

Through Videoconference

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

*** **

CA No. 03 of 2021
in
CP No. 3638/MB/2018

In the matter of

Infrastructure Leasing & Financial Services Limited ... *Applicant*
Vs
Union of India ... *Respondent*

In the matter of

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

Union of India ... *Petitioner*
v.
Infrastructure Leasing & Financial Services Limited & Ors. ... *Respondents*

Date of Order: 24.02.2021

CORAM:

Hon'ble Janab Mohammed Ajmal, Member Judicial
Hon'ble Shri. V. Nallasenapathy, Member Technical

Appearance:

For the Applicant(s) : Mr Ashish Kamat with Mr Aditya Sikka and Ms
Drishti Das, Advocates i/b Cyril Amarchand
Mangaldas
For the Respondent(s) : Mr Chiradeep Balooni, Assistant Director (Office
of Regional Director), MCA (WR), Mumbai

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. The present Application has been filed seeking approval of this Tribunal for a proposed settlement between National Highways Authority of India (NHAI) and Kiratpur Ner Chowk Expressway Limited (KNCEL).
2. The factual backdrop that led to the present Application 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 This Tribunal by an order dated 01/10/2018 superseded the Board of Directors of IL & FS and constituted a new Board with six Directors to take over the affairs of the Company. In addition to the six Directors appointed on 01/10/2018, this Tribunal appointed three more Directors *vide* order dated 03/10/2018 (pursuant to which one more director was appointed) and order dated 21/12/2018 (pursuant to which two more directors were appointed). 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 3rd 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 said Resolution Framework sets forth that given the position of and challenges in the IL & FS Group, an 'Asset Level Resolution' i.e., an asset-by-asset solution explored through various methods (as set out in the Resolution Framework) and in some cases, the sale of a business vertical comprising of a basket of Companies and other entities is the most feasible option for Resolution of the IL & FS Group. It is pertinent to note that the Resolution Framework *inter alia* sets forth that with regard to companies/entities of the IL & FS Group where: i) there are no operations or the cashflows are insufficient to meet the current operating liabilities and statutory liabilities; and/or ii) No bids/ EoIs are received from any bidder, the New Board may take steps for these companies to be wound up.
6. 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.

7. 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. The Hon'ble NCLAT *vide* the same order directed the UoI and IL & FS to file an affidavit *inter alia* setting out the names of entities in the IL & FS Group which are incorporated within the territorial jurisdiction of India (*Indian IL&FS Entities*) and entities that are incorporated in other countries (*Offshore IL&FS Entities*). In compliance the UoI filed an affidavit dated February 11, 2019 placing on record before the Hon'ble NCLAT, the list of 169 *Indian IL&FS Entities* and 133 *Offshore IL & FS Entities*. Hon'ble NCLAT by order dated 11/02/2019 *inter alia* excluded the *Offshore IL & FS Entities* from the purview of the October 15 Order (15/10/2018) and directed that the resolution of the *Offshore IL & FS Entities* may be taken up by the New Board under the supervision of Hon'ble Justice Mr. D. K. Jain (Retd.). NCLAT also directed that the actions taken for the resolution of the *Offshore IL & FS Entities* be presented to this Tribunal.
8. Thus, 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.
9. 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. In the 12/03/2020 Order the Hon'ble NCLAT has reiterated the 11/02/2019 Order. 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.

10. KNCEL, a special purpose vehicle incorporated for the purposes of the development, maintenance and management of National Highway No.21 (NH 21) including the section from 73.200 km to 186.500 km (approximate length of 84.38 km) in the States of Punjab & Himachal Pradesh on Design, Build, Finance, Operate and Transfer (DBFOT) basis (Project). It is a wholly owned subsidiary of IL&FS Transportation Networks Limited (ITNL), which in turn is a subsidiary of the Applicant.
11. NHAI entered into a Concession Agreement dated March 16, 2012 (Concession Agreement) with KNCEL for execution of the Project for a period of 28 years, including 1095 days (three years) of construction period.
12. As a business model for its road project SPVs, ITNL acts as a single point contractor for project related works and in turn appoints sub-contractors.
13. Accordingly, KNCEL had entered into an EPC contract dated July 25, 2013 (EPC Contract), with ITNL to undertake all the Project related work and as per the scope defined in the Concession Agreement and appointed several sub-contractor(s) for undertaking all civil works for the purposes of the Project.
14. The 'financial close' for the Project (Article 24 of the Concession Agreement) was achieved on September 5, 2012. This was informed to NHAI on March 29, 2012 and the form of the financial documents to be executed was confirmed by NHAI on July 18, 2012. The senior lenders/ financiers for KNCEL's Project include IFCI Limited, Indian Bank, Central Bank of India, Oriental Bank of Commerce, Allahabad Bank, Tamilnadu Mercantile Bank Limited, Corporation Bank, India Infrastructure Finance Company Limited and the Life Insurance

Corporation of India. ITNL also financed the Project through equity infusion/granting of sub-debt/granting of loans or arranging loans from the Applicant Group entities/ third parties.

15. NHAI was also required to provide equity support by way of a ‘Grant’ to KNCEL, for an amount aggregating to INR 134.567 crores (Article 25 of the Concession Agreement). It was to be released by NHAI after KNCEL had expended the equity and was to be disbursed proportionately along with the disbursement of loans by the aforesaid senior lenders. In view thereof and in accordance with KNCEL’s request, NHAI released a grant of INR 52.62 crores in two tranches, first INR 27.25 Crores on July 20, 2017 and second of INR 25.37 crores on June 7, 2018. KNCEL also requested NHAI to release INR 25 crores (towards balance part of the grant to KNCEL) directly to the sub-contractors/ suppliers for undertaking certain works.

16. The Project cost as per KNCEL (based on the financial close) is as follows:

All amounts in INR crores

| Concessionaire Project Cost (As per Financial Close Documents) | Sanctioned Amount | Disbursed Amount |
|---|--------------------------|-------------------------|
| Equity | 500.81 | 500.81 |
| Debt* | 1474.86 | 1240.77* |
| Subordinated Debt | 180.76 | 180.76 |
| Grant | 134.57 | 52.62 |
| Interest accrued and outstanding on senior debt# | - | 34.39 |

**Debt – includes Senior Debt of Yes Bank Limited of INR 130.02 crores which was appropriated against fixed deposits of ITNL effective August 2018, resulting in the said amount as a loan from ITNL in the books of KNCEL.*

17. The Project was suspended/ stalled before achieving commercial operations or the provisional commercial operations date, i.e., since end of May 2018 (after achieving physical progress of 63.23%), due to shortage of funds with ITNL.

18. The key aspects relating to the Project are summarized below:

| | | |
|-----|--|--------------------|
| 1. | Total Project length | 84.38 Km |
| 2. | Total Project cost as per Concession Agreement | INR 1818.47 crores |
| 3. | Total Project cost as per ITNL as of May 8, 2019 | INR 2291.00 crores |
| 4. | Date of signing of Concession Agreement | March 16, 2012 |
| 5. | Grant – Article 25 of Concession Agreement | INR 134.567 crores |
| 6. | Period of concession | 28 years |
| 7. | Construction period | 1095 days |
| 8. | Appointed date | November 14, 2013 |
| 9. | Scheduled Project completion date | November 13, 2016 |
| 10. | Physical progress | 63.23% |
| 11. | Financial progress | 67.26% |
| 12. | Grant received till date | INR 52.62 crores |

19. In view of the above, KNCEL had committed a Concessionaire Default (as it had suspended the work for the Project prior to achieving commercial operations) and was thus (in terms Article 37.1.1 r.w. Article 37.3.1 of the Concession Agreement) not entitled to any compensation from NHAI in respect of work done under the terms of Concession Agreement, unless it is established that such suspension has solely been on account of NHAI's default. Although NHAI had also contributed to causing of delay in completion of the Project, such default has been disputed by NHAI, given that the financial condition of ITNL also contributed in the suspension of work of the Project in May 2018. The final determination of this issue would require prolonged judicial process without any certainty of success.

20. KNCEL lodged a complaint against NHAI on June 28, 2018, claiming that the delay in completion of construction of the Project was on account of NHAI's default in providing encumbrance free land as required under the Concession Agreement. Thereafter, on July 16, 2018, KNCEL issued a cure period notice requesting NHAI to cure its defaults under the Concession Agreement. In turn, on August 2, 2018 NHAI also issued a cure period notice to KNCEL asking KNCEL to cure various defaults committed by it and on August 24, 2018, provided a detailed and pointwise response to the cure period notice issued by KNCEL denying/ rejecting all the claims mentioned therein. On September 14, 2018, KNCEL replied to NHAI stating that NHAI had failed to cure default and release payments due to KNCEL and had accordingly expressed its intention to terminate the Concession Agreement. NHAI issued an interim reply to KNCEL on September 28, 2018 and a detailed reply on October 16, 2018 *vide* which it – (i) advised KNCEL to not initiate action under its letter; and (ii) provided a detailed point by point reply to KNCEL's letter dated September 14, 2018 *inter alia* rejecting the notice of intention to terminate the Concession Agreement by KNCEL and stated that all defaults were on the part of KNCEL. Subsequently, on January 18, 2019, NHAI issued notice of intention to terminate the Concession Agreement to KNCEL.
21. It is pertinent to note that NHAI has established Conciliation Committees of Independent Experts (Conciliation Committee) for conciliation of disputes with concessionaires for NHAI projects. The terms of reference to the Conciliation Committees and procedures and methodologies for conciliation through the Conciliation Committees is set out in detail in Circular No.2.1.22/2017 dated June 2, 2017 issued by NHAI.
22. On January 14, 2019, KNCEL requested NHAI to refer the dispute related to the Project with respect to the settlement amounts to the Conciliation Committee of Independent Experts (CCIE). Accordingly, NHAI and KNCEL, issued a joint

letter dated January 31, 2019 to the Conciliation Committee of Independent Experts – II (CCIE- II).

23. In the interim, as NHAI had failed to cure the material defaults during the cure period of: (i) 90 (ninety) days provided under the cure period Letter; and (ii) 15 (fifteen) days provided in the Intention to Terminate Notice, as per Article 37.2.1 and 37.2.2 of the Concession Agreement respectively. KNCEL on January 23, 2019 terminated the Concession Agreement with respect to the Project. KNCEL claimed the termination Payment payable to be – (i) Debt Due, (being INR 816,61,83,750); and (ii) 150% (one hundred and fifty per cent) of the Adjusted Equity, (being INR 380,21,70,403), as per Article 37.3.2 of the Concession Agreement.
24. In reply to the said letter, NHAI *vide* its letter dated February 25, 2019 rejected the termination of the Concession Agreement by KNCEL reiterating that the defaults were on account of KNCEL and, *inter alia*, stated that as in the instant case, Concessionaire defaults have occurred prior to Commercial Operation Date (COD), KNCEL is not entitled to termination payment under clause 37.3.1 of the Concession Agreement. Thereafter, while the matter was being discussed in the CCIE-II, NHAI *vide* its letter dated October 22, 2019 terminated the Concession Agreement with respect to the Project citing various defaults committed by KNCEL.
25. In reply thereto, KNCEL *vide* its letter dated reiterated that it – (i) had left no stone unturned for successful completion of the Project but insensibility of NHAI towards the Project dragged it far behind; (ii) in any case the Concession Agreement was already terminated by KNCEL and a terminated agreement cannot be re-terminated; and (iii) denied all the allegations made by NHAI.

26. In the meanwhile, the Ministry of Road Transport and Highways, Government of India (MoRTH) issued the 'Guiding Principles for Resolution of Stuck National Highway Projects' dated March 9, 2019 (MoRTH Guidelines), noting the inability of concessionaires to continue with their project *inter alia* on account of proceedings initiated under the Insolvency & Bankruptcy Code, 2016 or Section 241(2) of the Act (such as the captioned Petition, in which the Applicant, ITNL and KNCEL are impleaded).
27. The MoRTH Guidelines provide that road projects on a 'Build, Operate, Transfer' basis, which qualify as "stuck-up" projects, may be foreclosed mutually agreed by contract executed between the parties; and the concessioning authority, would pay, as full and final settlement, an amount which is the lower of the: (a) the value of work done; or (b) 90% of the "Debt Due" (if applicable to the relevant SPV (in the present case, KNCEL)). In case the investment in the project by the concessionaire (of the relevant SPV) is not covered under the definition of "Debt Due", the payment may be restricted to the value of work done and assessed.
28. Accordingly, KNCEL *vide* its letter dated March 26, 2019 requested for foreclosure of the Concession Agreement and requested NHAI to pay the settlement amount in accordance with MoRTH guidelines and foreclose the Concession Agreement.
29. The value of work was assessed at INR 1027.79 crores by the IE. The "Debt Due" (as per the provisions of the Concession Agreement) was assessed to be INR 787.11 crores. In order to arrive at an expeditious settlement and based on discussions with NHAI officials, KNCEL sent a proposal to NHAI to foreclose the Concession Agreement on payment of compensation of INR 735.56 crores.

30. As the MoRTH Guidelines stipulate that the compensation payable is lower of value of work done or 90% of “Debt Due”, NHAI proposed the compensation amounts at INR 708.40 crores. NHAI also proposed recoveries of INR 35.78 crores on account of – (i) valuation fees payable to TPF Getinsa Eurostudios (INR 2.72 crores); (ii) maintenance of existing road (INR 7.5 crores); (iii) construction of damaged work at site (INR 12.2 crores); (iv) change of scope paid by NHAI (INR 12.61 crores); and (v) maintenance of tunnel (INR 0.75 crores), resulting in net compensation amount payable to KNCEL at INR 672.62 crores as full and final settlement amount for foreclosure of Concession Agreement to KNCEL.
31. On January 14, 2020, KNCEL provided its consent to NHAI’s proposal accepting the net compensation amount as well as seeking inclusion of accrued interest in “Debt Due”.
32. In the CCIE-II meeting held on August 21, 2020 the CCIE-II opined that KNCEL’s submission on amounts with respect to debt due appears to be fair and held that it would be in the interest of the Parties, the larger public interest as well as the economy of the nation to bring a finality to this Settlement without further delay. Accordingly, NHAI and KNCEL were instructed to exchange a draft Settlement Agreement.
33. KNCEL and NHAI finalized the draft of the settlement agreement which *inter alia* records – (i) the aforesaid understanding; (ii) settlement of all claims with respect to the Project; and (iii) the deposit of the KNCEL Settlement Amount in the escrow account of KNCEL (KNCEL Escrow Account) (Agreed Form Settlement Agreement).

34. In the meeting held on November 19, 2020, CCIE-II took on record the Agreed Form Settlement Agreement and instructed KNCEL to seek all requisite approvals and execute the same thereafter.
35. In the meanwhile, the New Board on July 24, 2019 authorized constitution of a ‘Standing Committee for Roads Projects’ (Standing Committee) from amongst the members of the New Board (assisted by officials of ITNL) who were authorized, to finalise and agree for settlement of claims with, amongst others NHAI and MoRTH for incomplete road projects (including KNCEL).
36. The Standing Committee approved the gross compensation amount of INR 708.40 crores in respect of KNCEL (and net compensation of INR 672.62 crores considering the recoveries of INR 35.78 crores) towards foreclosure of the Project, in addition to payment by NHAI of accrued interest on senior debt and sub debt forming part of “Debt Due” as defined in the Concession Agreement.
37. The New Board also decided that the Settlement Formula contemplated in the February 2020 Affidavit would not apply in the present scenario as, NHAI has not raised the issue of settling the dues of ITNL sub-contractors with CCIE-II and no such condition has been specified either by NHAI or CCIE-II for payment of compensation to KNCEL. Unlike other projects, NHAI has not brought to the notice of CCIE-II, any orders passed by any court of law asking NHAI to consider claims of ITNL sub-contractors before taking any decision regarding release of funds to ITNL. In view of this, CCIE-II has not considered it necessary to meet the sub-contractors, nor does its orders contain any condition for settlement of dues of ITNL sub-contractors. Accordingly, in its meeting held on October 21, 2020, the Standing Committee approved the receipt of the KNCEL Settlement Amount and its distribution as per Revised Distribution Framework (Proposal).

38. As per the Resolution Framework, claims were invited in respect of KNCEL as part of the claims management process for the IL&FS Group being undertaken by Grant Thornton Bharat LLP (Claims Management Consultant). A summary of the verified claims with respect to KNCEL for financial creditors is INR 1692,39,55,177 and operational creditors is INR 169,67,82,653. Therefore, the total verified claims aggregate to INR 1862,07,37,830.
39. Additionally, in accordance with the Resolution Framework, the following registered valuers were appointed to compute the estimates of KNCEL’s liquidation value. The average liquidation value of KNCEL is –

All amounts in INR crores

| Entity | Liquidation value (as of October 15, 2018) | |
|---------|--|---|
| | RNC Valuecon LLP | Adroit Valuation Services Private Limited |
| KNCEL | 658.08 | 501.13 |
| Average | 579.61 | |

40. According to the Second Addendum (the Revised Distribution Framework), the KNCEL Settlement Amount received for KNCEL is to be distributed in the following manner:
- A. first, before any distribution to the creditors, towards all resolution process costs incurred in the settlement process of KNCEL, whether incurred by KNCEL or on behalf of KNCEL (including but not limited to fees payable to legal counsels, resolution consultant, claims management consultant, independent valuers, costs for issuing advertisements, conducting audits, and conducting meetings of Creditors’ Committee etc. (collectively the “Resolution Process Costs”) in full. As on date the indicative amount payable as part of the Resolution Process Costs for the settlement of KNCEL is approximately INR 1.55 crores (excluding applicable taxes).

- B. second, towards distribution of the settlement proceeds paid by NHAI up to the average liquidation value to the creditors of KNCEL in accordance with Section 53 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) (which will include all components of Section 53 of the IBC such as unpaid workmen’s dues and unpaid employees’ dues etc., as applicable); and
- C. third, the remaining settlement proceeds to be distributed pro-rata to each class of creditors of KNCEL adjusted for any recovery made by the relevant creditor on account of distribution under Section 53 (of the IBC), as contemplated above.
41. The New Board approved the acceptance of the KNCEL Settlement Amount and also approved subsequent distribution of the KNCEL Settlement Amount to the creditors of KNCEL in accordance with the Revised Distribution Framework as filed by the Ministry of Corporate Affairs with the Hon’ble NCLAT on January 9, 2020 (and approved by the Hon’ble NCLAT vide the March 12 Order) on November 19, 2020.
42. Pursuant to the approval of the New Board on November 19, 2020, the Applicant filed an application dated November 24, 2020 before the Hon’ble Justice Mr. D. K. Jain (Retd.) seeking approval for the Proposal outlined above. In addition, the Applicant before Hon’ble Justice Mr. D. K. Jain (Retd.), has also filed a supplementary submission dated December 25, 2020
43. By a letter dated December 29, 2020, Hon’ble Justice Mr. D. K. Jain (Retd.) has accorded his approval for the following, *inter alia* subject to the approval of this Tribunal:
- a. Executing the Agreed Form Settlement Agreement with NHAI to record the understanding of the proposal and settlement with respect to the Project;

- b. accepting an amount of INR 672.62 crores (being the KNCEL Settlement Amount) (subject to any deduction of tax as applicable) from NHAI for foreclosure of the Project;
 - c. deposit of the KNCEL Settlement Amount in the KNCEL Escrow Account as stated in this memorandum; and
 - d. distribution of the KNCEL Settlement Amount (along with any additional amounts lying in the KNCEL Escrow Account) to the creditors of KNCEL (for claims admitted by the Claims Management Consultant, as of October 15, 2018) in accordance with the Revised Distribution Framework.
44. It is submitted the MoRTH Guidelines have been particularly relevant in the context of the domestic transportation vertical of the Applicant Group where a number of entities have filed various claims with the relevant concessioning authorities (including various state governments) for amounts aggregating to over INR 7,500 Crores (approx.). These amounts (termination/ settlement amounts), once finalized and received, will be utilized to settle the liabilities due to the relevant creditors of the relevant SPV (such as KNCEL).
45. It is submitted that the aforesaid Settlement Proposal is in accordance with the Revised Distribution Framework set out in January 2020 Affidavit as considered and approved by the Hon'ble NCLAT in the March 12 Order. It is further submitted that the Settlement Proposal as set out above, enables the recovery of an amount of approximately INR 672.62 crores by KNCEL (against settlement of its claims). As set out above, Article 37.3.1 of the Concession Agreement provides that due to failure to achieve commercial operations for the Project, no payment for termination of the Concession Agreement would otherwise be due or payable to KNCEL.
46. However, under the provisions of the MoRTH Guidelines, KNCEL would recover a part of the value of the amounts spent on the Project, where, absent the

MoRTH Guidelines, no recovery would have been possible in light of Article 37.3.1 of the Concession Agreement. Therefore, in light of the same, the proposed termination of the Concession Agreement and the consequent receipt of the KNCEL Settlement Amount will enable the resolution of significant portion of the debt of KNCEL.

47. It is further submitted that upon receipt of the KNCEL Settlement Amount from NHAI, the distribution of the KNCEL Settlement Amount will take place in accordance with the Revised Distribution Framework as approved by the Hon'ble NCLAT and upon approval from this Tribunal. The "Settlement Proposal" (as outlined in the January 2020 Affidavit and the February 2020 Affidavit) shall apply only in circumstances where the relevant Concessing Authority has stipulated a condition that the dues of the sub-contractors of ITNL in relation to the relevant project are to be cleared for the SPV to be able to receive the settlement/ compensation amounts. However, in the present case, there is no such direction or condition placed by the Concessing Authority/ NHAI and it is therefore submitted that such "Settlement Proposal" shall not apply.
48. Accordingly, the Applicant is before us, seeking the following reliefs:
- A. Permit Kiratpur Ner Chowk Expressway to execute the Agreed Form Settlement Agreement to record the proposal for foreclose of the Concession Agreement and settlement of all claims by Kiratpur Ner Chowk Expressway Limited against National Highways Authority of India;
 - B. Permit Kiratpur Ner Chowk Expressway Limited, IL&FS Transportation Networks Limited and National Highways Authority Limited to implement and give effect to the terms of the Agreed Form Settlement Agreement to be executed by and between parties in terms of prayer (A) above;

- C. Allow Kiratpur Ner Chowk Expressway Limited to receive the KNCEL Settlement Amount of INR 672.62 crores (subject to any deduction of tax as applicable) in the designated KNCEL escrow/banks account;
- D. Permit/direct that upon receipt of the KNCEL Settlement Amount of INR 672.62 crores:
- (i) the Applicant be permitted to utilize and pay an amount of upto INR 1.55 crores and any further amounts towards Resolution Process Costs that have accrued or been incurred in connection therewith till the closure of Kiratpur Ner Chowk Expressway Limited in terms of the Revised Distribution Framework; and
 - (ii) the balance KNCEL Settlement Amount (being the KNCEL Settlement Amount of INR 672.62 crores less Resolution Process Costs computed in terms of prayer (i) above) along with any additional amounts lying in the KNCEL Escrow Account be distributed to the creditors of Kiratpur Ner Chowk Expressway Limited as per the amounts admitted by the Claims Management Consultant, as of October 15, 2018 in accordance with the Revised Distribution Framework;
- E. Declare and direct that upon payment of the KNCEL Settlement Amount of INR 672.62 crores:
- a. all claims (disclosed or undisclosed, and whether existing at or relating to a period prior to October 15, 2018) of all the creditors (including, the Central Government, any State Government, statutory, local or regulatory authorities to whom such claim is owed under any law including any claim arising out of regulatory or enforcement action which pertains to a period prior to October 15, 2018)); and
 - b. all liabilities whether actual or contingent and whether existing at or relating to a period prior to October 15, 2018 including such claims in respect of which arbitration proceedings have been initiated against Kiratpur Ner Chowk Expressway Limited.
- of Kiratpur Ner Chowk Expressway Limited shall stand extinguished.

49. We have heard the learned counsel for the Applicant and have perused the pleadings and documents attached thereto including the approval of Hon'ble Justice Mr. D. K. Jain (Retd.). We are satisfied and are of the considered view that the proposed settlement between NHAI and KNCEL is fair and reasonable. The same is approved and recorded. Hence ordered.

ORDER

CA No. 03 of 2021 be and the same is allowed without contest in terms of the observations made supra. Accordingly, Prayers (A) to (E) are allowed as prayed for. There would however be no order as to costs.

Sd/-
V. NALLASENAPATHY
MEMBER TECHNICAL

Sd/-
JANAB MOHAMMED AJMAL
MEMBER JUDICIAL

**NATIONAL COMPANY LAW TRIBUNAL
COURT No. – I, MUMBAI BENCH**

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CA No. 02/2021

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Union of India

V/s

Infrastructure Leasing and Financial Services Ltd. & Ors.

***** ****

Dated 24th February, 2021

ORDER

Sr. No. 1

The matter is taken up on VC.Counsel for the Applicant is present. Order pronounced. CA No. 02 of 2021 and CA No.03 of 2021 are allowed, vide separate orders.

Sd/-

**V. NALLASENAPATHY
Member (Technical)**

Sd/-

**JANAB MOHAMMED AJMAL
Member (Judicial)**