

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

CA No. 604/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: 04.05.2023

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, Sr.
Advocate a/w Mr. Animesh
Bisht, Ms. Drishti Das, Ms.

Roma Bhojani and Mr.
Aniruddha Gambhir.

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 proposal for: (i) sale of 24% of share capital of Bangalore Elevated Tollway Private Limited held by IL&FS Engineering and Construction Company Limited beneficially for the Maytas Investment Trust to Galaxy Investments II Pte. Ltd., free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) in terms of the securities subscription cum purchase agreement dated September 28, 2022;

B. Allow redemption of 24,41,850 optionally convertible redeemable preference shares and 2,53,70,630 non-convertible debentures held by IL&FS Engineering and Construction Company Limited in Bangalore Elevated

Tollway Private Limited in terms of the securities subscription cum purchase agreement dated September 28, 2022.

C. Allow IL&FS Engineering and Construction Company Limited, Bangalore Elevated Tollway Private Limited, Maytas Infrastructure Trust and Galaxy Investments II Pte. Ltd. to implement and give effect to the terms of the securities subscription cum purchase agreement dated September 28, 2022;

D. Direct that of the amount of INR 57,10,00,000/- offered by Galaxy Investments II Pte. Ltd. an amount equivalent to the Primary Consideration (which as on March 31, 2021 is INR 53,45,56,934) as determined in terms of the securities subscription cum Purchase agreement dated September 28, 2022 be paid in manner as contemplated under the securities subscription cum purchase agreement dated September 28, 2022 and be transferred from Bangalore Elevated Tollway Private Limited to IL&FS Engineering and Construction Company Limited in the manner as contemplated under the securities subscription cum purchase

agreement dated September 28, 2022, to be deposited in a designated/ relevant bank/ escrow account to be intimated by the Applicant/ IL&FS Engineering and Construction Company Limited.

E. Permit/ direct that upon receipt of the amount equivalent to the Primary Consideration (which as on March 31, 2021 is INR 53,45,56,934) as determined in terms of the securities subscription cum purchase agreement dated September 28, 2022) by IL&FS Engineering and Construction Company Limited from Bangalore Elevated Tollway Private Limited:

- i. the Applicant/ IL&FS Engineering and Construction Company Limited be permitted to utilize and pay an amount of INR 24,55,197.92 (plus applicable taxes) towards Resolution Process Costs that have been accrued or incurred in relation to the Proposed Transaction and any further amounts that may be incurred as Resolution Process Costs; and
- ii. the Balance Primary Consideration (being the Primary Consideration (which as on March 31, 2021 is INR 53,45,56,934) as determined in terms of the

securities subscription cum purchase agreement dated September 28, 2022 less Resolution Process Costs utilized in terms of prayer E(i) above) be maintained in the designated/ relevant bank/ escrow account intimated by the Applicant/ IL&FS Engineering and Construction Company Limited and not be adjusted or set off against any dues pertaining to any bank and/or financial institution.

- F. Allow IL&FS Engineering and Construction Company Limited and Maytas Investment Trust to release all claims and losses of any nature against Bangalore Elevated Tollway Private Limited and its directors, officers, employees, agents, assigns and successors in relation to claims and/ or liabilities other than the Inter-Se Agreement dated October 12, 2016 as set out in the securities subscription cum purchase agreement dated September 28, 2022.
- G. For any further reliefs as this 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 terms of the Order and Judgement dated March 12, 2020 and the Orders dated August 8, 2019 and August 14, 2019 passed by the Hon'ble NCLAT.
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. The Resolution Framework sets out the process to be followed for

the Resolution of the IL&FS Group Entities.

6. Bangalore Elevated Tollway Private Limited (“**BETPL**”) is a special purpose vehicle engaged in the business of constructing, developing and operating an elevated highway from Silk Board Junction to Electronic City Junction and six laning from Electronic City to Attibele (Karnataka/ Tamil Nadu Border) portion of the Bangalore-Hosur Section of NH-7.
7. IL&FS Engineering and Construction Company Limited (“**IECCL**”) holds 5,18,907 equity shares of BETPL aggregating to 24% of the equity share capital of the BETPL (BETPL Sale Shares). The beneficial ownership of the BETPL Sale Shares vests in Maytas Investment Trust (“MIT”). Further, India Infrastructure Fund – II (IIF), holds 1,64,09,372 equity shares of BETPL aggregating to 76% of the issued and paid-up equity share capital of BETPL.
8. It is submitted that since BETPL is not a part of the entities which form part of the IL&FS group, the Resolution Framework does not apply to the resolution of BETPL. Further, MIT, the beneficial owner of the BETPL Sale Shares, is also not a part of the entities which form part of the Applicant Group and accordingly, the

Resolution Framework (including obtaining approval from IECCL's creditors' committee) does not apply to the sale of the BETPL Sale Shares by MIT. However, the Proposed Transaction contemplated the sale of shares and redemption of securities held by IECCL in BETPL and IECCL forms a part of the IL&FS group. Therefore, the present Application filed by the Applicant to seek approval of the proposed transaction.

9. The proposed transaction contemplates (i) sale of the BETPL Sale Shares held by IECCL beneficially for MIT and (ii) implementing the redemption of Other IECCL Securities held by IECCL in BETPL to Galaxy Investment II Pte. Ltd. ("Galaxy II").
10. It is submitted that in the year 2019, a binding offer for the sale of BETPL was received from Caisse de depot et placement du Quebec (CDPQ) pursuant to a process conducted by the investment manager of IIF. As part of the offer, CDPQ had offered INR 404,30,00,000/- for the transaction, of which an amount of INR 84,30,00,000/- would be payable for the acquisition of the BETPL Sale Shares and the Other IECCL Securities (CDPQ Offer). However, in light of the COVID-19 pandemic, CDPQ

withdrew its offer and the sale did not take place.

11. On July 5, 2021, Galaxy II, a 100% subsidiary of Galaxy Investments Pte. Ltd. (Galaxy), which is in turn owned by KKR Asia Pacific Infrastructure Holdings Pte. Ltd. (KKR Asia Pacific), submitted an unsolicited binding offer for IECCL's entire interest in BETPL wherein it has offered INR 57,10,00,000/- (Purchase Consideration) for: (i) the acquisition of the BETPL Sale Shares; and (ii) the redemption of Other IECCL Securities (the "Galaxy Offer).
12. It is submitted that the bid for the proposed transaction was lower than the value offered by CDPQ since the offer was made amidst the Covid-19 pandemic.
13. As the Resolution Framework is not applicable to BETPL, the order imposing moratorium on the IL&FS group entities (i.e. the Hon'ble NCLAT order dated October 15, 2018) is also not applicable to BETPL. In terms of the Galaxy Offer of INR 57,10,00,000/- an amount equivalent to the Primary Consideration (defined in the Agreed Form SSPA) (which as on March 31, 2021 is INR 53,45,56,934) will be transferred by BETPL to IECCL towards redemption of the Other IECCL

Securities and shall eventually be used to discharge the debt owed by IECCL to its lenders.

14. Further, the Secondary Consideration (defined in the Agreed Form SSPA) as determined in terms of the SSPA towards consideration for the purchase of the BETPL Sale Shares will be distributed by MIT amongst the pass through certificate holders of the MIT (i.e. IL&FS Financial Services Limited and IECCL) in accordance with the terms of the respective contribution agreements. Furthermore, all of the debt of BETPL will be assumed by Galaxy II.
15. IECCL has been classified as a 'Red Entity' by the resolution consultant. However, the Hon'ble NCLAT has vide its order dated August 8, 2019 directed that any act of inter alia selling, transferring etc. of any moveable or immovable assets of "Red" entities in the Applicant Group shall only be undertaken upon the approval of Justice (Retd.) D.K. Jain. Accordingly, as set out below, the approval of Justice (Retd.) D.K. Jain has been sought for the proposed Transaction.
16. By a letter dated 14.09.2022 Justice (Retd.) D.K. Jain accorded his approval to agreed form of the SSPA and the proposed

transaction, subject to approval of this Tribunal.

17. The Union of India has filed its affidavit in reply dated 16.12.2022 upon perusal of which it is observed that no objection has been raised by the Union of India for taking the matter on its merits.

Findings:

18. We have considered the matter in hand in the background of facts and circumstances stated above; it is observed that BETPL is not part of the Applicant Group and the Resolution Framework does not apply to the Resolution of BETPL. Moreover, MIT the beneficial owner of BETPL Shares is also not part of the Applicant Group. Since the proposed transaction contemplates redemption of Other IECCL securities held by IECCL in BETPL and IECCL is part of the Applicant Group and has been classified as a Red entity.
19. The Hon'ble NCLAT had vide its Order dated 08.08.2019 in the IL&FS proceedings directed that any act of selling, transferring, encumbering, alienating, dealing with or creating third party right, title or interest on any movable or immovable assets of "Red" entities in the Applicant Group shall be undertaken post approval from Justice (Retd.) D.K. Jain.

20. Justice D.K. Jain has accorded his approval to the proposed transaction vide letter dated 14.09.2022. We agree with Hon'ble Justice (Retd.) D.K. Jain's opinion that chances of getting a better offer divestment of minority stake (24%) in BETPL are minimal.
21. In the aforesaid backdrop, **CA No. 604 of 2022 In C.P No. 3638/MB/C-I/2018** stands disposed of as allowed in terms of prayer clause (A) to (F) in paragraph 1 hereinabove.

Sd/-

SHYAM BABU GAUTAM

Member (Technical)

04.05.2023

SAM

Sd/-

H.V. SUBBA RAO

Member (Judicial)