

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

**CA No. 130/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: 14.10.2022**

***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. Approve the one time settlement proposal, as approved by Justice D.K. Jain (Retd.) between IL&FS Financial Services Limited and Parsvnath Developers Limited, and implement the Settlement Agreement dated February 25, 2022, in terms of which an amount of INR 120 Crores payable within 60 days (and not more than 30 working days of IFIN sharing a copy of the approval so received from this Hon'ble Tribunal, whichever period ends later) with an upfront, payment of INR 10 Crores, and permit the release of the security charge(s) held by IL&FS Financial Services Limited over the assets of Parsvnath Developers Limited, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) upon full and final payment of the one-time settlement amount by Parsvnath Developers Limited;

B. Approve the one time settlement proposal, as approved by Justice D.K. Jain (Retd.) between IL&FS Financial Services

Limited and Ansal Properties and Infrastructure Limited, and implement the Settlement Agreement dated March 03, 2022, in terms of which amount of INR 109.66 Crores payable over 90 days (and not more than 30 working days of IFIN sharing a copy of the approval so received from this Hon'ble Tribunal, whichever period ends later) with an upfront payment of INR 5 Crores, and permit the release of the security charge(s) held by IL&FS Financial Services Limited over the assets of Ansal Properties and Infrastructure Limited, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) upon full and final payment of the one time settlement amount by Ansal Properties and Infrastructure Limited;

C. Direct that the amounts received by IL&FS Financial Services Limited from Parsvnath Developers Limited pursuant to the Revised PDL OTS Proposal and from Ansal Properties and Infrastructure Limited pursuant to the APIL July 27th Proposal be paid into a designated bank account to be intimated by the Applicant and/ or IL&FS Financial Services Limited

- D. Direct that the amounts received by IL&FS Financial Services Limited from Parsvnath Developers Limited pursuant to the Revised PDL OTS Proposal and from Ansal Properties and Infrastructure Limited pursuant to the APIL July 27th Proposal which have been paid into the designated bank account shall be maintained as fixed deposits and shall not be adjusted or set off against against any dues pertaining to any bank and/or financial institution;
- E. Direct that the distribution of the one time settlement amounts received by IL&FS Financial Services Limited from Parsvnath Developers Limited and Ansal Properties and Infrastructure Limited.or part thereof or withdrawal of any other amounts from the designated bank account be subject to further orders of this Hon'ble Tribunal; and
- F. For any further reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances.

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

2. The present Application is filed in accordance with:
  - i. The Resolution Framework.

- 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. The Applicant submits that in addition to asset resolution process, the New Board appointed a resolution consultant namely M/s Alvarez & Marsal India Private Limited which has

categorized the entities in the Applicant group into three groups based on 12-month cash flow solvency test namely Green, Red and Amber. The Applicant submits that the list of Red entities were filed the Hon'ble NCLAT on 11.02.2019, 12.03.2019 and 21.05.2019. Red entities are those which could not meet their respective payment obligations towards even senior secured Financial Creditors.

6. IFIN has been categorized as a red entity and recorded by the Hon'ble NCLAT in its Order dated 11.02.2019. On 08.08.2019 the NCLAT permitted the Red entities to only make going concern payments in order to preserve their value. The Hon'ble NCLAT also directed that any alienation of assets of Red entities would be subject to the approval of Justice Jain.
7. The Applicant submits that IFIN being the key holding company its resolution is dependent on the resolution of its assets. The Applicant has provided the details of the debt profile of IFIN as on 01.10.2018. The same is not reproduced herein for the sake of brevity. Further, with respect to intra-group receivables of IFIN (i.e. recovery of amounts lent to Applicant Group), IFIN will get its share per revised distribution framework.
8. IFIN through legal actions, inter alia entering into settlement

agreements with external borrowers has recovered around Rs.2000 Crores cash till date, since the year 2019 IFIN upon being approached.

9. The Applicant submits that the OTS proposals sought to be implemented by IFIN contemplate recovery/settlement of debt payable to IFIN by the third party borrowers. Since IFIN being a red entity would be required to comply with the Order dated 08.08.2019 and 14.08.2019 passed by the Hon'ble NCLAT.
10. The Applicant submits that Parsvnath Developers Limited on behalf of itself and its group companies had offered an OTS in respect of the outstanding debt of Rs. 318 Crore (as of 30.06.2021) which was owed by PDL and its subsidiaries to IFIN.
11. The OTS with PDL contemplates [Annexure 17/ Pg. 1474 @Pg. 1478-1480]:
  - i. Total Settlement Amount: INR 120 Crores for settlement of all dues;
  - ii. Upfront payment of INR 10 Crores to be paid within 3 working days of IFIN sharing copy of the order of approval from the Hon'ble Tribunal;
  - iii. Payment of INR 110 Crores to be paid within 30 working days

of IFIN sharing copy of the order of approval from the Hon'ble Tribunal;

iv. PDL to explore methodology to arrange funds including monetization of mortgaged assets;

v. Waiver of interest, penal interest, delayed payment interest in respect of outstanding facilities;

vi. Securities created in favour of IFIN to remain enforceable till obligations are discharged; and vii. All legal proceedings to be continued / reinitiated in case of default by PDL/VBPL.

12. OTS with APIL

a. APIL had offered an OTS in respect of its outstanding debt of INR 184.25 Crores (as of 30 June 2021) which was owed by APIL to IFIN.

b. The OTS with APIL contemplates [Annexure 18/Pg. 1507 @Pg. 1511-1513]:

i. Total Settlement Amount: INR 109.66 Crores;

ii. Part payment of INR 5 Crores to be made within 3 working days of IFIN sharing with Escrow Bank, a copy of the order of approval from this Hon'ble Tribunal;

iii. Payment of INR 104,66,00,000 within 30 working



days of IFIN sharing a copy of the order of approval from the Hon'ble Tribunal;

- iv. Waiver of interest, penal interest, delayed payment interest in respect of outstanding facilities;
  - v. Securities created in favour of the Applicant to remain enforceable till obligations are discharged;
  - vi. All legal proceedings to be continued / reinitiated in case of default.
13. As required in terms of the Resolution Framework approved by the Hon'ble NCLAT, the OTS Proposals received assent of the Board of Directors of IFIN and IL&FS on 25 August 2021 and 29 August 2021, respectively. Thereafter, Justice (Retd.) D.K. Jain on an application in respect of both OTS Proposals has approved the same vide letter dated 9 December 2021. [Annexure 16/Pg. 1455].
14. Upon receipt of the aforesaid approval from Justice D.K. Jain, IFIN has executed the OTS Agreements with PDL and APIL, viz agreement dated 25.02.2022 with PDL, and Agreement dated 03.03.2022 with APIL.
15. In the above circumstances, the Applicant has filed the present Petition in order to seek approval and necessary directions for

consummation of OTS proposals. The said proposals have been formulated keeping in mind the rights and interests of all stakeholders of IFIN and the Applicant group.

**Findings:**

16. We have considered the matter in hand in the background of facts and circumstances stated above; the OTS proposals have 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.
17. We grant the prayers A to E sought above in paragraph 1 (supra) absolute.
18. With the aforesaid observation present **CA No. 130 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)**

14.10.2022  
SAM

**Sd/-**

**JUSTICE P. N. DESHMUKH**

**Member (Judicial)**

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

**CA No. 290/2021**

**In**

**C.P (IB) No. 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 } ...Applicant  
East, Mumbai.**

**Versus**

**Union of India, MCA, (through the }  
RD), having its office at 5<sup>th</sup> Floor, }  
Everest Building, 100 Marine Lines, } ...Respondent  
Mumbai - 400001.**

**Order Pronounced on:14.10.2022**

***Coram:***

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

***Appearances:***

For the Applicant : Mr. Ashish Kamat a/w Mr. Animesh  
Bisht, Ms. Drishti Das, Ms. Roma  
Bhojani and Ms. Rima Jain i/b Cyril  
Amarchand Mangaldas, Advocates  
For the Respondent : Mr. Sanjay Shorey – RD (North) and  
Mr. Aditya Sikka for the UoI

**ORDER**

**Per Coram:**

**A. THE SUBJECT MATTER OF THE APPLICATION**

1. This Application has been filed to seek approval of this Tribunal to conclude (i) the distribution of the Residual FSEL Settlement

Amount (*defined below*) to the creditors of Fagne Songadh Expressway Limited (**FSEL**) and the subsequent winding up of FSEL under Section 271(a) of the Companies Act, 2013 (**Act**); and (ii) the winding up of Kiratpur Ner Chowk Expressway Limited (**KNCEL**) under section 271(a) of the Act.

2. FSEL is wholly owned subsidiary of IL&FS Transportation Networks Limited (**ITNL**) which in turn is a subsidiary of the Applicant. FSEL is a special purpose vehicle incorporated by ITNL for the purposes of the construction of the Fagne - MAH/Guj Border section of National Highway No. 6 in the States of Gujarat and Maharashtra by four-lining on design, built, finance, operate and transfer (Toll) (**DBFOT**) basis (**FSEL Project**).
3. KNCEL is a wholly owned subsidiary of ITNL which in turn is a subsidiary of the Applicant. KNCEL is a special purpose vehicle incorporated by ITNL for the construction, operation and maintenance of National Highway No. 21 including the section 73,200 km to 186,500 km (approximate length of 84.38 km) in the States of Punjab & Himachal Pradesh on DBOT basis (**KNCEL Project**).

## **B. FACTS LEADING TO THE APPLICATION**

**Intervention by the Union of India & superseding the erstwhile Board of the Applicant**

4. The Tribunal *vide* an order dated October 1, 2018 (**October 1 Order**) in the captioned Petition under Sections 241 – 242 of the Companies Act, 2013 (**Act**), was pleased to suspend the then existing directors of the Applicant and appoint a New Board of Directors for IL&FS (**New Board**) with a mandate to resolve the debt contagion that had infected the Applicant and its group companies (**Applicant Group**). The newly appointed Directors were *inter alia* directed to take over the Applicant immediately; conduct its business as per the Memorandum and Articles of Association of Applicant and the provisions of the Act, and thereafter, report the roadmap to this Tribunal before October 31, 2018. Further, three more directors were appointed to the New Board of the Applicant by subsequent orders of the Tribunal dated October 3, 2018 and December 21, 2018.
5. The Hon'ble National Company Law Appellate Tribunal (**Hon'ble NCLAT**) *vide* an order dated October 15, 2018 (**October 15 Order**) (pursuant to appeals filed from the order of this Tribunal dated October 12, 2018), granted an interim stay on, amongst others, coercive creditors and other action against the Applicant Group in larger public interest.

6. The October 15 Order has been confirmed by the Hon'ble NCLAT *vide* an order dated March 12, 2020 (**March 12 Order**), in terms of which the Hon'ble NCLAT has also approved the resolution process of the Applicant Group to be conducted as per the procedure in the Resolution Framework under the supervision of Hon'ble Justice (Retd.) D.K. Jain (Retired Judge of the Hon'ble Supreme Court).
7. Pursuant to and in compliance with the October 1 Order, the New Board submitted a progress report titled "*Report on Progress and Way Forward*" (**First Progress Report**) dated October 30, 2018 to the Petitioner, (in-turn filed by the Petitioner with this Tribunal on October 31, 2018), setting out, amongst other things, the broad options for the resolution of the Applicant group and the indicative way forward.

**Resolution Framework and Categorisation of Applicant Group Entities**

8. The New Board submitted the resolution framework ("**Initial Resolution Framework**"); the Addendum thereto ("**First Addendum**"); and the Second Addendum ("**Second Addendum**") (collectively, "**Resolution Framework**") to the Petitioner.
9. Ld. Counsel for the Applicant submits that the Second Addendum *inter alia* sets out a revised distribution framework (**Revised**

**Distribution Framework**) for the resolution of the Applicant Group, which provides that the distributable amounts for the resolution of an entity in the Applicant Group would be distributed as follows: (i) *first*, towards all resolution process costs incurred in the resolution process of the relevant Applicant Group entity; (ii) *second*, towards distribution of the amounts up to the average 'liquidation value' to the creditors of the relevant Applicant Group company in accordance with Section 53 of the IBC; and (iii) *third*, the remaining sale proceeds/ termination amount/ settlement amounts/ foreclosure amounts to be distributed pro-rata to each class of creditors of the relevant Applicant Group company, adjusted for any recovery made by the relevant creditor on account of distribution under Section 53 (of the IBC), as contemplated above. As per the Resolution Framework, claims of only those creditors validly existing on October 15, 2018 (**Cut-off Date**) will be considered by the Claims Management Consultant (**CMC**) for admission and these claims shall be adjusted for any amounts which have been set-off or appropriated by the relevant creditor in breach of the October 15 Order.

10. Ld. Counsel for the Applicant further submits that the list of "Red" Entities in the Applicant Group (as determined by M/s. Alvarez &

Marsal India Private Ltd., a resolution consultant appointed by the New Board (**Resolution Consultant**)), amongst others, was filed by the Petitioner with the Hon'ble NCLAT and FSEL and KNCEL, categorised as "Red" entities are recorded by the Hon'ble NCLAT in its order dated February 11, 2019. Pursuant to revised liquidity assessments for the testing period from January 1, 2020 and December, 31 2020 respectively, FSEL and KNCEL continue to be classified as "Red" Entities.

11. The Hon'ble NCLAT, as set out above, in terms of the March 12 Order, has permitted the resolution of the Applicant Group Entities to continue in accordance with the procedure suggested in the Resolution Framework and as per the procedures set out in the January 9 Affidavit and the February 7 Affidavit, "*under the supervision of Hon'ble Justice (Retd.) D.K. Jain,*"

**Initiation of the Resolution of Process of FSEL**

**Settlement with NHAI**

12. Ld. Counsel for the Applicant submits that as FSEL Project had achieved only 65% completion and had been suspended since July, 2018 at the site i.e. prior to achieving "commercial operations", therefore, in terms of Article 37.3.1 of the Concession Agreement



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dated September 8, 2015 (**FSEL Concession Agreement**) entered into between, amongst others, FSEL and NHAI, FSEL was not entitled to any compensation from NHAI in respect of the work already done on the FSEL Project. Accordingly the FSEL Project was classified as a “stuck-up project” under the ‘*Guiding Principles for Resolution of Stuck National Highway Projects*’ dated March 9, 2019 issued by the Ministry of Road Transport & Highways, Government of India (**MoRTH Guidelines**) and was accordingly, considered for foreclosure in accordance with the MoRTH Guidelines by the New Boar

13. To this intent, ITNL and FSEL engaged in discussions with NHAI for the foreclosure of the FSEL Project. Pursuant thereto, FSEL and NHAI executed a settlement agreement dated February 19, 2021 wherein NHAI agreed to pay FSEL a sum of INR 707,70,90,000/- (subject to deduction of applicable taxes and further withholding of an amount of INR 16,93,00,00 towards royalty payment in terms of the order passed by the Conciliation Committees of Independent Experts - III (**CCIE-III**) on January 16, 2020) (**FSEL Settlement Amount**) for foreclosure of the FSEL Project.

*Initial Approval of Justice (Retd.) D.K. Jain and this Tribunal with respect to FSEL*

14. Pursuant to approval of the New Board and in terms of the Resolution Framework, the Applicant filed an initial memorandum dated July 15, 2020 along with supplementary memorandums dated September 19, 2020 and September 25, 2020 seeking approval of Hon'ble Justice (Retd.) D.K. Jain for *inter alia* (i) the aforesaid settlement proposal for the termination of the FSEL Project; (ii) the receipt of the settlement amounts by FSEL and the consequent payment of an amount of INR 194,25,93,333 (as determined in accordance with the "Settlement Formula" set out in the January 9 Affidavit and February 7 Affidavit) to FSEL Sub-Contractors (as defined in the FSEL Initial Memorandum) by NHAI from the FSEL Settlement Amount for discharge of all claims against ITNL in connection with the FSEL Project; and (iii) deposit of the residual amount in the escrow account of FSEL.
15. By a letter dated October 7, 2020 (**FSEL First Justice Jain Approval**), Justice (Retd.) D.K. Jain granted approval for the aforementioned proposal, with a minor modification stating that GHV (India) Private Limited (**GHV**) shall be excluded from the list of FSEL Sub-Contractors, who were due to receive certain sums from the FSEL Settlement Amount.
16. Further, pursuant to certain clarifications sought by the Applicant

*vide* its letter dated October 8, 2020, Justice (Retd.) D.K. Jain *vide* clarification letter dated October 10, 2020 clarified that the amounts due to GHV which were classified as 'operational dues' (i.e. an amount aggregating to INR 35,683,696, as admitted by the Claims Management Consultant), should be treated at par with the other FSEL Sub-Contractors and be allowed to be paid in terms of the FSEL First Justice Jain Approval

17. Pursuant to the First Justice Jain Approval, the Applicant, on October 25, 2020, filed with this Tribunal Company Application No. 1156 of 2020 in the captioned Petition (**CA 1156**) seeking approval for *inter alia* the aforesaid settlement proposal with NHAI and the consequent discharge of the dues of the FSEL Sub-Contractors. By an order dated February 9, 2021 (as clarified by the order dated February 15, 2021), this Tribunal was pleased to allow CA 1156 and grant the reliefs prayed for therein.

*Receipt and Distribution of the FSEL Settlement Amount*

18. Pursuant to the approval of this Tribunal, a settlement agreement dated February 19, 2021 (**FSEL Settlement Agreement**) was executed between NHAI and FSEL. Subsequently, on March 9, 2021, out of the aggregate Settlement Amount of INR 707,70,90,000,

NHAI deposited a net settlement amount of INR 505,74,79,218 **(Residual FSEL Settlement Amount)** in the escrow account of FSEL, after (i) deducting an amount of INR 7,70,17,450 towards tax deducted at source; (ii) paying a sum of INR 177,32,93,332 directly to the FSEL Sub-Contractors; and w(iii) ithholding an amount of INR 16,93,00,000 towards royalty payment in terms of order passed by the Conciliation Committee of Independent Experts on January 16, 2020), which, as per the terms of the Agreed Form Settlement Agreement, are to be paid directly by NHAI to GHV.

*Claims Management Process and Valuation of FSEL*

19. As contemplated in terms of the Resolution Framework, claims were invited in respect of FSEL as part of the claims management process for the Applicant Group being undertaken by the CMC. The net total claims of creditors against FSEL, as of October 15, 2018, after necessary adjustments aggregates to INR 958,99,84,529.
20. For the purposes of distribution, the claims admitted by the CMC were to be adjusted as follows:
  - i. total expected payment of INR 194.26 crores towards the FSEL Sub-Contractors will be adjusted from the ITNL's claim as an operational creditor (which aggregates to INR 316.31 crores), in line with the FSEL NCLT Order and the affidavits

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filed by the MCA before the Hon'ble NCLAT on January 9,  
2020 and February 7, 2020;

- ii. the operational creditor M/s. P.V. Lakhani & Co. (who provided VAT assessment services to FSEL) was already paid in full, higher than the amount due to it as per the Revised Distribution Framework. Such amounts were paid to the said operational creditor in terms of the 'Payment Protocol' that has been put in place by the New Board, which permits payment of critical outstanding amounts to contractors, suppliers and vendors (including any amounts payable for services rendered prior to October 1, 2018), which are essential for maintaining the 'going concern' status of the relevant Applicant Group Company. Hence, for the purposes of distribution, the claim of INR 21,600 already paid in full has been assumed to be extinguished.
21. Ld. Counsel for the Applicant further submits that the distribution of the Residual FSEL Settlement Amount amongst the creditors of FSEL deals with a limited set of factual combinations to provide an indicative working of the Revised Distribution Framework.
  22. Further, given that the Residual FSEL Settlement Amount is less than the total admitted debt of FSEL (as of October 15, 2018) less the adjustments aggregating to INR 958,99,84,529, the creditors of FSEL will be required to forgo certain outstandings in respect of the admitted claims.

23. Ld. Counsel for the Applicant submits that in accordance with the Resolution Framework, two registered valuers (**Valuers**) were appointed to compute the estimates of the fair market value. As per the valuation reports, the average fair value of FSEL is INR 529.89 crores and average liquidation value is INR 505.45 crores.
24. At this juncture, it is also pertinent to note that:
- a) any liabilities of FSEL that have accrued post the Cut-Off Date (including tax liabilities) which are outstanding will be paid in full by FSEL prior to distribution of the proceeds to the creditors of FSEL against their admitted claims as of the Cut-Off Date; and
  - b) FSEL may also make certain additional recoveries in the future, owing to tax refunds sought by it, amongst others.

In order to ensure that such amounts are also made available to the creditors of FSEL in accordance with the Revised Distribution Framework, Ld. Counsel for the Applicant seeks from the Hon'ble NCLT, that any subsequent recoveries by the liquidator appointed in respect of FSEL be distributed to the creditors of FSEL in the same proportion that they have received from the settlement amounts as per the Revised Distribution Framework.

**Initiation of the Resolution Process of KNCEL**

**Settlement with NHAI**

25. Ld. Counsel for the Applicant submits that as KNCEL Project had

achieved only 63.23% completion by May, 2018 (on account of which it had not achieved “commercial operations” or the provisional commercial operations date) due to financing issues, accordingly, the KNCEL Project was classified as a “stuck-up project” under the MoRTH Guidelines and was also considered for foreclosure by the New Board. To this intent, ITNL and KNCEL engaged in discussions with NHAI for the foreclosure of the KNCEL Project. Pursuant thereto, NHAI agreed to pay KNCEL a sum of INR 672,62,00,000 crores (subject to deduction of applicable taxes) **(KNCEL Settlement Amount)** for foreclosure of the KNCEL Project.

*Initial Approval of Justice (Retd.) D.K. Jain and this Tribunal with respect to KNCEL*

26. Pursuant to approval of the New Board and in terms of the Resolution Framework, the Applicant filed an initial memorandum dated November 24, 2020 along with supplementary memorandums dated December 25, 2020 seeking approval of Hon’ble Justice (Retd.) D.K. Jain for *inter* for the proposal to foreclose the KNCEL Project and distribution of the KNCEL Settlement Amount received to the creditors of KNCEL
27. By a letter dated December 29, 2020 **(First KNCEL Justice Jain**

**Approval**), Justice (Retd.) D.K. Jain granted approval for the proposal contemplated in the aforesaid memoranda, subject to the approval of this Tribunal.

28. Pursuant to the First KNCEL Justice Jain Approval, the Applicant filed with this Tribunal Company Application No. 3 of 2021 in the captioned Petition (**CA 3**) seeking amongst others, the approval for the foreclosure of the KNCEL Project and execution of the necessary documents and distribution of the KNCEL Settlement Amount to the creditors of KNCEL. By an order dated February 24, 2021 this Tribunal was pleased to allow CA 3 and grant the reliefs as prayed for therein.

*Receipt and Distribution of the Net KNCEL Settlement Amount*

29. Pursuant to the order dated February 24, 2021 passed by this Tribunal, KNCEL and NHAI executed the Agreed Form Settlement Agreement on March 30, 2021 (**KNCEL Settlement Agreement**). Subsequently, on March 31, 2021, NHAI deposited an amount of INR 662,53,07,000/- (**Net KNCEL Settlement Amount**) in the escrow account of KNCEL after deducting an amount of INR 10,08,93,000 towards TDS.
30. Ld. Counsel for the Applicant submits that, as set out in CA 3, the



“*Settlement Formula*” (set out in the January 9 Affidavit and the February 7 Affidavit) did not apply in this case since NHAI had neither raised the issue of settling the dues of ITNL sub-contractors with the Conciliation Committees of Independent Experts - II (CCIE-II) nor was such condition specified either by NHAI or CCIE-II for payment of compensation to KNCEL and hence, the entire KNCEL Settlement Amount (less tax deducted at source) was received by KNCEL in a designated escrow account. Accordingly, an amount of INR 662.64 crores (consisting of the Net KNCEL Settlement Amount along the amounts already lying in the escrow account of KNCEL) was distributed to the creditors of KNCEL (for claims admitted by the CMC as of October 15, 2018) in accordance with the Revised Distribution Framework.

31. Ld. Counsel for the Applicant further submits that, at present, a balance amount of INR 1.84 crores (approx.) is available in the escrow/current/fixed deposit account of KNCEL, out of which certain outstanding payments are yet to be made towards discharge of certain liabilities of KNCEL that have accrued post the Cut-Off Date (including tax liabilities), each of which are in the process of being made.
32. Further that, instructions were issued to Indian Bank (which is

holding the Net KNCEL Settlement Amount in escrow) on June 18, 2021 and June 19, 2021 for the release of the Resolution Process Costs, statutory liabilities and expenses for the F.Y. 2020-21 June 19, 2021. However, Indian Bank has initiated funds transfer only for INR 22,72,866 and by its letter dated June 19, 2021, indicated its refusal to initiate fund transfer for the balance amounts from the said escrow account. In this regard, a letter dated June 23, 2021 was issued by KNCEL to Indian Bank *inter alia* by which KNCEL informed Indian Bank that it has discharged all its liabilities towards Indian Bank following the order of this Tribunal dated February 24, 2021, and called upon Indian Bank to remove the charge on the escrow account containing the Net KNCEL Settlement Amount at the earliest so that KNCEL can manage the available funds as per the directions of the Hon'ble NCLAT and this Tribunal. Time and again, KNCEL requested Indian Bank to release the funds vide further emails dated July 29, 2021, August 2, 2021 and September 9, 2021. Indian Bank has, notwithstanding, failed to release the amounts held in the escrow account, causing grave harm and prejudice to KNCEL, and delaying the resolution process of KNCEL.

33. Accordingly, Ld. Counsel for the Applicant prays that this Tribunal

in exercise of its powers under Sections 241/242 of the Act, direct Indian Bank to release the funds as instructed by the Applicant and/ or ITNL and/ or KNCEL in relation to the liabilities of KNCEL that have accrued post the Cut-Off Date.

*Distribution of Future Recoveries*

34. Ld. Counsel for the Applicant submits that KNCEL may also make certain additional recoveries in the future, owing to amongst others tax refunds sought by it. If any such subsequent recoveries are made by the proposed liquidator for KNCEL in the future, they are to be distributed to the creditors of KNCEL in the same proportion that they have received from the Net KNCEL Settlement Amount as per the Revised Distribution Framework, provided that if any creditor's admitted claim has been discharged/paid in full, they will not be entitled to receive such additional amounts (such creditors with outstanding admitted claims post distribution of the Net KNCEL Settlement Amount shall be referred to as "**KNCEL Residual Creditors**"). Accordingly, the Ld. Counsel prays that this Tribunal in exercise of its powers under Sections 241/242 of the Act direct that any subsequent recoveries by the liquidator appointed in respect of KNCEL be distributed to the KNCEL Residual Creditors of KNCEL in the same proportion that they have received from the Net KNCEL

Settlement Amount as per the Revised Distribution Framework.

*Recommendation of Initiation of Winding Up of KNCEL and FSEL under Section 271(a) of the Companies Act*

35. Post distribution of the Residual FSEL Settlement Amount (less an amount of INR 25 lakhs, which is proposed to be retained in the escrow account of FSEL towards meeting estimated costs for the winding up process of FSEL), FSEL is expected to retain only nominal residual assets including certain tax assets for which refunds are expected which would take time to be realized, and NIL Liabilities. Accordingly, the Resolution consultant has recommended closure of FSEL vide winding up under Section 271(a) of the Act.
36. Similarly, it is submitted that KNCEL has no business operations and keeping the entity alive would only result in the entity incurring additional liability and costs. Accordingly, the Resolution Consultant by a communication dated July 27, 2021, recommended the closure of KNCEL by way of winding up under section 271(a) of the Act, since post settlement of the KNCEL Project and distribution of the Net KNCEL Settlement Amount to the creditors of KNCEL, KNCEL has no ongoing business operations

*Corporate Authorisations*

FSEL

37. Upon obtaining the liquidation value reports, the board of directors of FSEL (**FSEL Board**), the board of directors of ITNL (**ITNL Board**) and the New Board have resolved to distribute of the Aggregate FSEL Settlement Amount. As set out above, pursuant to such distribution FSEL will have no liabilities and nominal residual assets and hence will have to be resolved *vide* winding up under Section 271 of the Act considering that FSEL has no business operations and keeping the entity alive will incur additional liabilities and costs. Accordingly, at a meeting held on June 29, 2021, the FSEL Board, approved the proposal with respect to distribution of the Aggregate FSEL Settlement Amount and for initiation of winding up of FSEL under Section 271 (a) Act. Further, the ITNL Board in its meeting held on June 29, 2021 and the New Board at its meeting held on June 30, 2021 has also approved the aforesaid proposal with respect to distribution of the Residual FSEL Settlement Amount and closure of FSEL, subject to the approval of Justice (Retd.) D.K. Jain and this Tribunal.

KNCEL

38. Pursuant to the recommendations of the Resolution Consultant, the board of directors of KNCEL (**KNCEL Board**) at its meeting held on

July 29, 2021 approved *inter alia* the proposal for winding up KNCEL under Section 271(a) of the Act subject to the proposal being approved by the ITNL Board, the New Board, Hon'ble Justice (Retd.) D.K. Jain and this Tribunal

39. Subsequently, the ITNL Board *vide* a circular resolution dated July 30, 2021 approved *inter alia* the proposal for winding up KNCEL under Section 271(a) of the Act subject to the proposal being approved by the New Board, Hon'ble Justice (Retd.) D.K. Jain and this Tribunal.
40. The New Board, at its meeting held on June 31, 2021, also approved the initiation of winding up of KNCEL under Section 271(a) of the Act (subject to the approval of Justice (Retd.) D.K. Jain and this Tribunal) and recommended that the proposal be submitted to Justice (Retd) D.K. Jain for his approval.

**Approval of Justice (Retd.) D.K. Jain**

**FSEL**

41. Pursuant to the approval of the New Board, the Applicant filed an application dated July 9, 2021, with Justice (Retd.) D.K. Jain (**FSEL Justice Jain Application**) seeking *inter alia* approval for distribution of the Residual FSEL Settlement Agreement and initiating the

winding up of FSEL under Section 271(a) of the Act

42. By a letter dated August 27, 2021 (**Second FSEL Justice Jain Approval**), Justice D.K. Jain (Retd.) has approved the proposal for distribution of the Residual FSEL Settlement Amount and the subsequent winding up of FSEL under section 271(a) of the Act. An extract of the operative portion of the Second FSEL Justice Jain Approval is as follows:

*“Having regard to the fact that: (i) the proposed distribution of the residual FSEL settlement amount to the Creditors of FSEL is stated to be in accordance with the Revised Distribution Framework, as filed by the MCA with the Hon'ble NCLAT on 9th January 2020 and approved vide its order dated 12th March 2020, and subsequently by the Hon'ble NCLT, vide its order dated 9th February 2021; (ii) post such distribution, FSEL would retain only nominal residual assets, with NIL liabilities and hence has to be resolved by adopting the route of winding up under Section 271 of the Companies Act, the process recommended by A&M, the Resolution Advisor to the Board; and (iii) FSEL has no business operations, to generate any revenue, and on the contrary keeping it alive will only result in incurring additional costs and liabilities, the approval, as sought in the Memorandum, is granted, subject to the Proposal being presented to the Hon'ble NCLT for its further approval and implementation of the steps set out in the Memorandum.*

43. Pursuant to the approval of the New Board, the Applicant filed an

CA No. 290/2022 In C.P (IB) No. 3638/MB/2018  
application dated August 1, 2021 with Justice (Retd.) D.K. Jain  
(**KNCEL Justice Jain Application**) seeking *inter alia* approval for  
filing suitable applications before this Tribunal for winding up  
KNCEL under Section 271(a) of the Act.

44. By a letter dated August 4, 2021 (**Second KNCEL Justice Jain Approval**), Justice D.K. Jain (Retd.) has approved the proposal for winding up of KNCEL under section 271(a) of the Act. An extract of the operative portion of the KNCEL Justice Jain Approval is as follows:

*“Accordingly, approval for filing requisite Applications before the Hon’ble NCLT for winding up of KNCEL under Section 271(a) of the Act is granted subject to the Proposal being presented to the Hon’ble NCLT, for its approval. It goes without saying that this approval will have absolutely no bearing on the investigations, if any, being conducted by any Agency into the affairs of KNCEL, IL&FS, and/or any of its Group Entities. The approval is granted accordingly”*

45. Ld. Counsel for the Applicant submits that both FSEL and KNCEL are special purpose vehicles incorporated for the construction, operation and maintenance of the FSEL Project and the KNCEL Project respectively. Given that these projects have now been foreclosed pursuant to the FSEL Settlement Agreement and the KNCEL Settlement Agreement executed with NHAI respectively,



the business operations of FSEL and KNCEL have ceased and keeping the entity alive would only result in the entity incurring additional liability and costs. Under the circumstance, it is just, necessary and convenient and in the interests of justice that this Tribunal approve the proposed winding up of FSEL and KNCEL respectively under Section 271(a) of the Act.

46. Ld. Counsel for the Applicant submits that the resolution of FSEL and KNCEL has been conducted to ensure a fair resolution upholding the key principles of value maximization for all stakeholders, commercial viability and financial stability. It is further submitted that the settlement agreements (i.e. the FSEL Settlement Agreement and the KNCEL Settlement Agreement) entered into with NHAH has enabled FSEL and KNCEL to maximize value of its business operations, which had otherwise stalled due to various difficulties, in accordance with the basic principles underlying the Resolution Framework (as set out above). The retired judge of the Hon'ble Supreme Court namely Justice (Retd.) D.K. Jain who was appointed by the Hon'ble NCLAT *vide* its order dated February 4, 2019 and February 11, 2019 to oversee the resolution process of the Applicant Group, has considered the proposed winding up of FSEL (after distribution of the Residual FSEL Settlement Amount) and

KNCEL respectively and has accorded his approval thereto.

47. Further, that the October 15 Order passed by the Hon'ble NCLAT has permitted the New Board to preserve value across the Applicant Group and work towards a resolution free from the threat of coercive creditor and other action. The October 15 Order has subsequently been confirmed by the Hon'ble NCLAT *vide* the March 12 Order. The March 12 Order approves the resolution of the Applicant Group (which includes FSEL and KNCEL) in the manner provided in the Resolution Framework. Given these protective and enabling orders, the New Board has worked towards resolution of FSEL and KNCEL, with due regard to the commercial feasibility of the proposed resolution process for FSEL and KNCEL and value maximization to all stakeholders in a timely manner. Accordingly, the New Board has duly conducted the resolution process of FSEL and KNCEL keeping in mind the objectives contained in the Resolution Framework. It is submitted that in larger public interest 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, it is in the interests of justice that this Tribunal approves the proposed resolution of FSEL and KNCEL and passes necessary directions to facilitate/ enable the proposed winding up of

FSEL and KNCEL

Resolution Process Costs

48. As set out above, in order to facilitate and implement the resolution process of FSEL and KNCEL, certain costs such as advertisement costs etc. were incurred and certain professionals, such as the Valuers, the CMC and Resolution Consultant etc. (**Professionals**), were appointed by the New Board. In lieu of providing these services, these Professionals are, as on date, to receive an amount of up to INR 35,43,357 for FSEL and INR 1,43,05,859 for KNCEL (inclusive of applicable taxes). Such 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.
49. Ld. Counsel submits that similar services are also being availed from Professionals by the Applicant Group Companies for the other sale/ resolution process which are currently underway for the Applicant Group and are a key ingredient for and to enable an orderly resolution of the Applicant Group. In light of the same, the Applicant had estimated that it might incur a further cost of INR 25,00,000 (for each FSEL and KNCEL) towards the proposed

winding up of: (i) FSEL (**FSEL Winding Up Costs**); and (ii) KNCEL (**KNCEL Winding Up Costs**) and had accordingly retained the same from the FSEL Settlement Amount and Net KNCEL Settlement Amount respectively in the relevant escrow account. Under the circumstances, it is in the interests of justice that this Tribunal direct that the Resolution Process Costs be permitted to be paid in terms of the reliefs set out below.

50. Ld. Counsel for the Applicant further submits that it is likely that certain additional Resolution Process Costs may arise in relation to the resolution and winding up of FSEL and/ or KNCEL. If and when any additional resolution process costs arise or are identified beyond the amount set aside as the FSEL Winding Up Costs and/ or KNCEL Winding Up Costs (as the case may be), the Applicant craves leave to approach this Tribunal to seek permission to pay such additional resolution process costs.
51. Further, that the approval of the resolution and liquidation process of the FSEL and KNCEL, both of which are “Red” entities in the Applicant Group, will greatly assist the resolution of the Applicant Group as a whole and will serve larger public interest.
52. Accordingly, the Applicant is before us praying for the reliefs as

follows:

- i. To approve the distribution of the Residual FSEL Settlement Amount to the creditors of FSEL (for claims admitted by the Claims Management Consultant, as of October 15, 2018, as adjusted) after discharging all outstanding liabilities if any accruing post October 15, 2018 and retaining a sum of INR 25,00,000 towards meeting estimated costs for the winding up process of FSEL), in accordance with the Revised Distribution Framework.
- ii. To approve the proposal to initiate winding up proceedings for Fagne Sonagadh Expressway Limited under Section 271(a) of the Companies Act, 2013 after the distribution of the Residual FSEL Settlement Amount as per prayer (A) above;
- iii. To direct that the Applicant be permitted to utilize and/ or pay from Residual FSEL Settlement Amount:
  - a. an amount of INR 35,43,357 towards Resolution Process Costs that have accrued or been incurred or are likely to accrue in connection with the resolution of Fagne Sonagadh Expressway Limited
  - b. an amount of INR 25,00,000 (i.e., the FSEL Winding Up Costs) towards estimated costs of the proposed winding up of Fagne Sonagadh Expressway Limited to be maintained in a designated bank/ escrow account to be intimated by the Applicant/ Fagne Songarh Expressway Limited and direct that the same shall not

- be adjusted or set off against any other dues pertaining to any bank/financial institution;
- c. an amount of INR 1,39,10,476 towards discharging liabilities of Fagne Sonagadh Expressway Limited that have accrued post October 15, 2018.
- d. To approve the proposal to initiate winding up proceedings for Kiratpur Ner Chowk Expressway Limited under Section 271(a) of the Companies Act, 2013;
- e. To direct that the Applicant be permitted to utilize and/ or pay from Net KNCEL Settlement Amount:
- i. an amount of INR 1,43,05,859 towards Resolution Process Costs that have accrued or been incurred or are likely to accrue in connection with the resolution of Kiratpur New Chowk Expressway Limited as per **Annexure 36** hereto; and
  - ii. an amount of INR 25,00,000 (i.e., the KNCEL Winding Up Costs) towards estimated costs of the proposed winding up of Kiratpur New Chowk Expressway Limited to be maintained in a designated bank/ escrow account to be intimated by the Applicant/ Kiratpur New Chowk Expressway Limited and direct that the same shall not be adjusted or set off against any other dues pertaining to any bank/financial institution;

- iii. an amount of INR 38,44,696 towards discharging liabilities of Kiratpur New Chowk Expressway Limited that have accrued post October 15, 2018
- f. To direct Indian Bank holding the Net KNCEL Settlement Amount in escrow to release the funds as per the directions/ instructions of KNCEL and/ or the Applicant and/ or ITNL towards Resolution Process Costs, statutory liabilities and expenses for F.Y. 2020-21.
- g. To direct that the liquidator appointed pursuant to the initiation of winding up of Fagne Sonagadh Expressway Limited in terms of prayer B above, shall distribute any subsequent recoveries made on behalf of Fagne Sonagadh Expressway Limited to the Residual Creditors of Fagne Sonagadh Expressway Limited in the same proportion that the FSEL Settlement Amount was distributed to such creditors as per the Revised Distribution Framework pursuant to the orders of this Tribunal dated February 9, 2021 (as clarified by order dated February 15, 2021) in Company Application No. 1156 of 2021;
- h. To direct that the liquidator appointed pursuant to the initiation of winding up of Kiratpur Ner Chowk Expressway Limited in terms of prayer D above, shall distribute any subsequent recoveries made on behalf of Kiratpur Ner Chowk Expressway Limited to the Residual Creditors of Kiratpur Ner Chowk Expressway Limited in the same proportion that the Net KNCEL Settlement Amount was distributed to such creditors as per the Revised Distribution Framework pursuant

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to the orders of this Tribunal dated February 4, 2021 in  
Company Application No. 3 of 2021;

i. For any further reliefs as this Tribunal deems fit and proper in the facts and circumstances.

53. Representative of Union of India has made a statement that, Union of India has no objection to the Application, since the aforesaid proposal has been approved by the Hon'ble Justice (Retd.) D.K. Jain, and since the Union is not involved in these processes overseen by the Hon'ble Justice (Retd.) D.K. Jain.

54. It is informed that Indian Bank and certain other creditors have preferred an appeal against the order dated February 24, 2021 on or about September, 2021 (after the filing of the present Application) before the Hon'ble NCLAT in respect of KNCEL, but no stay is granted on the same. Hence we find that the same does not come in the way of our consideration of the present Application.

### **ORDER**

55. We have considered the matter in hand in the background of facts and circumstances stated above. In light of the large amount of monies available with FSEL and KNCEL, and the fact that the New Board is taking steps for resolution of the Applicant Group in order to maximise value for stakeholders, it would be in the interests of



justice for the same to be distributed in terms of the Revised Distribution Framework approved by the Hon'ble NCLAT by the order and judgment dated March 12, 2022 in Company Appeal (AT) Nos. 346-347 of 2018 as prayed for. Moreover, we note that there (i) are no and/ or limited operations of; and (ii) no scope for monetisation of FSEL and KNCEL and keeping these entities alive in the aforesaid facts and circumstances would only result in adding to the number of Applicant Group entities, and accumulation of liabilities to keep the entities alive, which would not be just or equitable.

56. The FSEL and KNCEL Proposal has also been approved Justice (Retd.) 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 in line with the Resolution Framework; and the mandate given by this Tribunal to the New Board. Thus, we approve the proposed winding up of FSEL and KNCEL under Section 271(a) of the Companies Act, 2013 as per the modalities set out in the Application.
57. In the interest of justice, accordingly, application is allowed in terms

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of the reliefs A to H of the Application without prejudice ofcourse to  
any proceedings that any investigative or any other authorities may  
take against the erstwhile directors of the companies that are subject  
matter of this application.

With the aforesaid observation present **CA Nos. 290 of 2021 in CP  
(IB) No. 3638/MB/2018** stands disposed of as allowed in above  
terms.

**Sd/-**  
**SHYAM BABU GAUTAM**  
**Member (Technical)**  
14.10.2022  
SAM

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

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT - I

CA No. 296/2021

IN

C.P (IB) No. 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 } ...Applicant  
East, Mumbai.**

**Versus**

**Union of India, MCA, (through the }  
RD), having its office at 5<sup>th</sup> Floor, }  
Everest Building, 100 Marine Lines, } ...Respondent  
Mumbai - 400001.**

**Order Pronounced on:14.10.2022**

***Coram:***

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

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

***Appearances:***

For the Applicant : Mr. Ravindra M. Kadam, Sr. Adv.  
a/w Mr. Ashish Kamat Mr. Animesh  
Bisht, Ms. Drishti Das, Ms. Roma  
Bhojani and Ms. Rima Jain i/b Cyril  
Amarchand Mangaldas, Advocates

For the Respondent : Mr. Sanjay Shorey – RD (North) and  
Mr. Aditya Sikka for the UoI

**ORDER**

***Per Coram:***

1. The present Application is filed by the Applicant, Infrastructure Leasing & Financial Services Limited (hereinafter referred to as “IL&FS”) to seek approval from this Tribunal implement the

Phase 2 of proposal relating to the Infrastructure Investment Trust (hereinafter referred to as “**InvIT**” in accordance with the Securities and Exchange Board of India (Infrastructure Investment Trust) Regulations, 2014, as amended from time to time (hereinafter referred to as “**InvIT Regulations**”). The implementation of Phase 2 of the InvIT involves:

(i) transfer of the entire share capital held by IL&FS Transportation Networks Limited (**ITNL**) and/or the Applicant (as applicable) in:

- (I) Hazaribagh Ranchi Expressway Limited (**HREL**);
- (II) Pune Sholapur Road Development Company Limited (**PSRDCL**);
- (III) Thiruvananthapuram Road Development Company Limited (**TRDCL**); and
- (IV) Jharkhand Infrastructure Implementation Company Limited (**JIICL**)

(collectively the “**Phase 2 SPVs**”) to the InvIT and resultant change in control of each of the Phase 2 SPVs, where the purchase consideration to be paid by the InvIT to ITNL and/ or the Applicant (as applicable) (as shareholders of the relevant Phase 2 SPVs) will be units of the InvIT (“**Units**”,

and such transactions are collectively referred to the

**“Proposed Share Transfers”**); and

- (ii) assignment to the InvIT of receivables (whether in the form of financial debt, operational debt or any other debts) owed to ITNL and certain IL&FS Group Entities (together with ITNL, collectively referred to as **“IL&FS Group Creditors”**) by the relevant Phase 2 SPVs (**“Group Receivables”**) in lieu of Units to be allotted by the InvIT to such IL&FS Group Creditors (such transactions collectively referred to as the **“Proposed Receivables Assignments”**).
2. Due to developments that have taken place after the filing of the Application, namely the termination of the concession agreement between West Gujarat Expressway Limited (**WGEL**) and National Highways Authority of India (**NHAI**), the Applicant has filed an additional affidavit dated 04.05.2022 stating that it is not pressing for any reliefs in respect of WGEL as the same is now being excluded from the proposal. As such, only four SPVs, i.e. HREL, TRDCL, PSRDCL and JIICL are now proposed to be transferred to the InvIT.
3. The Applicant is before us with the following prayers :-

- A. Allow the Applicant, IL&FS Transportation Networks Limited, Hazaribagh Ranchi Expressway Limited, Pune Sholapur Road Development Company Limited, West Gujarat Expressway Limited, Thiruvananthapuram Road Development Company Limited, Jharkhand Infrastructure Implementation Company Limited, Roadstar Investment Managers Limited (formerly, North Karnataka Expressway Limited) and Roadstar Infra Investment Trust acting through its Trustee Axis Trustee Services Limited to execute, implement and give effect to the terms of the agreed forms of the share purchase agreements as and when executed (as set out in Annexure 14 of the Application);
- B1. Approve the sale of shareholding held by IL&FS Transportation Networks Limited (**ITNL**) in Hazaribagh Ranchi Expressway Limited (**HREL**), to Roadstar Infra Investment Trust (**InvIT**), free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) upon discharge of the purchase consideration in the manner (and subject to such adjustments) as contemplated in terms of the agreed form of the share purchase agreement to be entered into amongst ITNL, HREL, RIML (**Investment Manager**) and Axis

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**Trustee Services Limited (Trustee);**

- B2. Approve the sale of shareholding held by ITNL in Pune Sholapur Road Development Company Limited (**PSRDCL**), to the InvIT, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) upon discharge of the purchase consideration in the manner (and subject to such adjustments) as contemplated in terms of the agreed form of the share purchase agreement to be entered into amongst ITNL, PSRDCL, the Investment Manager and the Trustee;
- B3. Approve the sale of equity shareholding held by ITNL and the Applicant in West Gujarat Expressway Limited (**WGEL**) to the InvIT, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) upon discharge of the purchase consideration in the manner (and subject to such adjustments) as contemplated in terms of the agreed form of the share purchase agreement to be entered into amongst the Applicant, ITNL, WGEL, the Investment Manager and the Trustee;
- B4. Approve the sale of shareholding held by ITNL in

Thiruvananthapuram Road Development Company

Limited (**TRDCL**) to the InvIT, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) upon discharge of the purchase consideration in the manner (and subject to such adjustments) as contemplated in terms of the agreed form of the share purchase agreement to be entered into amongst ITNL, TRDCL, the Investment Manager and the Trustee;

B5. Approve the sale of shareholding held by ITNL in Jharkhand Infrastructure Implementation Company Limited (**JIICL**) to the InvIT, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) upon discharge of the purchase consideration in the manner (and subject to such adjustments) as contemplated in terms of the agreed form of the share purchase agreement to be entered into amongst ITNL, JIICL, the Investment Manager and the Trustee;

C. Allow the Applicant, IL&FS Transportation Networks Limited, the relevant IL&FS Group Creditors, Hazaribagh Ranchi Expressway Limited, Pune Sholapur Road Development Company Limited, West Gujarat Expressway Limited, Thiruvananthapuram Road Development



Company Limited, Jharkhand Infrastructure

Implementation Company Limited, Roadstar Investment Managers Limited (formerly, North Karnataka Expressway Limited) and Roadstar Infra Investment Trust acting through its Trustee Axis Trustee Services Limited to execute, implement and give effect to the terms of the agreed forms of the deeds of assignment (as set out in Annexure 16 of the Application);

- D1. Permit the assignment of the receivables (whether in the form of financial debt, operational debt or any other debts) owed by Hazaribagh Ranchi Expressway Limited to IL&FS Transportation Networks Limited (**ITNL**), the Applicant and other members of the IL&FS Group (collectively, the “**IL&FS Group Creditors**”), to Roadstar Infra Investment Trust (**InvIT**) acting through its trustee Axis Trustee Services Limited (**Trustee**), free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims), upon discharge of the purchase consideration in the manner (and subject to such adjustments) as contemplated in terms of the agreed form of the deed of assignment (**HREL DoA**) to be entered

into amongst the relevant parties thereto;

D2. Permit the assignment of the receivables (whether in the form of financial debt, operational debt or any other debts) owed by Pune Sholapur Road Development Company Limited to ITNL, the Applicant and the IL&FS Group Creditors, to the InvIT acting through the Trustee, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims), upon discharge of the purchase consideration in the manner (and subject to such adjustments) as contemplated in terms of the agreed form of the deed of assignment (**PSRDCL DoA**) to be entered into amongst the relevant parties thereto;

D3. Permit the assignment of the receivables (whether in the form of financial debt, operational debt or any other debts) owed by West Gujarat Expressway Limited to ITNL, the Applicant and the IL&FS Group Creditors, to the InvIT acting through the Trustee, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims), upon discharge of the purchase consideration in the manner (and subject to such adjustments) as contemplated in terms of the agreed

form of the deed of assignment (**WGEL DoA**) to be entered into amongst the relevant parties thereto;

D4. Permit the assignment of the receivables (whether in the form of financial debt, operational debt or any other debts) owed by Thiruvananthapuram Road Development Company Limited to ITNL, the Applicant and the IL&FS Group Creditors, to the InvIT acting through the Trustee, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims), upon discharge of the purchase consideration in the manner (and subject to such adjustments) as contemplated in terms of the agreed form of the deed of assignment (**TRDCL DoA**) to be entered into amongst the relevant parties thereto;

D5. Permit the assignment of the receivables (whether in the form of financial debt, operational debt or any other debts) owed by Jharkhand Infrastructure Implementation Company Limited to ITNL, the Applicant and the IL&FS Group Creditors, to the InvIT acting through the Trustee, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims), upon discharge of the purchase consideration in the

manner (and subject to such adjustments) as contemplated in terms of the agreed form of the deed of assignment (**JICL DoA**) to be entered into amongst the relevant parties thereto;

E. Direct that Roadstar Infra Investment Trust (**InvIT**) be permitted to issue additional Units of InvIT in lieu of the Resolution Process Costs borne by IL&FS Transportation Networks Limited (on behalf of the relevant Phase 2 SPVs for value aggregating to approximately INR 3,57,89,395 inclusive of applicable taxes and provisions till December, 2021 (as per paragraph 80 of the Application) and any further amounts that may be incurred as Resolution Process Costs till transfer of the shareholding of the relevant Phase 2 SPVs to the InvIT;

F1. Declare and direct that upon:

- (i) receipt of signed term sheets from each of the financial creditors of Thiruvananthapuram Road Development Company Limited ("**TRDCL**") (other than IL&FS Group Creditors) for restructuring of such financial debt availed by TRDCL for an amount equivalent to INR 36.02 crores (details of which are set out in Part A of Annexure 22 of the Application), which is arrived at

by allocating to such secured financial creditors of TRDCL, the SPV Enterprise Value for TRDCL as of the Final Value Date, subject to and in accordance with the “Revised Distribution Framework” against the claims admitted by the claims management consultant as of October 15, 2018 (the “**Restructured TRDCL Debt**”);

- (ii) discharge of the consideration for the assignment of the debts owed by TRDCL to members of the IL&FS Group (as financial and operational creditors, as the case may be) (collectively, the “**TRDCL Group Debt**”) in the manner contemplated under the TRDCL DoA;
- (iii) payment by TRDCL to the (non-IL&FS Group) operational creditors for an amount equivalent to INR 0.16 crores (details of which are set out in Part B of Annexure 22 of the Application), which is arrived at by allocating to such operational creditors of TRDCL, the SPV Enterprise Value for TRDCL as of the Final Value Date, subject to and in accordance with the “Revised Distribution Framework” against the claims admitted by the claims management consultant as of October 15, 2018,

- (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 TRDCL),

of TRDCL shall stand extinguished, save and except the following:

- (I) the Restructured TRDCL Debt which shall be payable in accordance with the terms of restructuring, as contemplated in terms of (i) above; and
- (II) the TRDCL Group Debt, which would have been acquired by the InvIT from the respective IL&FS Group Creditors of TRDCL (in the

DoA).

F2. Declare and direct that upon:

- (i) receipt of signed term sheets from each of the financial creditors of Hazaribagh Ranchi Expressway Limited (“HREL”) (other than IL&FS Group Creditors) for restructuring of such financial debt availed by HREL for an amount equivalent to INR 601.42 crores (details of which are set out in Annexure 23 of the Application), which is arrived at by allocating to such secured financial creditors of HREL the SPV Enterprise Value for HREL as of the Final Value Date, subject to and in accordance with the “Revised Distribution Framework” against the claims admitted by the claims management consultant as of October 15, 2018 (the “**Restructured HREL Debt**”); and
- (ii) discharge of the consideration for the assignment of the debts owed by HREL to members of the IL&FS Group (as financial and operational creditors, as the case may be) (collectively, the “**HREL Group Debt**”) in the manner contemplated under the HREL DoA,

- (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 HREL),

of HREL shall stand extinguished, save and except the following:

- (I) the Restructured HREL Debt which shall be payable in accordance with the terms of restructuring, as contemplated in terms of (i) above; and
- (II) the HREL Group Debt, which would have been acquired by the InvIT from the respective



IL&FS Group Creditors of HREL (in the manner as contemplated under the HREL DoA).

F3. Declare and direct that upon:

- (i) receipt of signed term sheets from each of the financial creditors of West Gujarat Expressway Limited (“**WGEL**”) (other than IL&FS Group Creditors) for restructuring of such financial debt availed by WGEL for an amount equivalent to INR 86.01 crores (details of which are set out in Part A of Annexure 24 of the Application), which is arrived at by allocating to such secured financial creditors of WGEL the SPV Enterprise Value for WGEL as of the Final Value Date, subject to and in accordance with the “Revised Distribution Framework” against all the obligations of WGEL as of the Final Value Date (the “**Restructured WGEL Debt**”);
- (ii) discharge of the consideration for the assignment of the debts owed by WGEL to members of the IL&FS Group (as financial and operational creditors, as the case may be) (collectively, the “**WGEL Group Debt**”) in the manner contemplated under the WGEL DoA;

(iii) payment by WGEL to the (non-IL&FS Group)

operational creditors for an amount equivalent to INR 1.77 crores (details of which are set out in Part B of Annexure 24 of the Application), which is arrived at by allocating to such operational creditors of WGEL the SPV Enterprise Value for WGEL as of the Final Value Date, subject to and in accordance with the “Revised Distribution Framework” against all the obligations of WGEL as of the Final Value Date,

(a) all claims (disclosed or undisclosed, and whether existing at or relating to a period prior to the Final Value Date 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 Final Value Date); and

(b) all liabilities whether actual or contingent and whether existing at or relating to a period prior to Final Value Date (including such claims in respect of which arbitration

proceedings have been initiated against WGEL), of WGEL

shall stand extinguished, save and except the following:

- (I) the Restructured WGEL Debt which shall be payable in accordance with the terms of restructuring, as contemplated in terms of (i) above; and
- (II) the WGEL Group Debt, which would have been acquired by the InvIT from the respective IL&FS Group Creditors of WGEL (in the manner as contemplated under the WGEL DoA).

F4. Declare and direct that upon:

- (i) receipt of signed term sheets from each of the financial creditors of Pune Sholapur Road Development Company Limited (“**PSRDCL**”) (other than IL&FS Group Creditors) for restructuring of such financial debt availed by PSRDCL for an amount equivalent to INR 884.47 crores (details of which are set out in Part A of Annexure 25 of the Application), which is arrived at by allocating to such secured and unsecured financial creditors of PSRDCL the revised SPV Enterprise Value for PSRDCL as of the Final Value Date (as increased

by the premium of 4.23% to such SPV Enterprise

Value), subject to and in accordance with the “Revised

Distribution Framework” against the claims admitted

by the claims management consultant as of October 15,

2018 (the “**Restructured PSRDCL Debt**”);

- (ii) discharge of the consideration for the assignment of the debts owed by PSRDCL to (a) IL&FS Financial Services Limited (as a secured financial creditor) and (b) other members of the IL&FS Group (as unsecured, financial and operational creditors, as the case may be) (collectively, the “**PSRDCL Group Debt**”) in the manner contemplated under the PSRDCL DoA;
- (iii) payment by PSRDCL to the (non-IL&FS Group) operational creditors for an amount equivalent to INR 0.76 crores (details of which are set out in Part B of Annexure 25 of the Application), which is arrived at by allocating to such operational creditors of PSRDCL the SPV Enterprise Value for PSRDCL as of the Final Value Date (along with the premium of 4.23% to such SPV Enterprise Value), subject to and in accordance with the “Revised Distribution Framework” against the

claims admitted by the claims management consultant  
as of October 15, 2018,

- (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 PSRDCL),

of PSRDCL shall stand extinguished, save and except the following:

- (I) the Restructured PSRDCL Debt which shall be payable in accordance with the terms of restructuring, as contemplated in terms of (i) above; and

(II) the PSRDCL Group Debt, which would have been acquired by the InvIT from the respective IL&FS Group Creditors of PSRDCL (in the manner as contemplated under the PSRDCL DoA).

- G. Permit dispensation of the requirement for IL&FS Financial Services Limited to seek approval of Small Industries Development Bank of India and IFCI Limited in terms of Section 186(5) of the Companies Act, 2013 for the purposes of acquiring the Units in respect of the Proposed Receivables Assignment in terms of the relevant Deeds of Assignment;
- H. Issue notice and provide a reasonable opportunity to be heard to:
- (i) the jurisdictional principal commissioner having jurisdiction over the purchaser (being the InvIT) and the company that is being transferred (i.e. the Phase 2 SPVs other than Thiruvananthapuram Road Development Company Limited) in relation to Notification No. 40 /2020/F. No.370149/143/2019-TPL (GSR 421(E)) dated June 29, 2020, issued by the

Central Board of Direct Taxes in connection with section 56(2)(x) of the Income-tax Act, 1961;

- (ii) the jurisdictional principal commissioner having jurisdiction over the seller (being ITNL and/or IL&FS, as applicable) and the company that is being transferred (i.e. the Phase 2 SPVs other than Thiruvananthapuram Road Development Company Limited) in relation to Notification No .42 /2020/F. No.370149/143/2019-TPL bearing GSR 423(E)) dated June 30, 2020, issued by the Central Board of Direct Taxes in connection with section 50CA of the Income-tax Act, 1961; and
  - (iii) to the jurisdictional principal commissioner having jurisdiction over the company (being the Phase 2 SPVs other than Thiruvananthapuram Road Development Company Limited) in connection with Section 79(2)(d) of the Income-tax Act, 1961;
- I. Declare that Roadstar Infra Investment Trust is exempt from the provisions of Section 56(2)(x) of the Income-tax Act, 1961 read with Rule 11UAC of the Income-tax Rules, 1962, and no tax liability shall arise from/out of the purchase of shares of the Phase 2

SPVs (namely Hazaribagh Ranchi Expressway Limited, Pune Sholapur road Development Company Limited, West Gujarat Expressway Limited, Jharkhand Infrastructure Implementation Company Limited) in terms of Notification No. 40/2020/F. No.370149/143/2019-TPL (GSR 421(E)) dated June 29, 2020, issued by the Central Board of Direct Taxes;

- J. Declare that the Sellers (being IL&FS Transportation Networks Limited and/or Infrastructure Leasing & Financial Services Limited, as applicable) are exempt from the provisions of Section 50CA of the Income-tax Act, 1961 read with Rule 11UAD of the Income-tax Rules, 1962 on the transfer of shares of the Phase 2 SPVs (namely Hazaribagh Ranchi Expressway Limited, Pune Sholapur road Development Company Limited, West Gujarat Expressway Limited, Jharkhand Infrastructure Implementation Company Limited) in terms of Notification No. 42/2020/F. No.370149/143/2019-TPL bearing GSR 423(E) dated June 30, 2020, issued by the Central Board of Direct Taxes;



K. Permit brought forward business losses of the Phase 2 SPVs (other than Thiruvananthapuram Road Development Company Limited) to be carried forward as per Section 79(2)(d) of the Income-tax Act, 1961 for setoff against future years, which would otherwise have lapsed in accordance with Section 79 of the Income-tax Act, 1961 owing to the change in shareholding of Phase 2 SPVs during the previous year.

L. For any further reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances.

4. It is submitted at the outset, that the prayers in respect of one of the entities, being West Gujarat Expressway Limited are not being pressed.

5. The brief background of the case is stated as under.

6. 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.

7. This Tribunal vide an Order dated 01.10.2018 superseded the

Board of Directors of the Applicant Company and constituted new Board to take over the affairs of the Company. Subsequently, more directors were appointed by this Tribunal. 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.

8. Pursuant to the Order dated 01.10.2018, the New Board submitted the 3<sup>rd</sup> progress report dated 17.12.2018 wherein they proposed the Resolution Framework and made certain recommendations for the Resolution processes of the Applicant and its group companies. The said Resolution framework sets forth different resolutions for different entities.
9. In addition to the asset resolution process, the New Board appointed a resolution consultant namely M/s. Alvarez & Marsal India Private Limited to carry out a liquidity assessment for the Applicant Group entities, which are categorised into 3 categories based on a '*12-month cash flow-based solvency test*' for a 12-month look forward period ("**Testing Period**") namely "Green", "Amber" and "Red" Entities. Those entities:
  - (i) where there was no payment default/ overdues subsisting currently and the cash flows to be generated by the entity in

the Testing Period from its operations and available cash balances were sufficient to meet all the payment obligations of that entity (both operational and financial, secured as well as unsecured) as and when such payment obligations fell due in the Testing Period; and which did not rely on other Applicant Group entities for any financial support to service their respective debt obligations (both financial and operational).

Such entities were classified as “Green” entities (within the Applicant Group); and

(ii) those entities within the Applicant Group, which did not meet the criteria for “Green” entities were further segregated as:

(a) **“Amber”** entities i.e., those which were not able to meet all their respective obligations (financial and operational) as and when they fell due in the Testing Period but could only meet: (A) operational payment obligations; and (B) payment obligations to senior secured financial creditors (i.e., those financial creditors which are first charge holders), falling due during the Testing Period; and

(b) **“Red”** entities i.e., those which could not meet their respective payment obligations towards even senior secured financial creditors as and when they fell due in the First Testing Period.

10. In accordance with its mandate, the New Board on December 14, 2018 commenced the resolution process by exploring the possible sale of various entities in the domestic roads vertical of the Applicant Group through a publicly solicited competitive price discovery process subject to authorisation from the board of directors of ITNL (**“ITNL Board”**). However, this process failed to yield any meaningful bids for a number of entities or in case of some entities, no bids at all, including the Phase 2 SPVs. It was then proposed by the New Board that an Infrastructure Investment Trust be set up as an alternative and more value accretive mode of resolution of such entities.
11. The Applicant in CA No. 296 of 2021 pleaded as below: -
  - i. This Hon’ble Tribunal by its order dated 15.09.2021 in Company Application No. 69 of 2021, this Hon’ble Tribunal has already granted reliefs in respect of *inter alia* the following:
    - (a) implementation of an infrastructure investment trust by the name of Roadstar Infra Investment Trust settled by its sponsor, Roadstar Infra Pvt. Ltd. (**“Roadstar”**), with trustee being Axis

Trustee Services Limited, investment manager being North Karnataka Expressway Limited (“**NKEL**”) and project manager being Elsamex Maintenance Services Limited (“**EMSL**”) in accordance with the InvIT Regulations;

- (b) transfer of shares held by IL&FS and/or ITNL (the “**Selling Shareholders**”) in 6 group companies to the InvIT and allotment of units in the InvIT as consideration for the same; and
- (c) assignment of receivables (whether in the form of financial debt, operational debt or any other debts) owed by the Phase 1 SPVs to other companies of the IL&FS Group (collectively, the “**IL&FS Group Creditors**”) to the InvIT and allotment of units in the InvIT as consideration for the same.

ii. The transaction which is the subject-matter of the Application is similar to the above mentioned transaction and involves inter alia the following:

- (a) The “**Proposed Shares Transfer**” i.e. transfer of shares held by the Selling Shareholders in the Phase 2 SPVs to the InvIT in exchange for allotment of units in the InvIT
- (b) The “**Proposed Receivables Assignment**” i.e. assignment of receivables (whether in the form of financial debt, operational

debt or any other debts) owed by the Phase 2 SPVs to IL&FS

Group Creditors (“**Group Debt**”) to the InvIT in exchange for

allotment of units in the InvIT.

(collectively the “**Phase 2 InvIT Proposal**”)

- iii. Shareholding of Selling Shareholders in the Phase 2 SPVs is as follows:

S. No.	Name of the Phase 2 SPV	Shareholding % held by Selling Shareholders	Continuing Shareholders (if any)
1.	HREL	99.99%	Punj Lloyd Ltd.
2.	PSRDCL	90.91%	East Nippon Expressway Co. Ltd.
3.	TRDCL	50%	Punj Lloyd Ltd.
4.	JIICL	100%	-

- iv. As part of the final resolution of ITNL, the Applicant and the relevant IL&FS Group Creditors who receive Units as part of the current proposal, ITNL, the Applicant and those IL&FS Group Creditors will distribute the Units of the InvIT received by them to their respective creditors in accordance with the Resolution Framework and their respective judicially approved resolution processes.
- v. Subsequently, the Units of the InvIT are proposed to be listed on recognized stock exchange(s) in compliance with the process set out in the InvIT Regulations. This would thereby provide for an exit option for lenders, depending on each such lender investor’s maturity/ exit preference and cash-flow requirements.
- vi. An independent valuer, namely RBSA Valuation Advisors LLP, has carried out a valuation of the Phase 2 SPVs in accordance with

the InvIT Regulations and submitted a valuation report dated September 28, 2021. For the purposes of the valuation, the Valuer relied on (a) traffic and techno economic viability estimates (as applicable) prepared by independent professional consultants appointed for undertaking such an assignment in relation to the proposed InvIT; and (b) certain management data and information.

- vii. According to the said valuation report, the ‘SPV Enterprise Value’ (fair market value) of each of the Phase 2 SPVs is as follows:

S. No.	Name of the Phase 2 SPV	SPV Enterprise Value (as on the Final Value Date) (in INR)
1.	PSRDCL	2007,45,72,983
2.	HREL	859,18,65,338
3.	TRDCL	119,48,28,109
4.	JIICL	793,92,75,468
<b>Total</b>		<b>3780,05,41,898</b>

- viii. The determination of ‘Outstanding Liabilities’ of Phase 2 SPVs depends on whether the Phase 2 SPV is a ‘Green’ entity, ‘Amber’ entity or ‘Red’ entity. For ‘Green’ entities, the ‘Outstanding Liabilities’ is determined on the basis of management accounts as on 21.08.2021. For ‘Amber’ and ‘Red’ entities, the ‘Outstanding Liabilities’ is equal to the claims admitted by the Claims Management Consultant as on 15.10.2018. The ‘Outstanding Liabilities’ for each of the Phase 2 SPVs is as follows:

S. No.	Name of Phase 2 SPV	Classification	Outstanding Liabilities*
2.	TRDCL	Amber	320.33

S. No.	Name of Phase 2 SPV	Classification	Outstanding Liabilities*
3.	PSRDCL	Red	2090.63
4.	JIICL	Green	586.03
5.	HREL	Amber	983.81

\* Amount in INR crores

- ix. Where the 'SPV Enterprise Value' of the relevant Phase 2 SPV is more than its 'Outstanding Liabilities', the Equity Purchase Consideration payable for the Proposed Share Transfer is equal to the differential amount, i.e. the amount remaining after all the Outstanding Liabilities are accounted for. If the 'SPV Enterprise Value' is less than the Outstanding Liabilities, then the Equity Purchase Consideration is NIL. On this basis, the Equity Purchase Consideration for each of the Phase 2 SPVs is as follows:

S. No.	Name of the Phase 2 SPV	SPV Enterprise Value*	Outstanding Liabilities*	Equity Purchase Consideration*
1.	TRDCL	119.48	320.33	NIL**
2.	PSRDCL	2007.46	2090.63	NIL**
3.	JIICL	793.93	586.03	207.89
4.	HREL	859.19	983.81	NIL**

\* Amount in INR crores

\*\* Nominal consideration of Re. 1/- will be paid

- x. As per the above table, Equity Purchase Consideration will be payable to the Selling Shareholders only in case of JIICL because for the other 4 (four) Phase 2 SPVs ("**Remaining SPVs**"), the SPV



Enterprise Value is less than the Outstanding Liabilities. Further, in case of JIICL, the Receivables Purchase Consideration is equal to the Group Debt and the entire debt owed to the External Creditors (“**External Debt**”) will either be discharged or carried forward and no portion of the debt owed to any creditor needs to be foregone.

xi. For the Remaining SPVs, since the SPV Enterprise Value is lesser than the Outstanding Liabilities, their respective creditors will have to forego certain amounts owed to them (the amount to be foregone is hereinafter referred to as “**Haircut**”). The manner in which the Outstanding Liabilities of the Remaining SPVs will be dealt with is as follows:

(a) For IL&FS Group Creditors, the Receivables Purchase Consideration payable for the Proposed Receivables Assignment in respect of the Remaining SPVs is lower than the Group Debt;

(b) For External Creditors who are financial creditors (secured and unsecured) (“**External Financial Creditors**”), the debt owed to the External Financial Creditors (“**External Financial Debt**”) is to be restructured and thereafter serviced by the relevant Remaining SPV in accordance with the restructured terms (“**Restructured SPV Debt**”)

(c) For External Creditors who are operational creditors (“**External Operational Creditors**”), the debt owed to the External Operational Creditors (“**External Operational Debt**”) will be discharged by paying a lower amount (“**Reduced Operational Debt**”).

xii. The Proposed Share Transfers will be undertaken in accordance

with the agreed form of the share purchase agreements (each a “**Final SPA**” and collectively, “**Final SPAs**”), to be entered into by and among each of the Phase 2 SPVs, the Applicant and/or ITNL (as applicable) and RIML. The Equity Purchase Consideration (expressed in INR) determined for each Phase 2 SPV set out above, will be subject to adjustments as contemplated in the Final SPA.

- xiii. The Receivables Purchase Consideration has been determined by calculating the amount that would have been received by each IL&FS Group Creditor of the Remaining SPVs as per the distribution framework approved by the Hon’ble NCLAT (“**Distribution Framework**”) by its order dated 12.03.2020 in the event a bid equal to the SPV Enterprise Value had been received for that Remaining SPV. In case of PSRDCL (where the InvIT has agreed to pay more than the SPV Enterprise Value the calculation has been done based on a bid equal to such higher consideration. As per this formula, the Receivables Purchase Consideration payable to the relevant IL&FS Group Creditors (all of whom are ‘Red’ entities) for the Proposed Receivables Assignment and the corresponding Haircut (if any) is as follows:

S. No.	IL&FS Group Creditor	Value of Receivables*	Receivables Purchase Consideration*	Haircut*	Haircut (~%)
<b>A. Hazaribagh Ranchi Expressway Limited (HREL)</b>					
1.	ITNL	380.16	255.43	124.73	33%
2.	IFIN	1.01	0.68	0.33	33%
3.	IL&FS	0.77	0.52	0.25	32%
<b>TOTAL FOR HREL</b>		<b>381.94</b>	<b>256.63</b>	<b>125.31</b>	<b>33%</b>

S. No.	IL&FS Group Creditor	Value of Receivables*	Receivables Purchase Consideration*	Haircut*	Haircut (~%)
<b>B. Pune Sholapur Road Development Company Limited (PSRDCL)</b>					
	ITNL	477.00	477.00	0	0
	IFIN	293.57	293.57	0	0
	IL&FS	289.99	289.99	0	0
	ICDI	87.98	87.98	0	0
	SCOL	56.86	56.86	0	0
	<b>TOTAL FOR PSRDCL</b>	<b>1,205.40</b>	<b>1,205.40</b>	<b>0</b>	<b>0</b>
<b>C. Thiruvananthapuram Road Development Company Limited (TRDCL)</b>					
	ITNL	139.55	40.02	99.53	71%
	IFIN	35.94	10.71	25.23	70%
	IL&FS	108.12	32.21	75.91	70%
	<b>TOTAL FOR TRDCL</b>	<b>283.61</b>	<b>82.94</b>	<b>200.67</b>	<b>71%</b>
<b>D. Jharkhand Infrastructure Implementation Company Limited (JIICL)</b>					
	ITNL	92.56	92.56	0	0
	EMSL	3.80	3.80	0	0
	<b>TOTAL FOR JIICL</b>	<b>96.36</b>	<b>96.36</b>	<b>0</b>	<b>0</b>
	<b>GRAND TOTAL</b>	<b>1,967.31</b>	<b>1,641.33</b>	<b>325.98</b>	<b>16.57 %</b>

*\*Amount in INR crores*

- xiv. The Proposed Receivables Assignments with respect to each Phase 2 SPV will be undertaken in accordance with the agreed form of the deeds of assignment to be entered into by and among the

relevant IL&FS Group Creditors of that Phase 2 SPV (as the assignor lenders), the relevant Phase 2 SPV, RIML (as the Investment Manager of the InvIT) and the Trustee.

- xv. One of the conditions precedent for the Proposed Share Transfer and the Proposed Receivables Assignment in respect of each Remaining SPV is the receipt of signed term sheets from each External Financial Creditor of that Remaining SPV. The Restructured SPV Debt for each Remaining SPV has been arrived at by calculating the amount that would have been received by each External Financial Creditor of the Remaining SPVs as per the Distribution Framework in the event a bid equal to the SPV Enterprise Value had been received for that Remaining SPV. In case of PSRDCL (where the InvIT has agreed to pay more than the SPV Enterprise Value, the calculation has been done based on a bid equal to such higher consideration. As per this formula, the Restructured SPV Debt in respect of each Remaining SPV is as follows:

S. No.	Remaining SPV	Restructured SPV Debt*
1.	TRDCL	36.02
2.	HREL	601.42
4.	PSRDCL	884.47
<b>TOTAL</b>		<b>1,521.91</b>

- xvi. The Reduced Operational Debt for each Remaining SPV has been arrived at by calculating the amount that would have been received by each External Operational Creditor of the Remaining SPVs as per the Distribution Framework in the event a bid equal to the SPV Enterprise Value had been received for that Remaining SPV. In case of PSRDCL (where the InvIT has agreed to pay more than

the SPV Enterprise Value), the calculation has been done based on a bid equal to such higher consideration. As per this formula, the Reduced Operational Debt in respect of each Remaining SPV is as follows:

S. No.	Remaining SPV	Reduced Operational Debt*
1.	TRDCL	16.04
2.	HREL	0
3.	PSRDCL	75.66
<b>TOTAL</b>		<b>91.7</b>

*\*Amount in INR lakhs*

- xvii. The Applicant has sought an exemption from seeking consent/approval of SIDBI/IFCI under Section 186(5) of the Companies Act, 2013. Similar dispensation was granted by this Hon'ble Tribunal by its order dated 15.09.2021.
- xviii. The Application has also sought certain tax reliefs as mentioned in the Application. Affidavits in Reply dated 23.02.2022 have been filed by the Principal Commissioner of Income Tax – 19 and Principal Commissioner of Income Tax – 6 stating that the conditions for the said exemptions are satisfied. Such similar reliefs were also granted by this Hon'ble Tribunal by its order dated 15.09.2021.
- xix. At the meeting of the ITNL CoC held on 11.06.2021, the proposal relating to Phase 2 SPV was presented to the ITNL CoC and the ITNL CoC was asked to vote on the resolutions regarding the Proposed Share Transfers and Proposed Receivables Assignments in relation to the Phase 2 SPVs. These resolutions were approved

by the ITNL CoC by 67.25% majority. The requisite majority for the approval of the resolution of a creditors' committee under the Resolution Framework is  $2/3^{\text{rd}}$  (i.e., 66.66%). Therefore, the aforesaid resolution has been approved by the ITNL CoC.

- xx. Further, the approval of the New Board and the board of directors of ITNL, for the Proposed Share Transfers and Proposed Receivables Assignments has been received on 21.08.2021 and 19.08.2021, respectively. Moreover, approval from the board of directors of each of the IL&FS Group Creditors (other than IL&FS and ITNL) for the Proposed Receivables Assignments has been received on 19.08.2021 (for SCOL – one of the IL&FS Group Creditors) and for the balance IL&FS Group Creditors on 20.08.2021.
- xxi. Also, approval of the board of directors of each of the Phase 2 SPVs (other than HREL), for the relevant Proposed Share Transfer and Proposed Receivables Assignment has been received on 20.08.2021 and for HREL has been received on 19.08.2021.
- xxii. Approval of the board of directors of RIML (previously NKEL), in its capacity as the Investment Manager of the InvIT, for the Proposed Share Transfers, the Proposed Receivables Assignments, the Agreed Form SPA and the Agreed Form Deed of Assignment have also been received on 19.08.2021. Additionally, the members of the Asset Sale Committee have also approved the agreed forms of the SPA and the Final Deed of Assignment.
- xxiii. Further to the approval of the New Board, the Applicant filed an application dated 02.09.2021 with Justice (Retd.) D.K. Jain *inter*

*alia* seeking approval for the Proposed Share Transfers and Proposed Receivables Assignments.

xxiv. By a letter dated 08.09.2021, Justice (Retd.) D.K. Jain has *inter alia* accorded his approval for the Proposed Share Transfers and Proposed Receivables Assignments subject to the approval of this Hon'ble Tribunal.

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

*“Since in the Memorandum it is stated that the instant proposal is identical to the Proposal for transfer of Phase 1 SPVs to the InviT, which proposal was approved by the undersigned vide letter dated 4th March 2021, the Proposal for transfer of the afore-noted Phase 2 SPVs to the InviT is also approved, subject, however, to the IL&FS taking the following steps (as outlined in the Resolution Framework), and undertaken in paragraph 9.2 of the Memorandum:*

*(a) obtaining approval of the Hon'ble NCLT, inter-alia, for the proposed share transfers and the proposed receivables assignments; and*

*(b) obtaining the approval of the Hon'ble NCLT for consummating the transactions contemplated in the relevant Agreed Form SPA and the Agreed Form Deed of Assignment respectively, as mentioned in paragraph 3.2 of the Memorandum.*

*The approval is granted in the above terms.”*

xxvi. Hence the Application.

xxvii. We have heard the Counsel for the Applicant as well as the Counsel for the Union of India and have perused the Application

along with annexures thereto including the approval of Hon'ble Justice D.K. Jain (Retd.) It is seen that the proposal as submitted above enables the final resolution of 4 entities in the Applicant Group which will enable Resolution of significant portion of debt of the IL&FS Group. Counsel for the Union of India has submitted that he has no objection to the prayers in the Application being allowed.

xxviii. In view of the above submissions and approval of Hon'ble Justice D.K. Jain (Retd.) as well as the no objection from the Union of India, the Proposed Share Transfers and Proposed Receivable Assignments are approved and the remaining prayers in the Application are also allowed in order to give effect to the same. It is made clear that the reliefs are being granted only in respect of HREL, TRDCL, PSRDCL and JIICL since the Applicant is not pressing for any reliefs in respect of WGEL.

12. With the aforesaid observation present **CA No. 296 of 2021 in CP (IB) No. 3638/MB/2018** stands disposed of as allowed in above terms without prejudice ofcourse to any proceedings that any investigative or any other authorities may take against the erstwhile directors of the companies that are subject matter of this application.

**Sd/-**

**SHYAM BABU GAUTAM**  
**Member (Technical)**

14.10.2022  
SAM

**Sd/-**

**JUSTICE P. N. DESHMUKH**  
**Member (Judicial)**



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

**CA No. 151/2022**

**In**

**C.P (IB) No. 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 } ...Applicant  
East, Mumbai.**

**Versus**

**Union of India, MCA, (through the }  
RD), having its office at 5<sup>th</sup> Floor, }  
Everest Building, 100 Marine Lines, } ...Respondent  
Mumbai - 400001.**

**Order Pronounced on:14.10.2022**

***Coram:***

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

***Appearances:***

For the Applicant : Mr. Ashish Kamat a/w Mr. Animesh  
Bisht, Ms. Drishti Das, Ms. Roma  
Bhojani and Ms. Rima Jain i/b Cyril  
Amarchand Mangaldas, Advocates  
For the Respondent : Mr. Sanjay Shorey – RD (North) and  
Mr. Aditya Sikka for the UoI

**ORDER**

**Per Coram:**

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

- A. Approve the sale of the shares and assets of Shendra Green Energy Limited held by IL&FS Energy Development Company Limited (jointly or individually) to Siddhi Fibers (and/ or its affiliates, nominees or assignees) free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) upon completion of the conditions contemplated in terms of the Share Purchase Agreement dated March 10, 2022 and receipt of the Purchase Consideration from Siddhi Fibers as contemplated under the Share Purchase Agreement dated March 10, 2022.
- B. Allow the Applicant, IL&FS Energy Development Company Limited, Shendra Green Energy Limited and Siddhi Fibers to implement and give effect to the terms of the Share Purchase Agreement dated March 10, 2022;
- C. Permit and Direct that the Purchase Consideration payable under the Share Purchase Agreement dated March 10, 2022 be paid by Siddhi Fibers in the following manner:
- a. INR 1/- be transferred to the bank accounts of shareholders of Shendra Green Energy Limited viz. IL&FS Energy Development Company Limited;

- b. Resolution Process Costs of INR 65,65,424 plus applicable taxes and any further amounts that may be incurred as Resolution Process Costs till the conclusion of the sale of SGEL in terms of the Share Purchase Agreement dated March 10, 2022 be transferred into the relevant/ designated bank and/ or escrow account to be intimated by the Applicant and/ or IL&FS Energy Development Company Limited;
- c. The balance Purchase Consideration (being the Purchase Consideration less the Resolution Process Costs) be transferred into the relevant/ designated bank and/ or escrow accounts of IL&FS Energy Development Company Limited.
- D. Permit/Direct that upon receipt of the Purchase Consideration from Siddhi Fibers:
- a. The Applicant/ IL&FS Energy Development Company Limited be permitted to utilize and pay an amount of INR 65,65,424 plus applicable taxes (as per Annexure 20 of the Application) and any further amounts that may be incurred as Resolution Process Costs till the conclusion of the sale of SGEL in terms of the Share Purchase Agreement dated March 10, 2022 towards Resolution

Process Costs that have accrued or been incurred in connection with the resolution of SGEL; and

b. The Balance Purchase Consideration (being the Purchase Consideration less Resolution Process Costs computed in terms of prayer D(a) above) be transferred/distributed to the creditors of Shendra Green Energy Limited illustratively as per Annexure 21 to the present Application after making the necessary adjustments required to reflect the terms of the Share Purchase Agreement dated March 10, 2022 and payment of Resolution Process Costs.

E. Direct that upon receipt of the Purchase Consideration from Siddhi Fibers, any and /or all encumbrances, liens, third party rights and similar covenants in, to or in respect of Shendra Green Energy Limited shall stand transferred to the Purchase Consideration paid by Siddhi Fibers.

F. Declare and direct that upon payment of the Purchase Consideration all:

a. 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, tax 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 or any awards, decrees or judgments have been passed, of or in respect of Shendra Green Energy Limited shall stand unconditionally and fully extinguished;

G. Direct that any amounts received from Siddhi Fibers Limited which have been deposited into the relevant/ designated bank and/or escrow accounts shall not be adjusted or set off against any other dues pertaining to any bank/financial institution and shall be strictly applied as per prayer D above and in accordance with the terms of the Share Purchase Agreement dated March 10, 2022;

H. For any further reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances.

**Facts and Submissions advanced are as follow:**

2. The present Application is filed in accordance with the Resolution

Framework and the Order and Judgment dated March 12, 2020 of the Hon'ble NCLAT in Company Appeal Nos. 346 and 347 of 2018 seeking the reliefs detailed hereinabove.

3. The Union of India (**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.
4. This Tribunal *vide* an Order dated October 1, 2018 superseded the Board of Directors of the Applicant Company and constituted new Board to take over the affairs of the Company (**New Board**). Subsequently, more directors were appointed by this Tribunal. The Hon'ble NCLAT *vide* an Order dated October 15, 2018 (**October 15 Order**) granted interim stay against any coercive action by the creditors against the Applicant and its group companies (**Applicant Group**). The October 15 Order has been confirmed by the Hon'ble NCLAT *vide* the March 12 Order.
5. Pursuant to the Order dated October 1, 2018, the New Board submitted the 3<sup>rd</sup> progress report dated December 17, 2018 wherein they proposed the Resolution Framework and made certain recommendations for the Resolution processes of the Applicant and its group companies. The said Resolution framework sets forth different resolutions for different entities.

6. Shendra Green Energy Limited (**SGEL**), a project special purpose vehicle (**SPV**) of IL&FS Energy Development Company Limited (**IEDCL**), which is in turn a subsidiary of the Applicant (*Reliefs @ Pgs. 32-35, Vol. I*)
  
7. SGEL has a 13 MW biomass-based power plant situated on certain parcels of non-contiguous land aggregating to 21.6 acres (approximately) at Shendra MIDC, Aurangabad District, Maharashtra that it occupies on leasehold basis from the Maharashtra Industrial Development Corporation (**MIDC**). The plant has been non-operational since 2015, because since the time of commissioning of the plant, SGEL faced operational and financial constraints *inter alia* due to shortage of fuel, frequent equipment breakdowns, fuel collection and storage issues, water shortage issues.
  
8. In line with the mandate granted to the New Board in terms of the various orders passed by this Hon'ble Tribunal, the resolution process in respect of SGEL was initiated by the New Board subsequent to the approval of the Asset Sale Committee (constituted by the New Board *inter alia* to finalise the resolution of SGEL) (**ASC**) on February 4, 2021, by exploring possible sale of the Applicant Group's entire indirect shareholding in SGEL

through a publicly solicited competitive price discovery process.

9. Bids were received from two bidders (i) MITCON Consultancy & Engineering Services Limited (**MITCON**) and (ii) Siddhi Fibers. Upon scrutiny, it was found that the bids submitted by both Siddhi Fibers and MITCON were defective. While Siddhi Fibres cured the defects identified in its bid, MITCON failed to cure the defects identified in its bid, and accordingly, was not taken forward. The financial proposal submitted by Siddhi Fibers offered an amount of INR 19,45,00,000/- (**Initial Bid**) for IEDCL's shareholding in SGEL. After subsequent discussions the bid was revised to INR 19,85,00,000/- (**Purchase Consideration**). The said Purchase Consideration excludes any liabilities to be borne by Siddhi Fibers towards gram panchayat taxes, MIDC transfer expenses, etc. [*Annexure 11 (October 6, 2021 letter) @ Pg. 527, Vol. III*].
10. In terms of the Resolution Framework, the total of claim in respect of SGEL verified and admitted by the Claims Management Consultant as of Cut-Off Date (October 15, 2018) is approx. INR 116.46 crores. Given that the Purchase Consideration is lesser than the admitted claims of SGEL, its creditors will have to forgo certain amounts in respect of the claims (approx. INR 96.62 crores), and it was categorised as a Category II Company in terms



of the Resolution Framework i.e., where the bid is less than all the admitted liabilities of the Sale Company. [*Para 10.1(d) of the Initial Resolution Framework (Annexure 3) @ Pgs. 150-151, Vol. I and Annexure 12 (CMC Report) @ 528-552, Vol. III of the Application*].

11. In the meanwhile, the Applicant engaged two independent valuers, being RBSA Valuation Advisors LLP (**RBSA**) and V S Jadon and Co. Valuers LLP (**VS Jadon**) (collectively, “**Valuers**”), for the purpose of determining the fair market value (**FMV**) and liquidation value (**LV**) of SGEL. The valuations provided by RBSA and Jadon (as on March 31, 2021) are as follows [*Annexure 8 (RBSA Valuation Report) @ pgs. 291-402, Vol. II & III and Annexure 9 (VS Jadon Valuation Report) @ pgs. 403-442, Vol. III*]

<b>S.N.</b>	<b>Valuer</b>	<b>FMV (INR)</b>	<b>LV (INR)</b>
1.	RBSA	26,33,00,000	19,54,00,000
2.	VS Jadon	22,89,30,000	16,91,49,829
	<b>Average</b>	<b>24,61,15,000</b>	<b>18,22,74,915</b>

From the above, it is seen that the Initial Bid of INR 19,45,00,000 amounts to 79% of the average FMV of SGEL and after negotiations, Siddhi Fibers offered the Purchase Consideration of INR 19,85,00,000, which is 81% of the average FMV of SGEL.

12. The value of IEDCL’s initial investment in SGEL as per the last audited balance sheet of IEDCL (for the F.Y. 2020-2021) is INR 24.4 crores (as at March 31, 2021) (now provisioned for

impairment) [*Balance Sheet @ pg. 453 and Notes to Financial Statements @ pg. 473 and 477 of Vol. III*].

13. The Purchase Consideration amounts to 81% of the average FMV of SGEL, and further specified that that the Purchase Consideration includes any lender objection in bid value and excludes liabilities to be borne by Siddhi Fibers towards Gram Panchayat taxes, MIDC transfer expenses, plant and tower line dismantling expenses and other miscellaneous expenses.
14. The Asset Sale Committee constituted by the New Board (**ASC**) at its meeting held on October 7, 2021, identified and approved the Purchase Consideration after considering certain additional expenses to be borne by the Bidder (as per the RFP) which were not factored in the valuation (mainly towards gram panchayat taxes and MIDC transfer expenses) approximately amounting to INR 4 crores to INR 6 crores in aggregate.
15. Furthermore, the New Board at its meeting held on October 9, 2021, identified and approved the Purchase Consideration and the valuations in relation to SGEL, and authorised the formation of the creditors' committee of creditors in respect of SGEL (**SGEL CoC**). Further, the Board of Directors of SGEL (**SGEL Board**) at its meeting dated October 25, 2021 approved the submission of the

Purchase Consideration and the valuations in relation to SGEL and the formation of the SGEL CoC, and authorised the ASC to seek requisite approvals for the Proposed Transaction. Additionally, the Board of Directors of IEDCL (**IEDCL Board**) at its meeting held on October 26, 2021, identified and approved the submission of the Purchase Consideration and the valuations in relation to SGEL, and authorised the formation of the SGEL CoC.

16. The SGEL CoC formed at the SGEL level (since it was categorized as a Category II Company) approved: (i) the terms of the sale and the Purchase Consideration offered by Siddhi (by 100% of the CoC voting share); and (ii) the change in control of SGEL (by 100% of the CoC voting share) of SGEL in favour of Siddhi Fibers [*Annexure 13 (CoC Voting Sheet) @ Pgs. 553-555, Vol. III*]. As per the Resolution Framework, a Bid is considered as approved if voted in favour by a majority of 2/3rd (i.e., 66 %) of the members (by value) of the relevant creditor's committee.
17. As per the Revised Distribution Framework, the Purchase Consideration amount is proposed to be distributed as follows:
  - (i) First, towards resolution process costs (**RPC**) incurred towards the two valuers, claims management consultants, FTA's etc. aggregating to INR 65,65,424 (excluding

applicable taxes) at present. Further RPCs may be incurred up to the conclusion of the sale process;

- (ii) Second, towards distribution of net sale proceeds up to average liquidation value to the creditors of SGEL in accordance with Section 53 of the Insolvency and Bankruptcy Code, 2016; and
- (iii) Third, remaining proceeds to be distributed pro-rata to each class of creditors of SGEL, adjusted for any recovery made by the relevant creditor on account of distribution as contemplated above.

[An illustrative distribution of such amounts to the creditors of SGEL is set out in *Annexure 21 (Illustrative Distribution) @ Pg. 689-692, Vol. IV*].

18. Each such payment to a creditor of SGEL shall be made to the relevant creditor of SGEL in respect of the admitted claim of that creditor existing at or relating to a period prior to the Cut-Off Date approved by the Hon'ble NCLAT in the March 12 Order (i.e., October 15, 2018), as admitted by the Claims Management Consultant and shall be adjusted for any amounts which have been set-off or appropriated by the relevant creditor in breach of the October 15 Order passed by the Hon'ble NCLAT.

19. The Resolution Framework including the Cut-Off Date and the Revised Distribution Framework has been approved by the Hon'ble NCLAT *vide* the March 12 Order.
20. Further to the approval of the New Board on November 13, 2021, the Applicant filed with Justice (Retd.) D.K. Jain (the retired judge of the Hon'ble Supreme Court, who was appointed by the Hon'ble NCLAT to oversee the resolution process of the Applicant Group), an application dated December 13, 2021 seeking approval of the sale of IEDCL's stake in SGEL to Siddhi Fibers [*Annexure 14 (Justice Jain Application) @ Pgs. 556-566, Vol. III of the Application*].
21. Justice (Retd.) D.K. Jain issued a letter dated January 25, 2022 approving the sale of IEDCL's shareholding in SGEL to Siddhi Fibers (**Justice Jain Approval**) subject to approval of this Hon'ble Tribunal and that of Maharashtra Industrial Development Corporation [*Para 23 and 24 of the Justice Jain Approval @ Pgs. 572-573, Vol IV*].
22. Subsequently, Siddhi Fibers, IEDCL, SGEL executed the share purchase agreement dated March 10, 2022 setting out terms of the sale of IEDCL's shareholding in SGEL to Siddhi Fibers [*Annexure 18 @ Pgs. 596-687, Vol IV*].
23. Further, in order to facilitate and implement resolution process of

SGEL, certain costs were incurred and certain professionals were consulted by IEDCL or on behalf of it, and these costs amount to INR 65,65,424 (plus applicable taxes) as on date, excluding applicable taxes, from the sale proceeds of IEDCL's shareholding in SGEL (if permitted by this Hon'ble Tribunal). These amounts that have been incurred are akin to the 'insolvency resolution process costs' as described under the IBC and are mandated to be paid ahead of any payments to any other stakeholders. The Applicant submits that similar services are also being availed from professionals by the Applicant Group Companies for the other sale/ resolution process which are currently underway for the Applicant Group and are a key ingredient for and to enable an orderly resolution of the Applicant Group. Under the circumstances, it is in the interests of justice that this Hon'ble Tribunal direct that the Resolution Process Costs be permitted to be paid in terms of the reliefs set out below.

24. The Applicant submits that the October 15 Order passed by the Hon'ble NCLAT has permitted the New Board to preserve value across the Applicant Group and work towards a resolution free from the threat of coercive creditor and other action. The October 15 Order has subsequently been confirmed by the Hon'ble NCLAT *vide* the March 12 Order. In fact, the March 12 Order

even approves the resolution of the Applicant Group (which includes SGEL) in the manner provided in the Resolution Framework. Given these protective and enabling orders, the New Board has worked towards resolution of SGEL, with due regard to the commercial feasibility of the proposed sale and value maximization to all stakeholders in a timely manner. The New Board has duly conducted the sale/ resolution process of SGEL in a fair and transparent manner with the objective to maximize value, following the procedure and the objectives contained in the Resolution Framework. It is submitted that in larger public interest and to enable a resolution of the Applicant Group in line with the Resolution Framework and the mandate given by this Hon'ble Tribunal to the New Board, it is in the interests of justice that this Hon'ble Tribunal approves the sale of the shareholding of SGEL held by IEDCL to Siddhi Fibers and passes necessary directions to facilitate/ consummate the said resolution on the terms contemplated under the SPA.

25. The Applicant also submits that the approval of the resolution process of SGEL constitute the resolution of an entity in the Applicant Group and will enable the New Board to take steps to finalise a resolution plan/ plans for the overall resolution of the Applicant Group and will be in larger public interest.

26. The Respondent/Petitioner in the affidavit in reply has submitted that since the captioned Application is a commercial matter pertaining to/towards the resolution of an entity in the Applicant Group and has been approved by Justice (Retd.) D. K. Jain in terms of the letter dated January 25, 2022, this Tribunal may consider the application on its merits and pass appropriate orders without prejudice to the Petitioner's and/or Serious Fraud Investigating Office's rights and/or contentions as indicated in the reply.

**Findings:**

27. We have considered the matter in hand in the background of facts and circumstances stated above; the proposed sale of IEDCL's shareholding in SGEL to Siddhi Fibers has also been approved by Justice (Retd.) 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.
28. It is also seen that SGEL has no operations since incorporation, due to operational and financial constraints *inter alia* due to shortage of fuel, frequent equipment breakdowns, fuel collection and storage issues, water shortage issues. Hence, the Purchase



Consideration offered by Siddhi Fibers for purchase of IEDCL's shareholding in SGEL, identified through a publicly solicited bid process attributes some value to the company, and is 81% of the average FMV of SGEL. This will aid in discharging the liabilities of SGEL in terms of the Revised Distribution Framework and will be in the interests of the relevant stakeholders of SGEL.

29. Thus, we approve the Proposed Transaction in the interest of justice.
30. We allow Prayers (A) to (G) of the Application.
31. With the aforesaid observation present **CA No. 151 of 2022 in CP (IB) No. 3638/MB/2018** stands disposed of as allowed in above terms without prejudice ofcourse to any proceedings that any investigative or any other authorities may take against the erstwhile directors of the companies that are subject matter of this application.

**Sd/-**

**SHYAM BABU GAUTAM**

**Member (Technical)**

14.10.2022

SAM

**Sd/-**

**JUSTICE P. N. DESHMUKH**

**Member (Judicial)**

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

**CA No. 145/2022  
IN  
C.P (IB) No. 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 } ...Applicant  
East, Mumbai.**

**Versus**

**Union of India, MCA, (through the }  
RD), having its office at 5<sup>th</sup> Floor, }  
Everest Building, 100 Marine Lines, } ...Respondent  
Mumbai - 400001.**

**Order Pronounced on:14.10.2022**

***Coram:***

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

***Appearances:***

For the Applicant : Mr. Ashish Kamat a/w Mr. Animesh  
Bisht, Ms. Drishti Das, Ms. Roma  
Bhojani and Ms. Rima Jain i/b Cyril  
Amarchand Mangaldas, Advocates  
For the Respondent : Mr. Sanjay Shorey – RD (North)  
and Mr. Aditya Sikka for the UoI

**ORDER**

***Per Coram:***

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

- A. Take on record and approve the proposal to initiate creditors voluntary liquidation process for ITNL International Pte Ltd. in accordance with the laws of Singapore;
- B. For any further reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances;

**Brief Facts and Submissions advanced are as follow:**

2. The present Application is filed pursuant to the Order dated February 11, 2019 (“**February 11 Order**”) passed by the Hon'ble NCLAT and the Order and Judgment dated March 12, 2020 of the Hon'ble NCLAT in Company Appeal Nos. 346 and 347 of 2018 seeking the reliefs detailed hereinabove *inter alia* to present the process for filing of Creditors Voluntary Liquidation (“**CVL**”) by ITNL International Pte Ltd. (“**I IPL**”) an ‘*Offshore IL&FS Entities*’ in the Applicant Group (*defined below*) in accordance with the laws prevalent in Singapore (“**Singapore Laws**”).
3. The Union of India (hereinafter referred to as UoI) had 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.
4. This Tribunal *vide* an Order dated October 1, 2018 superseded the

Board of Directors of the Applicant Company and constituted new Board to take over the affairs of the Company (“**New Board**”). Subsequently, more directors were appointed by this Tribunal. The Hon’ble NCLAT *vide* an Order dated October 15, 2018 (“**October 15 Order**”) granted interim stay against any coercive action by the creditors against the Applicant and its group companies (“**Applicant Group**”). The October 15 Order has been confirmed by the Hon’ble NCLAT *vide* the March 12 Order.

5. Pursuant to the Order dated October 1, 2018, the New Board submitted the 3<sup>rd</sup> progress report dated December 17, 2018 wherein they proposed the Resolution Framework and made certain recommendations for the Resolution processes of the Applicant and its group companies. The said Resolution framework sets forth different resolutions for different entities.
6. The Resolution Framework *inter alia* sets forth that given the position of and challenges in the Applicant 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 Applicant Group. The Initial Resolution

Framework in particular also *inter alia* sets forth that with regard to companies/ entities of the Applicant Group where there are no operations or the cashflows are insufficient to meet the current operating liabilities and statutory liabilities, the New Board may take steps for these companies to be wound up [*Para 8.3 of the Resolution Framework @Pg. 171, Vol. II of the Application*].

7. Following the October 15 Order, the Hon'ble NCLAT has also, from time to time, passed orders in the NCLAT Appeals to enable the resolution of the Applicant Group in various stages. In this regard, it is submitted that the Hon'ble NCLAT, on February 4, 2019 passed an order directing the Applicant/Petitioner to file an affidavit *inter alia* setting out the names of entities in the Applicant 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**").
8. In compliance with the February 4 Order, the Petitioner filed an affidavit dated February 11, 2019 placing on record of the Hon'ble NCLAT, the names of 169 Indian IL&FS Entities and 133 Offshore IL&FS Entities. Two such entities that had been set out in February 11 Affidavit are IIPL and Elsamex Vietnam. Pursuant thereto, by the February 11 Order, the Hon'ble NCLAT *inter alia*

excluded the Offshore IL&FS Entities from the purview of the October 15 Order and directed that the resolution of the Offshore IL&FS Group Entities may be taken up by the New Board under the supervision of Justice (Retd.) D.K. Jain, who was appointed by the Hon'ble NCLAT *vide* the February 4 Order and February 11 Order to oversee the resolution process of the Applicant Group. The Hon'ble NCLAT also directed that the actions taken for the resolution of the Offshore IL&FS Group Entities may be presented to this Hon'ble Tribunal. In the March 12 Order as well, the Hon'ble NCLAT has reiterated the February 11 Order.

9. IIPL is a wholly owned subsidiary of IL&FS Transportation Networks Limited (“ITNL”). IIPL was incorporated to carry out the overseas operations of ITNL. ITNL is in turn an Indian subsidiary of the Applicant.
10. IIPL was incorporated under Singapore Laws with an objective to make it the entity to hold all offshore investments of ITNL and act as a holding and operating company.
11. The Applicant has submitted that CVL has been initiated for IIPL for *inter alia* the following reasons:
  - (i) The offshore entities in which IIPL had stake, have been

resolved by being disposed of fully or substantially either through divestment, closure or liquidation [*Summarised in para 22 @ pg. 18-21, Vol. I*].

(ii) the monies available with IIPL is sufficient to meet all external borrowings but it is not sufficient to meet all liabilities including the related party payables and loans. Thus, IIPL would not be able to meet all its liabilities and would accordingly be considered insolvent under Singapore Laws.

(iii) Given the considerable amount of liabilities on the books of IIPL [*Summarised in paras 15-18 @ pgs. 14-16 of Vol. I*], it is evident that IIPL is insolvent and would not be able to repay its liabilities since most of its investments and loans/ advances have yielded little returns and may have to be written off.

(iv) The assets and liabilities of IIPL are as follows (As on March 31, 2021):

a) Assets: USD 141.95 million

b) Liabilities: USD 262.11 million

[*Annexure 7 (Unaudited Financials for FY 2020-2021) @ Pgs. 285-292; Balance Sheet @ Pg. 285, Vol II of the Application*]

12. Under the CVL process, IIPL is required to appoint a legal counsel in Singapore to advice and undertake the necessary process in a CVL including appointing of a provisional liquidator. Accordingly, M/s Shook Lin and Bok (“**SLB**”) was appointed as the legal counsel in Singapore, and advice was sought from SLB on the form of resolution that should be adopted by IIPL given its insolvent status, in compliance with Singapore Laws. SLB has opined that the best recourse available to IIPL in the aforesaid circumstances would be to submit itself to a CVL process under Singapore Laws and has *vide* email dated August 28, 2020 advised that the company may commence a CVL under Singapore Laws.
13. Further, Alvarez & Marsal, the Resolution Consultant by an email dated May 13, 2021 has recommended the for the initiation of CVL of IIPL under the laws of Singapore [*Annexure 25 (Resolution Consultant Recommendation) @ Pgs. 440-442, Vol. III of the Application*].
14. Subsequent, to the above recommendations, the board of directors of ITNL (“**ITNL Board**”) at its meeting held on December 1, 2021 approved the proposal for voluntary liquidation process of IIPL. Subsequently, the board of directors of IIPL have also granted



their approval for the said proposal *vide* resolution dated December 2, 2021.

15. Accordingly, the Asset Sale Committee (“**ASC**”) constituted by the New Board has approved the proposal for initiation of liquidation of IIPL by emails dated December 2, 2021.
16. Pursuant to the above approvals, the New Board has also approved the proposal to initiate voluntary liquidation process of IIPL *vide* resolution dated December 7, 2021
17. By a letter dated March 10, 2022, Justice (Retd.) D.K. Jain accorded his approval to initiate CVL of IIPL under the laws of Singapore [*Annexure 31 @ Pgs. 467-470, Vol. III of the Application, Operative portion: Para 11 @ Pgs. 469-470, Vol. III.*]
18. Thereafter, pursuant to the approval of the New Board and the ITNL Board for IIPL, the Applicant filed an application dated December 28, 2021 before Justice (Retd.) D.K. Jain seeking approval for the proposed filing of CVL in accordance with the laws of Singapore.
19. By a letter dated March 10, 2022 (“**Justice Jain Approval**”), Justice (Retd.) D.K. Jain has observed that “*IIPL is insolvent and would not be able to pay back its liabilities as most of its investments and*

*loans/ advances have turned bad and have to be written off and further, all the requisite approvals, including under the applicable Indian laws, are in place, the approval for filing requisite application(s) for initiating CVL proceedings for IIPL, in accordance with the prevalent laws of Singapore, as final resolution of IIPL, is granted.”* Accordingly, Justice (Retd.) D.K. Jain accorded his approval for initiating filing of CVL in accordance with the laws of Singapore for IIPL subject *inter alia* to the approval of this Hon’ble Tribunal.

20. The Applicant has submitted that the resolution of IIPL by the aforesaid modes will directly result in reduction of liabilities, which would enable an effective resolution of the larger Applicant Group. In the circumstances, it is prayed that this Hon’ble Tribunal be pleased to grant its approval to the proposal for initiating CVL of IIPL under the laws of Singapore.
21. The Respondent/Petitioner in the affidavit in reply has submitted that since the captioned Application is a commercial matter pertaining to/towards the resolution of an entity in 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 without prejudice to the Petitioner’s and/or Serious Fraud Investigating Office’s rights and/or contentions as

indicated in the reply.

**Findings:**

22. We have considered the matter in hand in the background of facts and circumstances stated above; the proposed initiation of Creditors Voluntary Liquidation for ITNL International Pte. Ltd. has also been approved by Justice (Retd.) 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.
23. Moreover, we note that, (i) The offshore entities in which IIPL had stake, have been resolved by being disposed of fully or substantially either through divestment, closure or liquidation; (ii) Further, recovery of loans provided to subsidiaries is doubtful as most of the subsidiaries are under insolvency or have been closed; (iii) the monies available with IIPL is sufficient to meet all external borrowings but it is not sufficient to meet all liabilities including the related party payables and loans. Thus, IIPL would not be able to meet all its liabilities and would accordingly be considered insolvent under Singapore Laws; and (iv) Given the considerable

amount of liabilities on the books of IIPL, it is evident that IIPL is insolvent and would not be able to repay its liabilities since most of its investments and loans/ advances have yielded little returns and may have to be written off. Therefore, the resolution of IIPL by the aforesaid modes will directly result in reduction of liabilities, which would enable an effective resolution of the larger Applicant Group. Thus, we take on record and approve the proposed closure in the interest of justice.

24. We allow Prayer (A) of the Application.
25. With the aforesaid observation present **CA No. 145 of 2022 in CP (IB) No. 3638/MB/2018** stands disposed of as allowed in above terms without prejudice ofcourse to any proceedings that any investigative or any other authorities may take against the erstwhile directors of the companies that are subject matter of this application.

**Sd/-**

**SHYAM BABU GAUTAM**  
**Member (Technical)**  
14.10.2022  
SAM

**Sd/-**

**JUSTICE P. N. DESHMUKH**  
**Member (Judicial)**

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

**CA No. 146/2022**

**IN**

**C.P (IB) No. 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 } ...Applicant  
East, Mumbai.**

**Versus**

**Union of India, MCA, (through the }  
RD), having its office at 5<sup>th</sup> Floor, }  
Everest Building, 100 Marine Lines, } ...Respondent  
Mumbai - 400001.**

**Order Pronounced on:14.10.2022**

***Coram:***

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

***Appearances:***

For the Applicant : Mr. Ashish Kamat a/w Mr.  
Animesh Bisht, Ms. Drishti Das, Ms.  
Roma Bhojani and Ms. Rima Jain  
i/b Cyril Amarchand Mangaldas,  
Advocates  
For the Respondent : Mr. Sanjay Shorey – RD (North) and  
Mr. Aditya Sikka for the UoI

**ORDER**

***Per Coram:***

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

- A. Take on record and approve the proposal for sale of 100% of the shareholding held by ITNL International Pte. Limited in Elsamex Vietnam Joint Stock Company (being 65% of the registered capital of Elsamex Vietnam Joint Stock Company) together with transfer of the loan exposure of ITNL International Pte. Limited in Elsamex Vietnam Joint Stock Company to the DKP Infra Pte. Ltd. in terms of the Share Purchase Agreement dated March 30, 2022 and the Novation Agreement dated March 30, 2022, and permit the implementation thereof; and
- B. For any further reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances;

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

2. The present Application is filed pursuant to the Order dated February 11, 2019 (**February 11 Order**) passed by the Hon'ble NCLAT and the Order and Judgment dated March 12, 2020 of the Hon'ble NCLAT in Company Appeal Nos. 346 and 347 of 2020 seeking the reliefs detailed hereinabove *inter alia* to present before this Hon'ble Tribunal, the process undertaken by ITNL International Pte. Ltd. (**IIPL**) for sale of its entire shareholding

(being 65% of the registered share capital) in Elsamex Vietnam JSC (**Elsamex Vietnam**) together with transfer of the loan exposure of IIPL aggregating to USD 320,000 in Elsamex Vietnam (**IIPL Debt**) to DKP Infra Pte. Ltd. (Purchaser) (the "**Proposed Transaction**")..:

3. The Union of India (hereinafter referred to as UoI) had 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.
4. This Tribunal *vide* an Order dated October 1, 2018 superseded the Board of Directors of the Applicant Company and constituted new Board to take over the affairs of the Company (**New Board**). Subsequently, more directors were appointed by this Tribunal. The Hon'ble NCLAT *vide* an Order dated October 15, 2018 (**October 15 Order**) granted interim stay against any coercive action by the creditors against the Applicant and its group companies (**Applicant Group**). The October 15 Order has been confirmed by the Hon'ble NCLAT *vide* the March 12 Order.
5. Pursuant to the Order dated October 1, 2018, the New Board submitted the 3<sup>rd</sup> progress report dated December 17, 2018

wherein they proposed the Resolution Framework and made certain recommendations for the Resolution processes of the Applicant and its group companies. The said Resolution framework sets forth different resolutions for different entities.

6. Following the October 15 Order, the Hon'ble NCLAT has also, from time to time, passed orders in the NCLAT Appeals to enable the resolution of the Applicant Group in various stages. In this regard, it is submitted that the Hon'ble NCLAT, on February 4, 2019 passed an order directing the Applicant/Petitioner to file an affidavit *inter alia* setting out the names of entities in the Applicant 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**).
7. In compliance with the February 4 Order, the Petitioner filed an affidavit dated February 11, 2019 placing on record of the Hon'ble NCLAT, the names of 169 Indian IL&FS Entities and 133 Offshore IL&FS Entities. In this regard, it is submitted two such entities that had been set out in February 11 Affidavit are I IPL and Elsamex Vietnam. Pursuant thereto, by the February 11 Order, the Hon'ble NCLAT *inter alia* excluded the Offshore IL&FS Entities from the purview of the October 15 Order and



directed that the resolution of the Offshore IL&FS Group Entities may be taken up by the New Board under the supervision of Justice (Retd.) D.K. Jain, who was appointed by the Hon'ble NCLAT *vide* the February 4 Order and February 11 Order to oversee the resolution process of the Applicant Group. The Hon'ble NCLAT also directed that the actions taken for the resolution of the Offshore IL&FS Group Entities may be presented to this Hon'ble Tribunal. In the March 12 Order as well, the Hon'ble NCLAT has reiterated the February 11 Order

8. Elsamex Vietnam is a part of the '*Offshore IL&FS Entities*' in the Applicant Group. The divestment of IIPL's shareholding and transfer of loan exposure in Elsamex Vietnam are proposed to be undertaken to facilitate resolution of Elsamex Vietnam, and has, in terms of the February 11 Order and the March 12 Order, been approved by the New Board (*defined below*) and Justice (Retd.) D.K. Jain.
9. IL&FS Transportation Networks Limited (**ITNL**) is an Indian subsidiary of the Applicant and a key holding company in the roads and transportation vertical of the Applicant Group. IIPL is a wholly owned subsidiary of ITNL, incorporated under the laws of Singapore. IIPL was incorporated to carry out the overseas

operations of ITNL.

10. Elsamex Vietnam is a joint stock company, incorporated in Vietnam as a joint venture amongst IIPL, Gold Wisdom Holdings Limited (**GWHL**) and Strategic Alliance Holdings, Incorporated (**SAHI**). Elsamex Vietnam is engaged in undertaking road maintenance works, especially for providing microsurfacing services. The current shareholding in Elsamex Vietnam is held by IIPL (65%), GWHL (25%) and SAHI (10%).
11. Pursuant to an unsolicited offer made in June 2020 by SAHI (an existing minority shareholder in Elsamex Vietnam) for the purchase of IIPL's shares in Elsamex Vietnam, the Applicant conducted a truncated public bid process to receive publicly solicited offers. Following such a public process, SAHI, which had submitted its bid as a part of the public process emerged as the highest bidder. Per the proposal, SAHI offered USD 160,001 for the Proposed Transaction as follows: USD 1 for IIPL's 65% equity stake in Elsamex Vietnam; and USD 160,000 for purchasing the IIPL Debt (collectively, "**Original Offer**") [*para 20 @ pg. 12, Vol. I, Annexure 11 @ pg. 353, Vol. III*].
12. The Asset Sale Committee (constituted by the New Board *inter alia* to finalise the resolution of the Applicant Group companies)

(ASC) directed the Applicant to negotiate with SAHI to increase the offer. Pursuant to the negotiations, SAHI submitted two revised offers: (a) **Revised Offer 1**: of USD 260,001, which is subject to deduction of an amount equivalent to the monthly cash burn rate of Elsamex Vietnam or USD 15,000 per month, whichever is higher, starting from September 1, 2021 until the closing of the Proposed Transaction (**Revised Offer 1**); (b) **Revised Offer 2**: of USD 180,001, which is subject to the closing of the Proposed Transaction by February 15, 2022 (**Revised Offer 2**). The Estimated monthly cash burn rate of Elsamex Vietnam is USD 12,000. SAHI confirmed that the Original Offer would remain the base consideration but refused IIPL's offer for a fixed monthly cash burn rate of USD 12,000. [*See, para 28-29 @ pgs. 15-16, Vol. I, Annexure 16 Colly @ pgs. 421-424 , Vol III and Annexure 17 Colly @ pgs. 425-428, Vol III*].

13. In the meanwhile, in terms of the Resolution Framework, the New Board also appointed two registered valuers to undertake an exercise for determination of "Fair Market Value" (FMV) and "Liquidation Value" (LV) of Elsamex Vietnam, being (i) RNC Valuecon LLP (RNC) and (ii) Adroit Appraisers and Research Private Limited (Adroit):

14. The Valuers submitted their valuation reports dated July 28, 2021 (from RNC) and July 26, 2021 (from Adroit) setting out the FMV and LV of Elsamex Vietnam as of December 31, 2020 as follows (all amounts in USD mn) [Annexure 12 (Valuation report by RNC) @Pgs. 354-395, Vol. III; Annexure 13 (Valuation report by Adroit) @ Pgs. 396-416, Vol. III; Annexure 14 (Detailed computation of fair market value and liquidation value) @Pgs. 417-419, Vol. III].

<i>FMV</i>	<i>RNC</i>		<i>Adroit</i>		<i>Average</i>
Enterprise Value of EV	<b>24,860</b>	10,78,321			
External Liabilities of EV	13,305	5,77,106			
IPL Debt to EV		3,20,000		3,20,000	3,20,000
Equity Value of EV		1,81,215	<b>1,548</b>	67,129	
IPL's Equity Holding in EV	65%	65%	65%	65%	
IPL Equity Value		1,17,789		43,634	80,712
IPL Investment Value		<b>4,37,789</b>		<b>3,63,634</b>	<b>4,00,712</b>
<i>LV</i>	<i>RNC</i>		<i>Adroit</i>		<i>Average</i>
Enterprise Value of EV	<b>18,538</b>	8,04,112			
External Liabilities of EV	13,305	5,77,106			
IPL Debt to EV		3,20,000		3,20,000	3,20,000
Equity Value of EV		-92,994	<b>3,741</b>	-	1,62,277
IPL's Equity Holding in EV	65%	65%	65%	65%	
IPL Equity Value		-60,446		-	-82,963

<i>FMV</i>	<i>RNC</i>	<i>Adroit</i>	<i>Average</i>
I IPL Investment Value	2,59,554	2,14,520	2,37,037

(The exchange rate used for the aforementioned conversion was 1 USD = 23,054 VND (exchange rate as of April 30, 2021).)

15. As per the last audited balance sheet of IIPL (for the F.Y. ending March 31, 2020), the book value of its shareholding in Elsamex Vietnam was USD 325,000 as of March 31, 2020. For F.Y. ending March 31, 2021 (audit process ongoing), this investment has been fully impaired in the balance sheet [*para 26 @ pg. 14, Vol. I*].
16. In the meanwhile, the management and certain ex-employees of Elsamex Vietnam together with an unnamed financier on behalf of a consortium of M/s Dhanjibhai K. Patel, B K Das, Tuan Anh and Tan Dat Phat JSC (**Consortium**) offered to purchase IIPLs 65% equity stake and Debt for a total consideration of USD 250,001 as follows: (i) USD 1 for the 65% equity stake; and (ii) USD 250,000 for the IIPL Debt (**Unsolicited Bid**) [*See, para 30 @ pg. 16, Vol. I of the Application*].
17. In support of the Unsolicited Bid of USD 250,001 on behalf of the Consortium, a commitment letter by the financier, M/s. Dhanjibhai K. Patel for funding USD 250,001 on behalf of the

Consortium, the provisional balance sheet of M/s. Dhanjibhai K. Patel as on March 31, 2021 showing proof of funds (i.e. a net worth of INR 5.96 Crores (which is approximately USD 795,000 as on September 17, 2021, as confirmed by the Applicant), being greater than USD 250,000 which was the prescribed eligibility criteria for body corporates in the public bidding process for the Proposed Transaction), along with the relevant supporting documents were submitted, which upon scrutiny, were found to be in order as per the Applicant Group's resolution process requirements subject to certain clarification and confirmation to be sought from the Consortium, which was subsequently provided by the Consortium along with the necessary supporting documents on September 17, 2021.

18. Since the Unsolicited Bid was higher than the Revised SAHI Offer, the ASC decided to pursue further efforts with the Consortium and requested for certain supporting documents (proof of funds, provisional balance sheet, etc.) to evaluate the Consortium's eligibility in participating in the process, *mutatis mutandis* in terms of the Request For Proposal and all addenda thereto issued by the Applicant for the Proposed Transaction. The documents so submitted to the Applicant were found to be

in order. The Purchaser has also submitted on March 15, 2022 (i) a declaration, confirming that it is not debarred or restrained by any regulatory authority from making investment, in respect of its bid of USD 251,000; and (ii) net worth certificate, certified by a chartered accountant dated February 28, 2022 by way of a letter dated March 15, 2022 [*Annexure 27 (Assurance letter) @Pg. 591, Vol. IV*].

19. Elsamex Vietnam has two financial creditors: (i) IIPL; and (ii) MB Bank. R&T (the Singapore legal counsel) has confirmed *vide* e-mail dated May 11, 2021 that no consent/ approval of MB Bank is required, the other financial creditor of Elsamex Vietnam, apart from IIPL, for the Proposed Transaction [*para 27 @ pg. 15, Vol. I; Annexure 15 (Email dated May 11, 2021 from R&T) @Pg.420, Vol. III*].
20. The ASC recommended the Unsolicited Bid, which has been considered and approved by the IIPL Board, ITNL Board, the New Board and the management of Elsamex Vietnam [*paras 36-40 @ pgs. 19-20, Vol. I*].
21. The Purchaser has offered to pay a revised equity consideration of USD 1000, instead of USD 1 to avoid any regulatory issues on the nominal equity consideration by Vietnam authorities. Thus,

the revised offer from the Purchaser for the Proposed Transaction stands modified as follows: (a) USD 250,000 for purchase of the IIPL Debt; and (b) USD 1000 for purchase of IIPL's 65% equity stake in Elsamex Vietnam (i.e., an upward revision of USD 999 from the Unsolicited Bid, of USD 1), (the "**Final DKP Bid**") [*Annexure 24 (Email dated February 22, 2022) @Pg. 581, Vol. IV*].

22. Pursuant to the approval of the New Board on October 9, 2021, the Applicant submitted an application dated December 25, 2021 to Justice (Retd.) D.K. Jain seeking his approval for the Proposed Transaction.
23. By a letter dated January 31, 2022 (**Justice Jain Approval**), Justice (Retd.) D.K. Jain has accorded his approval for the sale of 100% of IIPL's shareholding in Elsamex Vietnam (being 65% of the registered capital of Elsamex Vietnam) along with transfer of the IIPL Debt as per the terms of the bid and financial proposal submitted by the Purchaser subject to obtaining required statutory approvals and presentation of the proposal before this Hon'ble Tribunal, on the grounds that, amongst others, the same is principally aligned with the "*Asset Level Resolution*" described in the Resolution Framework.
24. IIPL has issued a letter of intent dated February 24, 2022 which



was countersigned by the Purchaser on March 1, 2022. Elsamex

Vietnam, IIPL and the Purchaser have executed the Share Purchase Agreement on and the Novation Agreement on March 30, 2022.

25. The Purchaser *vide* its e-mail dated March 9, 2022 conveyed its inability to furnish the performance bank guarantee of USD 25,000 as per the RFP requirements, on account of certain regulatory constraints. In order to accommodate the request of the Purchaser and in the interest of early closure of the Proposed Transaction, on the basis of the approval of the ASC received on March 12, 2022, the Purchaser (through a Consortium member) submitted demand drafts dated March 15, 2022 for an amount aggregating to INR 19,25,000 issued by Bank of India in favour of ITNL (being equivalent to USD 25,000, at the prevailing USD: INR exchange rate on the date of issue of the demand draft), along with the assurance dated March 17, 2022 to renew the validity of the demand drafts on/ before the expiry of the current demand drafts, i.e. June 15, 2022, until the closure of the Proposed Transaction.
26. The Applicant has submitted that in terms of the February 11 Order after receiving approval of the New Board and Justice

(Retd.) D.K. Jain, the Applicant is required to present the resolution of an Offshore Entity to this Hon'ble Tribunal. Under the circumstances, the Applicant has filed the present Application to present before this Hon'ble Tribunal the proposal for sale of 100% of IIPL's shareholding in Elsamex Vietnam (being 65% of the registered capital of Elsamex Vietnam) together with transfer of the loan exposure of IIPL in Elsamex Vietnam, to the Purchaser.

27. The Applicant has submitted that the present application is made *bona fide* and in the interests of justice. The sale of 100% of IIPL's shareholding in Elsamex Vietnam (being 65% of the registered capital of Elsamex Vietnam) together with transfer of the loan exposure of IIPL in Elsamex Vietnam, to the Purchaser, the final resolution of Elsamex Vietnam would be complete, which will further pave the way for resolution of its holding company, i.e., IIPL, under applicable Singapore Laws, for which the Applicant has approached this Tribunal by way of a separate Application.
28. The Respondent/Petitioner in the affidavit in reply has submitted that since the captioned Application is a commercial matter pertaining to/towards the resolution of an entity in the Applicant Group and has been approved by Justice (Retd.) D. K. Jain in

terms of the letter dated January 25, 2022, this Tribunal may consider the application on its merits and pass appropriate orders without prejudice to the Petitioner's and/or Serious Fraud Investigating Office's rights and/or contentions as indicated in the reply.

**Findings:**

29. We have considered the matter in hand in the background of facts and circumstances stated above; the proposed sale of 100% of the shareholding held by ITNL in Elsamex Vietnam Joint Stock Company (being 65% of the registered capital of Elsamex Vietnam Joint Stock Company) together with transfer of the loan exposure of ITNL International Pte. Limited in Elsamex Vietnam Joint Stock Company to the DKP Infra Pte. Ltd. in terms of the Share Purchase Agreement dated March 30, 2022 and the Novation Agreement dated March 30, 2022. We find that the offer made by DKP Infra Pte. Ltd. is higher than that made by SAHI, received after negotiations and attempts at upward price revision. Hence, we are of the opinion that the Proposed Transaction deserves to be taken on record and approved.
30. The aforesaid has also been approved by Justice (Retd.) D.K. Jain former judge of the Hon'ble Supreme Court appointed by the

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

CA No. 146/2022 In C.P (IB) No. 3638/MB/2018

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 take on record and approve the Proposed Transaction in the interest of justice.

31. We allow Prayer (A) of the Application.
32. With the aforesaid observation present **CA No. 146 of 2022 in CP (IB) No. 3638/MB/2018** stands disposed of as allowed in above terms without prejudice ofcourse to any proceedings that any investigative or any other authorities may take against the erstwhile directors of the companies that are subject matter of this application.

**Sd/-**  
**SHYAM BABU GAUTAM**  
**Member (Technical)**  
14.10.2022  
SAM

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

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

**CA No. 299/2022**

**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 } ...Applicant  
East, Mumbai.**

**Versus**

**Union of India, MCA, (through the }  
RD), having its office at 5<sup>th</sup> Floor, }  
Everest Building, 100 Marine Lines, } ...Respondent  
Mumbai - 400001.**

**Order Pronounced on:14.10.2022**

***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 along with Mr. Kuber Dewan, Mr. Abhishek Tilak and Ms. Neeharika Agarwal, Advocates i/b DMD Advocates

For the Respondent : Mr. Sanjay Shorey – RD (North) and Mr. Aditya Sikka for the UoI

**ORDER**

**Per Coram:**

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

- A. Approval of one-time settlement proposal (“**OTS**”), as approved by Justice D.K. Jain (Retd.) between IL&FS Financial Services Limited (“**IFIN**”) and Siva Shelters and Constructions Private Limited (“**SSCL**”) and permit the parties to execute necessary documents to give effect to the SSCL OTS Proposal;
- B. Direct that the amounts received by IL&FS Financial Services Limited from SSCL pursuant to the SSCL OTS Proposal be paid into a designated bank account to be intimated by the Applicant and/ or IL&FS Financial Services Limited and be maintained as fixed deposits and shall not be adjusted or set off against against any dues pertaining to any bank and/or financial institution;
- C. Direct that the distribution of the one-time settlement amounts received by IL&FS Financial Services Limited from SSCL or part thereof or withdrawal of any other amounts from the designated bank account be subject to further orders of this Hon’ble Tribunal.

**Facts and Submissions advanced are as follows:**

2. The present Application is filed in accordance with the Order and Judgment dated 12 March 2020 of the Hon’ble NCLAT in the Company Appeal Nos. 346 and 347 of 2020 seeking the reliefs detailed hereinabove. (Annexure 1 at pages 44 – 144)
3. SSCL, a group company of Chennai based Siva Group, engaged in real estate development, was exploring to undertake affordable housing projects across the country and was finalizing its plans for

its projects at Hyderabad and Chennai respectively.

4. In February 2018, IFIN sanctioned a loan of INR 175,00,00,000/- (Rupees One Hundred and Seventy Five Crores) (“**Term Loan**”) to SSCL in terms of the loan agreement dated 21 February 2018 executed between SSCL and IFIN (“**Loan Agreement**”), which Term Loan was to be utilized for the following: (i) settlement of dues towards inter alia the refinancing of Siva group dues with IFCI Ltd (“**IFCI**”) (ii) purchase of development rights/land parcels at Hyderabad from Hill County Properties Limited (“**HCPL**”); (iii) development of plots at 17.48 acres of land parcel owned by Mr Vallal R.C.K in Chennai; (iv) project development expenses; and (v) working capital requirement (Annexure 6 at pages 249 – 288).
5. Out of the sanctioned limit of INR 175 Crores, the Term Loan to an extent of INR 50 crores came to be disbursed by IFIN, which was secured by way of an exclusive registered mortgage over approximately 17 acres of land parcels at Chennai (valued around INR 150 crores as per CBRE report of December 2017) (“**Mortgaged Property/ Secured Asset**”), since Siva Group could not purchase the land parcel(s) at Hyderabad. This loan was classified as an NPA on 30 May 2019 and has been currently classified as a loss asset in Applicant’s books of accounts.

6. The Applicant, as per Clause No. 16 of its offer letter, had a put option on SSCL, which was required to be paid in full or part (“**Put Option Right**”) at the end of every 12 months from the date of first disbursement (“**Put Option Date**”), which came to be exercised by the Applicant in February 2019.
7. Thereafter, the Applicant initiated action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act”) and issued the 13 (2) notice (“Notice”) to the Borrower on 16 July 2019 for taking possession of the Secured Asset. As per applicable law, possession can only be taken by the Authorized Officer after 60 days from the date of issuance of the Notice i.e. on and after 17 September 2019.
8. In the interim, on 28 August 2019, the Applicant received Provisional Attachment Order passed by Enforcement Directorate (“ED”) wherein the Secured Asset amongst other properties of Siva Group came to be attached basis complaint by ED under the Prevention of Money Laundering Act, 2002 (“PMLA”) with a direction that the Secured Asset was not permitted to be transferred, disposed off, alienated or parted with or otherwise dealt in any manner without prior permission of the designated investigating



officer. The PAO was confirmed by Adjudicating Authority by order dated 07 February 2020 under PMLA as Final Order (“FO”). The Applicant filed an appeal before the Appellate Authority under PMLA challenging the FO, which is pending adjudication.

9. In the interregnum, the Applicant initiated process of filing a summary suit against SSCL and its Guarantor, and Mortgagor before the Hon’ble High Court of Delhi. Accordingly, a pre-institution mediation application came to be filed before Delhi High Court Mediation Centre i.e Samadhan. During the first virtual hearing before the Mediator held on 08 September 2021, SSCL indicated to arrive at a settlement through an offer of one-time settlement proposal.
10. Accordingly, SSCL submitted a Settlement Proposal dated 10 September 2021 to the Hon’ble Delhi High Court (“**SSCL OTS Proposal**”), in terms of which SSCL has offered to pay to the Applicant an amount of INR 69.94 crores against the outstanding receivables of INR 76.86 crores (as on 8 September 2021), and has requested for waiver of the balance amount of INR.6.92 Crores. (Annexure 7 at pages 289 – 293)
11. The SSCL OTS Proposal came to approved by the board of directors

of the Applicant on 23 September 2021 (Annexure 9 at pages 311 – 319) and by the Board of Directors of IL&FS on 5 October 2021 (Annexure 10 at pages 320 – 321)

12. Thereafter, SSCL by its letter dated 11 October 2021 (Annexure 11 at pages 322 – 326) accepted the conditions precedent stated in Applicant's letter dated 07 October 2021 (Annexure 12 at pages 327 – 328).
13. The Applicant submits that the rationale for the SSCL OTS Proposal is under:
  - a. SSCL offered to pay INR 69.94 Crores out of total dues of INR 76.86 Crores, representing 91% of the total outstanding and sought waiver of INR 6.92 Crores representing delayed payment interest and additional Interest for Document / Security imperfection.
  - b. SSCL offered to pay normal interest at existing rate of 14% p.a. until all dues are fully cleared under the Settlement Agreement and pay penal interest of 2% p.a. until the date of Settlement.
  - c. SSCL offered offered to pay 20% of the Settlement Amount immediately on signing of the Settlement Agreement and to pay the balance 80% of the Settlement Amount before 31 March 2022
  - d. The Settlement proposed with SSCL will result in 91% recovery and waiver of only Rs. 6,92,00,000/- representing 9% of the total outstanding.

e. After careful evaluation, such OTS Proposal was considered to the better option since land parcel has been under the ED attachment order.

14. Subsequently, pursuant to application made by the Applicant (Annexure 13 at pages 329 – 344), Justice D.K. Jain, former judge of the Hon'ble Supreme Court vide letter dated 30 May 2022 granted his approval to SSCL OTS Proposal (Annexure 16 at pages 368 – 375)

**Findings:**

15. We have considered the matter in hand in the background of facts and circumstances stated above, the SSCL OTS Proposal has also been approved Justice (Retd.) 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 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.
16. With respect to prayer (B) and (C), we direct that the amounts received by the Applicant from SSCL be paid into designated bank account by Applicant Group and be maintained as fixed deposits and are not permitted to be adjusted and / set off against any dues

pertaining to any bank and / or financial institution.

17. With the aforesaid observation present **CA No. 299/2022** in **CP (IB) No. 3638/MB/2018** stands disposed of as allowed in above terms without prejudice ofcourse to any proceedings that any investigative or any other authorities may take against the erstwhile directors of the companies that are subject matter of this application.

**Sd/-**

**SHYAM BABU GAUTAM**  
**Member (Technical)**

14.10.2022  
SAM

**Sd/-**

**JUSTICE P. N. DESHMUKH**  
**Member (Judicial)**

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

**CA No. 283/2021**

**In**

**C.P (IB) No. 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 } ...Applicant  
East, Mumbai.**

**Versus**

**Union of India, MCA, (through the }  
RD), having its office at 5<sup>th</sup> Floor, }  
Everest Building, 100 Marine Lines, } ...Respondent  
Mumbai - 400001.**

**Order Pronounced on:14.10.2022**

***Coram:***

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

***Appearances:***

For the Applicant : Mr. Ashish Kamat a/w Mr. Animesh Bisht, Ms. Drishti Das, Ms. Roma Bhojani and Ms. Rima Jain i/b Cyril Amarchand Mangaldas, Advocates  
For the Respondent : Mr. Sanjay Shorey – RD (North) and Mr. Aditya Sikka for the UoI

**ORDER**

***Per Coram:***

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

- A. Take on record the proposal to initiate creditors voluntary liquidation process for ITNL Offshore Two Pte. Ltd. and ITNL Offshore Three Pte Ltd. in accordance with the laws of Singapore;
- B. Permit the initiation of creditors voluntary liquidation process for ITNL Offshore Two Pte. Ltd. and ITNL Offshore Three Pte Ltd. in accordance with the laws of Singapore;
- C. For any further reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances.

**Facts and Submissions advanced are as follows:**

2. The present Application is filed pursuant to the Order dated February 11, 2019 ("**February 11 Order**") passed by the Hon'ble NCLAT and the Order and Judgment dated March 12, 2020 of the Hon'ble NCLAT in Company Appeal Nos. 346 and 347 of 2018 seeking the reliefs detailed hereinabove *inter alia* to present the process for filing of Creditors Voluntary Liquidation ("**CVL**") by ITNL Offshore Two Pte Ltd. ("**IO2PL**") and ITNL Offshore Three Pte Ltd. ("**IO3PL**") both of which are '*Offshore IL&FS Entities*' in the Applicant Group (*defined below*) in accordance with the laws prevalent in Singapore ("**Singapore Laws**").
3. The Union of India (hereinafter referred to as UoI) had 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.

4. This Tribunal *vide* an Order dated October 1, 2018 superseded the Board of Directors of the Applicant Company and constituted new Board to take over the affairs of the Company (“**New Board**”). Subsequently, more directors were appointed by this Tribunal. The Hon’ble NCLAT *vide* an Order dated October 15, 2018 (“**October 15 Order**”) granted interim stay against any coercive action by the creditors against the Applicant and its group companies (“**Applicant Group**”). The October 15 Order has been confirmed by the Hon’ble NCLAT *vide* the March 12 Order.
5. Pursuant to the Order dated October 1, 2018, the New Board submitted the 3<sup>rd</sup> progress report dated December 17, 2018 wherein they proposed the Resolution Framework and made certain recommendations for the Resolution processes of the Applicant and its group companies. The said Resolution framework sets forth different resolutions for different entities.
6. The Resolution Framework *inter alia* sets forth that given the position of and challenges in the Applicant 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 Applicant Group. The Initial Resolution Framework in particular also *inter alia* sets forth that with regard to companies/ entities of the Applicant Group where there are no operations or the cashflows are insufficient to meet the current operating liabilities and statutory liabilities, the New Board may take steps for these companies to be wound up.

7. Following the October 15 Order, the Hon'ble NCLAT has also, from time to time, passed orders in the NCLAT Appeals to enable the resolution of the Applicant Group in various stages. In this regard, it is submitted that the Hon'ble NCLAT, on February 4, 2019 passed an order directing the Applicant/Petitioner to file an affidavit *inter alia* setting out the names of entities in the Applicant 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**").
8. In compliance with the February 4 Order, the Petitioner filed an affidavit dated February 11, 2019 placing on record of the Hon'ble NCLAT, the names of 169 Indian IL&FS Entities and 133 Offshore IL&FS Entities. Two such entities that had been set out



in February 11 Affidavit are IO2PL and IO3PL. Pursuant thereto, by the February 11 Order, the Hon'ble NCLAT *inter alia* excluded the Offshore IL&FS Entities from the purview of the October 15 Order and directed that the resolution of the Offshore IL&FS Group Entities may be taken up by the New Board under the supervision of Justice (Retd.) D.K. Jain, who was appointed by the Hon'ble NCLAT *vide* the February 4 Order and February 11 Order to oversee the resolution process of the Applicant Group. The Hon'ble NCLAT also directed that the actions taken for the resolution of the Offshore IL&FS Group Entities may be presented to this Hon'ble Tribunal. In the March 12 Order as well, the Hon'ble NCLAT has reiterated the February 11 Order.

9. IO2PL and IO3PL are both wholly owned subsidiaries of IL&FS Transportation Networks Limited (“ITNL”). ITNL is in turn an Indian subsidiary of the Applicant.
10. IO2PL and IO3PL were incorporated under Singapore Laws with an objective to raise money from the offshore markets for funding the international business of ITNL. IO2PL and IO3PL achieved said funding through issuance of RMB bonds and availing terms loans against corporate guarantees issued by ITNL.
11. The Applicant has submitted that CVL has been initiated for

IO2PL for *inter alia* the following reasons:

- (i) The RMB bonds so issued by IO2Pl were subsequently redeemed on maturity in April 2018 and the said corporate guarantee issued by ITNL was released. IO2PL has not been involved in any material transactions since April 2018. It has some receivables and payables, although these are from related entities. [*Summarised in para 44 @ pg. 11, Vol. I*].
- (ii) IO2PL has a cash balance of USD 4,809 as of March 31, 2020. Out of this, a sum of USD 4,000 has been utilised for meeting operating expenses of the entity since April 1, 2020 and as on March 31, 2021, the cash balance has reduced to USD 809.24.

*Financial Position of IO2PL:*

- (a) The summarized financials of IO2PL for the last 2 years are in the table as provided below:

Particulars	FY 2019	FY2020
	Audited (USD)	Audited (USD)
Revenue**	120,653	120,984
Total Income	120,659	120,984
Other Expenses*	5,190,470	1,493,666
Finance Expenses	426,273	427,799
EBIDTA	-5,496,084	-1,800,481
EBIT	-5,496,084	-1,800,481
<b>PAT</b>	<b>-1,811,582</b>	<b>-5,694,599</b>

(b) The key Assets of IO2PL as on March 31, 2020 are as follows:

<b>Assets</b>	<b>As of 31<sup>st</sup> March 2019 (in USD)</b>	<b>As of 31<sup>st</sup> March 2020 (in USD)</b>
Loan to a fellow subsidiary *	4,694,508	4,694,508
Loan to a related entity (ITNL Elsamex JV Bure, Ethiopia)^	1,700,000	1,700,000
Interest Accrued on above loans*^	4,844,220	4,965,203
Reimbursement of Expenses from a fellow subsidiary – IO3PL	46,684	46,684
Advance Tax Paid	8,540	7,967
Cash and Bank balance	16,560	4,214
<b>Total Assets</b>	<b>6,616,004</b>	<b>11,418,576</b>

\* *ITNL Offshore Pte Ltd (“IOPL”) is based out of Singapore and a 100% subsidiary of ITNL. This company was taken into insolvency by its creditors and is under the control of the official liquidator appointed by a Singapore court. This loan is considered doubtful and provision has been made in the books for the principle & interest accrued. Provision made up to FY 2019 was USD 3,286,156 and in FY 2020 the provision was increased to USD 4,694,508 to cover the full amount of loan and accrued interest.*

\*^ *As Elsamex S.A. has been taken into insolvency by one of its creditors, the loan is considered doubtful and full provision has been made in the books for the principal and interest amount. This loan matured in March 2019, but no recovery has been made as yet.*

(c) The Liabilities of IO2PL as on March 31, 2020 are as follows:

<b>Liabilities</b>	<b>As of 31<sup>st</sup> March 2019 (in USD )</b>	<b>As of 31<sup>st</sup> March 2020 (in USD )</b>
Loan from a Fellow Subsidiary- I IPL*	7,013,183	7,013,183
Accrued interest on the above loan	1,006,244	1,434,044

<b>Liabilities</b>	<b>As of 31<sup>st</sup> March 2019 (in USD )</b>	<b>As of 31<sup>st</sup> March 2020 (in USD )</b>
Guarantee Commission Payable to ITNL	265,506	218,499
Payable to related party for expenses*	6,927	204,769
Other Payables	25,469	35,562
Withholding Tax Payable	473,252	473,252
<b>Total Liabilities</b>	<b>8,790,581</b>	<b>8,482,789</b>

\* This loan and payables are from IIPL. The loan was repayable on 6<sup>th</sup> October 2019

12. The Applicant has submitted that CVL has been initiated for IO3PL for *inter alia* the following reasons:

- (i) IO3PL raised term loans of approximately EUR 37 million from offshore banks against a corporate guarantee of ITNL. An amount of USD 41 million is currently outstanding with respect to these term loans. Additionally, ITNL has provided corporate guarantee to IO3PL for this EUR 37 million availed by it. These lenders were also provided security on the common pool of assets of ITNL which was offered as security to other secured lenders of ITNL. Against the corporate guarantee and security, the external lenders of IO3PL have filed claims on ITNL.
- (ii) The money raised by IO3PL was lent to Elsamex S.A., Spain (a 100% step down subsidiary of ITNL) as subordinate loans

to refinance a part of Elsamex S.A.'s external borrowings.

- (iii) Elsamex S.A. was taken into insolvency by its creditors in Spain. There is no likelihood of any recovery against this loan as it will be treated as a shareholder loan and subordinate to all other external lenders in accordance with applicable insolvency laws of Spain.
- (iv) Apart from the above borrowing and lending, there are no other businesses which IO3PL is engaged in.
- (v) IO3PL has balance funds of only USD 17,244 as of March 31, 2020. Out of which, since April 1, 2020 an amount of approximately USD 7315 has been utilized for operational purposes and the balance available as per books of accounts is USD 9,929 as of May 31, 2021.

Financial Position of IO3PL:

(a) The summarized financials of IO3PL for the last 2 years are set out in the table below:

Particulars	FY 2019	FY2020
	Audited (USD)	Audited (USD)
**Revenue	2,114,402	1,482,337
Other Income	274,622	927,341
Total Income	2,389,024	2,409,678
*Other Expenses	44,500,979	1,482,590

Particulars	FY 2019	FY2020
	Audited (USD)	Audited (USD)
Finance Expenses	2,251,798	1,454,597
Total Expenses	-46,752,777	-2,937,187
EBIDTA	-44,363,753	-527,509
Tax	78,567	73,069
PAT	-44,442,320	-600,578

\* Other Expenses incurred are mainly on account of allowance for doubtful debts amounting to USD 44,392,675 during FY 2019 and USD 1,410,220 during FY 2020

\*\* Revenue on account of interest from loan to fellow subsidiary Elsamex SA is also accrued income and will not be realised. Other Income is mainly on account of notional Foreign Exchange gain.

(b) The key assets of IO3PL as on March 31, 2020 are as follows:

Assets	As of 31 <sup>st</sup> March 2019 (in USD )	As of 31 <sup>st</sup> March 2020 (in USD )
Loan given to a Fellow Subsidiary – Elsamex S.A.*	41,563,319	40,910,900
Interest on Loan given to fellow subsidiary – Elsamex*	2,104,707	3,452,334
Guarantee Fees Receivable from fellow Subsidiary*	483,581	483,581
Interest Receivable*	80,397	102,289
Reimbursement from a fellow subsidiary *	160,671	160,671
Advance Tax Paid	71,623	9,609
Cash and Bank balance	17,533	17,244
<b>Total Assets</b>	<b>44,481,831</b>	<b>45,136,628</b>

\*The loan and receivables from fellow subsidiary Elsamex S.A., Spain along with the interest accrued has been provided for fully in the books of accounts. Elsamex SA is under mandatory insolvency initiated by its lenders.

(c) The Liabilities of IO3PL as on March 31, 2020 are as follows:

<b>Liabilities</b>	<b>As of 31st March 2019 (in USD )</b>	<b>As of 31st March 2020 (in USD )</b>
Loan from a Fellow Subsidiary – ITNL International Pte Ltd (“I IPL”)	1,901,590	1,872,211
Accrued interest on the above loan – I IPL*	194,160	309,124
Secured Loan from Banks	41,563,319	40,910,900
Accrued Interest on above Bank loans	461,810	1,785,530
Guarantee Commission Payable to ITNL (Including Withholding tax)	490,905	261,951
Payable to related party for expenses (I IPL & IO2PL)	61,873	61,873
Other Payables	17,072	27,414
Income Tax Payable	3,918	3,918
<b>Total Liabilities</b>	<b>44,694,647</b>	<b>45,232,921</b>

13. Accordingly, under the terms of the Resolution Framework, the Resolution Consultant on May 13, 2021 has recommended initiation of CVL of both entities under the laws of Singapore. [Annexure 12 (Resolution Consultant Recommendation) @ Pgs. 296-297, Vol. II]
14. Under the CVL process, IO2PL and IO3PL are required to appoint a legal counsel in Singapore to advice and undertake the necessary process in a CVL including appointing of a provisional liquidator. Accordingly, M/s Shook Lin and Bok (“SLB”) was

appointed as the legal counsel in Singapore, and advice was sought from SLB on the form of resolution that should be adopted by both entities given its insolvent status, in compliance with Singapore Laws. SLB has opined that the best recourse available to both entities in the aforesaid circumstances would be to submit itself to a CVL process under Singapore Laws and has *vide* email dated May 25, 2021 advised that the company may commence a CVL under Singapore Laws.

15. Subsequent, to the above recommendations, the board of directors of ITNL (“**ITNL Board**”) at its meeting held on May 26, 2021 approved the proposal for voluntary liquidation process of IO2PL and IO3PL. Subsequently, the board of directors of IO2PL (“**IO2PL Board**”) and the board of directors IO3PL (“**IO3PL Board**”) have also granted their approval for the said proposal *vide* resolution dated May 31, 2021.
16. Accordingly, the Asset Sale Committee (“**ASC**”) constituted by the New Board has approved the proposal for initiation of liquidation of both entities by emails dated May 25, 2021.
17. Pursuant to the above approvals, the New Board has also approved the proposal to initiate voluntary liquidation process of both entities *vide* resolution dated June 6, 2021.



18. Thereafter, pursuant to the approval of the New Board and the ITNL Board the IO2PL Board and the IO3PL Board, the Applicant filed an application dated July 5, 2021 before Justice (Retd.) D.K. Jain seeking approval for the proposed filing of CVL in accordance with the laws of Singapore.
19. By a letter dated August 9, 2021, Justice (Retd.) D.K. Jain accorded his approval to initiate CVL of IO2PL and IO3PL under the laws of Singapore [*Annexure 14 @ Pgs. 314-318, Vol. II of the Application*]
20. The Applicant has submitted that the resolution of both entities by the aforesaid modes will directly result in reduction of liabilities, which would enable an effective resolution of the larger Applicant Group. In the circumstances, it is prayed that this Hon'ble Tribunal be pleased to grant its approval to the proposal for initiating CVL of IO2PL and IO3PL under the laws of Singapore.
21. The Respondent/Petitioner in the affidavit in reply has submitted that since the captioned Application is a commercial matter pertaining to/towards the resolution of an entity in 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 without prejudice to the Petitioner's and/or

Serious Fraud Investigating Office's rights and/or contentions as indicated in the reply.

**Findings:**

22. We have considered the matter in hand in the background of facts and circumstances stated above; the proposed initiation of Creditors Voluntary Liquidation for ITNL Offshore Two Pte. Ltd. and ITNL Offshore Three Pte. Ltd. has also been approved by Justice (Retd.) 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. Moreover, we note that there (i) are no and/ or limited operations of; and (ii) no scope for monetisation of ITNL Offshore Two Pte. Ltd. and ITNL Offshore Three Pte. Ltd. Keeping these entities alive in the aforestated facts and circumstances would only result in adding to the number of Applicant Group entities, and accumulation of liabilities to keep the entities alive, which would not be just or equitable. Thus, we take on record and approve the proposed closures of ITNL Offshore Two Pte. Ltd. and ITNL Offshore Three Pte. Ltd. in the interest of justice.

23. We allow Prayers (A) to (B) of the Application without prejudice ofcourse to any proceedings that any investigative or any other authorities may take against the erstwhile directors of the companies that are subject matter of this application.
24. With the aforesaid observation present **CA No. 283 of 2021 in CP (IB) No. 3638/MB/2018** stands disposed of as allowed in above terms.

**Sd/-**

**SHYAM BABU GAUTAM**  
**Member (Technical)**

14.10.2022

SAM

**Sd/-**

**JUSTICE P. N. DESHMUKH**  
**Member (Judicial)**

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

**CA No. 272/2022**

**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 } ...Applicant  
East, Mumbai.**

**Versus**

**Union of India, MCA, (through the }  
RD), having its office at 5<sup>th</sup> Floor, }  
Everest Building, 100 Marine Lines, } ...Respondent  
Mumbai - 400001.**

**Order Pronounced on:14.10.2022**

***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 a/w Mr. Kuber  
Dewan, Mr. Abhishek Tilak and Ms.  
Neeharika Agarwal, Advocates i/b DMD  
Advocates

For the Respondent : Mr. Sanjay Shorey – RD (North) and Mr.  
Aditya Sikka for the UoI

**ORDER**

**Per Coram:**

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

- A. Approval of sale of 100% of issued, subscribed and paid up share capital held by IL&FS Energy Development Company Limited (“**IEDCL**”) (individually and along with its joint shareholders) in Ramagiri Renewable Energy Limited (“**RREL**”) and the Fixed Assets owned by IEDCL to H1 Bidder, i.e., Maithan Alloys Limited;
- B. Allow IEDCL, RREL and H1 Bidder, i.e., Maithan Alloys Limited, to implement and give effect to the terms of Share Purchase Agreement (“**SPA**”) dated 04 June 2022;
- C. Allow IEDCL and H1 Bidder, i.e., Maithan Alloys Limited to implement and give effect to the terms of the Asset Purchase Agreement (“**APA**”) dated 4 June 2022;
- D. Direct that the Applicant be permitted to utilize and pay amount of Rs. 96,81,064/- from the Purchase Consideration received from the Proposed Transaction towards Resolution Process costs that have accrued or been incurred or likely to accrue in connection with resolution of RREL and balance funds be permitted to be deposited into relevant bank / escrow account, as per details provided by IEDCL and that the same shall not be adjusted or set off against any other dues pertaining to any bank / financial institution.

**Facts and Submissions advanced are as follows:**

2. The present Application is filed in accordance with the Order and Judgment dated 12 March 2020 of the Hon’ble NCLAT in the Company Appeal Nos. 346 and 347 of 2020 seeking the reliefs detailed hereinabove. (Annexure 1 at pages 32 – 132)

3. IEDCL (individually and along with its joint shareholders) holds 100% (One Hundred percent) of the issued, subscribed and paid-up equity shares of RREL. The Applicant and the Applicant Group collectively hold 95.54% (Ninety Five point Five Four percent) of the total issued and paid up equity share capital of IEDCL. (Annexure 5 at pages 236 – 237)
4. RREL owns and operates with 26 (Twenty-Six) wind turbines having a capacity of 250 KW each situated on the 169.89 acres of contiguous land parcels owned by RREL at Ramagiri, District, Anantapur, Andhra Pradesh (“**RREL Land**”). The Fixed Assets owned by IEDCL are also situated at the RREL Land and are used for gathering meteorological and solar data.
5. In line with the Resolution Framework approved by the Hon’ble NCLAT *vide* its Order dated 12 March 2020 and the mandate granted to New Board of the Applicant in terms various orders passed by this Tribunal and Hon’ble NCLAT, the Asset Sale Committee (“**ASC**”) approved initiation of process for the sale of entire stake of IEDCL in RREL and the Fixed Assets *vide* emails dated 23 June 2020 (Annexure – 6 at page 238) and 7 June 2021 respectively. (Annexure – 6 at page 241)
6. The Applicant, thereafter, engaged LSI Financial Services Private Limited as the financial and transaction advisor (“**LSI**”), *vide* Mandate Letter dated 15 January 2021, for advising and undertaking, on behalf of the Applicant transactions involving the sale of or investments in one or more assets, portfolios, minority shareholding, companies or

businesses as may be identified in due course, with the success fee payable by IL&FS or any such entity of the IL&FS Group, as advised by IL&FS. RREL was included in the 'List of Identified Assets' in the Mandate Letter awarded to LSI. Appointment of LSI was accorded by the ASC *vide* email dated 31 December 2020 (Annexure – 8 at pages 249 – 270)

7. Separately, the Applicant also engaged two independent valuers, viz RBSA Valuation Advisors LLP (“**RBSA**”) and V S Jadon and Co. Valuers LLP (“**Jadon**”) (collectively “**Valuers**”), for the purpose of determining the fair market value and liquidation value of RREL. (Annexure 10 at pages 289 – 296)
8. The Applicant invited expression of interest, by advertisement in newspapers, from interested parties for the potential acquisition of 100% of issued, subscribed and paid up share capital held by IEDCL (individually and along with its joint shareholders) in RREL and the Fixed Assets (Proposed Transaction)
9. The Applicant, on the bid due date, i.e 19 November 2021, received 3 bids for the Proposed Transaction from Maithan Alloys Limited, Manikaran Power Limited and Laser Power and Infrastructure Private Limited respectively. (Annexure 21 at pages 614 – 617)
10. The ASC approved the bid value submitted by Maithan Alloys Limited (“**H1 Bidder**”) for the Proposed Transaction as the H1 bid (“**H1 Bid**”) *vide* email dated 14 December 2021 (Annexure 22 at pages 618 – 624) along with the earnest money in the form of a demand draft issued by State Bank of India dated 18 November 2021 in favour of IL&FS for

an amount of INR 10,00,000/- (Indian Rupees Ten Lakh only), valid until 19 November 2021.

11. Accordingly, the H1 Bid and the valuation reports submitted by the Valuers (Annexure 20 at pages 495 – 613) were placed before the New Board at the meeting convened on 24 December 2021 wherein the New Board approved the H1 Bid. (Annexure 24 at pages 626)
12. Subsequently, the H1 Bid and the valuation reports submitted by the Valuers were placed before the Board of Directors of IEDCL at its meeting convened on 10 January 2022 wherein the Board of Directors of IEDCL approved the H1 Bid (Annexure 25 at pages 627 – 628)
13. Further, the H1 Bid and the valuation reports submitted by the Valuers were placed before the Board of Directors of RREL at its meeting convened on 13 January 2022 wherein the Board of Directors of RREL approved the H1 Bid. (Annexure 26 at pages 629 – 630)
14. Accordingly, at the meeting of RREL Committee of Creditors held on 25 January 2022, the H1 Bid offered by H1 Bidder for the Proposed Transaction was approved by the financial creditors of RREL. (Annexure 28 at pages 641 – 645)
15. Thereafter, New Board of the Applicant at its meeting held on 3 February 2022 took note of the approval accorded by the RREL COC with respect to the H1 Bid and approved the H1 Bid received from the H1 Bidder for the Proposed Transaction, authorised and approved the submission of the H1 Bid to Justice (Retd.) Mr. D.K. Jain along with the proposal regarding the Proposed Transaction for consideration and



evaluation and authorized the ASC to seek requisite authority and other relevant approvals, including approval from this Hon'ble Tribunal. (Annexure 30 at pages 649 – 650)

16. Subsequently, pursuant to application made by the Applicant (Annexure 31 at pages 651 – 663), Justice D.K. Jain, former judge of the Hon'ble Supreme Court vide letter dated 13 April 2022 granted his approval to Proposed Transaction (Annexure 32 at pages 664 – 666)

**Findings:**

17. We have considered the matter in hand in the background of facts and circumstances stated above, the Proposed Transaction has also been approved Justice (Retd.) 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 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.
18. With respect to prayer (B), we allow IEDCL, RREL and H1 Bidder, i.e., Maithan Alloys Limited to implement and give effect to the terms of the SPA dated 4 June 2022.
19. With respect to prayer (C), we allow IEDCL and the H1 Bidder, i.e., Maithan Alloys Limited to implement and give effect to the terms of the APA dated 4 June 2022.
20. With respect to prayer (D), we direct that Rs. 96,81,064 received from the Purchase Consideration be utilized towards Resolution Process Costs and balance funds from the Purchase Consideration be deposited into bank / escrow account as per details provided by IEDCL and

accordingly, are not permitted to be adjusted or set off against any other dues pertaining to any bank / financial institution.

21. With the aforesaid observation present **CA No. 272 of 2022 in CP (IB) No. 3638/MB/C-I/2018** stands disposed of as allowed in above terms without prejudice ofcourse to any proceedings that any investigative or any other authorities may take against the erstwhile directors of the companies that are subject matter of this application.

**Sd/-**

**SHYAM BABU GAUTAM**

**Member (Technical)**

14.10.2022  
SAM

**Sd/-**

**JUSTICE P. N. DESHMUKH**

**Member (Judicial)**