

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE**

Present:-

Hon'ble Justice Shampa Sarkar.

**AP-COM/1049/2024
IA GA-COM 1 of 2025
GA-COM 2 of 2025**

**SREI EQUIPMENT FINANCE LIMITED
VS
TRINITY ALTERNATIVE INVESTMENT MANAGERS LIMITED**

For the petitioner	: Mr. Ranjan Bachawat, Sr.Adv. Mr. Debnath Ghosh, Sr.Adv. Mr. Sushovit Dutt Majumder, Adv. Ms. Pubali Sinha Chowdhury, Adv. Ms. Rajeshwari Prasad, Adv.
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For the respondents	: Mr. Joy Saha, Sr.Adv. Ms. Hashnuhana Chakraborty, Adv. Ms. Soma Chatterjee, Adv. Ms. Arpita Das, Adv.
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Hearing concluded on	: 19.05.2025
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Judgment on	: 18.06.2025.
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Shampa Sarkar, J.

1. GA COM 2 of 2025 is an application for preponement of the date of hearing this application.
2. AP COM No. 1049 of 2024 is an application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act). Prayers have been made for interim protections. Disputes had arisen

between the parties out of the rupee loan agreement dated August 28, 2020, and supplementary rupee loan agreement dated November 2, 2020 (hereinafter collectively referred to as the loan agreements).

3. Under the said loan agreements, a sum of Rs. 26,00,00,000/- (Rupees Twenty Six Crores) was lent and advanced by the petitioner to the respondent. The said loan was secured by two deeds of hypothecation, dated August 28, 2020, and February 18, 2021.

4. In terms of the said loan agreement and deeds of hypothecation, the repayment obligations of the respondent under the said loan agreement were secured by a first charge on all investments (present, and future) on pari-passu basis with the existing loan of the petitioner.

5. I.A. G.A. COM 1 of 2025 is an application for vacating and / or setting aside and / or stay of the interim order dated December 19, 2024 passed by this court in AP COM NO. 1049 of 2024. Relevant portion of the order is quoted below:-

“The law is well settled. Parallel proceedings filed under the SARFAESI Act and the Arbitration and Conciliation Act 1996 can continue. The factum of extension of loan facility to the respondent is not in dispute. The respondent admits that Rs.26 crores had been lent by the petitioner. The reason why the respondent does not accept the liability to pay back the loan is that a sister concern of the petitioner company had expressed a desire not to take any coercive measure against the respondent in respect of any loan that the respondent may have been extended. Such understanding in my prima facie view, is not available from the records. There is neither any record of any promise nor any kind of assurance in respect of the loan which had been extended by the petitioner. The investment is worth Rs.12.41 crores as per the petitioner’s estimate. This appears from a communication dated November 16, 2024. The petitioner has made out a prima facie case that at present, more than Rs.53 crores is due and payable on account of non-payment of the principal and the interest. The submission of Mr. Wadehra that once a notice under Section 13(2) of the SARFAESI Act had been issued, there is an automatic injunction on the respondent from dealing with the

assets/investments which were hypothecated to the petitioner, is accepted.

However, the Panchnama and the inventory issued by the authorized officer and the communication of the authorized officer with regard to taking possession of the investments indicate that there was non-cooperation and non-disclosure. Such conduct of the respondent, prima facie, indicates that a protection is necessary to secure the dues of the petitioner. The injunction which is already operative in terms of the order passed under Section 13(4) of the SARFAESI remains. In addition, this Court is of the, prima facie, view that a further injunction should be issued restraining the respondent from operating the bank account which is maintained with the ICICI Bank, R.N. Mukherjee Road, Kolkata, 700001, without keeping a minimum balance of Rs.40 crores in the said account. The bank shall ensure compliance of this order on the basis of a server copy of the same.

Such interim injunction shall continue for a period of two months.

The respondent is directed to file an affidavit-in-opposition disclosing its other assets, investments and bank accounts, both past and current. Such affidavit-in-opposition be filed within 29th January, 2025. Let the matter appear in the monthly list of February, 2025. In the meantime, the petitioner shall act and proceed in accordance with the Arbitration and Conciliation Act, 1996.

As the learned Advocate for the respondent is not in a position to disclose any other movable or immovable assets over which an injunction can be issued by this Court, this Court has no other option but to injunct the respondent from operating the afore-mentioned bank account without maintaining a minimum balance of Rs.40 crores in it.

The respondent is at liberty to pray for vacation, variation and modification of the order.”

6. The court was, prima facie, satisfied that the factum of the extension of the loan facility of Rs. 26,00,00,000/- (Rupees Twenty Six Crores) was not in dispute. The reason why the respondent did not accept the liability to pay back the loan was that a sister concern of the petitioner company had expressed a desire not to take any coercive steps against the respondent, but such contention of the respondent was not available from the record. From the communication dated November 16, 2024, the investments over which the petitioner had the first charge was found to be worth Rs. 12.41 crore. The panchnama and the inventory issued by the authorized officer

and the communication of the authorized officer disclosed that, possession of such investments could not be taken over. The respondent resisted the authorized officer and did not hand over those documents. The authorized officer complained of non-cooperation. The conduct of the respondent persuaded the court to arrive at a, prima facie, finding that a protection with regard to the security of the dues would be necessary. The petitioner was entitled to secure the loan which had gone up to more than Rs. 50 crores with interest. In addition to the injunction which was already operative under Section 13(13) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (hereinafter referred to as the SARFAESI Act), this court had directed the respondent to keep a minimum balance of Rs. 40 crores in its bank account maintained with the ICICI Bank. Parties were permitted to exchange affidavits.

7. Thereafter, G.A. COM 1 of 2025 was filed for vacating of the above interim order. On February 20, 2025, the court directed that the application being G.A. COM 1 of 2025 be treated as the affidavit-in-opposition of the respondent and the petitioner was allowed to file an opposition to the said G.A., which would be treated as the affidavit in reply. The matter was heard at length on several occasions and parties argued on the merits of the application.

8. Mr. Ranjan Bachawat, learned senior Advocate submitted that adjudication of the disputes and differences between the parties were to be settled by arbitration. The application for injunction had been filed in aid of the main relief. The current dues of more than Rs. 53 crores should be secured. The respondent was already in contempt of the order of the court.

It was urged that, this court had directed the respondent to disclose other assets, investments, bank accounts both past and current, but such direction had not been followed. The petitioner was entitled to secure its claim as the loan was an agreed incident and the amount was not disputed. Several communications made by the respondent were relied upon in support the contention that the respondent had unequivocally accepted and acknowledged its obligation to repay the loan. The claim of the petitioner was a crystallized debt. The admission made by the respondent to that effect, was relied upon.

9. According to Mr. Bachawat, in addition to the recovery proceedings under the SARFAESI Act, reliefs and protections under Section 9 of the said Act should be granted in the facts of the case. The law permitted protection of the loan extended by the petitioner. The court could compel the defaulter to secure the amount in some form or another.

10. Any protection or interim measure which would appear to the court to be just and proper in the facts and the circumstances of the case should be granted. This court, upon being satisfied with regard to the depletion of the value of the investments which had been charged in favour of the petitioner, had deemed it fit to injunct the respondent from operating the bank account maintained with the ICICI Bank without keeping a continuous balance of an amount of Rs. 40 crores. This was done in order to secure the amount payable to the petitioner, by the respondent.

11. In the course of arguments, the respondent filed a supplementary affidavit. The first supplementary affidavit dated March 18, 2025 was not in proper form and did not disclose material particulars. The court had

permitted the respondent to file another supplementary affidavit and the same was filed on May 2, 2025.

12. Objecting to the contents of the supplementary affidavits, Mr. Bachawat submitted that the net value of the securities or investments which were disclosed in the supplementary affidavit had no legal sanctity. There was no clarity as to whether those investments were held by the respondent as their own assets or were investments made on behalf of third parties/investors. It was further submitted that some of the investments referred to in the first supplementary affidavit were not included in the second supplementary affidavit and there were huge escalations/enhancements in the valuation of some of those funds. Such discrepancies indicated that the respondent was not following an honest business practice and as such, interference of the court was required, by continuing the injunction that was already passed in respect of the bank account.

13. According to Mr. Bachawat, SEFL and SIFL were two separate and distinct corporate entities, having separate registrations with the Registrar of Companies and separate board of directors. Thus, the contention of the respondent that SEFL and SIFL were alter egos of each other and as such the loan was in effect an investment made in the respondent company by one of its sister concerns, could not be a valid ground to vacate the order of injunction on the bank account.

14. It was submitted that a Corporate Insolvency Resolution Process (CIRP) had been initiated against both the companies SEFL and SIFL before the National Company Law Tribunal (NCLT), Kolkata. An Administrator was

appointed over the affairs of both the companies. The Administrator prayed before the NCLT for consolidation of the CIRP process of both SEFL and SIFL. The learned Tribunal approved the same. The Administrator called for resolution plans from prospective applicants. National Asset Reconstruction Company Limited, NARCL was the successful resolution applicant. NARCL was an independent entity and not connected with the Kanoria family, which had originally promoted the two companies. Thus, the right to recover the loan survived even if the CIRP proceedings were consolidated.

15. What transpired between the SEFL and SIFL at the time when the Kanoria family was involved in the management and operation of the companies, was no longer relevant. It was immaterial whether the petitioner was a 100% or 60% subsidiary of SIFL or whether SIFL had majority shareholding in the respondent / company. SIFL could be a shareholder in SEFL or a shareholder in the respondent, but such fact would not affect the right of the petitioner to seek interim protections, pending adjudication of the dispute by an appropriate forum. The petitioner had an independent right to recover the dues from the respondent. Further, no assurance or undertaking had ever been given to the respondent by the petitioner in any proceeding before the NCLT. The petitioner was not a party to the proceedings viz, CP No. 275 (KB) of 2021, SREI Infrastructure Finance Ltd. v. Trinity Alternative Investment Managers Ltd. The specific contention of Mr. Bachawat was that in spite of the order passed under the SARFAESI Act, the respondent had parted with/ disposed of/transferred/redeemed 62,346.08 numbers of units held in the ICICI Prudential Money Market

Fund Direct Plan Growth. It was also submitted by Mr. Bachawat that even after the order of injunction was passed, the respondent had depleted and disposed of further investments, particularly investments in infrastructure resurrection funds, strategic opportunity funds, etc. Thus, the respondent acted in violation of the order and such conduct raised a question of bonafide of the respondent.

16. The contention of the respondent that there had been suppression of material facts by the petitioner was also refuted by Mr. Bachawat and it was submitted that in the order dated December 19, 2024, the connection between SIFL and SEFL had been recorded. The respondent's argument had been dealt with by the court. The respondent could not have alleged any suppression. Even after Payaash became 49% shareholder of the respondent, the respondent had admitted the obligation to pay back the loan to the petitioner. Therefore, there was no material suppression while obtaining the order of ad-interim injunction on the first occasion. The allegation that SIFL was preventing issue of rights which had been proposed by the respondent in order to raise funds and pay back the loan, did not have any bearing on the facts of the case. In the absence of any non-disclosure of the assets, investments, bank accounts of the respondent, the court must draw an adverse inference against the respondent.

17. It was further submitted that, the respondent proceeded with a malafide intention to issue rights at a time when the Administrator had been appointed over the assets of the petitioner and SIFL. Such intention of the respondent was to merely reduce the shareholding of SIFL in the respondent. SIFL would not be able to participate in such rights issue and

the shareholding of SIFL would be reduced from 51% to 11%. On a comparison of the Management Accounts as on December 31, 2024, which were disclosed by the respondent earlier and the investments disclosed by the respondent in the supplementary affidavits, it would appear that few of the investments appearing in the Management Accounts dated December 31, 2024, i.e., 4,99,045 units of Infrastructure Resurrection Fund and 1,00,000 units of Strategic Opportunity Fund were not mentioned in the latest disclosures. The values assigned to the investments were ex-facie incorrect or inflated, particularly that of Bharat Nirman Fund. The value of which, had drastically increased by twenty times, i.e., from Rs. 1.82 crores to Rs. 36.96 crores. Such valuation could not be relied upon. The net asset value per unit of Bharat Nirman Fund was unrealistic. Moreover, companies in which the funds were invested by the respondent were highly indebted to banks and other financial institutions. They were undergoing liquidation proceedings. There was also a doubt with regard to the impartiality of the valuers. There was nothing on record to show that the bank account which was enjoined from being operated without maintaining a sum of Rs. 40 crores, was actually an account connected with the business transactions between the respondent and third-party investors, who had engaged the respondent to make investment on their behalf. Thus, Mr. Bachawat submitted that, GA No. 1 of 2025 should be dismissed and the injunction should be continued.

18. Mr. Joy Saha, learned Advocate for the respondent, submitted that, SEFL was the 100% wholly-owned subsidiary of SIFL. At the time of grant of such loan on August 28, 2020, Trinity was also a 100% owned subsidiary of

SIFL. The purported loan was in effect, money transferred by the 100% shareholders of Trinity in favour of Trinity i.e., SIFL to Trinity. The said amount was in fact an investment by the promoter and 100% shareholder of Trinity in Trinity itself and not a loan. Such investment had been made on August 28, 2020. SIFL sold 49% shareholding in Trinity to Payaash, much later. Till date, SIFL was the majority shareholder, having 51% of the share holding in Trinity. Proceedings were pending before the NCLT, Kolkata since July 2022 with regard to the management and control of Trinity, between Payaash vs. Trinity and ors, viz, CP NO. 230 of 2022. Certain orders were passed. It was directed that SIFL could continue with the meetings, but the result of such meetings would be subject to the final decision of the NCLT Kolkata.

19. Trinity had intended to take out a Rights Issue to generate revenue for repayment of the debt of SEFL. Such Rights Issue was opposed by SIFL. Consequently, the Rights Issue had to be permanently deferred by Trinity. This fact was also recorded by the NCLT in the order dated March 24, 2022. There was already an injunction on the hypothecated assets. On July 25, 2024, the petitioner had issued a notice under section 13(2) of the SARFAESI Act. Section 13(13) of the SARFAESI Act came into operation immediately thereafter. As per law, no borrower could, after receiving a notice under subsection (2) of Section 13, transfer by way of sale, lease, or otherwise, (other than in the ordinary course of his business), any of its secured assets referred to in the notice, without prior consent of the secured creditor.

20. In view of the automatic restraint on Trinity from effectively transferring by way of sale, lease, or otherwise any of the secured assets, a further order of injunction was not warranted. The petitioner was automatically protected under the SARFAESI Act. It was further submitted that the securities of SEFL were confined to past, present, and future books, debts, and investments. The petitioner had no tangible securities in the form of movable and immovable assets. In that sense, it was an unsecured creditor. It was trite law that an unsecured creditor having a money claim, could not be converted to a secured creditor. Reliance was placed on the following decisions:-

- (a)** Sunil Kakrania & Ors. vs M/s Saltee Infrastructure Ltd. and Anr. reported in AIR 2009 Cal 260,
- (b)** Raman tech & process Engg. Co. & Anr. vs Solanki Traders reported in (2008) 2 SCC 302,
- (c)** Kohinoor Steel Private Limited vs Pravesh Chandra Kapoor reported in 2010 SCC Online Cal 1856, and
- (d)** Sanghi Industries Limited Vs. Ravin Cables Ltd. and Anr. reported in 2022 SCC Online SC 1329.

21. According to Mr. Saha, the petitioner was also attempting to obtain an order of attachment before judgment. Order 38, Rule 5 of the Code of Civil Procedure, could be invoked only when the court was satisfied that the defendant in a suit, with the intention to delay or obstruct the execution of any decree, was about to dispose of the whole or any part of the property or was about to remove the whole or any part of the property from the local limits of the jurisdiction of the court.

22. In the instant case, there has been no incident which would indicate that Trinity was trying to sell any unit or deal with any of its assets. Thus, the interim order should be vacated and the application for injunction

should be dismissed. The injunction on the bank account had caused serious hindrance in the business of the respondent and the money belonging to third party investors which were lying in the bank accounts were blocked.

23. Heard the learned advocates for the respective parties. The question is whether the interim order already passed on December 19, 2024 should be vacated or continued and what reliefs were available to the petitioner. The fact that Rs. 26,00,00,000 crores was lent by the petitioner, is an admitted position. The amount was reflected in the books of accounts. The respondent claims to have intended to take out a Rights Issue, which SIFL had objected to. The letter dated April 23, 2024 issued by the respondent is quoted below.

“
TRINITY
Trinity Alternative Investment Managers Limited

Dated : 23rd April 2024

To
M/s. Srei Equipment Finance Limited
Kolkata

Reg: Balance Confirmation as on 31" March 2024

Dear Sir,

We hereby confirm the Outstanding as on 31s March 2024 as per our books of accounts, payable to you :-

Principal Due - Rs.26,00,00,000/-

The above amount does not include any other charges or Interest Dues as on the mentioned date.

Thanks & Regards
For : Trinity Alternative Investment Managers Limited
Authorised Signatory ”

24. The contention of Mr. Saha that the extension of loan was actually an investment by SIFL in its erstwhile wholly owned company Trinity, shall be decided by the learned Arbitrator. The question involves admissibility of the claim. Further contention of Mr. Saha that an undertaking was given by SIFL in a proceeding before the NCLT to the effect that it would not take any coercive measures against the respondent, is again a matter of evidence which has to be decided by the learned arbitrator. However, from the deeds of hypothecation, this court finds that all investments (present and future) were secured in favour of the petitioner. The schedule does not mention exactly what those investments were. No specifications were provided, which means that all existing investments held by the respondent at present or to be made in future, in its own name, would remain charged in favour of the petitioner. No other form of security had been provided in the deeds of hypothecation. The schedule does not provide any further charge. What would happen if the value of the investments depleted, had not been provided for. The argument of Mr. Bachawat that, as the value of the investments had depleted further security should be provided, is not accepted. The court need not pass directions for securing the alleged sum calculated by the petitioner at present. The petitioner is entitled to protection of what was charged to the petitioner as per the deeds of hypothecation. However, the letter quoted hereinabove mentions that as per books of accounts Rs. 26,00,00,000 was payable. The petitioner did not object to the quantum mentioned. Thus, in my prima facie view, the petitioner's claim that an amount of Rs. 53,61,39,447 was payable at present, is not supported by any admission by the respondent. As per the

petitioner's estimation, the investments mentioned in the application was worth Rs. 12.41 crores. Further investments have been disclosed in this proceeding, which have been valued at Rs. 4104.08 lakhs. Although, those disclosures have been stated to be unreliable, in my opinion the petitioner has not been able to establish with proper calculations that such investments which have been disclosed are not worth Rs. 26 crores. A further deliberation and probe by this court would amount to a mini trial. The value of the investments depends on market conditions. The charge on investments was created consciously by the parties. The parties were both commercial entities and well versed in the subject. There is nothing on record to show that the alleged reduction in the value of the assets was attributable to any malafide conduct of the respondent. The significant factor before this court is that SEFL was a 100% fully owned subsidiary of SIFL, on the date of grant of loan, i.e., August 28, 2020.

25. Trinity, was also a 100% fully owned subsidiary of SIFL. Thus, in effect SIFL had lent the money to Trinity which was also owned by SIFL. Thereafter, SIFL sold 49% shareholding in Trinity to Payaash. Till date, SIFL is the majority shareholder, owning 51% of the shares in Trinity.

26. The loan was extended by the petitioner to a wholly owned subsidiary of its parent company, which, in my prima facie view, creates a unique situation. Subsequently, M/S Payaash Capital (Singapore) Pte Limited, invested in the respondent company in the capacity of an overseas investor, so as to expand the business of the company. Consequently, a tripartite agreement was entered into between the existing shareholder, namely SIFL, the respondent and Payaash on September 1, 2020, whereby 49% of the

paid-up share capital of the company was acquired by Payaash. The balance of 51% of the paid-up share capital was held by SIFL. On October 8, 2021, the Reserve Bank of India filed an application for initiation of Corporate Insolvency Resolution Process against the petitioner company and SIFL under Section 227, read with clause (zk) of subsection 2 of Section 239, of the Insolvency and Bankruptcy Code, 2016, read with Rules 5 and 6 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudication Authority) Rules, 2019 before the learned NCLT Kolkata.

27. The respondent decided to issue fresh equity shares on rights issue basis, in the interest of the company and to improve its financial health. SIFL resisted such Rights Issue. SEFL and SIFL were under a common Administrator and at the behest of the Administrator, the CIRP of both companies SEFL and SIFL were consolidated. Payaash preferred a petition under Sections 241, 242 and 244 of the Companies Act before the NCLT, seeking to raise issues of oppression and mismanagement in the respondent company. The said application is pending. The respondent is a fully functional entity. SIFL has 51% shareholding in Trinity. It is a fact that NARCL manages, controls and administers both SIFL and SEFL. SIFL is a majority shareholder in the respondent company. The resolution plan of NARCL was approved by NCLT. The petitioner's claim, as that of a financial creditor, ought to have been included in the plan. The petitioner was included in the Committee of Creditors, but being a related party to SIFL, was not allowed to represent, participate or vote in the meeting of the committee of creditors. The alleged debt which the respondent owed to the

petitioner should have been factored in and included in the claims of the financial creditors that had been admitted. However, parties have not produced the plan which would have dealt with such aspect in more detail. After the resolution plan was approved by NCLT on August 11, 2023, the dues payable to the petitioner by the respondent, as per the books of account was Rs. 26,00,00,000, which was communicated by a letter dated August 23, 2024. The possibility that only Rs. 26,00,00,000 was admitted in the resolution plan towards dues of SEFL cannot be ruled out.

28. The relevant portions of the order of the NCLT dated August 11, 2023 with regard to the approval of the resolution plan are quoted below:-

“78. Now we proceed to consider the Resolution Plan which has been filed before this Adjudicating Authority through I.A. (IB) No. 428/KB/2023 and I.A. (IB) No. 434/KB/2023 which are applications filed under section 30(6) of the Insolvency and Bankruptcy Code, 2016, after approval of the resolution plan by the consolidated Committee of Creditors ("CoC") of SREI Equipment Finance Limited and SREI Infrastructure Finance Limited.

79. These applications were filed by Mr. Rajneesh Sharma, Administrator of SREI Equipment Finance Limited ("SEFL") and SREI Infrastructure Finance Limited ("SIFL"), by invoking the provisions of section 30(6) of the Insolvency and Bankruptcy Code, 2016 ("the Code" or "IBC") read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) for approval of a Resolution Plan in respect of SREI Equipment Finance Limited and SREI Infrastructure Finance Limited.

80. The underlying Company Petitions in C.P. (IB) No. 294/KB/2021 and C.P. (IB) No. 295/KB/2021 were filed by the Reserve Bank of India, the Appropriate Regulator, against SIFL and SEFL respectively, under the Insolvency and Bankruptcy Code 2016 read with the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 ("FSP Rules") which were admitted vide order dated 08 October 2021.

81. Mr. Rajneesh Sharma was appointed as the Administrator of SEFL and SIFL. The Authorised Representative vide a press release dated 11 October 2021 advised that the Advisory Committee constituted on 04 October 2021 shall continue as the Advisory Committee constituted under rule 5(c) of the FSP Rules. The Advisory Committee was

reconstituted from time to time in accordance with the directions from the Reserve Bank of India.

Constitution of CoC

82. The IRP made public announcement on 11 October 2021 in the Times of India (English) (Kolkata Edition, Anadabazar Patrika (Bengali) (Kolkata Edition) Maharashtra Times (Marathi) (Mumbai edition) and Navbharat Times (Hindi) (Mumbai edition) newspapers regarding initiation of Corporate Insolvency Resolution Process (CIRP) and called proof of claims from the financial and operational creditors, workers and employees of the corporate debtor in the specified forms till 22 October 2021.

83. The Administrator constituted the CoC for SEFL and SIFL. Two I.A.s, i.e. I.A. (IB) No. 1100/KB/2021 in C.P. (IB) No. 295/KB/2021 and I.A. (IB) No. 1090/KB/2021 in C.P. (IB) No. 294/KB/2021 were filed by the Administrator seeking consolidation of the CIRP and CoC of SEFL and SIFL. This Adjudicating Authority vide order dated 14 February 2022⁵⁷ approved the said I.A.s and allowed the consolidation of the CoC. The CoC of SIFL and SEFL were consolidated on 16 March 2022 which consists of 43 Financial Creditors which is given hereunder:

Sl. No.	Members of the Consolidated Committee of Creditors ("CoC")
1.	Canara Bank
2.	Union Bank of India
3.	Punjab National Bank
4.	State Bank of India
5.	Bank of Baroda
5.	Indian Bank
7.	Punjab and Sind Bank
8.	Central Bank of India
9.	UCO Bank
10.	Bank of India
11.	Indian Overseas Bank
12.	Bank of Maharashtra
13.	IDBI Bank
14.	Lakshmi Vilas Bank
15.	Dhan Laxmi Bank
16.	Axis Bank
17.	South Indian Bank
18.	Karur Vysya Bank
19.	Karnataka Bank
20.	ICICI Bank
21.	HDFC Bank
22.	SIDBI
23.	NABARD
24.	IFCI Ltd.
25.	Bank of Ceylon

26.	People's Bank
27.	Standard Chartered Bank
28.	Aozora Bank Ltd.
29.	ING Bank, a branch of ING-DiBa AG
30.	DEG – Deutsche Inventions-und Entwicklungsgesellschaft mbH (“DEG”)
31.	Sumitomo Mitsui Finance and Leasing Co., Ltd.
32.	Finnish Fund for Industrial Cooperation Ltd. (FINNFUND)
33.	Belgian Investment Company for Developing Countries SA/NA-BIO
34.	Societe de Promotion et de Participation pour la Cooperation Economique S.A (“PROPARCO”)
35.	Export Import Bank of United States (represented by International Advisors)
36.	Global Climate Partnership Fund S.A., SICAV-SIF
37.	Oesterreichische Entwicklungsbank AG (ÖEB)
38.	SACE S.p.A. The Export credit Agency of Italy (“SACE”)
39.	Axis Trustee Services Limited
40.	Catalyst Trusteeship Limited
41.	IDBI Trusteeship Services Limited
42.	Nicco Engineering Services
43.	<u>SREI Equipment Finance Limited</u>

*SEFL being a related party to SIFL, SEFL shall not have any right of representation, participation or voting in a meeting of the committee of creditors pursuant to section 21(2).

84. The applicant states that a total 39 CoC meetings [three separate CoC Meetings an 36 Consolidated CoC meetings] have been held during CIRP period spreading over a period of 02 November 2021 to 15 February 2023.

Collation of claims

85. The amounts claimed and admitted are summarized below:-

Nature of creditor	Amount claimed	Amount admitted
Financial Creditors	45,372.44	32,749.26
Operational Creditor (Other than Workmen and Employee and	224.12	123.54

Statutory Dues)		
Operational Creditors (Government Dues)	190.23	0.07
Operational Creditor (Workmen and Employee)	3.42	3.39
Other Creditors	150.98	150.05
Total	45,941.149	33,026.31

29. Whether the petitioner's claim was included in the amount of Rs. 32,749.26 in the claims of financial creditors, is an issue which will be decided by the learned Arbitrator. If the claim of the petitioner or part thereof was not included and admitted in the resolution plan, the same stood extinguished. Whether the intention of SIFL was to take over the control from Payaash by using such coercive measures through SEFL, is also a question which has to be decided by the learned arbitrator. Proceedings are pending before the NCLT.

30. The relevant portion of the order of NCLT is quoted below:-

"118. With respect to the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are granted in terms of Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd," wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. We place reliance on the recent judgement of Hon'ble High Court of Rajasthan in the matter of EMC v. State of Rajasthan wherein it has been inter-alia held that :

* * *

"Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date."

* * *

On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.”

31. Interim protection is granted upon consideration of prima facie case, balance of convenience and inconvenience and irreparable loss and injury to be suffered by parties in case of grant or non-grant of the interim protections. A, prima facie, case of the petitioner's dues of Rs. 26,00,00,000 is available from the books of accounts of the respondent. This was admitted in the letter dated April 23, 2024. However, the balance of convenience and inconvenience and irreparable loss and injury tilt in not continuing with the order of injunction that was passed, restraining the operation of the bank account without keeping aside a sum of Rs.40 crores. The fact that SIFL and SEFL are both controlled, managed and administered by NARCL indicate that the NARCL has adequate control over the respondent. NARCL's interest is protected. The relevant portion of the order of NCLT is quoted below:-

“113. On hearing the submissions made by the Administrator, and perusing the record, we find that the Resolution Plan filed by National Asset Reconstruction Company Limited has been approved with 89.25% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. It is pertinent to note that NARCL along with India Debt Resolution Company Limited have proposed to carry out the compliances envisaged in the Resolution Plan filed by NARCL. By and large, all the compliances have been done by the Administrator and the Resolution Applicant for making the plan effective after approval by this Bench.

* * *

115. We have perused the reliefs, waivers and concessions as sought and as given in Section 10 at Pages 105-115 of the Resolution Plan. While some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the purview of the Code while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has power to grant reliefs, waivers and concessions only in relation to the Code and the Companies Act 2013 (within the powers of the NCLT) for achieving the objective of the Code. No reliefs, waivers and concessions that fall within the domain of other government department/authorities are granted. The reliefs, waivers and concessions that pertain to other governmental authorities/departments shall be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government with regard to the respective reliefs, waivers and concessions. The competent authorities including the Appellate authorities may consider grant such reliefs, waivers and concessions keeping in view the spirit of the Code.

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123. Subject to the observations made in this Order, the Resolution Plan dated 18 January 2023 along with an addendum dated 24 January 2023, is hereby APPROVED by this Adjudicating Authority. The Resolution Plan shall form part of this Order and shall be read along with this order for implementation. The Resolution Plan thus approved shall be binding on the Corporate Debtor and other stakeholders involved in terms of section 31 of the Code, so that revival of the Debtor Company shall come into force with immediate effect.

* * *

124. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.

125. The Administrator shall submit copies of the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.

126. Liberty is hereby granted for moving any application if required in connection with implementation of this Resolution Plan.

127. A copy of this Order is to be submitted to the Registrar of Companies, West Bengal.

128. The Administrator shall stand discharged from his duties with effect from the date of this Order, save and except the duties envisaged in the Resolution Plan.

129. The Administrator is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises

of the corporate debtor through the Administrator to finalise the further line of action required for starting of the operation.

130. In view of the approval of the Resolution Plan, I.A. (IB) No.434/KB/2023 in C.P. (IB) No. 295/KB/2021 and I.A. (IB) No. 428/KB/2023 in C.P. (IB) No. 294/KB/2021 shall stand disposed of accordingly.

131. In view of the approval of the Resolution Plan, I.A. (IB) No. 392/KB/2023, has been rendered infructuous and is disposed of accordingly.

132. C.P. (IB) No. 294/KB/2021 and C.P. (IB) No. 295/KB/2021 shall be listed on 06 September 2023 along with the pending connected I.A.s.

133. The Registry is directed to send e-mail copies of the order forthwith to all the parties for information and for taking necessary steps.

134. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

32. The injunction under the SARFAESI Act over all the secured assets as per the schedule is sufficient protection. The balance of convenience and inconvenience is in favour of vacating the order of injunction on the bank account in view of the above discussions. If the order of injunction is not vacated, it would amount to interference with the day to day business of the respondent. Thus, the interim order passed is modified to the extent that there shall be an injunction on all the investments, which have been disclosed by the respondent in the two supplementary affidavits and also on those which may be made in future. The respondent shall be restrained from disposing of, transferring or parting with or redeeming the shares or units held in the investments and funds. This injunction will apply to all future investments to be made. This order will continue until further orders are passed by the learned Arbitrator. In addition to the above, the last audited accounts of the respondent shall be handed over to the petitioner within two weeks. The respondent shall be obliged to provide such information to the petitioner as may be required from time to time with

regard to the past, present and future investments. Financial statements for the last 6 months shall be supplied to the petitioner within two weeks from date. The order of injunction on the bank account is vacated, in view of the above discussion and on finding that NARCL which manages both the petitioner and the SIFL, has sufficient control in the respondent company.

33. The petitioner does not require any further protection. The petitioner at this stage is entitled to the security as mentioned in the schedule of the deeds of hypothecation agreement. The respondent is continuing its business activity, and is fully functional. The pleadings do not indicate that the respondent had tried to remove its assets or alienate its properties which would give rise to an apprehension that even if an award is passed in favour of the petitioner, the same will be a paper decree. The arbitration has commenced and it is informed that the same has been fixed before the learned arbitrator in the end of June. The petitioner is always at liberty to pray for interim orders before the learned arbitrator. The observations made herein are tentative.

34. Accordingly AP COM 1049 of 2024, I.A. G.A. COM 1 of 2025 and I.A. G.A. COM 2 of 2025 are disposed of.

(Shampa Sarkar, J.)