

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.976 of 2019

IN THE MATTER OF:

Srei Equipment Finance Ltd.

...Appellant

Versus

Cosyn Ltd. & Ors.

...Respondents

**For Appellant: Shri Abhijeet Sinha and Shri Shambo Nandy,
Advocates**

**For Respondents: Eswara R. Nanduri and Ms. Prity Kumari,
Advocates
Shri S. Chidambaram (for RP)**

ORDER
(Virtual Mode)

04.01.2021 1) This Appeal along with Company Appeal (AT) (Ins) No.552 of 2019 was heard and reserved for Judgement by us on 25.11.2020. We have now listed this Appeal today for directions.

2) Heard Mr. Abhijeet Sinha for the Appellant, Ms. Prity Kumari for Respondent No.3 and Mr. S. Chidambaram for Resolution Professional – Respondent No.4. Counsel for Respondent No.4 states that in Company Appeal (AT) (Ins) No.552 of 2019, he has filed Reply and arguments but not in this Appeal.

3) Appellant has claimed in Appeal that the Resolution Plan approved makes provision to pay the Appellant only Rs.8.64 Crores out of admitted amount of Rs.32.29 Crores (Which admitted amount of Appellant is under

challenge in Company Appeal (AT) (Ins) No.552 of 2019.) Appellant has further claimed that as dissenting Financial Creditor, it is entitled to at least the value of its security interest which at the time of execution of Loan Agreement was Rs.35,02,00,000/-. Appellant claims the average liquidation value of securities held by Appellant would be Rs.12.95 Crores.

4) Resolution Professional in Company Appeal (AT) (Ins) No.552 of 2019 in Counter has claimed that after deducting value of 52 Lakhs shares issued, the claim of Appellant was admitted for dues of Rs.32.29 Crores.

5) Appellant has relied on Amendment Act 26 of 2019 and Judgement in the matter of **“Committee of Creditors of Essar Steel India Limited versus Satish Kumar Gupta & Ors.”** (2019 SCC OnLine SC 1478) para - 109.

6) We have already heard the parties in Company Appeal (AT) (Ins) No.552 of 2019 and this Appeal and are yet to decide the issues raised in both Appeals. We have noticed that Resolution Professional has not responded to the averments made in this Appeal and we require his response, especially to the above claims of the Appellant.

7) (i) Keeping all issues still open, we direct Resolution Professional to file Affidavit responding to above averments and claims of Appellant.

(ii) The Affidavit should further confirm in terms of Amended Section 30(2)(b)(ii) if the Resolution Plan provides for the payment of debts of Appellant – Financial Creditor, who did not vote in favour of the Resolution

Plan (in such manner as may have been specified by the Board), which shall not be less than the amount to be paid to such Creditor in accordance with Sub-Section 1 of Section 53 of IBC, in the event of a liquidation of the Corporate Debtor. If no, what should be the payment.

8) Resolution Professional is further directed to file copies of Form 'G' (Regulation 36A(2)) and Form 'H' (Regulation 39(4)).

9) Resolution Professional is directed to file the Affidavit and documents as directed within 10 days, after serving copies of the Affidavit on Counsel for Appellant and Respondent No.3 and after serving copy on Respondents Nos.1 and 2 along with copy of this Order. Proof of service be filed with regard to service of Affidavit on Respondents 1 and 2.

10) List this Appeal on 19.01.2021 for further hearing as part heard.

[Justice A.I.S. Cheema]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

rs/md