

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A. No. 133,225,346,2966 of 2020
&
785, 817-818,1815, 1816,1820,2104 of 2021
&
296,427,429,557, 586,645,762,845, 924,1709,2424,3115, 3498-
3499,3579, 3844,3845,4009, 4526,4977-4978, 4867 of 2022
in
Company Appeal (AT) No. 346 of 2018

IN THE MATTER OF:

Union of India

....Appellant

Vs.

**Infrastructure Leasing and Financial Services Ltd.
& Ors.**

....Respondents

With

Company Appeal (AT) No. 347 of 2018

IN THE MATTER OF:

Infrastructure Leasing and Financial Services Ltd.

....Appellant

Vs.

Union of India & Ors.

....Respondents

Present:

Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Vihas Kumar Jah, Ms. Isha Malik, Mr. Nihaad Dewan, Advocate for IL&FS. Mr. Rigved Prasad, Advocate for Applicant in I.A. No. 924 of 2022. Mr. Abhirup Das Gupra, Ishaan Duggal, Pathik Choudhury, Advocates for Tata Power and Pramerica Life Insurance. Mr. Arun Kathpalia, Mr. Sandeep Singhi, Mr. R. Sudhinder, Mr. Gaurav Mathur, Ms. Ekta Bhasin, Ms. Aastha Trivedi, Advocates for the Applicant in I.A. No. 2966 of 2020 and Appellant in CA(AT) No. 177 of 2022. Mr. Aditya Sikka, Ms. Vasudha Vijayshat, Advocates for UoI. Mr. Ramji Srinivasan, Sr. Advocate with Mr. Kuber Dewan, Ms. Neeharika Aggarwal, Ms. Trisha Ray Chaudhuri, Mr. Kaustubh Srivastava, Advocates for

IL&FS and I.A. No. 557 & 645 of 2022. Mr. Siddhanth Pandey, Advocate for PFL, EPF, PFCEGF, PPLSMF. Mr. N.L. Ganapathi and Mr. Sidhant Garg, Advocates for GAIL (I) Ltd. in I.A. No. 1815, 1816 and 1820 of 2021. Mr. Mahesh Agarwal, Mr. Amar Dave, Mr. Ankur Saigal, Advocates for Terra Infra Development in I.A. No. 2424. Mr. Mahesh Agrawal, Mr. Ankur Saigal, Mr. Shivam Shukla, Advocates in I.A. No. 586 of 2022. Chilanjivi S., Dhurav Shah, Apoorva Kaushik, Geetika Sharma, for HDFC in I.A. No. 557 of 2022. Mr. Vikas Kumar, Mr. Manish Paliwal, Advocates for Intervener Applicant (BEL). Mr. Manish Singhvi, Sr. Advocate with Mr. Pawan Kr. Bansal, Mr. Ahsan, Advocates in I.A. No. 762 of 2022. Saransh Jain, Abhishek Kumar, Advocates for TITAN in C.A. (AT) No. 347 of 2018. Mr. Mahesh Agrawal, Mr. Shivam Shukla, Ms. Geetika Sharma, Advocate in I.A. No. 3499 of 2022. Mr. Sanjay Bajaj, Urwick Hans, Mayank Jain, Advocates for Canara Bank in I.A. No. 586 of 2022 and in I.A. No. 1709 of 2022 for PNB and in I.A. No. 3115 of 2022 for PNB. Ms. Anannya Ghosh, Ms. Bhabne Das, Ms. Doel Bose, Applicants in I.A. No. 3579 of 2022. Mr. Gaurav Juneja, Mr. Aayush Jain, Advocates in I.A. No. 4977-4978 of 2022. Mr. P. Nagesh, Sr. Advocate with Mr. Anand Mehta, Ms. Bani Brar, Mr. Akshay Sharma, Advocates in I.A. No. 296, 427, 429 of 2022 for the Applicant. Mr. Aayush Agarwala, Siddham Nahatta, Bhumika Sharma, Advocate for AXIS Bank (R3) in I.A. No. 645, 3499 of 2022. Advocate Munindra Divedi, Advocate Divya Bhalla, for NHAI in I.A. No. 4526 of 2022. Ms. Kavita Sarin, Ms. Niharica Khanna, Advocates for ECIPL in I.A. No. 827 of 2019. Mr. Rajiv S. Rly, Mr. Avrojyoti Chatterjee, Ms. Jayasree Saha, Mr. Siddharth Dhingra, Advocate for UCO Bank & Canara Bank. Mr. Krishnendu Datta, Sr. Advocate with Mr. Dhruv Wahi, Rakshit Jain, Advocates for Applicant in I.A. No. 363 of 2019. Mr. Udit Seth, Ms. Priya Kanwat, Advocates for KVNL Applicant in I.A. No. 785-786. Mr. Sanjay Kapur, Ms. Megha Karnwal, Mr. Surya Prakash, Ms. Aastha Gumber, Advocates for SBI in I.A. No. 3579 of 2022 and Mr. Sanjay Kapur, Ms. Megha Karnwal, Ms. Akshata Joshi, Mr. Arjun Bhatia, Advocates for SBI in I.A. No. 4867 of 2022. Mr. Abhishek M. and P. Gupta, Advocate in I.A. No. 557, 645 of 2022. Mr. Krishnendu Datta, Sr. Advocate with Ms. Misha, Ms. Mahima Sareen, Mr. Rahul Gupta, Mr. S. Bose, Advocates for Applicant and Petitioner in I.A. No. 845 of 2022, I.A. No. 4009 of 2022 and Review App. No. 03 of 2022. Mr. Arun Kathpalia, Sr.

Advocate with Mr. Sandeep Singhi, Mr. R Sudhinder, Mr. Guarav Mathur, Ms. Ekta Bhasin, Ms. Aastha Trivedi, Advocates. Mr. Abhishek Puri, Ms. Surbhi Gupta, Mr. Sahil Grewal, in I.A. No. 2966 of 2020 for HDFC. Mr. Gopal Jain, Sr. Advocate with Mr. Akshat Hansaria, Mr. Tanmay Arora, Advocates. Mr. Ritik Gupta, Mr. Kunal Verma, Advocates. Mr. Arun Kathpalia, Mr. Manmeet Singh, Ms Anjali Dwivedi, Ms. Diksha, Advocates for ARIL and L&T Infra Credit, Ms. Pallavi Parmar, Advocate for Applicant in I.A. No. 4977 & 4978 of 2022. Mr. Manish Singhi, Sr. Advocate with Mr. Pawan Kr. Bansal, Mr. Absan, Advocate in i.a. No. 762 of 2022.

ORDER

19.01.2023:

1. I.A. No. 133 of 2020, I.A. No. 817-818 of 2021 & I.A. No. 3498-3499 of 2022

(i) These above Applications substantially makes the same prayers. We shall notice the prayers in I.A. No. 133 of 2020 which prayer is to the following effect:

“a. Allow the present application and modify the order dated 29.05.2019 while directing SBI, Allahabad Bank, Axis Bank and ICICI Bank that all such bank guarantees as stated in Paragraph 3 of I.A. No. 2077 of 2018 be duly honoured upon invocation and/or encashment by the Applicant herein; and/or b....”

(ii) Learned Sr. Counsel-Mr. Ramji Srinivasan appearing for IL&FS submits that this Tribunal vide its earlier Order dated 29th May, 2019 has already refused invocation of bank guarantees which order has already been approved on 12th March, 2020. It is submitted that the invocation of bank guarantees shall be subject to the resolution plan which is still under consideration by the Adjudicating Authority.

(iii) In view of the Orders which have been passed by this Tribunal refusing invocation of bank guarantees, we are of the view that prayer made in the above applications for invocation of the bank guarantees can not be accepted.

(iv) We are further of the view that the Bank Guarantees should be kept alive so as to abide by the result of the final resolution. Appropriate steps for renewal of the Bank Guarantees may be taken.

(v) In view of the above, the Banks may keep the Bank Guarantees alive. All these Applications (I.A. No. 133 of 2020, 817-818 of 2021 and 3498-3499 of 2022) are disposed of, accordingly.

2. I.A. No. 1815, 1816 and 1820 of 2021

(i) These Applications have been filed praying for clarification of the Order dated 15th October, 2018 as well as the Order dated 12th March, 2020 in respect of Bank Guarantees submitted by the IL&FS Engineering and Construction Limited through PNB/SBI/Bank of India.

(ii) On 2nd March, 2022, this Tribunal has passed an Order directing bank to extend the validity of the Bank Guarantees. The GAIL has filed a common affidavit on 17th January, 2023 requesting to keep the Bank Guarantee alive until the disposal of the Appeal filed before the Hon'ble Supreme Court in Civil Appeal No. 3752 – 3754 of 2022.

(iii) Learned Sr. Counsel for the IL&FS submits that this Tribunal has passed several orders refusing the prayer for invocation of the Bank Guarantees and further directed to keep the Bank Guarantees alive which shall abide by the final resolution.

(iv) We are of the view that the order passed by this Tribunal does not need any clarification especially in view of the subsequent order.

Refusing to invoke the Bank Guarantees are covered by the ambit of the orders passed by this Tribunal.

(v) Learned Counsel for the Appellant submits that he has already challenged the Order dated 2nd March, 2022 before the Hon'ble Supreme Court in Civil Appeal No. 3752-3754 of 2022. It goes without saying that any orders passed by this Tribunal shall be subject to any order passed by the Hon'ble Supreme Court in the above civil appeals.

(vi) With these observations, these applications (I.A. No. 1815, 1816 and 1820 of 2021) are disposed of. However, we make it clear that the Bank shall keep the bank guarantees alive.

3. I.A. No. 296, 427, 429 and 762 of 2022

(i) Learned Sr. Counsel-Mr. Ramji Srinivasan appearing for the IL&FS Entities submits that he has received instruction that IL&FS is taking steps to solve the matter with the applicants and the matter is to be placed before the Board. He seeks adjournment for two weeks.

(ii) In view of the aforesaid, we list these Applications on 13th February, 2023 at 02:00PM. Learned Sr. Counsel for the IL&FS submits that in the Proceedings filed by the IL&FS Entities, IL&FS shall take adjournment before the Adjudicating Authority.

4. I.A. No. 225 of 2019

(i) This Application has been filed by the Jupiter Capital Private Limited a shareholder of IL&FS Technologies Ltd. (now known as Terracis Technologies Ltd.).

(ii) It is submitted by Learned Sr. Counsel-Mr. Ramji Srinivasan that after filing of the Application, the Jupiter Capital Pvt. Ltd. has exited as a

shareholder of the Terracis Technologies Ltd.. It is submitted that in view of the aforesaid, this Application has become infructuous.

(iii) There is no opposition to submission made by Learned Counsel for IL&FS.

(iv) This I.A. No. 225 of 2019 is dismissed as infructuous.

5. I.A. No. 2424 of 2022

(i) This Application has been filed by the Terra Projects Pvt. Ltd. and Terra Development Pvt. Ltd..

(ii) Learned Sr. Counsel for the IL&FS seeks time to obtain instructions.

(iii) List this Application on 13th February, 2023.

6. I.A. No. 3844 of 2022

(i) This Application has already been disposed of by this Tribunal on 28.11.2022.

7. I.A. No. 3845 of 2022

(i) This Application has been filed on behalf of B.E. Contracts Pvt. Ltd. (an Operational Creditor of IL&FS Rail Ltd.) praying for following reliefs:

“a) Pass an appropriate order thereby allowing the Applicant herein to intervene and make submissions at the time of hearing of the captioned Appeal; and

b) Pass an appropriate order thereby clarifying the mechanism for treatment of claims with respect to debts pertaining to IL&FS Rail Ltd. which is a group company of the Respondent herein; Or in the alternative direct the Adjudicating Authority, i.e., NCLT, Chandigarh to permit the Applicant to pursue the petition bearing CP(IB) No. 279 of 2021;

c).....”

(ii) Learned Sr. Counsel for the IL&FS submits that with regard to the IL&FS Rail Ltd. which is group company of IL&FS, the claims management Consultant has not yet been appointed since the matter was pending in the Supreme Court and was decided on 04th January, 2023. It is submitted that as soon the claims management consultant is appointed, Applicant shall submit its claim.

(iii) Recording the aforesaid statement on behalf of Learned Counsel for the Respondent, we dispose of this Application, accordingly.

8. I.A. No. 845 of 2022 and I.A. No. 4009 of 2022

(i) These Applications have been filed on behalf of ICICI Bank Limited for and on behalf of consortium of lenders of IECCL and I.A. No. 4009 of 2022 has been filed by the ICICI Bank praying for appropriation of money in escrow account of the IECCL.

(ii) Learned Counsel for the Applicant submits that the Appellant being secured creditors the amount lying may be permitted to be appropriated by the Bank.

(iii) Learned Counsel for the IL&FS submits that there are some Board Resolution in respect of this entity. He submits that Committee of Creditors meeting has already been held of which the Applicant is part of it.

(iv) In view of the above, we adjourn these Applications for **13th February, 2023**. Learned Counsel for the Respondent shall update about the steps taken in meantime.

(v) Rejoinder-Affidavit may be filed in I.A. No. 4009 of 2022 within two weeks.

9. I.A. No. 557 of 2022

(i) I.A. No. 557 of 2022 has been filed by the IL&FS Energy Development Corporation Ltd. praying for following relief:

“(a) Set aside and quash the Impugned Notice dated February 17, 2022 as the same is in violation of the orders dated October 15, 2018, May 02, 2019, May 29, 2019, March 12, 2020 as passed by this Hon’ble Tribunal;

(b) Staying the effect and operation of the Impugned Notice, pending disposal and hearing of the present application;

(c) Directing the Respondent No. 2 not to take any steps pursuant to the directions contained in the Impugned Notice dated February 17, 2022;

(d) Directing the Respondent No. 2 to comply with the orders dated May 02, 2019 and May 29, 2019 as passed by this Hon’ble Tribunal in the captioned appeal, and to continue to release such amounts as may be necessary to maintain the ‘going concern’ status of the Applicant.”

(ii) Reply has been filed by the Assistant Commissioner of Income Tax. It is submitted by Learned Counsel for the Respondent that amounts for which notice dated 17.02.2022 has been issued pertain to the year 2017-18 and 2018-19 and that was prior to passing of order dated 15.10.2018 hence there shall be no restraint on the recovery of the amount by the notice dated 17.02.2022.

(iii) Learned Counsel for the IL&FS submits that order dated 15th October, 2018 clearly prohibits any person from recovery of any amount and/or to take any proceeding to institute or continue hence the notice dated 17.02.2022 issued by the Income Tax Department is clearly not in accordance with order dated 15.10.2018. It is submitted that

resolution of the entity is at advance stage and the amount lying in the bank is not made available for the utilisation for any interim distribution/final resolution in compliance of the orders passed by this tribunal, the whole purpose of final resolution shall be frustrated.

(iv) Considering the submissions of Learned Counsel for the parties, we are of the view that order dated 15.10.2018 clearly prohibited any recovery from the IL&FS entities and notice of attachment shall come in the way of final resolution which has already been directed by the Order dated 12th March, 2020. We thus are of the view that attachment imposed by the notice dated 17.02.2022 be lifted to enable the amounts to be part of the final resolution / interim distribution. In so far as the claim of the assistant commissioner of income tax-Respondent are concerned, the same shall be taken care in the final resolution in accordance with law. The attachment vide notice dated 07.02.2022 is directed to be lifted.

(v) I.A. No. 557 of 2022 is disposed of, accordingly.

10. I.A. No. 645 of 2022

(i) This application has been filed on behalf of Gujarat Integrated Maritime Complex Pvt. Ltd.

(ii) It is submitted that in the said Application the notice issued by the Income Tax Department is dated 3rd February, 2022 and other facts and submissions are same as has been noticed in I.A. No. 557 of 2022.

(iii) This Application is allowed and notice dated 3rd February, 2022 is directed to be set aside and the Application stands disposed of.

11. I.A. No. 586 of 2022

- (i)** This is an Application filed by the Union of India praying for various directions. This I.A. was heard by this Tribunal and detailed order was passed on 31st May, 2022 permitting the Interim Distribution as per the directions issued in the Application at paragraph 18. It is submitted that at the time of passing of the Order dated 31st May, 2022 the entities with regard to which the distribution was sought were the entities reflected in Annexure 6 except those excluded.
- (ii)** Learned Counsel for the Union of India submits that in view of the fact that further amounts have now been available for distribution, the Order may be extended to all entities for which amounts are available except the excluded entities as contained in paragraph 18(vi).
- (iii)** Shri Bajaj, Learned Counsel for the Applicant pointed out that Rapid Metro Rail Gurgaon Sought Limited and Rapid Metro Rail Gurgaon Limited issues have been resolved finally and hence there is no necessity of the distribution to said entities. Mr. Bajaj has also referred to paragraph 11 of the Order where his submission was noted that as regards the payment already lying in the Escrow Account/ FDR drawn out of the Escrow Account with lead Bank (Canara Bank), the same may be dealt with as per the interim distribution formula suggested in I.A No. 586/2022. It is, however, prayed that any amount received at a later date, on account of termination payment or out of the outcome of the arbitration proceedings may kindly be ordered to be dealt separately.
- (iv)** It is submitted that directions in Paragraph 11 has not been taken into consideration and no amount pertaining to the lead bank-

Cananra Bank has been dealt with nor submissions were taken into consideration and no distribution took place.

(v) Learned Counsel for the Union of India and Learned Counsel for the IL&FS submits that steps shall be taken by the Board taking into consideration the request/statement recorded in paragraph 11 of the Order.

(vi) In view of the submissions of learned counsel for the parties, in continuation of the Order dated 31st May, 2022, we permit the interim distribution with regard to all entities except excluded entities in paragraph 18(vi)(a)(d). With regard to entities mentioned in paragraph 18(vi)(b) and (c) issues have already been finalised. Let appropriate steps be taken for distribution as directed above with all entities except as above and steps taken be brought on record by means of an Affidavit by the next date.

(vii) List this Application on **13th February, 2023**.

12. I.A. No. 924 of 2022

(i) This I.A. No. 924 of 2022 has been filed by Coastal Marie Constructions and Engineering Ltd.

(ii) The Applicant seeks time to file Rejoinder-Affidavit to the Reply-Affidavit received from the Respondent.

(iii) Let Rejoinder-Affidavit be filed within two weeks. List this I.A. No. 924 of 2022 along with I.A. No. 945 of 2019 on **13th February, 2023**.

13. I.A. No. 1709 of 2022

(i) Learned Counsel for the Applicant is permitted to file Rejoinder-Affidavit within three days.

(ii) Mr. Arun Kathpalia, Sr. Advocate submits that affidavit has been filed vide Diary No. 40514.

(iii) Mr. Arun Kathpalia, Sr. Advocate further submits that Affidavit in Reply has been filed to the Affidavit filed by the IL&FS vide diary No. 40912 which be listed on **13th February, 2023** and Affidavit filed vide diary no. 42605 be also placed on record.

(iv) Both the parties are at liberty to file Additional Affidavit brining further materials on record.

14. I.A. No. 3115 of 2022-Learned Counsel for the Respondent submits that Reply has been filed on 05.12.2022 by Diary No. 41644/2022. Learned Counsel for the Applicant may file Rejoinder before the date fixed.

List on **13th February, 2023**.

15. I.A. No. 3579 of 2022 – Mr. Ramji Srinivasan, Learned Senior Counsel for the ILFS submits that steps are being taken and on the next date all steps shall be placed before the Court.

List on **13th February, 2023**.

Learned Counsel for the Respondent submits that matter is placed before the Board for approval and after getting appropriate information will be sent to all.

16. I.A. No. 4977-4978 of 2022 – Let Reply be filed to the application filed by Respondent No.1

List on **14th February, 2023**.

17. I.A. No. 4867 of 2022 – Learned Counsel for the Respondent (IL&FS) prays for and is allowed two weeks' time to file Reply Affidavit. Rejoinder may be filed within two weeks.

List on **14th February, 2023.**

18. I.A. No. 4526 of 2022 – Mr. Ramji Srinivasan- Learned Senior Counsel prays for and is allowed two weeks' time to file Reply Affidavit. Rejoinder may be filed within two weeks.

List on **14th February, 2023.**

19. I.A. No. 785 of 2021 – List this application on **14th February, 2023.**

20. I.A. No. 346 of 2020 – List this application on **20th January, 2023.**

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

**[Ms. Shreesha Merla]
Member (Technical)**

Basant/nn