

NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT No. - I

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CA No. 4127 of 2019 &  
CA No. 1011 of 2020 in  
CP No. 3638/MB/2018

*In the matter of*

A Petition under Sections 241 & 242 of the Companies Act, 2013

*Between*

Union of India

v.

Infrastructure Leasing & Financial Services Limited & Ors.,

and

*In the matter of*

**Company Application No. 4127 of 2019**

An Application under Rule 11 of the NCLT Rules, 2016

*Between*

Sigma Outsourcing Services Private Limited. Ltd.

21-1, Rishi Complex, Kishan Nagar

Chowk, Dehradun,

Uttarakhand – 248001

... **Applicant**

Versus

1. Infrastructure Leasing & Financial Services Limited

The IL&FS Financial Centre, Plot C-22, G Block,

Bandra Kurla Complex, Bandra East,

Mumbai – 400051

2. JM Financial Limited

7th Floor, Cnergy Appasaheb Marathe Marg,

Prabhadevi, Mumbai – 400025

3. Arpwood Capital Private Limited

51A, Maker Chamber IV, 222, Jamnalal Bajaj Marg,

Nariman Point, Mumbai – 400021

... **Respondents**

**and**

*In the matter of*

**Company Application No. 1011 of 2020**

An Application in accordance with order dt. 12.03.2020 of Hon'ble  
NCLAT in Company Appeal Nos. 346 & 347 of 2018

*Between*

Infrastructure Leasing & Financial Services Limited,  
The IL&FS Financial Centre, Plot C-22, G Block,  
Bandra Kurla Complex, Bandra East,  
Mumbai – 400051

... **Applicant**

Versus

Union of India

... **Respondent**

Date of Order: 05.10.2020

CORAM:

Hon'ble Janab Mohammed Ajmal, Member Judicial

Hon'ble V. Nallasenapathy, Member Technical

Appearance through video-conference:

For the Applicants : Amit Vyas, Rishika Rajadhyaksha, Pratik Jhaveri,  
Sonal Singh, Advocates i/b Vertices Partners (CA  
No. 4127 of 2019)

Mr Ashish Kamat with Mr Aditya Sikka and Ms.  
Drishti Das, Advocates (CA No. 1011/2020)

For the Respondents: Mr Ashish Kamat with Mr Aditya Sikka and  
Ms Drishti Das, Advocates (R1 in CA No.  
4127/2019)

Mr Piyush Raheja with Mr Jayesh Mestry (R2 &  
R3 in CA No. 4127/2019)

Mr Manmohan Juneja, Regional Director, MCA  
(WR), Mumbai (for Respondent in CA No.  
1011/2020)

Per: Janab Mohammed Ajmal (Member Judicial)

ORDER

Both the Applications have been taken together as they concern  
interwoven facts and related prayers. They shall abide by the common order  
passed hereunder.

2. The factual backdrop that led to the present Applications may briefly be stated. The Union of India (UoI) filed CP No. 3638 of 2018 against Infrastructure Leasing and Financial Services Ltd (IL & FS) under Sections 241 and 242 of the Companies Act, 2013 (the Act) *inter alia* alleging mismanagement in the Company.
3. This Tribunal by an order dated 01/10/2018 superseded the Board of Directors of IL & FS and constituted a new Board with six Directors to take over the affairs of the Company. The new Board was directed to furnish a roadmap for consideration of the Tribunal. This Tribunal by an order dated 12/10/2018 in MA No. 1173 of 2018 declined to order a moratorium in respect of IL & FS group. The UoI and IL & FS carried the matter in Appeal before the Hon'ble National Company Law Appellate Tribunal (NCLAT) respectively in Company Appeal No. 346 of 2018 and Company Appeal No. 347 of 2018. The Hon'ble NCLAT by an order dated 15/10/2018 granted interim stay against any coercive action by the creditors against IL & FS and its group entities.
4. The New Board prepared periodical progress reports in terms of the order dt. 01/10/2018 and submitted them to the UoI in the Ministry of Corporate Affairs. In the process the Board of Directors submitted the 3<sup>rd</sup> Progress Report dated 17/12/2018 and in terms of the order dated 01/10/2018 proposed the Resolution Framework. It made certain recommendations for various Resolution Processes of the IL & FS and its group Companies and requested the Government of India in the Ministry of Corporate Affairs to approach the relevant forum for approval of the Resolution Process.
5. The Hon'ble NCLAT by an order dated 11/01/2019 observed that the process required to be followed was similar to that of 'Corporate Insolvency Resolution Process' for the purpose of proper Resolution of IL&FS and its

group companies. The Hon'ble Appellate Authority further observed that in such cases the Committee of Creditors (CoC) may be required to be constituted for determining the viability, feasibility and financial matrix of the plan or offer, if any, given by one or other party for acquisition of one or other group companies or its assets and in the absence of any other knowledgeable person such as the 'Resolution Professional', (if) such Committee of Creditors cannot be constituted, in the meantime the IL & FS and its board may be allowed to proceed with the matter.

6. The Hon'ble NCLAT by an order dated 04/02/2019 permitted the UoI and IL & FS to engage Hon'ble Justice Mr. D. K. Jain (Retd.) to supervise the operation of the Resolution Process. Basing on the recommendations of Hon'ble Justice Jain, the resolution was then to be placed before the NCLT (this Tribunal) for approval. The approval by this Tribunal would formalize and finalize the resolution of the individual or collective group entities. By their order dated 12/03/2020 the Hon'ble Appellate Tribunal accepted 15/10/2018 as the cut-off date for distribution of assets and termed it as the date of initiation of Resolution Process of the IL & FS and its group companies. The Hon'ble Appellate Tribunal further directed that the Union of India, the Board of Directors of IL & FS and the 'Committee of Creditors' already constituted or which may be constituted were to conclude resolution of all the entities preferably within 90 days. The developments thereof were to be brought to the notice of Hon'ble Appellate Tribunal every month. That is how the resolution of IL & FS and its group entities came to be worked out.
7. CPG-BPN Services Private Limited (hereinafter referred to as CPG) is also one of the group companies wherein, IL & FS held 59.18% of the issued, subscribed and paid up equity shares. Pursuant to the Resolution

Framework, IL & FS issued a notice dated 11/11/2019 inviting Expression of Interest (EoI) for sale of the shares held by it in CPG. The notice sought the EoIs latest by 5 pm IST of 22<sup>nd</sup> November 2019.

8. The Applicant in CA No. 4127 of 2019 incorporated under Companies Act, 1956 has been engaged in the business of Domestic Outsourcing Services. It has been offering professional services to various companies including those in the telecom and retail industry. Sometime in the first week of December, 2019 the Applicant came to know about the publication of EoI indicated (supra). It accordingly on 10/12/2019 sent an EoI by e-mail addressed to CPG as well as Respondent Nos. 2 & 3 (R2 & R3) who had been engaged as Financial Transaction Advisors (FTAs) to assist in the potential sale transaction. Since it did not receive any reply, it followed it up with another e-mail on 13/12/2019. On 16/12/2019 the Applicant received e-mail from J. M. Financial Limited (R2) to the effect that its EoI could not be considered having been submitted subsequent to the last date i.e. 22/11/2019. The Applicant made a representation on 23/12/2019 to Hon'ble Justice Mr. D. K. Jain (Retd.) to condone the delay in submission of EoI and consider the same on merits. Hon'ble Justice Jain observed in his letter dated 09/05/2020 at Para 16 as below:

*“For the sake of completion of facts, I may, however, add that in the memorandum it is pointed out that one Sigma Outsourcing Private Limited, claiming to be an interested party for acquiring IL & FS stake in CPG, has filed petition in the Hon'ble NCLT, questioning the decision of the Board in not entertaining their EoI Application on the ground that the same was submitted 11 days after the deadline for submission of EoI. It is also pointed out that the said petition is pending consideration, but no interim order has been passed by the Hon'ble NCLT in the said petition. The effect of this litigation shall be considered by the Hon'ble NCLT at the appropriate stage.”*

9. It is submitted by the Applicant that it has market goodwill and has been undertaking activities similar to that of CPG for over 14 years. It is best suited to acquire the equity shares in CPG. It would also provide strategic growth to the Company. Being a serious contender for the proposed acquisition of the CPG shares (IL & FS shares in CPG), it could not have been ignored. The primary object of inviting EoI is to maximize the benefit that could accrue to CPG which in turn would benefit all the stakeholders. R2 & R3 failed to consider these aspects and rejected its EoI on a technical ground without proper evaluation or substantial reason. They also failed to realize the spirit of Corporate Debt Resolution which is of paramount consideration. Unless the Applicant is afforded an opportunity to take part in the sale process not only that it would be prejudiced but that CPG may suffer a disadvantage. It accordingly, came up with the present Application seeking the following prayers:

- i. This Hon'ble Tribunal be pleased to direct, in the facts and circumstances of the case, that a fair opportunity of being heard be provided to the Applicant in respect of the EOI submitted by the Applicant vide Email dated December 10, 2019 annexed as Exhibit B;*
- ii. This Hon'ble Tribunal be pleased to condone the delay in submitting the EOI by the Applicant and the EOI dated December 9, 2019 submitted by the Applicant be considered on merits in the interest of the Respondent No.1, its stakeholders and the public at large;*
- iii. This Hon'ble Tribunal be pleased to set aside the communication dated December 16, 2019 by which Respondent Nos. 2 and 3 have rejected the EOI dated December 9, 2019 submitted by the Applicant; and*

*iv. That pending the hearing and final disposal of the present Application, the Respondents be restrained from proceeding with the proposed transaction;*

10. The Respondent No. 1 in its reply submitted that asset divestment process for CPG was initiated under the Resolution Framework by a process akin to *Swiss Challenge Method*, since another party had already evinced interest in acquiring the shares and it submitted binding offer for the same vide its letter dated 08/08/2019. The publication of inviting EoI was made subsequent to the bidding offer. The publication was widely circulated through 'Economic Times' and 'Maharashtra Times'. It had also been uploaded on the IL & FS website. Admittedly the Applicant submitted EoI after a period of 18 days. The EoI was not accepted on account of this delay. The FTAs i.e. R2 & R3 duly intimated the rejection of EoI to the Applicant. The Applicant not only approached Hon'ble Shri Justice Jain but also preferred a Writ Petition bearing No. 2086 of 2020 before the Hon'ble Bombay High Court during the pendency of the present Application *inter alia* challenging the bid process. The Hon'ble High Court however dismissed the Writ Petition by an order dated 03/03/2020. Subsequent thereto the sale process of the CPG shares has substantially progressed. Upon approval of the bidding process by Hon'ble Justice Jain, the successful bidder has also executed the Share Purchase Agreement (SPA) on 27/06/2020. The grounds and reasons stated by the Applicant in delay in submission of EoI are false and frivolous.

11. It is further pleaded that the Applicant's contention that the natural justice has not been adhered to would not apply in the case of the rejection of EoI. The Respondents were also not obliged to provide hearing or give other reasons for rejection of the EoI. Besides, the Hon'ble NCLAT by their

order dated 12/03/2020 had directed for completion of the Resolution Process within 90 days. The relief if granted will be highly prejudicial and would disrupt the whole process of Resolution of CPG which is at an advanced stage. It is accordingly submitted that the Application deserves to be rejected.

12. Meanwhile, the IL & FS filed Company Application No. 1011 of 2020 *inter alia* seeking the sale of CPG share to the successful bidder and for the implementation of the SPA. It is contended that upon getting the letter dated 08/08/2019 from the initial bidder, the FTAs on 19/09/2019 issued terms of bid for acquiring CPG BPM Services Private Limited *inter alia* setting forth the following conditions:

- i. The Initial Bidder is required to quote an equity value for acquisition of shareholding of the Applicant in CPG;*
- ii. The bid submitted by the Initial Bidder shall be subject to a counter bid process which would be conducted by the New Board in a fair and transparent manner by way of a publicly solicited bid process;*
- iii. The Initial Bidder will be given an opportunity to match or better the bid consideration quoted by the highest bidder in the counter bid process, only if the equity value of the highest bidder in the counter bid process is up to 120% (one hundred and twenty per cent) of the equity value quoted by the Initial Bidder in its bid (Right to Match); and*
- iv. In the event that the equity value quoted by the highest bidder in the counter bid process is higher by more than 20% (twenty per cent) of the equity value quoted by the Initial Bidder in its bid, the Initial Bidder shall not have any Right to Match.”*

13. In order to estimate the fair value of CPG as per the Resolution Framework the Board of Directors, (as appointed by the Tribunal) appointed two valuers namely Rakesh Narula and Co. and M/s Adroit Technical Services.



Upon the valuation exercise undertaken by the valuers the fair value of the Company (CPG) was assessed as Rs. 12.97 Crores. The fair value of the stake (59.18% of IL&FS) in CPG was thus determined to be Rs. 7.6 Crores. The initial bid submitted by the initial bidder was opened on 18/10/2019. It has quoted the equity value of the Applicant's shareholding at Rs.3,25,49,000/- which was much lower than the fair value indicated above. Accordingly, the Board of Directors initiated a counter bid process which resulted in the invitation of EoI dated 11/11/2019. In response thereto the Applicant received eight (8) EoIs, five (5) of them were shortlisted basing on the eligibility criteria set out in the invitation.

14. On 18/12/2019, the shortlisted entities were issued Request for Proposal (RFP) which was subsequently supplemented on 17/01/2020. Two (2) of the shortlisted entities, namely Abans Enterprises Limited and Vision Plus Security Control Private Limited submitted their respective bids on 20/01/2020. On consideration of the bids the new Board found the bid submitted by Vision Plus as the highest. The Vision Plus Security Control Private Limited had quoted equity value at Rs. 4,15,00,000/-. Since this amount was 27.50% higher than the initial bid, the initial bidder, under the *Swiss Challenge Method*, lost his right to match the bid (H1), submitted by Vision Plus Security Control Private Limited.

15. The Board had appointed Grant Thornton India LLP as the Claims Management Consultant to conduct the claims management exercise of the IL&FS group. Financial Creditors of IL&FS have been identified basing on the determination of the claims management consultant. These constituted the Committee of Creditors (CoC) of the Group. On 16/03/2020 the Financial Creditors (CoC) convened the meeting in terms of the Resolution Framework. The bid, in order to be accepted, was required to get the

approval of the 2/3<sup>rd</sup> (i.e. 66%) of the voting share of the CoC members in its favour. The H1 bid was put to vote and the CoC approved it by a vote of 75.46% for the sale of 59.18% stake of IL&FS in CPG. The Board constituted by the Tribunal approved the Resolution of the CoC and recommended that the bid be placed before the Hon'ble Justice Jain (Retd.) for consideration and approval. The matter was placed before the Hon'ble Justice Jain (Retd.) on 21/04/2020. Hon'ble Justice Jain approved the sale of Applicant's shareholding in CPG to Vision Plus Security Control Private Limited by his observation dated 09/05/2020.

16. While the finalization of the bidding process was in progress, Sigma Outsourcing Private Limited filed the aforesaid Miscellaneous Application No. 4127 of 2019 seeking various prayers indicated supra. This Tribunal by order dated 27/01/2020 imposed a cost of Rs. 1,00,000/- (Rupees One Lakh) on Sigma Outsourcing Private Limited for misquoting the proceedings held before this Tribunal. The Writ Petition filed by Sigma Outsourcing Private Limited was also dismissed by the Hon'ble Bombay High Court. The Resolution Framework provided that upon approval of sale by Hon'ble Justice Jain (on 09/05/2020 in this case) the sanction of this Tribunal would be necessary for finally approving the sale.

17. The Applicant issued letter on 19/05/2020 confirming Vision Plus as the purchaser of 59.18% stake in CPG. On 28/05/2020, Vision Plus submitted acceptance of the letter of intent and deposited Performance Guarantee (PG) amount of Rs. 50,00,000/- (Rupees Fifty Lakhs) by bank transfer to the Applicant. Subsequently Vision Plus, Applicant and CPG executed the SPA on 27/06/2020 setting out the terms on which the sale was to be concluded. As agreed between the parties the PG amount was to be applied to Resolution Process costs and remaining amount was to be retained in a

designated escrow account and the balance of the consideration was to be paid by the purchaser i.e. Vision Plus Security Control Private Limited by the Closing date as specified in the SPA.

18. It is further submitted by the Applicant that Vision Plus has attributed a positive equity value for its shares in CPG and has agreed to assume all liabilities of CPG, both Financial and Operational, without any compromise of debt. Order dated 15/10/2018 of the Hon'ble NCLAT indicated to preserve the value across the Applicant group and work towards a Resolution free from the threat of coercive creditors and other action. The Applicant accordingly came up with the following prayers:

- A. *“Approve the sale of the shares of CPG BPM Services Private Limited held by Infrastructure Leasing & Financial Services Limited to Vision Plus Security Control Private Limited, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) upon completion of the conditions contemplated in terms of the Share Purchase Agreement dated June 27, 2020 and realization of the Purchase Consideration by the Applicant as contemplated under the Share Purchase Agreement dated June 27, 2020.*
- B. *Allow the Applicant, CPG BPM Services Private Limited and Vision Plus Security Control Private Limited to implement and give effect to the terms of the Share Purchase Agreement dated June 27, 2020;*
- C. *Direct that the:*
  - v. *PG Amount of INR 50,00,000/- deposited by Vision Plus Security Control Private Limited be appropriated/realized by the Applicant as being towards part payment of the Consideration contemplated by the SPA;*
  - vi. *balance consideration payable by Vision Plus Security Control Private Limited being the Purchase Consideration less PG Amount be paid into a designated escrow account to be intimated by the Applicant*

- D. Direct that the Applicant be permitted to utilize an amount of INR 35,94,288/- plus applicable taxes from the PG Amount realized by the Applicant as per prayer (C) (i) above towards Resolution Process Costs that have accrued in connection with the resolution of CPG till date as set out in Annexure 25 hereto and:
- vii. permit the Applicant to pay this amount of INR 35,94,288/- plus applicable taxes as per Annexure 25; and
- viii. direct that the balance amount remaining from the PG Amount of INR 50,00,000/- after payment of such Resolution Process Costs be transferred into the bank/escrow account intimated by the Applicant.
- E. Direct that the PG Amount deposited shall only be utilized/transferred in the manner prescribed in D(i) and (ii) above and shall not be adjusted or set off against any dues pertaining to any bank and/or financial institution;
- F. Direct that after paying Resolution Process Costs, the funds comprising the Purchase Consideration which have been deposited into the relevant bank/ escrow accounts shall be maintained as fixed deposits and should not be adjusted or set off against any other dues pertaining to any bank/financial institution;
- G. Direct that the distribution of the Purchase Consideration or part thereof or withdrawal of any other amounts from the escrow account apart from Resolution Process Costs be subject to further orders of this Hon'ble Tribunal;
- H. exempt the Applicant from affixing the affidavit annexed to this application on stamp paper and notarizing the present Application; and
- I. For any further reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances."

19. Both the Applications were heard together. The Resolution of the IL & FS and its group companies was ordered by the Hon'ble NCLAT and a Resolution framework has been approved. Though the Resolution of the

Company and its group entities is not strictly under the Insolvency and Bankruptcy Code, 2016 (the Code) the principle underlying the Code for Corporate Resolution of a Company is required to be kept in mind while going about the Resolution of the IL & FS and its group entities. The purpose of Resolution is to see that the Company and its assets are not wasted under an inefficient management. The Resolution aims at putting the Company and its group entities in better hands which the Hon'ble Apex Court in *Swiss Ribbons v. Union of India*: (2019) 4 SCC 17 indicated that the timelines within which the Resolution Process takes place again protects the Corporate Debtor's assets from further dilution and also protects all its creditors and workers by seeing that the Resolution Process goes through as fast as possible so that the another management can through its entrepreneurial skills resuscitate the Corporate Debtor to achieve its revival. It was indicated that the object of keeping a Company/ Corporate Debtor alive in the hands of another management through Corporate Insolvency Resolution Process (CIRP) is in the interest of all the stake holders. The Hon'ble Court in *Swiss Ribbons (supra) inter alia* observed as follows with regard to objects of the Code.

“As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. Unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme workers are paid, the creditors in the long run will be repaid in full, and shareholders/ investors are able to maximize their investment. Timely

resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets.”

20. True it is that the provisions of the Code would not be strictly applicable in the instant case, but the underlying object and principle thereof, in resolving a debt-ridden Corporate Debtor, cannot be lost sight of. The adherence to specific timeline for resolution is the essence, which in effect would bring about successful resolution of a beleaguered Company, like CPG or for that matter other entities in the IL & FS conglomerate. The Applicant (Sigma) in CA No. 4127 of 2019 was informed by an e-mail dated 16<sup>th</sup> December 2019 that its request for submitting EoI could not be considered. The invitation for EoI was widely publicized in two newspapers namely ‘Economic Times’ and ‘Maharashtra Times’ in circulation among other places in Mumbai and Maharashtra. The reason that the Applicant’s factory is in Uttarakhand and it could not know about the advertisements cannot be accepted for the fact that the Applicant also has an office in Mumbai as can be seen in Annexure 5 appended to the reply affidavit. Besides no indulgence can be given to someone who hasn’t been vigilant enough. In the meantime, the FTAs had taken further steps for acceptance of the bid. As can be known from the discussions supra the same is awaiting approval of this Tribunal. That apart the Applicant has not shown any sufficient cause for its delay in submitting its EoI under the advertisement dated 11.11.2019. Mere stating that it could not know about the advertisement would not be considered sufficient reason to condone the delay. Besides that would effectively set at naught the progress made in the meantime. We are not persuaded by the submissions made on behalf of the Applicant to

condone the delay and accept its EoI. The CA No. 4127 of 2019 doesn't merit consideration and is liable to be rejected. We hereby do so.

21. The UoI represented by the Regional Director, MCA (WR), Mumbai has no objection to the divestment of IL & FS shares in CPG, as the same has been done in accordance with the approved Resolution Framework. On hearing the counsel for the Applicant in CA No. 1011 of 2020 as well as the Regional Director and having perused the pleadings and the documents attached thereto, we are satisfied and of the considered view that the sale of stake of IL & FS (59.18%) in CPG has been done within the Resolution Framework and the same needs to be approved and recorded. Hence ordered.

#### ORDER

The CA No. 4127 of 2019 be and the same is rejected on contest. CA No. 1011 of 2020 be and the same is allowed in terms of the observation indicated supra. There would however be no order as to costs.

Sd/-  
V. NALLASENAPATHY  
MEMBER TECHNICAL

Sd/-  
MOHAMMED AJMAL  
MEMBER JUDICIAL