

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

**CA No. 223/MB/2022  
In  
C.P (IB) No. 3638/MB/2018**

Under section 241-242, 242(4) 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)**

**...Petitioner**

Versus

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

**... Respondent**

**Order Pronounced on: 23.09.2022**

***Coram:***

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)  
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

***Appearances:***

For the Applicant : Ms. Fereshte Sethna, Advocate  
For the Respondent : Mr. Aditya Sikka, Advocate

**ORDER**

**Per Coram:**

1. This Application is filed seeking approval of this Tribunal for the following reliefs:

A. Grant approval to proceed with the filing of the requisite applications for commencement of winding up procedures in respect of Maritime International Offshore Pte. Ltd. (hereinafter referred "MIOPL") in accordance with laws of Singapore.

B. Pass any such other or further reliefs as this Tribunal deems fit.

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

2. The present Application is filed in accordance with:

i. The order dated 11 February 2019 passed by the Hon'ble

NCLAT.

- ii. An order and judgement dated March 12, 2020 (March 12 Order) passed by the Hon'ble NCLAT in Company Appeal Nos. 346 and 347 of 2020 inter alia approving the procedure(s) for the resolution of the Applicant Group.
3. On 1 October 2018 this Tribunal suspended the erstwhile Board of the Applicant and appointed a new board comprising of six directors nominated by the Original Petitioner. Pursuant to appeals filed by the Applicant, the Hon'ble NCLAT vide Order dated 15 October 2018 inter alia stayed coercive creditor and other action against the Applicant Group in larger public interest.
4. At the outset, the Applicant has laid down the events which resulted in resolution of the Applicant group. Eventually the Hon'ble NCLAT vide its Order dated 12 March 2020 permitted the resolution of the applicant to continue as per procedure suggested by the Original Petitioner which included a Resolution Framework. Thereafter, in compliance with the Hon'ble NCLAT Orders various progress reports were filed which inter alia sets out resolutions framework of the Applicant group.
5. In furtherance of the Resolution of the Applicant, the Hon'ble NCLAT directed the Applicant to file an affidavit indicating the

names of entities in the Applicant Group based in the territorial jurisdiction of India and entities incorporated in other countries.

The Applicant vide affidavit dated 11 February 2019 placed on record the names of 169 Indian IL&FS entities and 133 offshore IL&FS entities. In this backdrop, the Hon'ble NCLAT vide Order dated 11 February 2019 excluded the Offshore IL&FS Entities from the purview of the 15 October Order and directed that the resolution of the said entities may be taken up by the new board under the supervision of Justice (Retd.) D.K. Jain. Further, the Hon'ble NCLAT further directed that the actions taken for the Resolution of the Offshore IL&FS Entities be presented to this Tribunal for approval.

6. The Applicant submits that present Application has been filed seeking approval for winding up procedures in respect of MIOPL in accordance with laws of Singapore.
7. MIOPL is a wholly owned subsidiary of IL&FS Energy Development Company Limited (“**IEDCL**”), is an Offshore Group Entity of IL&FS incorporate in Singapore to cater to overseas business opportunities.
8. The issued and paid up share capital of MIOPL is SGD 67,169 (Singapore Dollars Sixty-Seven Thousand One Hundred and

Sixty-Nine only) comprising of 67,169 (Sixty-Seven One Hundred Sixty-Nine Only) ordinary shares. The Applicant submits that as on date the directors of MIOPL, as per the records of the Accounting and Corporate Regulatory Authority, (“ACRA”), are as follow:

- a) Mr. Sanjay Joshi – Indian Director
- b) Mr. Hemant Thanvi – Indian Director
- c) Mr. The Kwang Hwee – Signapore Director

9. The Applicant submits that Mr. Sanjay Joshi and Mr. Hemant Thanvi both have resigned as directors of MIOPL and are no longer employed with IL&FS group. IEDCL has also appointed M/s Abogado Pte. Ltd., a Baker & McKenzie affiliated company as secretarial consultants of MIOPL for the purpose of compliance with the laws of Singapore.
10. The Applicant submits that the Singapore Director and the Company Secretary are not corporative with MIOPL and have communicated that they will not assist in the execution of documents.
11. MIOPL has no business activity, and no business is foreseen going forward. Considering the fact there is no visibility for any overseas business opportunities board of directors of IEDCL approved the

winding up of MIOPL vide its board meeting dated 23.05.2019.

12. Shook Lin & Bok LLP was engaged by IEDCL for the purpose of providing legal opinion in the process of winding up of MIOPL. Pursuant to the legal opinion dated 22 July 2021 an approximate cost of winding up MIOPL in Singapore would be around Rs.28,00,000/- (Rupees Twenty-Eight Lakh only). The said computation is based on an exchange rate of approximately Rs.55.84 against the Singapore dollar.
13. The applicant submits the winding up cost has to be borne by IEDCL, which ultimately will be refundable from the assets of MIOPL. However, given the state of affairs of MIOPL it is unlikely that a significant recovery will be made from the assets of MIOPL, as it has no other assets apart from current account in Standard Chartered Bank with a balance of USD 3,486.
14. In the above backdrop, IEDCL in its board meeting dated 26.10.2021 passed a special resolution as required under the Singapore Companies Act, 1987 to wind up the affairs of MIOPL through a court order. Further, IEDCL appointed Alvarez & Marsal (Southeast Asia) as the liquidator of the Company. IEDCL vide board resolution dated 26 October 2021 approved the payment of Singapore Dollar 50,000 plus applicable taxes as

expenses of winding up of MIOPL. The board resolution is placed as Annexure 9 at page 223-224 of the Application

15. The new board has approved the winding up process of MIOPL vide board resolution dated 6.12.2021. Copy of the same is placed as Annexure 11 at page 226.
16. Pursuant to the above, an application dated 04.03.2022 for approval of winding up of MIOPL in accordance with laws of Singapore was made before Hon'ble Justice (Retd.) D.K. Jain. Vide letter dated 25.03.2022 Justice (Retd.) D.K. Jain granted his approval subject to IEDCL strictly complying with rules and regulations applicable to incorporation and winding up of off-shore companies. A copy of the Justice Jain approval is placed as Annexure 13 at pages 233-235.
17. The Applicant on the condition laid by Justice Jain states that IEDCL shall take necessary steps as required under the applicable laws of Singapore and initiate legal proceedings before appropriate court in Singapore to wind up MIOPL.

**Findings:**

18. We have considered the matter in hand in the background of facts and circumstances stated above; the winding up process of MIOPL 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.

19. In terms of prayer (A) this bench grants its approval to filing of requisite applications pursuant to commencement of winding up of MIOPL in accordance with laws of Singapore.
20. With the aforesaid observation present **CA No. 223 of 2022 In C.P (IB) No. 3638/MB/C-I/2018** stands disposed of as allowed in above terms.

**Sd/-**

**SHYAM BABU GAUTAM**

**Member (Technical)**

23.09.2022

SAM

**Sd/-**

**JUSTICE P. N. DESHMUKH**

**Member (Judicial)**



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

**CA No. 248/MB/C-I/2022**

**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  
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***Appearances:***

For the Applicant : Ms. Fereshte Sethna, Advocate

For the Respondent : Mr. Aditya Sikka, Advocate

**ORDER**

**Per Coram:**

1. This Application is filed seeking approval of this Tribunal for the following reliefs:

A. Grant approval for the sale/assignment of the Commercial Premises on as "as is where is" and "as is what is" basis, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) as on 15.10.2018, subject to receipt of the Consideration, to the H1 Bidder Affiliate, post which the steps set out in Paragraph 34 of the application will be undertaken by the parties;

B. Direct that the amounts received by the Applicant pursuant to the Proposed Transaction be paid into a designated bank account to be intimated by the Applicant;

C. Direct that the Consideration received by the Applicant be

utilized in the following manner: (i) firstly, a part of the consideration be remitted into such bank account as may be intimated by IL&FS, towards the Resolution Process Costs and goods and services tax, incurred/to be incurred in connection with the Proposed Transaction to the full extent and be utilized towards meeting them; (ii) secondly, the remaining amount of Consideration be remitted into the designated escrow account as intimated by IL&FS, which would be held in trust for the relevant stakeholders of IL&FS;

D. Direct that the distribution of the Consideration received by IL&FS from the Proposed Transaction or part thereof or withdrawal of any other amounts from the designated bank account be subject to further orders of this Tribunal.

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

2. The present Application is filed in accordance with the:
  - (i) Third Progress Report on the 'Proposed Resolution Framework for IL&FS Group' dated 17.12.2018 (Initial Resolution Framework); the Addendum dated 15.01.2019 thereof (First Addendum); and the Second Addendum dated 05.12.2019 (Second Addendum) (collectively, "Resolution Framework"); and

(ii) Order and judgement dated 12.03.2020 passed by the Hon'ble NCLAT in Company Appeal Nos. 346 and 347 of 2020 inter alia approving the Resolution Framework for the Applicant Group,

to seek approval from this Tribunal to consummate the sale/transfer/assignment of "The IL&FS Financial Centre", Bandra Kurla Complex, Mumbai, along with certain assets situated therein, (excluding an area of commercial/office space admeasuring 21,644 square feet FSI built-up area on a part of the 5<sup>th</sup> Floor of the said building, namely Quadrants "C" and "D" together with proportionate leasehold interest in the said land which has been assigned/transferred by IL&FS to HDFC Standard Life Insurance Company Limited vide Agreement for Sale dated 30.03.2001), ("Commercial Premises") free of encumbrances and on an "as is where is" and "as is what is" basis to Chronos Properties Private Limited ("CPPL"), an affiliate of Brookfield Private Capital (DIFC) Limited ("BPCL") ("Proposed Transaction").

3. The Resolution Framework was approved by the Hon'ble

NCLAT vide 12.03.2020. **(Pg. 134/Para 61)**

4. The COC approved the H1 Bid on 17.12.2021. HDFC is a member of the COC, holding 1.89% voting share.

“... The meeting of the COC was held on 17.12.2021 through video conference and was attended by the required members of the COC through their authorized representatives and draft resolutions for the approval of the H1 Bid offered by the H1 Bidder for the Proposed Transaction was placed for approval of the financial creditors of IL&FS, required pursuant to the RFP.” **(Pg. 27/Para 24).**

5. I.A. No. 2966/2020 filed by HDFC Bank on 16.12.2020, subsequent to the publication of advertisements and issuance of EOI.

“...HDFC Bank, which is a member of the COC, holding 1.89% voting share, filed an application being I.A. No. 2966/2020 before the Hon’ble NCLAT on 16.12.2020 (“HDFC Application”), seeking, inter alia, a declaration that the Applicant herein was not entitled to effect the sale of the Commercial Premises.” **(Pg. 31/Para 31)**

6. Approval by Justice D.K. Jain granted on 08.03.2022:

“By a letter dated 08.03.2022, Mr. Justice D.K. Jain has granted his approval to the Proposed Transaction, subject to the order of this Tribunal (“Justice Jain Approval”). The Justice Jain Approval also states that notwithstanding the Hon’ble NCLAT has not passed any interim orders, on the HDFC Application. It would be proper and prudent to await the final decision of the Hon’ble NCLAT before issuing the letter to the H1 Bidder, accepting its bid.” **(Pg. 31-32/Para 32; Ann.44/Pg.1102@1107)**

7. Vide Counter Affidavit filed on 30.06.2022, the Union of India gave its no-objection to the Proposed Transaction:

“Accordingly, the Petitioner submits keeping in view the approval of Justice (Retd.) D.K. Jain in terms of the letter dated 08.03.2022, the Applicant/New Board of the Applicant have in its/their wisdom considered and filed the present Application before this Tribunal. It is submitted that since the captioned application is a commercial matter pertaining to the sale of a real estate assets if the Applicant Group and has been approved by Justice (Retd.) D.K. Jain, this Tribunal may consider the application on its merits

and pass appropriate orders.”

8. This Tribunal vide order dated 02.02.2021 has approved an asset sale (in CA No. 1164/2020) on the basis of Justice D.K. Jain’s approval coupled with a no objection from the Union of India.
9. Additionally, CPPL (H1 Bidder Affiliate in whose favour the LOI has been executed) has furnished a Performance Bank Guarantee of INR 108 Crores (10% of the bid amount), which is valid only till 21.09.2022.

**Findings:**

10. We have considered the matter in hand in the background of facts and circumstances stated above; the sale process of the Commercial Premises 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.
11. It is directed that the amounts received by the Applicant pursuant

to the Proposed Transaction be paid into a designated bank account and the same be intimated by the Applicant.

12. It is also directed that the Resolution Process Costs and goods and service tax incurred /to be incurred be permitted to be paid in the manner set out in the Application. Whereas, the remaining amount of consideration be remitted into the designated escrow account as intimated by the Applicant and the same be held in trust for the relevant stakeholders of the Applicant.
13. Further, the distribution of the consideration received by the Applicant from the Proposed Transaction or withdrawal of any other amounts from the designated bank account be subject to further orders of this Tribunal.
14. With the aforesaid observation present **CA No. 248 of 2021 In C.P (IB) No. 3638/MB/C-I/2018** stands disposed of as allowed in above terms.

Sd/-

**SHYAM BABU GAUTAM**

**Member (Technical)**

23.09.2022

SAM

Sd/-

**JUSTICE P. N. DESHMUKH**

**Member (Judicial)**