

Srei Infrastructure Finance Limited vs Trinity Alternative Investment ... on 19 January, 2022

National Company Law Appellate Tribunal
Principal Bench, New Delhi
COMPANY APPEAL (AT) No. 13 of 2022
(Arising out of Order dated 06th December, 2021 passed by National
Company Law Tribunal, Kolkata Bench, Kolkata, in CP/275(KB)2021).

IN THE MATTER OF:

Srei Infrastructure Finance Limited
Plot No. Y-10, Block EP,
Sector - V, Salt Lake City,
Kolkata - 700091

...Appellant

Versus

Trinity Alternative Investment
Limited
302, B-Wing, 3rd Floor,
Times Square, Andheri Kurla Road,
Opp. Mittal Est., Andheri-East
Mumbai 400059
Email: secretarial@taiml.co.in

Managers

...Respondent

Appellant: Mr. Tushar Mehta (Solicitor General), Sr. Advocate,
Mr. Arun Kathpalia, Sr. Advocate along with Mr. V.P.
Singh, Ms. Vatsala Rai, Mr. Vivek Shetty, Ms. Neeraja
Balakrishnan and Mr. Raghav Seth, Advocates.
Respondent: Mr. Ratnanko Banerji, Sr. Advocate along with
Mr. Abhijeet Sinha, Mr. Rishav Banerjee, Mr. Aditya
Shukla, Rajarshi Banerjee, Mr. Ravneet Singh and
Ms. Abhilasha Sharma, Advocates.

JUDGEMENT

[Per; Shreesha Merla, Member (T)]

1. Challenge in this Company Appeal (AT) No. 13 of 2022 filed under Section 421 of the Companies Act, 2013 (herein after referred to as the 'Act') is to the Impugned Order dated 06.12.2021, passed by the NCLT (National Company Law Tribunal, Kolkata Bench, Kolkata) in CP/275(KB)2021. By the Impugned Order, NCLT has observed as follows:

1. Ld. Sr. Counsel for the Respondent present. Ld. Sr. Counsel for the Petitioner present.

2. The Supplementary Affidavit in the matter of the order dated 30.11.2021 has been served on the Administrator on 03.12.2021. Ld. Sr. Counsel seeks sometime to cover

the same and file his reply thereto.

At request, time is granted. One week time is granted to file reply in the matter and copies of the reply shall be served on the Counsel on record for the Respondent. List this matter for further consideration on 16.12.2021 as a specially ordered matter.

3. In the mean time, both sides shall have precipitate himself and shall maintain status quo until the hearing of Petition.

2. Submissions on behalf of the Learned Solicitor General appearing on behalf of Appellant:

Learned Solicitor General appearing for the Appellant herein submitted that NCLT admitted the Application filed by Reserve Bank of India ('RBI') vide Order dated 08.10.2021 and initiated CIRP against the Appellant/M/s. SREI Infrastructure Finance Limited ('SIFL'), with the effect that moratorium under Section 14 of the Code commenced. An Administrator was appointed by the Company. 'SIFL' is a Non-Banking Financial Company and the Respondent/Trinity Alternative Investment Managers Limited („Trinity) is a subsidiary of 'SIFL'. 'SIFL' owns 51% of the equity shareholding in 'Trinity'. The remaining 49% shareholding is owned by one Payaash Capital Singapore Pte Ltd. („Payaash).

The Appellant filed Company Petition No. 275/KB/2021 under Sections 241/242 of the Companies Act, 2013, on 18.11.2021, before Company Appeal (AT) No. 13 of 2022 the NCLT seeking inter alia injunction against the Respondent from proceeding with the Rights Issue as it was being issued with a motive to dilute the shareholding of the Appellant in the Respondent Company.

The Status Quo ordered by NCLT with respect to the exercise of their Statutory Rights under Sections 100 and 169 of the Act, i.e., in matters entirely unconnected with the proposed Rights Issue in the absence of any pleadings or Affidavits by the parties, is unjustified. The Impugned Order effectively restrained the Appellant, the 51% Shareholder from exercising its Statutory Rights and following a prescribed procedure to remove an appointed Director, despite there being no request or prayer wheresoever. The Impugned Order is passed in respect of issue which is not even remotely connected with the lis pending before NCLT i.e., the Right Issue. The Impugned Order interferes with the functioning of the statutorily appointed Administrator and has the effect of derailing the timelines. It is strenuously argued by the Learned Solicitor General that the Directors of 'Trinity' on a Meeting with the Administrator of 'SIFL' on 12.11.2021 had conveyed to them that there was no malafide intention behind the aforesaid Rights Issue of shares and the Board of Directors of the Company decided to withdraw the current offer of the Rights Issue with immediate effect and advised to explore a way out to repay its debt, in consultation with the Administrator. It is submitted that under Section 159 of the Act, read with Regulation 168 of the Company Appeal (AT) No. 13 of 2022 Articles of

Association, 'SIFL' undertook to remove the Directors, for which procedure, 21 days time is a prerequisite to issue Notice for a Meeting. On account of the Status Quo Order by the NCLT, 'SIFL' will lose time and the Administrator will lose control. Further, the matter was first heard on 16.12.2021 and then was listed on 04.01.2022 thereafter on 14.01.2022 and is now posted to 18.02.2022.

Learned Solicitor General drew our attention to the prayer sought for before the NCLT, which primarily was only to stop the Rights Issue contemplated by 'Trinity'. The Respondent obtained an Order of injunction against the Appellant in a Petition filed by the Appellant. Learned Counsel relied on the decision of the Hon'ble Supreme Court in paras 118, 121, 133, 172 & 173 of 'Tata Consultancy Services Ltd.' Vs. 'Cyrus Investment Private Ltd. & Ors.', (2019) 9 SCC 449 and also relied on para 100 in 'Life Insurance Corporation of India' Vs. 'Escorts Ltd. & Ors.', (1986) 1 SCC 264 in support of his contentions.

3. Submissions of the Learned Sr. Counsel appearing on behalf of the Respondent:

Learned Sr. Counsel contended that 'SIFL' challenged the Rights Issue in a Petition filed before the NCLT, but latter initiated the process of removal of Directors. The requisition Notice (page 539) is only a pressure tactic by SREI. Learned Sr. Counsel drew our attention to the Orders dated 06.12.2021 & 04.01.2022. He submitted that the matter is listed again on 18.02.2022 within four weeks from today.

Company Appeal (AT) No. 13 of 2022 Learned Sr. Counsel submitted that there was no case of collusion made out in the Notice and that the NCLT has not expressed any opinion on the merits of the matter.

Learned Sr. Counsel further submitted that when a Petition is filed under Sections 241 and 242, the powers of Tribunal under Section 242(4) provides that the Tribunal may on an Application of any party to the proceeding, make any Interim Order which it thinks fit for regulating the conduct of the Companies affairs upon such terms and conditions as appear to it to be just and equitable.

4. For the sake of brevity, the facts are not being repeated.

5. At the outset, we find it relevant to reproduce the Order dated 30.11.2021 for better understanding of the case on hand:

Date: 30.11.2021 Ld. Sr. Counsel present on both sides.

This petition was moved by the Ld. Sr. Counsel appearing on behalf of the Administrator of the Petitioner aggrieved by the fact that the rights issue was proposed by the respondent No.1 Company on 25th October, 2021. The Administrator of the Petitioner immediately wrote back saying that in view of the moratorium following the admission of the petition filed by Reserve Bank of India on

08/10/2021 by the order of this Adjudicating Authority.

The Petitioner is not in a position at the moment to subscribe to the rights issue and therefore the same should be withdrawn. The apprehension of the Administrator stems from the fact that the rights issue is not subscribed to by the 51% shareholders, then there will be dilution of the shareholding in the R1 Company. The Ld. Sr. Counsel also alleges violation Company Appeal (AT) No. 13 of 2022 of Regulation 20(13) of the SEBI (Alternative Investment Funds) Regulations 2021 and the provisions of Section 62(1)(a) (iii) of the Companies Act, 2013.

Ld. Sr. Counsel on behalf of the Respondent No.1 Company submits that the cause of action for the present petition does not exist in view of the deferment of the proposed rights issue. He further submits that a future rights issue cannot be decided in the present petition.

Be it as it may, in the first instance we have to be satisfied as to why there was a material change proposed in the minutes which was circulated in draft form on 13/11/2021 and its final form was changed. We are also keen to know at whose instance the change was brought about. We are also required to be satisfied as to the pressing need for the rights issue when at this point of time 51% shareholding of the R1 company is with the Administrator appointed by this Tribunal. Ld. Sr. Counsel request a short time to place the documents/information on record. At request time is granted.

List this matter for further hearing on Monday, 06/12/2021 as a specially ordered matter.

6. Impugned Order dated 06.12.2021 is reproduced in para 1.

7. The matter was heard once again on 16.12.2021, when NCLT passed the following Order:

"1. Ld. Sr. Counsel for the Respondent present. Ld. Sr. Counsel for the Petitioner present.

2. Heard the Ld. Sr. Counsel appearing for the Petitioner in full. Ld. Sr. Counsel appearing for the Respondent seeks time to file reply affidavit, at request, one week's time is granted for the same. Copies of the same to be served on the Counsel on record for the Petitioner who shall have one week to file rejoinder if any.

3. List this matter on 04.01.2022."

Company Appeal (AT) No. 13 of 2022

8. From the aforementioned Order it is seen that the matter was listed on 04.01.2022 and it is pertinent to mention that NCLT has recorded that the „Petitioner was heard in full . It is significant to mention that in all the aforementioned Orders passed by NCLT both sides were present and heard. The matter was listed for 06.12.2021 as „a specially ordered matter . We find force in the contention of the Learned Counsel for the Respondent that it could not be heard on 14.01.2022 on account of the pandemic and was hence posted to 18.02.2022.

9. At this juncture, we find it relevant to reproduce Section 242(4) of the Act:

242. Powers of the Tribunal. -

..... (4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

10. The aforementioned Section empowers the Tribunal to pass any Interim Order on an Application made by any party to the proceeding, which it thinks fit for regulating the conduct of the Companies affairs upon such terms and conditions as appear to it to be just and equitable.

11. The Learned Solicitor General has strenuously contended that it is an admitted position that no Application/Prayer has been made with respect to the issue on hand; that this Status Quo Order disrupts the timelines and interferes with the functioning of the Administrator; that the Appellant vide letter dated 30.11.2021 issued under Sections 100 and 115 of the Companies Act, 2013, requisitioning an EGM of the Shareholders of the Company Appeal (AT) No. 13 of 2022 Respondent Company has nothing to do with the Rights Issue; that the Status Quo Order against the Appellant is with respect to the exercise of their Statutory Rights under Sections 100 (calling of EGM) and 169 (Removal of Directors) of the Companies Act, 2013, and for matters entirely unconnected with the Rights Issue; that NCLT had adjourned the matter time and again, despite the Appellant pointing out that the Respondent had unfairly dealt with the serving of the Reply and that the hearing ought to be taken up and the Order of Status Quo be vacated and that the Respondent had not raised any issue with letters dated 24.11.2021, 30.11.2021 issued by the Appellant nor had it sought any relief and further these letters do not give rise to any cause of action in favour of the Respondents.

12. Though we are conscious of the fact that there is an Order of Status Quo in a Petition filed by the Appellant in the absence of any Prayer to that effect/issue, we observe that NCLT has not passed any Order on the merits of the case on hand. From the bare perusal of the Impugned Order, we are of the view that the Tribunal has the power to make Interim Orders which it thinks fit for regulation of the conduct of the affairs of the Company. On a careful consideration of the contentions projected by both sides, and the pleadings put forward, this Tribunal, keeping in mind the ingredients of Section 241 and 242 of the Act, arrives at the resultant conclusion, without expressing any opinion on the merits of the matter, also not delving deep into the case, as allegations of 'oppression and mismanagement' consist of mixed questions of fact and law, which cannot be decided at this interim stage, directs the NCLT Kolkata Bench to take up the matter on 18.02.2022, Company Appeal (AT) No. 13 of 2022 without any further adjournments, dealing with all issues raised, in accordance with

law.

13. This Appeal is disposed of with the aforementioned observations.

14. The Registry is directed to upload the Judgement on the website of this Tribunal and send the copy of this Judgement to National Company Law Tribunal, Kolkata forthwith.

[Justice Anant Bijay Singh] Member (Judicial) [Ms. Shreesha Merla] Member (Technical) NEW DELHI 19th January, 2022 ha Company Appeal (AT) No. 13 of 2022