

NATIONAL COMPANY LAW TRIBUNAL
COURT-I, MUMBAI BENCH

Item 6

CA 58/2022 CA 66/2022 in C.P 3638/MB/2018

CORAM:

SH. K.K. VOHRA
HON'BLE MEMBER (T)

JUSTICE P. N. DESHMUKH (Retd.)
HON'BLE MEMBER (J)

ORDER SHEET OF THE HEARING ON **25.02.2022**

NAME OF THE PARTIES: - **Union of India**
V/s
**Infrastructure Leasing & Financial Services
Ltd & Ors**

Appearance (via video-conference):

For the Applicant (in CA 58) : Mr. Ashish Kamat, Advocate a/w Adarsh Saxena, Drishti Das and Roma Bhojani i/b Cyril Amarchand Mangaldas

(in CA 66) : Mr. Aditya Bapat, Advocate

For the Respondent No. 2 : Ms. Chery F, Advocate

Sections 241-242 of the Companies Act, 2013 & Rule 32

ORDER

CA 58/2022

This is an Application praying for approval of expenses incurred by the Applicant for payment of statutory dues (taxes etc.) and other expenses for keeping the entity as a going concern during the Resolution Process.

A perusal of the papers reveal that the following expenses are related to taxes: -

(a) Rs 2,73,83,540 (taxes for Financial Year 2020 – pg 12 of the Application);

(b) Rs 8,02,00,000 (taxes for Financial Year 2021-2022 – pg 13 of the Application).

The above expenses are **allowed**. The Applicant shall submit the details of the above two items of taxes allowed before the CoC in their next meeting for information, so that CoC may consider making appeal, if any.

For the remaining expenses, the Applicant is at liberty to approach this Tribunal appropriately giving details like expenses in the past years in each category, method of remuneration to professionals if linked with amount of recovery etc. It may be added that the Resolution Process expenses normally require approval of Committee of Creditors (CoC) in terms of Regulation 31 and 34 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 which read as under:

“31. Insolvency resolution process costs. “Insolvency resolution process costs” under Section 5(13)(e) shall mean- 27 (a) amounts due to suppliers of essential goods and services under Regulation 32; 50[(aa) fee payable to authorised representative under 51[sub-regulation (8)] of regulation 16A; (ab) out of pocket expenses of authorised representative for discharge of his functions under 52[section 25A];] (b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d); (c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33; (d) expenses incurred on or by the resolution professional fixed under Regulation 34; and (e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.”

“34. Resolution professional costs. The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs. 54[Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid to the resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional.”

Further, Para 60 of the NCLAT order dated 12.03.2020 in IL&FS and group Companies states that “*the maximization of the asset and distribution of it to all the stakeholders are the object to be kept in mind while following any Resolution Framework for the IL&FS Group Companies*”.

The Resolution Process in IL & FS is akin to other Resolution Processes, it will be in the interest of justice that the Applicant considers Resolution expenses for getting approval of CoC, may be once in a year or so, to ensure fiscal austerity and optimization of resources-objective admitted by IL & FS. It will also be appropriate that CoC has control over inflows and outflows of funds. Accordingly, the Application bearing IA No. 58 of 2022 is **disposed of as allowed in above terms**.

CA 66/2022

Heard Advocate for the Applicant. Prayer made in this Application is for allowing the Applicant to amend the Application bearing CA 417 of 2021 by impleading the ‘Assessing Officer, Circle 14(1)(1), Mumbai having his office at Aayakar Bhavan, Maharshi Karve Road, New Marine Lines, Mumbai 400 020 as Respondent 3. It is submitted that the Applicant is already allowed to implead the Jurisdictional Income Tax Department as Respondent by this Tribunal vide its order dated 05.01.2022. The order copy of the same is also attached at pg 8 of the Application. The perusal of the record substantiates the contentions made as aforesaid by the Applicant. In the circumstances, the Application is liable to be allowed. Applicant is allowed to implead the

Jurisdictional Income Tax Department as has been detailed in Schedule file in the Application as party Respondent 3 in CA 417 of 2021. Applicant is directed to carry out the amendment forthwith and the amended copy of the Application bearing CA 417 of 2021 be served on the newly impleaded Respondent 3. Accordingly, the Application bearing CA No. 66 of 2022 is **disposed of as allowed in above terms.**

Sd/-
K.K. VOHRA
Member (Technical)

Vedant

Sd/-
JUSTICE P. N. DESHMUKH
Member (Judicial)