

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - I**

**CA No. 27/2022
IN
CP 3638/MB/2018**

Under section 241 and 242 of the of the
Companies Act, 2013.

In the matter of

**Infrastructure Leasing & Financial Services
Limited**

**IL& FS Financial Centre, C-22, G Block,
BKC, Bandra East, Mumbai.**

..... Applicant

Versus

**Union of India, MCA, (through the RD)
Having its office at 5th Floor, Everest
Building, 100 Marine Lines, Mumbai –
400001.**

..... Respondent

Order Delivered on :- 22.03.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. K.K. Vohra

Appearances:

For the Applicant: Mr. Ashish Kamat, Advocate a/w Adarsh Saxena,
Drishti Das and Roma Bhoani i/b Cyril Amarchand
Mangaldas

For the Respondent: Mr. Rakesh Tiwari, Joint Director, MCA (WR),
Mumbai

For IDBI Bank :- Mr. Shantanu Chaturvedi, Advocate

ORDER

Per:- Coram

1. The present Application is filed by the Applicant Infrastructure Leasing & Financial Services Limited (hereinafter referred to as ILFS) to seek approval from this Tribunal for the settlement proposal between National Highways Authority of India (hereinafter referred to as NHAI) and Khed Sinnar Expressway Limited (hereinafter referred to as KSEL) in accordance with the Concession Agreement dated 09.05.2013 wherein KSEL will receive a Compensation Amount of INR 891.59 crores, including an amount of INR 139.44 crores payable to the Sub-Contractors of KSEL to be paid directly by NHAI.
2. The Applicant is before us with the following prayers :-
 - a) Approve the proposal for settlement of the claims of Khed Sinnar Expressway Limited against the National Highways Authority of India and permit Khed Sinnar Expressway Limited and National Highways Authority Limited to execute a Settlement Agreement to

record the proposal for termination and settlement of claims by Khed Sinnar Expressway Limited against National Highways Authority of India;

- b) Permit Khed Sinnar Expressway Limited, IL&FS Transportation Networks Limited (hereinafter referred to as ITNL) and National Highways Authority Limited to implement and give effect to the terms of the settlement agreement to be executed by and between parties in terms of prayer (a) above;
- c) Allow Khed Sinner Expressway Limited to receive the Revised KSEL Compensation Amount of INR 891.59 crores (subject to applicable deductions) less an amount of INR 1,39,44,82,935 which is to be paid by National Highway Authority of India directly to the KSEL Sub-Contractors;
- d) Permit: (i) the amount due to GHV India Private Limited (hereinafter referred to as GHV) in connection with work done for Project and currently categorized as ‘financial dues’ from ITNL be considered as amounts due to sub-contractor for the purposes of the work done on the Project; and (ii) that GHV be paid the amounts currently categorized as ‘financial dues’ from ITNL, from the Revised KSEL Compensation Amount as contemplated in the present Application;

- e) Declare and direct that upon payment of a sum of INR 1,39,44,82,935 by National Highway Authority of India to the KSEL Sub-Contractors from the Settlement Amount, any and all claims of all subcontractors against IL&FS Transportation Networks Limited arising from and/or in connection with the four laning from 42.000 km to 177.000 km of Khed Sinnar section of National Highway-50 in the State of Maharashtra shall stand extinguished and the Project be discharged from all encumbrances that KSEL Sub-Contractor may have;
- f) Direct that the funds comprising the Revised KSEL Compensation Amount (which are received net of all deductions including the amounts which are to be paid by National Highway Authority of India directly to the KSEL sub-contractors in terms of prayer (c) above) i.e., the Residual KSEL Compensation Amount should be deposited into a relevant/ designated Escrow Account to be intimated by the Applicant/ ITNL/ KSEL and be maintained as fixed deposits and should not be adjusted or set off against any other dues pertaining to any bank/financial institution;

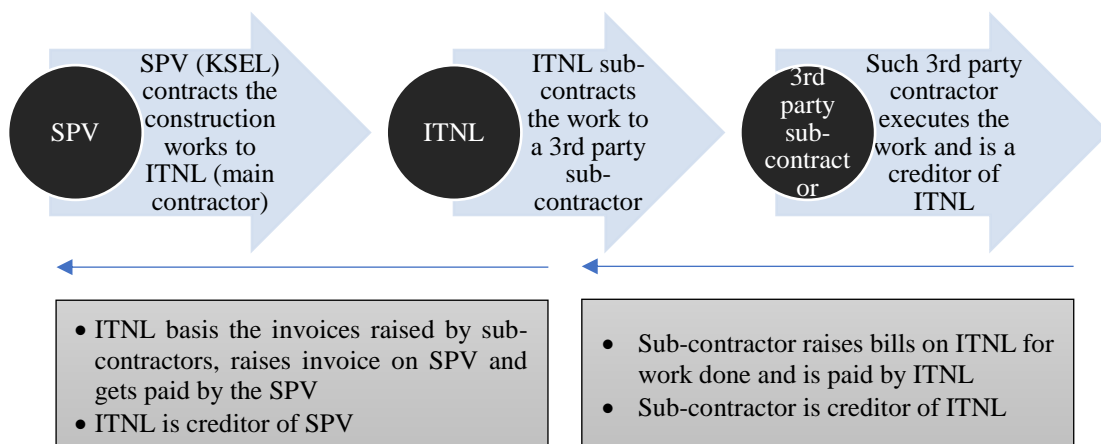
- g) Direct that the distribution of the Residual KSEL Compensation Amount or part thereof or withdrawal of any other amounts from the relevant/ designated escrow account as per prayer (f) above shall be subject to further orders of this Hon'ble Tribunal;
- h) For any further reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances.
3. The brief background of the case is stated as under.
4. The Union of India (hereinafter referred to as UoI) filed CP No. 3638 of 2018 against the Applicant under Section 241 and 242 of the Companies Act, 2013 *inter alia* alleging mismanagement in the Applicant Company.
5. This Tribunal vide an Order dated 01.10.2018 superseded the Board of Directors of the Applicant Company and constituted new Board with 6 Directors to take over the affairs of the Company. Subsequently, six more directors were appointed by this Tribunal. This Tribunal by an Order dated 12.10.2018 in M.A. No. 1173 of 2018 declined to Order a moratorium in respect of the Applicant and its group companies. The UoI and the Applicant Appealed the said subject matter before the Hon'ble National Company Law Appellate Tribunal (hereinafter referred to as NCLAT). The Hon'ble NCLAT vide an Order dated 15.10.2018 granted interim stay against any coercive action by the creditors against the Applicant and its group companies.

6. Pursuant to the Order dated 01.10.2018, the New Board submitted the 3rd progress report dated 17.12.2018 wherein they proposed the Resolution of framework and made certain recommendations for the Resolution processes of the Applicant and its group companies. The said Resolution frame work sets forth different resolutions for different entities.
7. The Hon'ble NCLAT vide its Order dated 11.10.2019, observed that for the proper Resolution of the Applicant and its group companies, the process to be followed is to be similar as that of the Corporate Insolvency Resolution Process (CIRP). The Hon'ble NCLAT also observed that in such case the Committee of Creditors (CoC) or any knowledgeable person such as the Resolution Professional may be required to be constituted to determine the viability, feasibility of the Plan/Offer.
8. In view of the above, the Hon'ble NCLAT vide an Order dated 04.02.2019 permitted the UoI and the Applicant to engage Hon'ble Justice Mr. D.K. Jain (Retd.) to supervise the operations of the Resolution Process. The Hon'ble NCLAT directed UoI and the Applicant Company to file an Affidavit *inter alia* setting out the names of the other group companies of the Applicant which are incorporated within territorial jurisdiction of India and also companies which are incorporated in other countries.
9. In compliance to the said, UoI filed an affidavit dated 11.02.2019, placing on record the list of 169 Indian companies and 133 offshore companies. Hon'ble NCLAT vide its Order dated 11.02.2019, excluded the offshore companies and directed that the resolution of such companies would be taken up separately and under the supervision of Hon'ble Justice Mr. D.K. Jain (Retd.) and the same to be presented to this Tribunal.

10. Further, vide an Order dated 12.03.2020 passed by Hon'ble NCLAT, the cut-off date for distribution of assets and initiation of Resolution process of the Applicant and its group companies was decided as 15.10.2018. The developments thereof in the Resolution of the Applicant and its group companies were to be brought to the notice of Hon'ble NCLAT every month. As a consequence, the Resolution of the Applicant and its group companies came to be worked out.
11. The Applicant in CA No. 27 of 2022 pleaded as below:-
 - i. NHAI as a nodal authority for development of highways and roadways in India, on 21.01.2013 invited proposals for short listing bidders for construction, operation and maintenance of Khed Sinnar section of National Highway-50 in the state of Maharashtra by four-laning on Design, Build, Finance, Operate and Transfer (DBFOT) hereinafter referred to as the Project.
 - ii. NHAI accepted the bids submitted by ITNL, a fully owned subsidiary of the Applicant in respect of the project and issued Letter of Award (LOA) on 28.03.2013 in favour of ITNL for execution of Concession Agreement.
 - iii. KSEL is a wholly owned subsidiary of IL&FS Transportation Networks Limited (hereinafter referred to as ITNL), which in turn is a subsidiary of the Applicant. 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 to carry out the construction and other works. This business model was applied even for KSEL. KSEL, a SPV incorporated for the purposes of the

construction, operation and maintenance of the Khed Sinnar section of the NH No. 50 in the State of Maharashtra by four-laning on design, build, finance, operate and transfer (Toll) basis (Project), is a wholly owned subsidiary of IL&FS Transportation Networks Limited (ITNL), which in turn is a subsidiary of the Applicant.

- iv. NHAI entered into a Concession Agreement dated 09.05.2013 (Concession Agreement) with KSEL for execution of the Project for a period of 20 years, including 910 days of construction period. Accordingly, KSEL entered into an EPC contract dated 08.02.2014 with ITNL. ITNL appointed various subcontractors to execute the project related work (KSEL Sub-Contractors). Pursuant to above, KSEL had entered into an EPC Contract with ITNL dated 08.02.2014. The contracting structure followed by ITNL is as under :-



- v. Further, ITNL appointed (i) GHV (India) Private Limited (**GHV**); (ii) Montecarlo Limited; and (iii) Roadway Solution India Private Limited, as their sub-contractors for undertaking all the civil works

for the purposes of the Project and entered into separate Construction Contracts dated February 12, 2014 with GHV, Montecarlo Limited and Roadway Solution India Private Limited, (**Construction Contracts**). Apart from the above sub-contractors, ITNL engaged various other contractors which are tabulated as under :-

GHV India Private Limited
Elsamex Maintenance Services Limited
Montecarlo Limited
Eagle Scale Manufacturing Works
Geoone Solutions
International Wire Products
Gajra Infra Private Limited
Interbuild Infrastructure Pvt Ltd
Arman Technology
Konkan Malleable Industries
Harikrupa Automation Private Limited
S S Enterprises
Bons Light Pvt Ltd
Envoy's Electronics Pvt Ltd
Final Mile Consultants
Rakshanay Security Services
Kuber Constructions
S&A Infra Heights

- vi. Till July 2018, significant physical progress (81.39% work done) was made in the Project. Since July 2018, the on-site Project work was suspended due to various reasons including non-availability of encumbrance free land constituting an 'Authority Event of Default' under the Concession. Article 37.3.2 of the Concession Agreement stated:-

“Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of

Termination Payment, an amount equal to: (a) Debt Due; and (b) 150% (one hundred and fifty percent) of the Adjusted Equity.”

- vii. Further, the project was delayed on account of delay in handover of encumbrance free land by NHAI to KSEL. KSEL vide its letter dated 10.07.2018 (Cure Notice), served a notice to NHAI to cure the material defaults on part of NHAI (within 90 days of receipt of the notice), which caused material adverse effect on KSEL and thereby constituting an ‘Authority Default’ in terms of the Concession Agreement. Due to the losses suffered, KSEL sought for compensation of INR 788.76 crores. NHAI vide its letter dated 01.10.2018 rejected the Cure Notice served by KSEL stating that NHAI has fulfilled all its obligations under Concession Agreement.
- viii. Pursuant to a letter dated 14.01.2019 issued by KSEL, NHAI referred the dispute to the Conciliation Committee of Independent Experts-III (CCIE-III) seeking conciliation of their dispute in respect to compensation and termination of the Concession Agreement. Several meetings were held between the CCIE-III and the representatives of KSEL and NHAI wherein the claim from KSEL and counterclaim by NHAI were discussed at lengths and the CCIE-III directed parties to arrive at a settlement proposal with respect to the Project. Based on discussion between KSEL and NHAI, NHAI proposed a settlement amount of INR 891.59 crores (net of recoveries of INR 38.82 crores (subject to deduction of tax if any, as applicable)).

- ix.* Subsequently, KSEL and NHAI finalised the draft of the settlement agreement on the aforesaid understanding and also settlement of all claims and counterclaims with respect to the said project. Further, the CCIE-III in its order dated 30.06.2021, approved the Agreed Form Settlement Agreement.
- x.* Further, the Applicant filed an affidavit dated 09.01.2020 *inter alia* setting out the brief details of the various settlement discussions being held with the Concessioneing Authorities (including in connection with KSEL) and that the Applicant Group would approach the Hon'ble NCLAT with respect to the distribution of the settlement amounts in accordance with terms of settlement conveyed by the relevant Concessioneing Authority and conditions, if any after seeking requisite approvals (including approval of Justice (Retd.) D.K. Jain and this Hon'ble Tribunal) to settle claims of the 3rd Party Sub-Contractors from the compensation received from the relevant Concessioneing Authority.
- xi.* As a consequence, to the CCIE-III Order, KSEL issued a letter dated 05.02.2020 to CCIE-III stating that KSEL will be unable to approve or agree to application of amounts other than as is approved by the Hon'ble NCLAT and this Hon'ble Tribunal and the Applicant Group companies was in the process of approaching the Hon'ble NCLAT to permit inclusion of project specific third-party contractors (who are creditors of ITNL), as part of the recipients of the sums payable to KSEL.

xii. Accordingly, the Applicant filed a further Affidavit dated 07.02.2020 with the Hon'ble NCLAT proposing that the Board of Directors of ITNL with approval of the New Board of the Applicant Company, shall prescribe a formula (**Settlement Formula**) to settle claims of the 3rd Party Sub-Contractors from the settlement amounts received from concessioning authorities. Further it also stated that the settlement amounts shall first be used, either by direct payment by NHAI or an escrow mechanism to discharge dues of the 3rd party sub-contractors determined through the Settlement Formula. After such amounts are paid to the sub-contractors, all of the third-party sub-contractor's claim against ITNL in respect of relevant project shall be extinguished fully and ITNL's claim against the relevant entity (as an operational creditor) shall be extinguished to the extent of payments to the 3rd Party Sub-Contractor provided that the said proposal for settlement of claims of such "incomplete projects" with the relevant Concessioning Authority and distribution of the settlement amounts to the 3rd Party Sub-Contractors shall be subject to the supervision of Justice (Retd.) D.K. Jain.

xiii. The Affidavit dated 07.02.2020 further set out an illustration for the Settlement Proposal as, if the 3rd party sub-contractor's claim against ITNL is INR 100 crores in connection with the relevant project, ITNL's claim against the project entity will be INR 120 crores and the amount payable to the relevant 3rd party sub-contractor pursuant to the Settlement Formula will be INR 80 crores and further the payment of INR 80 crores (to the sub-

contractor) will extinguish the sub-contractor's entire claim of INR 100 crores (against ITNL), and ITNL's claim against the project entity will reduce to INR 40 crores. The residual settlement amounts (after discharge of sub-contractor's claim in accordance with the Settlement Formula) will be transferred to the relevant project entity, for which the amounts will be utilized towards discharge of obligations due to the creditors of that project entity, in accordance with the Revised Distribution Framework as approved by the Hon'ble NCLAT.

- xiv. Accordingly, the Applicant had sought liberty from the Hon'ble NCLAT for the New Board to proceed with the implementation of the Settlement Proposal. Further, the Hon'ble NCLAT vide its Order dated 12.03.2020 approved the resolution process for the Applicant Group companies and directed to conduct as per the procedures suggested by the Applicant and under the supervision of Hon'ble Justice (Retd.) D.K. Jain". Therefore, it is submitted that the New Board permitted to implement the Settlement Proposal and discharge dues of the 3rd Party Sub-Contractors.
- xv. The New Board on 24.07.2019, authorized constitution of a '*Standing Committee for Roads Projects*' (**Standing Committee**) who were authorized, to finalise and agree for settlement of claims with, amongst others NHAI and Ministry of Road Transport & Highways (**MoRTH**) for incomplete road projects (including KSEL).
- xvi. Further, the Standing Committee, in consultation with the ITNL Board, recommended Settlement Formula for the determination of

the amounts payable to the 3rd party sub-contractors of the relevant projects on May 18, 2020 (as approved by the ITNL Board in its meeting held on June 4, 2020, and by the New Board in its meeting held on June 12, 2020) as under :-

- a. Settlement amount received from Concessioneing Authority be allocated among all the obligations of the SPV (Financial as well as operational Creditors) on a proportionate basis;
- b. The amounts payables to sub-contractors of ITNL be equal to amounts allocated towards operational claims of ITNL in the SPVs following the proportionate allocation as described in (i) above (capped at dues of sub-contractors from that project);
- c. Inclusion of financial debt of one sub-contractor (which arose due to conversion of operational dues of that sub-contractor, in respect of work done on the project), in the above settlements be clearly disclosed in the application to be filed before Justice (Retd.) D.K. Jain.

xvii. In terms of the Resolution Framework, the claims management exercise was carried out by the independent ‘Claims Management Consultant’ being Grant Thornton India LLP (CMC) appointed by the New Board for determining the claims of KSEL’s creditors and claims of sub-contractors appointed by ITNL for the KSEL Project

(i.e., the KSEL Sub-Contractors). Claims aggregating to INR 194,20,15,436 were received by the CMC from KSEL sub-contractors. Based on claims verification process carried out by the CMC and upon application of the Settlement Formula, the amounts accruing to the KSEL Sub-Contractors was initially determined as INR 117,94,55,908 and subsequently revised to INR 118,61,29,935. The amount was further revised on the basis of the updated claims report provided by the CMC to INR 139,44,82,935 to be allocated to the KSEL Sub-Contractors in satisfaction of all their claims with respect to work done for the Project as per the Settlement Formula.

xviii. For the determination and verification of claims of individual KSEL Sub-Contractors, the CMC adopted the following process:-

- a. CMC was mandated to breakup all claims admitted by them at ITNL level into claims pertaining to service rendered with respect to specific projects (which are proposing to enter into settlements with respective concessioning authorities, including KSEL) and claim pertaining to services rendered for rest of projects of ITNL as well as corporate and administrative services;
- b. CMC was also instructed to review and complete the verification of all the claims filed and admitted by them for identified ITNL Sub-contractors to the extent such claims relate to work done by the

relevant ITNL Sub-contractors with respect to KSEL project (KSEL sub-contractors) and also provide a separate report for such admitted claims;

- c. CMC submitted its report in relation to final claims admitted by the CMC relating to the KSEL sub-contractors.

xix. The CMC, as the Independent Agency, submitted its verification report dated July 29, 2020 (CMC Report) in relation to final claims admitted by the CMC relating to KSEL. In light of the above, KSEL issued a letter dated August 10, 2020 to the CCIE-III (with a copy to NHAI and MoRTH) (August 10 Letter), setting out the procedure followed by the Applicant and ITNL in determination of the Settlement Formula, on the basis of the February 2020 Affidavit and also the list of the third-party vendors in respect of KSEL (i.e., the KSEL Sub-Contractors) and the amounts payable to them in accordance with the approved Settlement Formula. The aforementioned list of KSEL Sub-Contractors includes an amount of INR 62,69,97,341 determined payable to GHV (as per the approved settlement formula) which due to inability of ITNL to pay dues to GHV, these operational dues for work done by GHV in respect of *inter alia* the Project were converted into a financial debt on July 31, 2018.

xx. The CMC further submitted an updated report on 15.11.2021 and verified the amounts to be paid to the KSEL sub-contractors. Accordingly, after following the abovementioned steps, the final

amount payable of KSEL sub-contractors as per the approved settlement formula was determined as under :-

<i>Claims of KSEL Sub-Contractors</i>			
<i>Total Claims Received by CMC</i>	<i>Claims not Admitted by the CMC pursuant to the claims verification process</i>	<i>Contingent Claims – not approved by NHAI</i>	<i>Total Claims Admitted by CMC*</i>
194.,20	36.91	17.84	139.45*

* Including the financial debt of GHV for a sum of INR 87.85 crores.

xxi. Upon payment of amounts to KSEL sub-contractors in accordance with the Settlement Formula, all claims of the KSEL sub-contractors against ITNL in connection with the project shall stand extinguished. The final amounts payable to the KSEL sub-contractors is as follows :-

<i>N.</i>	<i>Name of the KSEL Sub-Contractor</i>	<i>Claims admitted by the CMC</i>	<i>Final KSEL Sub-Contractor Settlement Amount</i>
1	GHV India Private Limited	87,84,84,127	87,84,84,127
2	Elsamex Maintenance Services Limited	4,77,96,024	4,77,96,024
3	Montecarlo Limited	42,93,78,073	42,93,78,073
4	Eagle Scale Manufacturing Works	29,88,015	29,88,015
5	Geoone Solutions	43,20,271	43,20,271
6	International Wire Products	78,66,343	78,66,343
7	Gajra Infra Private Limited	56,63,106	56,63,106
8	Interbuild Infrastructure Pvt Ltd	6,38,000	6,38,000
9	Arman Technology	1,00,466	1,00,466
10	Konkan Malleable Industries	1,00,87,244	1,00,87,244
11	Harikrupa Automation Private Limited	3,68,316	3,68,316
12	S S Enterprises	11,83,260	11,83,260
13	Bons Light Pvt Ltd	3,77,564	3,77,564
14	Envoys Electronics Pvt Ltd	35,500	35,500
15	Final Mile Consultants	7,08,000	7,08,000

16	Rakshanay Security Services	7,30,000	7,30,000
17	Kuber Constructions	27,25,838	27,25,838
18	S&A Infra Heights	10,32,788	10,32,788
Total		1,39,44,82,935	1,39,44,82,935

xxii. As observed from the above, 100% of the admitted claims of KSEL sub-contractors will be directly paid by NHAI to the KSEL sub-contractors from the revised KSEL compensation amount. Therefore, the KSEL sub-contractors are not taking any haircut under the proposed settlement.

xxiii. Further as stated above, GHV was appointed by ITNL to undertake construction activities with respect to the Project and other certain road projects etc. On 31.07.2018, INR 336.05 crores from the amounts due to GHV from ITNL (in connection with sub-contracted work undertaken for, amongst others, the Project) were converted into financial debt of ITNL (GHV Construction Dues), and were secured by way of *inter alia* pledge over 51% shares held by ITNL in another SPV of ITNL, Fagne Sonagarh Expressway Limited (FSEL) and the cash flows from FSEL's road project. ITNL separately had also availed certain financial facilities from GHV (by way of inter-corporate deposits), which were repaid in full on 31.08.2018. As on date, INR 87.85 crores is outstanding to GHV under the GHV Construction Dues.

xxiv. Based on the claims admitted by CMC, the GHV Construction Dues in respect of KSEL (appearing as financial debt of ITNL) accrues to a sum of INR 62.70 crores relating to construction work undertaken by GHV in connection with the said Project.

- xxv. After accounting for payment to the KSEL sub-contractors, the balance amount is to be paid to KSEL. At this juncture, it is anticipated that TDS at the rate of 2% shall be deducted by NHAI from the balance amount. On the basis, the net amount expected to be received by KSEL is approximately INR 736.85 crores.

In INR Crores

<i>Settlement amount agreed with NHAI</i>	<i>Amount payable to KSEL Sub-Contractors (to be paid by NHAI directly)</i>	<i>Residual Amount to be received in the KSEL Escrow Account (subject to deductions)</i>	<i>Residual Amount to be received in the KSEL Escrow Account (assuming that only applicable deduction is TDS @ 2%)</i>
891.59	139.45	751.89	736.85

- xxvi. The KSEL Board and the ITNL Board on 29.07.2021 and 30.07.2021 respectively approved the acceptance of Revised KSEL Compensation Amount and distribution of the relevant amounts to the KSEL Sub-Contractors by NHAI. Thereafter, the New Board approved the acceptance of Revised KSEL Compensation Amount and distribution of the relevant amounts to the KSEL Sub-Contractors by NHAI subject to verification/approval of Justice (Retd.) D.K. Jain and this Hon'ble Tribunal. Subsequently, the KSEL Board, the ITNL Board and the New Board on 26.11.2021, 24.11.2021 and 29.11.2021 respectively approved the distribution of the Final KSEL Sub-Contractor Settlement Amount (as per the Updated CMC Report).

- xxvii. Meanwhile GHV in respect of certain SPV's of ITNL including KSEL, initiated proceedings before certain forums including Hon'ble NCLAT and Hon'ble Supreme Court. Till date no Orders have been passed by the Hon'ble Supreme Court and the NCLAT. The Hon'ble NCLAT has only granted a stay on the proceedings initiated by the IL&FS Infra Debt Fund (hereinafter referred to as IL&FS IDF) against GHV Hospitality under Section 7 of the Insolvency and bankruptcy Code, 2016 vide an order dated 05.03.2020.
- xxviii. Subsequently, after various discussions of the Applicant Company, ITNL with GHV, the GHV filed an Affidavit withdrawing the Appeals filed before Hon'ble Supreme Court, Hon'ble NCLAT and with NCLT with an understanding that GHV Hospitality shall repay amounts payable by it to IL&FS IDF subject to mutual agreement between IL&FS IDF & and GHV, failing which GHV shall be precluded from claiming payment of any amounts against the GHV KSEL Dues. It is submitted that this arrangement will also enable IL&FS IDF to recover amounts due to it from GHV Hospitality (an entity against which IL&FS IDF had filed an application under Section 7 of the IBC), thereby enabling maximization of value for the Applicant Group.
- xxix. Further, GHV and IL&FS IDF filed a Joint Application before Hon'ble Supreme Court thereby placing on record the terms of settlement arrived between GHV and IL&FS IDF. The said Application was dismissed by the Hon'ble Supreme Court vide an

order dated 11.11.2021. It is submitted that till date there are no pending litigation by GHV in relation to the said Project.

xxx. It is further submitted that certain lenders of KSEL namely IDBI Bank Limited, Yes Bank Limited, India Infrastructure Finance Company Limited and IFCI Limited (collectively known as “IDBI Appellants”) filed Civil Appeal (D) No. 17014 of 2020, before the Hon’ble Supreme Court of India. The grievance, as set forth by IDBI was that the ‘Termination Payment’ due from NHAI under the Concession Agreement should be credited to the escrow account of KSEL. The Applicant had filed a counter Affidavit dated 24.12.2020. It is further submitted that no substantive and/or injunctive Orders have been passed by the Hon’ble Supreme Court nor has the Hon’ble Supreme Court stayed the operation of the Order passed by Hon’ble NCLAT dated 12.03.2020.

xxxi. Subsequently, IDBI Bank on behalf of the consortium of lenders of KSEL, consented to the settlement proposal between NHAI and KSEL vide its letter dated 17.12.2021. Later, IDBI Bank vide letter dated 03.01.2022 also consented to the Final KSEL sub-contractor’s settlement amount subject to the deposit of the Residual KSEL compensation amount in a designated escrow account.

xxxii. Pursuant to the approval of the New Board on 29.11.2021, the Applicant filed an Application dated 30.11.2021 before Justice D.K Jain seeking approval for the proposal of the Settlement Agreement as discussed supra.

xxxiii. By a letter 07.01.2021, Hon’ble Justice D.K. Jain (Retd.) accorded his approval for the following, subject inter alia to the approval of this Tribunal:-

- a. executing the settlement agreement between KSEL and NHAI in respect of the Project;
- b. accepting an amount of INR 891.59 crores from NHAI with deductions detailed herein;
- c. distribution of amounts to the KSEL Sub-Contractors by NHAI from the Revised KSEL Compensation Amount for discharge of all claims against ITNL in connection with the Project; and
- d. deposit of the residual amount in the KSEL Escrow Account by NHAI

xxxiv. The operative portion of the approval granted by Hon’ble Justice D.K. Jain is set as under :-

“43. I have examined the proposal, in the light of the afore-stated factual background. Having regard to the consent letter issued by IDBI Bank on 3rd January, 2022, on behalf of the Lenders, inter-alia, requesting the undersigned to grant approval to the proposal, so that the proposed settlement with NHAI is expedited, thus indicating that even the Senior Lenders feel that

the settlement arrived at with NHAI, is in the best interest of the concerned IL&FS entity, I am inclined to agree with the decision of the Board.

“44. Accordingly, the approval as sought in Paragraph 13.1 of the Memorandum is granted, subject to the Proposal being approved by the Hon’ble NCLT, including on the question whether the aforementioned dues of GHV, converted into financial debt, are to be treated as dues of a Sub-Contractor for the work done on the Project, the stated stand of the Board.”

xxxv. At the time of hearing, Mr. Rakesh Tiwari, Joint Director (Office of Regional Director), MCA (WR) Mumbai was present and gave his No objection to the said proposal for settlement of claims between NHAI and KSEL and its sub-contractors.

xxxvi. Hence the Application.

12. We have heard the Counsel for the Applicant as well as the representative of the UoI and have perused the documents/pleadings attached including the approval of Hon’ble Justice D.K. Jain (Retd.) It is seen that the Settlement proposal as submitted above enables the recovery of an amount against the settlement of claims of KSEL and its sub-contractors which will enable Resolution of significant portion of debt of KSEL. Further, the amounts due to GHV from ITNL aggregating to INR 87,84,84,127 are to be paid as per the approved settlement formula as the dues of GHV were categorized as financial dues from ITNL, to be paid by NHAI directly.

In view of the above submissions and approval of Hon'ble Justice D.K. Jain (Retd.) for the said proposed Settlement Agreement between NHAI and KSEL and its sub-contractors needs to be ratified. Hence Ordered.

ORDER

In view of the above submissions, we hereby approve the settlement of claims of KSEL against NHAI for a revised compensation amount of INR 891.59 crores (subject to applicable deductions). Further, after the amount of INR 1,39,44,82,935 paid to the sub-contractors of KSEL by NHAI, all the claims of all the sub-contractors as tabulated above in paragraph *xxi* against ITNL in connection with the said project shall stand extinguished and the project be discharged from all encumbrances. Further, the Residual settlement amount shall be deposited into an Escrow Account and to be maintained as fixed deposits.

Accordingly, the Prayers in the application **CA No. 27 of 2022 are allowed.**

CA No. 27 of 2022 is disposed of in above terms.

Sd/-

K.K. VOHRA
(MEMBER TECHNICAL)

Sd/-

JUSTICE P.N. DESHMUKH
(MEMBER JUDICIAL)