

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
CAMP AT CHENNAI**

IA/ /2020 in CP/3638/2018

Petition filed under Section 241 & 242 of CA, 2013

**In the matter of
Infrastructure Leasing & Financial Services Limited**

.....Applicant

Vs.

**Union of India,
through the Ministry of Corporate Affairs**

.....Respondent

In the matter of

Union of India

.....Petitioner

Vs.

**Infrastructure Leasing & Financial Services
Limited and Others**

.....Respondents

CORAM

B. S.V. PRAKASH KUMAR, ACTING PRESIDENT

For the Applicant : *Mr. Aditya Sika, Advocate*

For the Respondent : *Mr. Juneja, RD – Mumbai*

Order delivered on: 26.05.2020

ORDER

Per: B.S.V. PRAKASH KUMAR, ACTING PRESIDENT

Order pronounced on: 22.05.2020

It is an application filed by Infrastructure Leasing and Financial Services (IL&FS) for approval of the sale of shares of Gujarat

International Finance Tec-City Company Limited (GIFTCL) held by the Applicant to the Governor of State of Gujarat/Gujarat Urban Development Company Limited (GURDCL) and for grant of other reliefs incidental thereto.

2. The Applicant is a core investment company registered with the Reserve Bank of India, engaged in the business of giving loans and advances to its group companies and holding investment in its group companies operating in various sectors, including but not limited to Transportation, Financial Services and Energy, etc.

3. It is an application in a Petition filed by Union of India u/s 241 (2) r/w 242 (2) of the Companies Act, 2013 (**the Act**), seeking replacement of its Directors with new Board on the ground that the Applicant and its group companies' affairs were being conducted in a manner contrary to the public interest, therefore seeking intervention of this Tribunal to prevent the downfall of the Applicant and its group Companies, which are intimately connected to the financial market of the country. Whereupon, this Bench on 01.10.2018 ordered appointing new Directors to the Board of the Applicant to take over the Applicant company

immediately to conduct its business as per the provisions of the Act. Upon which, Hon'ble NCLAT vide its order dated 15.10.2018 granted further orders against coercive creditors and over other actions against the Applicant Group in larger public interest. In pursuance thereof, the applicant New Board submitted a report titled "**Report of Progress and Way Forward**" (the "**First Progress Report**") to the petitioner setting out the broad options for the resolution of the Applicant group.

4. In between, it is pertinent to mention that this Applicant in the year 2007 entered in to a Memorandum of Understanding (MOU) with Government of Gujarat (GoG) setting out the terms and conditions to set up a Joint Venture to develop an integrated township / International Financial Services City (IFSC) in the State of Gujarat. In furtherance of it, the Applicant and GoG on 15.05.2007 entered into Joint Venture Agreement (JVA) superseding the MOU, and in furtherance of it, entered into a supplemental agreement dated 04.08.2014. In the JVA, it has been contemplated execution of shareholders agreement to record the parties respective inter-se rights and obligations in relation to the joint venture company (JVC- GIFTCL) incorporating exit option with a

right of first refusal (RoFR) available to fifty-fifty percent shareholders (the Applicant and GoG) in the event any of the shareholders of GIFTCL proposed to divest its shareholding in the JVC.

5. On the resolution framework and addendum and the second addendum submitted to the Petitioner, and thereafter placed before Hon'ble NCLAT, it has set out Asset Level Resolution and in some cases, the sale of business verticals comprising of basket of companies and other entities as a feasible option for the resolution of the Applicant Group. In addition to this Asset Resolution Process, the New Board appointed a resolution consultant namely M/s. Alvarez & Marsal India Private Limited (Resolution Consultant). Upon being appointed, the Consultant categorised the group entities into three categories based on the "12 Month Cash Flow Based Solvency Test" (**Testing Period**) namely "Green", "Amber" and "Red Entities".

6. In companies where there is no payment default/overdue subsisting currently and cash flows generated by them in testing period from their operations (and available cash balances) are sufficient to meet all the payment obligations of the respective entities and do not rely

upon other entities in the Applicant Group for any financial support to service their debt obligations, they are classified as “Green” entities.

7. When this proposal was placed before Hon’ble NCLAT, it has permitted the Resolution of such green entities to continue in accordance with the resolution frame work subject to the supervision of the Hon’ble Justice (Retd.) D.K. Jain. Since GIFTCL has been classified as a “Green” Entity, the Applicant has commenced the Resolution Process of GIFTCL in accordance with the resolution framework subject to the supervision aforementioned.

8. For there being RoFR clause in the JVA, and for the Applicant having expressed its interest to divest its shareholding in the JVC, GUDC issued a letter on 04.01.2019 to GIFTCL recording their willingness to purchase 50% of the shareholding of the Applicant in GIFTCL based on valuation by an independent valuer. In the meeting dated 09.04.2019 held in between GUDC and the Applicant, GUDC finally agreed to purchase the Applicant’s entire stake in GIFTCL on a bilateral basis on a valuation computed by a reputed valuer instead of participating in a publicly solicited price discovery process.

9. As the GUDC exercised its RoFR indicating its decision to purchase the Applicant's shareholding at a Fair Market Value, the Applicant, looking at the strategic contribution by the Government of Gujarat in the business, did not undertake a public process for the sale of its stake in GIFTCL. As the price mechanism was not set out in the JVA, the New Board appointed RBSA advisors (RBSA) to conduct the valuation exercise for GIFTCL. On RBSA being assigned the job, it has submitted its valuation report dated 21.11.2019 with a cut off date of 31.03.2020 to the New Board estimating the negative equity value at (-) ₹ 1520.2 to (-) ₹ 1600.2 and negative enterprise value at (-) ₹ 652.2.

10. The factors taken into consideration for valuation of GIFTCL are (i) progress slower than expected off take of developmental rights; (ii) non contiguous nature of land parcels; (iii) complexities in developing certain parcels of land; (iv) requirement of further capital; and (v) macro-economic trends.

11. In terms of the valuation report, the New Board, to ensure value maximization, offered to sell the Applicant's stake of 3,27,09,420 equity shares having face value of ₹10 each in GIFTCL to GOG for an

aggregate sale consideration of ₹ 32,70,94,000. It is evident that the sale consideration is higher than the fair market value of the stake of the Applicant in GIFTCL as determined by RBSA. On 20.12.2019, GoG accepted the Applicant's offer to sell its stake at the purchase consideration on the terms and conditions set out by the Applicant. In furtherance of it, the Applicant as well as the GoG arrived to an understanding that consequent to the sale of the Applicant share, GIFTCL Company shall be liable to discharge all debts owed by GIFTCL and its companies to all the respective creditors. Notwithstanding the liability of GIFTCL, GoG has agreed to pay positive equity value of 100% of the stake of the Applicant in GIFTCL (i.e., 50% shareholding in GIFTCL), by which, the positive equity value of ₹ 32,70,94,000 will come to IL & FS.

12. As per the initial resolution framework, the applicant on 09.01.2020 convened a creditors' committee comprising of all the financial creditors, wherein the Creditors considered the resolution framework and approved the same on 14.01.2020 constituting of 80.09% of voting share. The New Board, consequent to CoC approval for sale of

Applicant's stake in GIFTCL to GOG, submitted it to Justice (Retd) DK Jain for his consideration. In the meanwhile, GoG sought for modification of the share purchase agreement stating that the representation/prosecution under taken by the Seller/Seller Group in the matter of 'D. C. Anjaria vs. GIFTCL, IL&FS, GUDC and Chairman GIFTCL, (Writ Petition (PIL) 260/2015 before Gujarat High Court), shall be at the cost of the Applicant. Thereafter this modified SPA was placed before the asset sale committee constituted by the New Board to inter alia negotiate and finalize the terms of sale of GIFTCL to GoG. And it was approved. The applicant has even obtained further approval to the modified SPA from the Hon'ble Justice (Retd.) DK Jain.

13. Under these circumstances, the Applicant has approached this Tribunal for approval and necessary directions to consummate the sale of the Applicant shareholding in GIFTCL to GoG/GUDC in line with the Resolution Framework as approved by Hon'ble NCLAT. The Applicant submitted that sale resolution has been conducted to ensure a fair resolution upholding the key principles of the value maximization, commercial viability and financial stability for all stakeholders. The

Applicant has further submitted in order to facilitate and implement the sale/resolution process of GIFTCL, an amount of ₹61,84,403 is excluded as resolution process costs incurred for meeting various expenditures, other applicable taxes from the sale proceeds of the Applicant's shareholding in GIFTCL to GoG and further stated that it is likely that the certain additional resolution process costs may arise for existing arrangements, for which the Applicant has sought permission to use around ₹ 3Crore from the balance sale consideration lying in Escrow Account upon approval by the New Board to meet such an additional resolution process costs.

14. In view of the reliefs sought by the Applicant, this Bench hereby approved:

- ✓ That sale of shares of GIFTCL held by IL&FS to Governor of State of Gujarat/ Gujarat Urban Development Company Limited shall be free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) upon receipt of sale consideration from GUDC as contemplated in terms of this share purchase agreement dated 29.04.2020 with effect from 29.04.2020.

- ✓ That sale consideration payable to the Applicant excluding resolution process costs shall be credited into a designated Escrow Account intimated by the Applicant and such funds shall be maintained as interest bearing fixed deposits.
 - ✓ That the Resolution Process Costs of ₹61,84,403 shall be deposited in an account designated/intimated by the Applicant to pay those costs payable to the professionals as contemplated in Annexure 26 to the Application and the funds deposited in the relevant bank / escrow accounts shall be maintained as fixed deposits and they shall not be adjusted or set off against any other dues.
 - ✓ That IL&FS is hereby permitted to withdraw a sum of ₹ 3Crore from the Escrow Account opened to keep sale consideration for meeting the additional process resolution costs that may arise, after approval by the Board of Directors appointed by this Tribunal.
 - ✓ That the distribution of the remaining purchase consideration is hereby subjected to further orders of this Bench.
15. Accordingly, this unnumbered application is hereby **disposed of**.

Sd/-
(B.S.V.PRAKASH KUMAR)
ACTING PRESIDENT

Rajesh