

NATIONAL COMPANY LAW TRIBUNAL

COURT-I, MUMBAI BENCH

(Special Bench)

Item No. 7

IA 382/21 IN CP 3638/MB/2018

CORAM:

SH. H. V. SUBBA RAO

SH. SHYAM BABU GAUTAM

HON'BLE MEMBER (JUDICIAL)

HON'BLE MEMBER (TECHNICAL)

ORDER SHEET OF THE HEARING ON **24.04.2023**

NAME OF THE PARTIES: Union of India

V/s

Infrastructure Leasing & Financial Services Ltd & Ors

SECTION 242(4), 241-242 OF COMPANIES ACT, 2013

ORDER

Ms. Drishti Das, counsel for the Applicant is present through virtual hearing.

I.A. 382/21

Order pronounced in the open court vide separate order. In the result, the above

Interlocutory Application No. I.A. 382/21 is rejected.

Sd/-

**SHYAM BABU GAUTAM
MEMBER (TECHNICAL)**

Sd/-

**H. V. SUBBA RAO
MEMBER (JUDICIAL)**

Shubham

NATIONAL COMPANY LAW TRIBUNAL

COURT-I, MUMBAI BENCH

Item No. 10

IVN.P/3/2023 IVN.P/4/2023 CA 209/2021 CA 369/2020 IA 40/2023 IN
CP/3638(MB)2018

CORAM:

SH. H. V. SUBBA RAO

MS. ANU JAGMOHAN SINGH

HON'BLE MEMBER (JUDICIAL) HON'BLE MEMBER (TECHNICAL)

ORDER SHEET OF THE HEARING ON 24.04.2023

NAME OF THE PARTIES: Union of India

VS

Infrastructure Leasing and Financial Services Ltd. & Ors.

SECTION 241-242 OF COMPANIES ACT, 2013

ORDER

Mr. Aditya Sikka a/w Ms. Vasudha Vijaysheel, for Union of India and Mr. Shyam Kapadia a/w Ms. Bency Ramakrishnan and Ms. Vanitaa Bhatade i/b Menon & Mankava (For the Applicant in IA No. 40 of 2023) and Mr. Ashish Kamat Sr. Adv. a/w Mr. Animesh Bisht, Ms. Drishti Das and Ms. Roma Bhojani i/b Cyril Amarchand Mangaldas for IL&FS and Mr. Sunil N. Bravos Realty Ltd, for the Applicant in C.A.369/2020 are present through virtual hearing.

I.A. 40/2023

The above Interlocutory Application is filed by Applicant for early listing of CA 209/2021 and CA 369/2020.

Since the CA 209/2021 and CA 369/2020 is already listed on today's board, hence the above application **is disposed of**.

It is hereby clarified that the Auction Purchaser, Premier International Convention Centre & Hotels arguments will also be heard on the next date.

CA 369/2020

Counsel appearing for the Applicant requested for short adjournment.

Request is considered.

IVN.P/3/2023 & IVN.P/4/2023

Hard copy of the petition is not available with this Bench. The Petitioner, Registry and the Court Officer shall ensure the availability of hard copy of this petition before this Bench on the next date of hearing.

List all the pending application on **28.04.2023 high on board**.

Sd/-
ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

Sd/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)

Shubham

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

CA No. 382/MB/2021

In

CA No. 16/MB/2021

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

State Bank of India

...Applicant

Versus

Union of India

...Respondent

In the matter of

**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: 24.04.2023

Coram:

Hon'ble Member (Judicial) : Mr. H.V. Subba Rao
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. Impleading the Applicant in the Company Application No. 16 of 2021 filed in Company Petition No. 3638 of 2018.
 - B. Direction for a speedy and time bound resolution of Chennai Nashri Tunnelway Limited (“CNTL”) or in the alternative the Applicant seeks to that senior secured creditors be allowed to debit interest, principal and other dues of CNTL despite Moratorium Order in an event of further delay in implementation of a Resolution Plan for CNTL.

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

2. At this juncture, the Applicant submits that it is only pressing for 2nd part of prayer clause (b).
3. It is submitted that consortium of banks led by SBI had granted various credit facilities to CNTL, being a group company of IL&FS. The State Bank of India i.e. the Applicant herein is the lead banker in the consortium of lenders and debt due and payable to SBI alone amounts to Rs. 939.53 Crore as on 15.10.2018.
4. It is submitted that one M/s Cube Highways and Infrastructure Private Limited, (**“Cube Highways” for short**) a company incorporated under the laws of Singapore submitted H1 bid to the tune of Rs.3929.70 Crore in respect of resolution of CNTL. Cube Highways/bidder expressed its willingness to improve its bid and offered a revised sale consideration of Rs.4227-4427 Crore.
5. The Creditors Committee of CNTL approved the bid of H1 bidder on 16.06.2020. Hon’ble Justice (Retd.) D.K. Jain approved the same on 03.12.2020. The IL&FS in January 2021 filed an application before this Tribunal for approval of the plan submitted

by Cube Highways. The said plan is pending approval.

6. It is submitted that pending approval Cube Highways has moved before the Hon'ble High Court of Bombay seeking remedy on account of expiry of long stop date under the Share Purchase Agreement dated 04.12.2020.
7. Meanwhile, the IL&FS Board informed the Applicant that the revised fair market value obtained for CNTL is Rs.5256.88 Crore as per the valuation Report dated 31.03.2021 submitted by RBSA Valuation Advisors.
8. In the above backdrop, the IL&FS board has proposed the transfer of CNTL under Infrastructure Investment Trust (InvIT) structure which payment shall be made to the lenders in stages.
9. It is urged that due to the inordinate delay no recovery has been made in the Account since April 2020.
10. It is submitted that an amount of Rs. 1800 crores are lying in the escrow account of CNTL. It is in no one's interest to keep the amount in the escrow account and not thereby permit the Secured Lenders to appropriate the same towards their dues. An amount of Rs. 3142 crores of Secured Financial Creditor are due and payable.

11. The fact that CNTL is an Amber Group of Companies who is capable to meet their payment obligations towards Senior Secured Financial Lenders and operational obligations, cannot be ignored. Such debit/appropriation of the funds lying in the escrow account will not hamper the maintenance of CNTL as a going concern.

Submissions advanced by the Learned Counsel appearing for IL&FS.

12. It is submitted that a consortium of banks led by the Applicant granted various credit facilities to CNTL. After the intervention of Union of India and the new Board being appointed, bids were invited and one binding bid of M/s Cube Highways was received offering a consideration of Rs.3906.70 Crores. Since CNTL was categorized as a Category II company, a creditors committee of CNTL approved the bid by 94.86% of the voting share and Justice D.K.Jain issued the approval letter dated 18.11.2020. Subsequently, the Respondent filed a Company Application bearing Number 16 of 2021.
13. It is submitted that since the share purchase agreement lapsed, the updated valuation of CNTL arrived at by an independent valuation firm was Rs.5257 Crore, which would be available if CNTL is transferred to an InvIT. The CNTL CoC including the

Applicant approved the proposal of restructuring the debt of CNTL by a majority of 69.59% by value, subject to and conditional upon the entire shareholding in CNTL held by IL&FS Being transferred to the InvIT.

14. It is submitted that this Tribunal cannot grant reliefs in modification of Moratorium Orders dated 15.10.2018 and 12.03.2020. The Hon'ble NCLAT vide Order dated 15.10.2018 has granted stay on coercive creditor action.
15. Admittedly, CNTL has been classified as an "Amber" entity in the IL&FS Group. "Amber" entities are those entities which are not capable of meeting all their obligations (financial and operational) but have the capability to meet only operational payment obligations and payment obligations to senior secured financial creditors. It is pertinent to note that the classification of entities as 'amber' is only a categorization based on the ability to meet obligations of senior secured financial creditors and does not permit payment of such obligations as an exception to the Moratorium Orders. Thus, while CNTL has the ability to meet the payment obligations to senior secured financial creditors, the Moratorium Orders bar CNTL from making such payments. This

absolute restriction on payment obligations is based on the reasoning that the same would lead to preferential payments being made to only certain financial creditors.

16. The Union of India in its affidavit dated February 11, 2019 had submitted that so far as the Amber entities were concerned, the Hon'ble NCLAT should permit "Amber Group Entities to make payments necessary only to maintain and preserve the "Going Concern" Status". The same has been recorded and approved by the Hon'ble NCLAT in the March 12 Order [Para 9(14) @ Pg. 49 and Para 66 @ Pg. 102, March 12 Order. Thus, it is abundantly clear that that moratorium applies to the payments towards senior secured financial creditors and any other interpretation would be in modification of the Moratorium Orders.
17. The Respondent submits that the New Board at the meeting held on October 30, 2021 authorized the management to approach the lenders of the IL&FS Group with the alternate resolution proposal for transferring CNTL to the InvIT, which alternate restructuring proposal shall be subject to the outcome of pending legal proceedings. It is pertinent to note that significantly higher consideration (i.e. INR 5257 crores (approx.)) as compared to the

Cube Bid (i.e. INR 3906.70 crores) can be obtained by transfer of CNTL to the InvIT. As set out above, the CNTL CoC including the Applicant has voted in favour of the restructuring by way of the InvIT Proposal.

18. It is submitted that the above proposal is an alternative resolution plan conceived by the New Board in respect of CNTL in light of expiry of the SPA only with a view to expedite implementation of an alternative resolution plan for CNTL.

Submissions advanced by Learned Counsel appearing for Union of India

19. It is submitted that reliefs contrary to the Moratorium Orders passed by the Hon'ble NCLAT cannot be granted. The reliefs claimed by the Applicant is clearly contrary to the Moratorium Orders. Further, the Hon'ble NCLAT in its Order dated 12.03.2020 clearly records that Amber entities are only capable of making going concern payments. The restriction on payment obligations is reasoned on the fact that it would lead to preferential payments being made to only certain financial creditors.

Findings:

20. We have considered the matter in hand in the background of facts and circumstances stated above; it is observed that the CNTL is

categorized as an amber entity. The Applicant herein cannot be allowed debit interest, principal and other dues of CNTL in view of the Moratorium Orders passed by the Hon'ble NCLAT dated 15.10.2018 and 12.03.2020. Further, as per the Affidavit dated 04.02.2019 of Union of India defines Amber entities as those entities which are not able to meet all their obligations (financial and operational), but can only meet operational payment obligations and payment obligations to senior secured financial creditors. However, Amber Entities are permitted to only make necessary payments to preserve their going concern status.

21. With the aforesaid observation present **CA No. 382 of 2021 In C.P No. 3638/MB/C-I/2018** stands disposed of rejected.

Sd/-

SHYAM BABU GAUTAM

Member (Technical)

24.04.2023

Priyal

Sd/-

H.V. SUBBA RAO

Member (Judicial)