

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I**

CA No. 423/MB/C-I/2021

In

C.P (IB) No. 3638/MB/C-I/2018

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

Filed by

**Infrastructure Leasing and Finance Services Limited,
...Applicant**

Versus

Union of India

...Respondent

In the matter of

**Union of India, Ministry of Corporate Affairs, Through
Regional Director (Western Region)**

...Financial Creditor

Versus

**Infrastructure Leasing and Finance Services Limited and
Ors.**

... Corporate Debtor

Order Pronounced on: 29.04.2022

Coram:

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

Hon'ble Member (Technical) : Sh. Kapal Kumar Vohra

Appearances:

For the Applicant : Mr. Ashish Kamat a/w Adarsh Saxena, Ms. Roma Bhojani, and Nikita Singhi Advocates i/b Cyril Amarchand Mangaldas.

ORDER

Per Coram:

1. This Application is filed seeking approval of this Tribunal for sale of 2,81,00,060 (two crore eighty one lakh and sixty) shares constituting 33.33% of Urjankur Shree Tatyasaheb Kore Warana Power Company Limited (hereafter referred as **Urjankur Warana**) and 31,030 (thirty one thousand and thirty) units constituting 27.75% in Urjankur Nidhi Fund (hereafter referred as **Fund**), both held by IL&FS Energy Development Corporation Limited (hereafter referred as **IEDCL**), to Shree Tatyasaheb Kore Warana Sahakari Sakhar Karkhana Limited (hereafter referred as **Sakhar Karkhana**) [*Reliefs @ Pgs. 26-29/ PDF 30-33, Vol. I of the Application*]. IEDCL is a subsidiary of the Applicant.
2. Urjankur Warana is a special purpose vehicle which was set up for the purpose of setting up a 44 MW bagasse-based co-generation power plant, adjacent to the Warana Sugar Factory (which is owned by Warana Sugar Limited, a subsidiary of Sakhar Karkhana). The other shareholder of Urjankur Warana is the Fund, which holds the remaining 66.66% of Urjankur Warana's shares. The other unit-holders

in the fund are Maharashtra Energy Development Agency, a Government of Maharashtra institution and Shree Datta Shetkari Sakhar Karkhana Limited (which became a unitholder when 24,870 units were transferred to it by IREL on April 20, 2017).

Facts leading to the present Application and Submissions advanced are as follow:

3. The proposed sale of shares and units which are the subject-matter of the present sale were initially held by IL&FS Renewable Energy Limited (hereafter referred as **IREL**). IREL had proposed to sell the said shares and units to Sakhar Karkhana in 2017 itself and had entered into a share purchase agreement dated March 28, 2017 (hereafter referred as "**Initial SPA**") with Sakhar Karkhana and Urjankur Warana for that purpose. As a part of the Initial SPA it was also agreed that Urjankur Warana would settle all outstanding loans availed from IREL [*Initial SPA (Annexure 3) @ Pgs. 83- 107/ PDF 87-112, Vol. I of the Application*]. Out of the purchase consideration of INR 62,49,65,683/-, an amount of INR 60,00,00,000/- (Rupees Sixty Crores only) was paid to IREL. IREL merged with IEDCL pursuant to a scheme of merger dated March 21, 2018 [*Scheme (Annexure 2) @ Pgs. 61-82/ PDF 65-86, Vol. I of the Application*].
4. The above transfer could not be completed due to lack of requisite

approvals from the Government of Maharashtra. Pursuant to the merger between IREL and IEDCL, the amount of INR 60,00,00,000/- (Rupees Sixty Crores only) is appearing as a liability in the books of IEDCL [*Balance Sheet for FY 2017-18 (Annexure 2) @ Pg. 146/ PDF 148, Vol. I of the Further Affidavit and Balance Sheet for FY 2020-21 (Annexure 3) @ Pg. 208/ PDF 13 r/w Pg. 234/ PDF 39, Vol. II of the Further Affidavit*].

5. Sakhar Karkhana had arranged the above funds Pledge over Shares and Units through its subsidiary, Warana Sugar Limited, which had availed a loan of INR 60,00,00,000/- (Rupees Sixty Crores only) from IL&FS Financial Services Limited (hereafter referred as **IFIN**), an NBFC subsidiary of the Applicant [*Loan Agreement (Annexure 4) @ Pgs. 108-141/ PDF 113-146, Vol. I of the Application*]. Since the said amount was paid to IREL, IREL's shares in Urjankur Warana and IREL's units in the Fund were pledged as security in favour of IFIN for the said loan [*Pledge Agreement (Annexure 5) @ Pgs. 142-179/ PDF 147-184, Vol. I of the Application*].
6. This Tribunal vide its order dated October 1, 2018 suspended the then existing directors of the Applicant and a new board of directors for IL&FS was appointed (hereafter referred as **New Board**), Subsequent to orders of this Tribunal dated October 3, 2018 and December 21,2018,

three more directors were appointed to the New Board of the Applicant with a mandate to resolve the debt contagion that had infected the Applicant and its group companies (hereafter referred as **Applicant Group**). On October 15, 2018, the Hon'ble National Company Law Appellate Tribunal (**Hon'ble NCLAT**) granted an interim stay on, amongst others, coercive creditor and other action against the Applicant Group in larger public interest (hereafter referred as **October 15 Order**). The October 15 Order enabled the New Board to conceive a resolution framework for the resolution of the Applicant Group contained in the '*Third Progress Report - Proposed Resolution Framework for IL&FS Group*' dated December 17, 2018 (hereafter referred as **Initial Resolution Framework**); the Addendum dated January 15, 2019 thereto (**First Addendum**); and the Second Addendum dated December 5, 2019 (**Second Addendum**). For convenience, the Initial Resolution Framework, the First Addendum and the Second Addendum are referred to collectively as the "**Resolution Framework**" [*Annexure 7 (Resolution Framework) @ Pgs. 282-329/ PDF 107-154, Vol. II of the Application*].

7. The October 15 Order has been confirmed by the Hon'ble NCLAT *vide* an order dated March 12, 2020 (hereafter referred as **March 12 Order**),

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in terms of which the Hon'ble NCLAT has also permitted the resolution of the Applicant Group to continue as per the procedure in the Resolution Framework and under the supervision of Hon'ble Justice D.K. Jain, former Judge of the Hon'ble Supreme Court appointed *vide* orders dated February 4 and February 11, 2019 to oversee the resolution process of the Applicant Group entities in line with the Resolution Framework [*Annexure 6 (March 12 Order) @ Pgs. 180-281/ PDF 5-106, Vol. II of the Application*].

8. The Resolution Framework contemplates an “*Asset Level Resolution*” (as defined therein) through a step- by-step publicly solicited bid process as the most feasible option for resolution of the Applicant Group.
9. In terms of the Resolution Framework, two valuers, RNC Valuecon LLP (**RNC**) and Adroit Appraisers (**Adroit**), were appointed to ascertain the fair market value (**FMV**) and liquidation value (**LV**) of total IEDCL's holdings in Urjankur Warana and the Fund in INR crores which has been determined as follows:

<i>Particulars</i>	<i>RNC</i>	<i>Adroit</i>	<i>Average</i>
Total FMV of Equity as on 31 st March 2021	60	71	65.5
FMV of IEDCL Holdings as on 31 st March 2021	40	47	43.5

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LV of IEDCL Holdings as on 31 st March 2021	13	36	24.5
LV of IEDCL Holdings as on 15 th October 2018 (i.e., Cut-Off Date)	NIL	29	14.5

[See, RNC Valuation Report (Annexure 13 Colly) @ Pgs. 357-405/ PDF 5-53 and Adroit Valuation Report (Annexure 14 Colly) @ Pgs. 406-435/ PDF 54-83, Vol. III of the Application].

10. Further, as per IEDCL's balance sheet for F.Y. 2017-18 (prepared as per IndAS), the aggregate of the book value of IEDCL's holding in the equity shares of Urjankur Warana and the units of the Fund (both classified as assets held for sale) is INR 59.774 crores (approx.) as follows:

i. value of equity investment in Urjankur Warana – INR 28.166 crores (approx.); and

ii. value of units held in the Fund – INR 31.608 crores (approx.)

[Balance Sheet for FY 2017-18 (Annexure 2) @ Pg. 42/ PDF 44, Vol. I of the Further Affidavit]. The same values are also appearing in IEDCL's balance sheet for F.Y. 2020-21 *[Balance Sheet for FY 2020- 21 (Annexure 3) @ Pg. 230/ PDF 35, Vol. II of the Further Affidavit].*

11. As per IEDCL's consolidated balance sheet for F.Y. 2017-18 (prepared

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as per IndAS), the loans outstanding to Urjankur Warana are reflected

as follows [*Balance Sheet for FY 2018-19 (Annexure 2) Pg. 10/ PDF 12,*

Vol. I of the Further Affidavit]:

<i>Sr. No.</i>	<i>Particulars</i>	<i>Balance Amount outstanding (INR Crores)</i>
1.	Non-Current Loans including ICDs	6.27 (as at 31.03.2018) [<i>@ Pg. 188/ PDF 190</i>]
2.	Current Loans including ICDs	18.29 (as at 31.03.2018) [<i>@ Pg. 188/ PDF 190</i>]
3.	Interest accrued on loans and advances – other current assets	1.54 (as at 31.03.2018) [<i>@ Pg. 191/ PDF 193</i>]
	TOTAL	26.10

12. As per IEDCL's standalone balance sheet for F.Y. 2020-21 (prepared as per IndAS), the loans and receivables outstanding to Urjankur Warana are as follows [*Balance Sheet for FY 2020-21 (Annexure 3) @ Pg. 198/ PDF 3, Vol. II of the Further Affidavit*]:

<i>Sr. No.</i>	<i>Particulars</i>	<i>Balance Amount outstanding (INR Crores)</i>
1.	Current – Interest Accrued on Loans and Investments	4.664 (as at 31.03.2021) [<i>@ Pg. 278/ PDF 83</i>]

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<i>Sr. No.</i>	<i>Particulars</i>	<i>Balance Amount outstanding (INR Crores)</i>
2.	Current – Loans and Advances	14.270 (as at 31.03.2021) [<i>@ Pg. 278/ PDF 83</i>]
3.	Current – Inter Corporate Deposits	11.638 (as at 31.03.2021) [<i>@ Pg. 278/ PDF 83</i>]
4.	Trade Receivables	0.214 (as at 31.03.2021) [<i>@ Pg. 279/ PDF 84</i>]
	TOTAL	30.786

13. As on October 15, 2018, being the cut-off date applicable to the Applicant Group, the outstanding loans availed by Urjankur Warana from IEDCL (**IEDCL Loan**) amounted to INR 27,23,52,034/- (Rupees Twenty-Seven Crores Twenty-Three Lakhs Fifty-Two Thousand and Thirty-Four only) [*Para 9 @ Pg. 8/ PDF 12, Vol. I of the Application*], comprising of the following:

- (a) inter-corporate deposits and the project sub-debt provided to Urjankur Warana together with all interest/ charges amounting to INR 19,23,52,034/- (Rupees Nineteen Crores Twenty-Three Lakhs Fifty-Two Thousand and Thirty-Four only); and
- (b) receivables of INR 8,00,00,000/- (Rupees Eight Crores only).

14. The transaction which is the subject-matter of the Application (hereafter referred as **Proposed Transaction**) involves:

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- (a) Sale of 2,81,00,060 (two crore eighty one lakh and sixty) shares held by IEDCL in Urjankur Warana (**Shares**) and 31,030 (thirty one thousand and thirty) units held by IEDCL in the Fund (**Units**) to Sakhar Karkhana for an aggregate consideration of INR 62,49,65,683/- (Rupees Sixty Two Crores Forty Nine Lakhs Sixty Five Thousand Six Hundred Eighty Three only), of which INR 60,00,00,000/- (Rupees Sixty Crores only) has already been received and the balance amount of INR 2,49,65,683/- (Rupees Two Crores Forty Nine Lakhs Sixty Five Thousand Six Hundred Eighty Three only) is now to be paid;
- (b) Repayment of INR 27,23,52,034/- (Rupees Twenty-Seven Crores Twenty-Three Lakhs Fifty-Two Thousand and Thirty-Four only), being the amount outstanding as on October 15, 2018, by Urjankur Warana to IEDCL over three years; and
- (c) Release of pledge held by IFIN over the Shares and the Units (so that the same can be transferred by IEDCL to Sakhar Karkhana) and their subsequent re-pledge by Sakhar Karkhana in favour of IFIN.

[Diagrammatic Representation of the Proposed Transaction (Annexure 1) @ Pg. 9/ PDF 11, Vol. I of the Further Affidavit].

15. On December 24, 2020, the Government of Maharashtra provided

consent to the Initial SPA with certain modifications [*GoM Consent (Annexure 8 Colly) @ Pgs. 330-335/ PDF 155-160, Vol. II of the Application and (Annexure 9 Colly) @ Pgs. 336-351/ PDF 161-177, Vol. II of the Application*].

16. After discussions with the Asset Sale Committee of the Applicant, Sakhar Karkhana agreed to pay the balance consideration of INR 2,50,00,000/- (Rupees Two Crores Fifty Lakhs only) and also to repay IEDCL Loans in the next three years [*Purchaser's Financial Proposal (Annexure 10) @ Pg. 352/ PDF 178, Vol. II of the Application*].
17. The Asset Sale Committee of the Applicant (ASC) and the IEDCL board accorded their respective in-principle approval for the proposed sale on July 2, 2021 and July 6, 2021 [*Para 26 @ Pg. 16/ PDF 20, Vol. I of the Application*]. Consequently, a revised SPA was negotiated between IEDCL, Sakhar Karkhana and Urjankur Warana (**Restated SPA**) and the same was approved by the board of Urjankur Warana on September 2, 2021 [*Para 28 @ Pg. 16/ PDF 20, Vol. I of the Application*]. The drafts of the Repayment Undertaking and Deed of Guarantee to be executed for the Proposed Transaction were also consented to by the board of Sakhar Karkhana on September 14, 2021 [*Para 29 @ Pg. 16/ PDF 20, Vol. I of the Application*]. The board of IFIN provided its approval on September 14, 2021, for release and re-pledge of the Shares

and the Units [*Para 30 @ Pg. 17/ PDF 21, Vol. I of the Application*].

18. The Proposed Transaction was approved by the ASC and the board of directors of IEDCL on September 16, 2021 [*Para 32 @ Pg. 18/ PDF 22, Vol. I of the Application*]. The New Board also approved the Proposed Sale on September 18, 2021 [*Para 33 @ Pgs. 18-19/ PDF 22-23, Vol. I of the Application*].
19. On September 27, 2021, the members of the IEDCL CoC by 79.43% votes (by value) voted in favour of the Proposed Transaction [*Voting Sheet (Annexure 15) @ Pg. 436/ PDF 84, Vol. III of the Application*].

[N.B.: It is pertinent to note that in terms of the Resolution Framework for the Applicant Group, a bid is considered approved by the relevant creditors' committee if voted in favour of by 2/3rd (i.e., 66%) of the members by value [Para 2.2(e) of the First Addendum to Initial Resolution Framework (Annexure 7) @ Pg. 307/ PDF 132, Vol. II of the Application]. Further, the Resolution Framework in its entirety has been approved by the Hon'ble NCLAT vide an order and judgement dated March 12, 2020 (March 12 Order) [See, para 66 of the March 12 Order (Annexure 6) @ Pg. 279/ PDF 104, Vol. II of the Application].

Justice Jain Approval

20. Pursuant to an application dated October 29, 2021 filed by the Applicant with former Justice D. K. Jain, Justice D. K. Jain, by a letter

dated November 12, 2021, approved the Proposed Transaction subject to approval of this Tribunal (**Justice Jain Approval**) [*Para 30 of Justice Jain Approval (Annexure 17) @ Pgs. 452-460/ PDF 100-108, Vol. III of the Application*].

Transaction Documents

21. Pursuant to the Justice Jain's Approval, Sakhar Karkhana has executed the Repayment Undertaking on November 29, 2021 [*Executed Repayment Undertaking (Annexure 18) @ Pgs. 461-476/ PDF 109-123, Vol. III of the Application*] and the Deed of Guarantee on November 29, 2021 [*Executed Deed of Guarantee (Annexure 19) @ Pgs. 477-496/ PDF 125-144, Vol. III of the Application*]. IEDCL, Sakhar Karkhana and Urjankur Warana have executed the Restated SPA on November 29, 2021 [*Executed Restated SPA (Annexure 21) @ Pgs. 501-519/ PDF 151-169, Vol. III of the Application*]. As per the Clause 5.7 of the Restated SPA, Sakhar Karkhana has also provided an undertaking to MEDA on November 24, 2021 [*MEDA Undertaking (Annexure 20) @ Pgs. 498-500B/ PDF 146-150, Vol. III of the Application*].
22. It is submitted that, as per the Resolution Framework for the Applicant Group as approved by the Hon'ble NCLAT *vide* the March 12 Order, the receipt of approval of this Tribunal a prerequisite to the

consummation of any sale/ resolution process of an Applicant Group entity [*Para 10.1(f) of the Initial Resolution Framework @ Pg. 295/ PDF 120, Vol. II of the Application*]. Accordingly, as per Clause 5.1(a) of the Restated SPA executed by and between parties, the receipt of approval of this Tribunal is a condition precedent to the consummation of the Proposed Transaction [*Clause 5.1(a) of the Restated SPA (Annexure 21) @ Pg. 508/ PDF 158, Vol. III of the Application*].

23. It is stated that the resolution of Urjankur Warana has been conducted to ensure a fair resolution upholding the key principles of value maximization for all stakeholders, commercial viability and financial stability. In this regard, it is submitted that as set out above and in paragraph 10.2 of the Resolution Framework (as approved by the Hon'ble NCLAT *vide* the March 12 Order) which *inter alia* reserves the liberty for the New Board to *inter alia* undertake such modification in the process of resolution of Applicant Group entities as it deems fit, guided by principles such as commercial feasibility and the nature of existing contractual arrangements in place with counterparties, ensuring a fair resolution in a timely manner, good governance and financial stability.
24. Accordingly, it is contemplated that since the Initial SPA was entered into with Sakhar Karkhana on March 28, 2017 and 96% of the agreed

sale consideration was paid by Sakhar Karkhana pending the transfer of Shares and Units prior to the Resolution Framework coming into effect, the New Board, in exercise of this liberty under the Resolution Framework, proceeded with the execution of the Restated SPA subject to the approval of Justice D.K. Jain (Retd.) and this Tribunal.

25. It is further submitted that Sakhar Karkhana has attributed a positive value for the Shares and Units held by IEDCL and has agreed to assume the liability of the IEDCL Loans as on October 15, 2018 and that the Proposed Transaction is in the interests of the resolution of the Applicant Group. The total consideration to be received is also higher than the average FMV ascertained to be INR 43.5 crores (approx.) of IEDCL's holding in Urjankur Warana and the Fund.
26. In addition to above, Applicant prays that certain amounts are akin to 'insolvency resolution process costs' as described under the Insolvency and Bankruptcy Code, 2016 (IBC) and are mandated to be paid ahead of any payments to any other stakeholders. In order to facilitate and implement the resolution process of IEDCL, costs were incurred aggregating to INR 26,32,716/- (Indian Rupees Twenty-Six Lakhs Thirty-Two Thousand Seven Hundred and Sixteen only), excluding applicable taxes, towards certain costs including fees of professionals (hereafter referred as **Resolution Process Costs**).

Findings and Directions:

27. We have considered the matter in hand in the background of facts and circumstances stated above; the sale process of the Urjankur has also been approved by Justice D.K. Jain former judge of the Hon'ble Supreme Court appointed by the Hon'ble NCLAT to oversee the resolution process of the Applicant Group and to enable a resolution of the Applicant Group in line with the Resolution Framework; and the mandate given by this Tribunal to the New Board. Thus, we **approve** the Proposed Transaction in the interest of justice.
28. It is also directed that the Resolution Process Costs be permitted to be paid in the manner set out in the Application.
29. With the aforesaid observation present **IA No. 423 of 2021 In C.P (IB) No. 3638/MB/C-I/2018** stands disposed of as allowed in above terms.

Sd/-

KAPAL KUMAR VOHRA
MEMBER (TECHNICAL)
29.04.2022

Sd/-

JUSTICE P. N. DESHMUKH
MEMBER (JUDICIAL)

SAM