

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

CA No. 515/MB/2022

In

C.P No. 3638/MB/2018

Under section 241-242, 242(4) of the Companies Act, 2013 r/w Rule 11 of NCLT Rules, 2016.

Filed by

**Infrastructure Leasing and Finance Services
Limited,**

...Applicant

Versus

Union of India

...Respondent

In the matter of

Union of India.

...Petitioner

Versus

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

... Respondent

Order Pronounced on: 08.02.2023

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, Advocate
For the Respondent : Mr. Aditya Sikka, Advocate

ORDER

Per Coram:

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

- A. Grant approval to initiate winding up of IL&FS Maritime International FZE (“**IMIF**”) an “Offshore IL&FS Entity” in the Applicant Group in accordance with laws of United Arabs Emirates (“**UAE**”).
- B. Pass any such other or further reliefs as this Tribunal deems fit.

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

2. The present Application is filed in accordance with:
 - i. The order dated 11 February 2019 passed by the Hon’ble NCLAT.
 - ii. An order and judgement dated March 12, 2020 (March 12 Order) passed by the Hon'ble NCLAT in Company Appeal Nos. 346 and 347 of 2020 inter alia approving the

procedure(s) for the resolution of the Applicant Group.

3. On 1 October 2018 this Tribunal suspended the erstwhile Board of the Applicant and appointed a new board comprising of six directors nominated by the Original Petitioner. Pursuant to appeals filed by the Applicant, the Hon'ble NCLAT vide Order dated 15 October 2018 inter alia stayed coercive creditor and other action against the Applicant Group in larger public interest.
4. At the outset, the Applicant has laid down the events which resulted in resolution of the Applicant group.
5. 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.
6. In furtherance of the Resolution of the Applicant, the Hon'ble NCLAT directed the Applicant to file an affidavit indicating the names of entities in the Applicant Group based in the territorial jurisdiction of India and entities incorporated in other countries. The Applicant vide affidavit dated 11 February 2019 placed on record the names of 169 Indian IL&FS entities and 133 offshore

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

7. It is submitted that IMIF is one such entity that had been set out in 11.02.2019 Affidavit.
8. IMIF was incorporated in the Fujairah Free Zone on 06.11.2012 with objective of providing project development and advisory including marketing and management consultancy. At present, IMIF has no employees and no further operational or revenue generating activities is expected. IMIF had advanced an unsecured loan of AED 26.70 million to IL&FS Prime Terminals FZC (**"IPTF"**) during 2017 and 2018 and received AED 9.23 million as full and final settlement towards the said loan.
9. Further, IMIF availed unsecured loan totalling to AED 18.35 million from IL&FS Maritime Infrastructure Company Ltd. (**"IMICL"**) for three years from 2015 to 2018. As of 31.03.2022

an amount of AED 15.97 million remains to be unpaid by IMIF towards principle and accrued interest on it. Also, an amount of around AED 30,000 is to be incurred towards audit fees for completing the winding up process.

10. IMIF is a wholly owned subsidiary of IL&FS Maritime Infrastructure Company Ltd (“**IMICL**”), is an Offshore Group Entity of IL&FS incorporate in Dubai, UAE. Considering the fact that IPTF project was cancelled in October 2018 pursuant to letter dated 25.10.2018 and since there is no business for running IMIF. IPTF project was the only source of income. It currently has no employees hence keeping the entity alive will incur additional liabilities.
11. In the above backdrop, IMIF in its board resolution dated 25.05.2022 has provided its consent for winding up of IMIF. Thereafter, the board of IMICL vide its board resolution dated 25.05.2022 has provided its consent for the winding up of IMIF before the competent authorities in UAE.
12. The new board has approved the winding up process of IMIF vide board resolution dated 28.05.2022. Copy of the same is placed as Annexure 17.
13. Pursuant to the above, an application dated 22.06.2022 for

approval of winding up of IMIF in accordance with laws of UAE was made before Hon'ble Justice (Retd.) D.K. Jain. Vide letter dated 29.06.2022 Justice (Retd.) D.K. Jain granted his approval. A copy of the Justice Jain approval is placed as Annexure 19.

14. We have taken on record Affidavit-in-reply filed by the Union of India. Upon perusal of the same it is observed no material objection is raised by the UOI, therefore the matter is taken on merits.

Findings:

15. We have considered the matter in hand in the background of facts and circumstances stated above; the winding up process of IMIF has also been approved by Justice D.K. Jain former judge of the Hon'ble Supreme Court appointed by the Hon'ble NCLAT to oversee the resolution process of the Applicant Group and to enable a resolution of the Applicant Group in line with the Resolution Framework; and the mandate given by this Tribunal to the New Board.
16. Moreover, it is observed that IMIF has no employees and no further business activities are envisaged. Hence keeping the entity alive will not serve any purpose.
17. Thus, we **approve** the proposal to initiate winding up process of

IL&FS Maritime International FZE in the interest of justice.

18. With the aforesaid observation present **CA No. 515 of 2022 In C.P No. 3638/MB/C-I/2018** stands disposed of as allowed in above terms.

Sd/-

SHYAM BABU GAUTAM

Member (Technical)

08.02.2023

Priyal

Sd/-

JUSTICE P. N. DESHMUKH

Member (Judicial)