

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

CA No. 1192/MB/2020

And

CA No. 328/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

IA No. 1192 of 2020

**Infrastructure Leasing and Finance
Services Limited**

...Applicant

Versus

Union of India

...Respondent

And

IA No. 328 of 2021

Sekura Roads Limited

... Applicant

Versus

**Infrastructure Leasing and Finance
Services Limited**

...Respondent No.1

Union of India

...Respondent No.2

In the matter of

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH – I

CA No.1192/MB/2020 and CA No. 328 of 2021

In C.P No. 3638/MB/2018

Union of India.

...Petitioner

Versus

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

... Respondent

Order Pronounced on: 14.07.2023

Coram:

Hon'ble Member (Judicial) : Mr. H.V. Subba Rao
Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh

Appearances:

For the Applicant : Mr. Animesh Bisht, a/w Ms. Drishti
Das, Ms. Roma Bhojani, 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 as amended by Additional Affidavit dated 19.01.2023:
 - A. Approve the sale of the shares of Jorabat Shillong Expressway Limited held by IL&FS Transportation Networks Limited (solely or jointly with its nominees in respect of 50 equity shares of JSEL) to Sekura Roads Private Limited, free and clear from all encumbrances, liens, security interest and third party claims

(including any statutory or tax claims) in terms of the agreed form of the amended Share Purchase Agreement to be executed by and between Jorabat Shillong Expressway Limited, IL&FS Transportation Networks Limited and Sekura Roads Private Limited (the "Agreed Form Revised SPA") upon payment/dischARGE of the revised bid value of INR 1323,00,00,000/- (Revised Offer) (subject to the value adjustments and increments as contemplated under the Agreed Form Revised SPA) by Sekura Roads Private Limited as per the terms contemplated under the Agreed under the Agreed Form Revised SPA;

- B. Allow the Applicant Group, IL&FS Transportation Networks Limited, Jorabat Shillong Expressway Limited and Sekura Roads Private Limited to execute, enter into, implement and give effect to the terms of the Agreed Form SPA and the Securities Purchase Agreement including but not limited to transfer of the debt securities contemplated in the Securities Purchase Agreement free and clear of all encumbrances;
- C. Direct that the Revised Offer amount (subject to the value adjustments and increments as stipulated in the Agreed Form Revised SPA) payable by Sekura Roads Private Limited in

accordance with the terms of the Agreed Form Revised SPA be paid or discharged in the manner as contemplated therein.

D. Declare and direct that upon payment or discharge of the Revised Offer amount (in the manner contemplated under the Agreed Form Revised SPA), the following, of Jorabat Shillong Expressway Limited, shall stand extinguished:

- 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 Jorabat Shillong Expressway Limited)

E. Direct that the Applicant be permitted to utilize and pay an

amount of upto INR 7,00,00,000/- from the Revised Offer amount received from Sekura Roads Private Limited towards Resolution Process Costs that have accrued or been incurred or are likely to accrue in connection with the resolution of Jorabat Shillong Expressway Limited.;

- F. Direct that after paying Resolution Process Costs, the balance Revised Offer amount which has been deposited into the relevant bank/ escrow account shall not be adjusted or set off against any other dues pertaining to any bank/financial institution and shall be strictly applied/ discharged as per prayer G below and in accordance with the terms of the Agreed Form Revised SPA;
- G. Direct and permit the distribution/ discharge of the balance Revised Offer amount (being the Revised Offer amount less the Resolution Process Costs utilized as per prayer E above) to the creditors of JSEL as per the "Revised Distribution Framework" in the manner illustrated in Annexure 7 to the Additional Affidavit dated January 19, 2023 filed by the Applicant in Company Application No. 1192 of 2020.
- H. 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 captioned company Application was filed to seek approval of this Tribunal to conclude the sale/resolution process of Jorabat Shillong Expressway Limited (“JSEL”).
3. Consequent to the competitive price discovery process set out in the Resolution Framework, bids were received from two bidders (i) Cube Highways and Infrastructure III Pte. Ltd. and (ii) Sekura Roads Limited (Sekura) out of which the bid of Sekura was identified by the board of directors of ITNL (ITNL Board) as the higher bid offering a lump sum consideration of INR 916,20,00,000 (“Sekura Bid”).
4. The total admitted debt of JSEL is approx. INR 1620.12 crores. Therefore, since the Sekura Bid was lower than the admitted debt of JSEL, its creditors would have to forgo certain outstanding amounts. Accordingly, JSEL was categorized as a ‘Category II Company. Category II companies are those wherein the financial amount offered by the Applicant is less than the all the liabilities of the sale company.
5. Since JSEL was categorized as a Category II Company, a creditors’ committee comprising of all the financial creditors of JSEL (JSEL CoC) approved the Sekura Bid by 100% of the voting share and approved the

- change in control by 100% of the voting share. The CoC minutes of meeting held on 05.11.2019 and voting sheet is placed at Annexure 15.
6. Justice (Retd.) D.K. Jain issued a letter dated November 11, 2020 approving the sale of ITNL's shareholding in JSEL to Sekura (Justice Jain Approval) subject to approval of this Tribunal.
 7. Subsequently, ITNL entered into a Share Purchase Agreement dated December 10, 2020 (Earlier SPA) with Sekura for the sale of 100% of JSEL held by ITNL and ITNL jointly with its nominees (the "Shares") to the Sekura.
 8. Thereafter, the New Board appointed a consultant for independent assessment of the maintenance requirements of *inter alia* JSEL for the purpose of undertaking an updated valuation. Pursuant thereto, the Applicant was informed that the updated valuation of JSEL, arrived at by an independent valuation) firm, as on March 31, 2021 was INR 1351.16 crores (approx.) **(March 2021 Valuation)**.
 9. Moreover, the Further Affidavit also set out that: (a) as compared to the Sekura Initial Bid of INR 916.2 crores received in August 2019 (which was the purchase consideration as set out in the Earlier SPA), the March 2021 Valuation of JSEL was higher by INR 434 crores (approx.); and (b) if an alternate resolution of JSEL were to be considered (for instance,

JSEL's transfer to the Applicant Group's Infrastructure Investment Trust (the "InvIT)), the March 2021 Valuation would be available for distribution to the stakeholders of JSEL (as compared to the Sekura Initial Bid value of INR 916.2 Crore)

10. Thereafter, the New Board on September 8, 2022 engaged RBSA Valuation Advisors LLP (RBSA) for the purpose of undertaking a further updated valuation of JSEL. Pursuant thereto, the Applicant was informed that the updated valuation of JSEL, as on August 31, 2022 was INR 1468 crores (approx.)(the August 2022 Valuation"). The liquidation value of JSEL continues to remain of INR 858.2 crores (approx.) in terms of the valuation exercise carried out in respect of JSEL as of July, 2020 (the valuation reports in this regard are set out at Annexures 9 and 10 of the Company Application) [Annexure I (RBSA August 2022 Valuation Report), Additional Affidavit.
11. Pursuant to negotiations between the Applicant, ITNL and Sekura, Sekura submitted a final binding offer on October 14, 2022 increasing its bid in respect of JSEL to INR 1323,00,00,000/- (Sekura Revised Offer) (inclusive of JSEL's gross claim amount of INR 252.15 crores received from NHAI) In this regard, it is pertinent to note that the Revised Offer is:-

- a) Higher than its earlier bid of INR 916.2 crores by 14% (when net claim amount (after TDS) of INR 242.74 crores is considered in addition to the Earlier Bid);
 - b) More than 90% of the August 2022 Valuation of INR 1468 crores;
and
 - c) 54.2% higher than the liquidation value of INR 858.2 crores.
12. In order to reflect the terms of the Revised Offer, the Applicant, ITNL, JSEL and Sekura have agreed to a draft of the amendments to the Earlier SPA, (the Agreed Form Revised SPA) to be entered into by and between the Applicant, ITNL, JSEL and Sekura, for the sale of the Shares held by ITNL and ITNL jointly with its nominees to Sekura at the Revised Offer value. The said Agreed Form Revised SPA is placed Annexure 3 of the Additional Affidavit.
13. The JSEL CoC in meeting held on 11.01.2023 approved by 83.46% of the CoC voting share the revised Sekura Offer of Rs.1323 Crores subject to potential value adjustment as stipulated in the Agreed Form Revised SPA in respect of the sale of shares of JSEL and the change in control of JSEL in favour of Sekura.
14. The JSEL Board and the ITNL Board vide resolutions dated January 7, 2023 respectively have approved consummation of the acquisition of

100% of the issued, subscribed and paid up share capital of JSEL held by ITNL together with its nominees by Sekura, at the Sekura Revised Offer and on the terms and conditions stipulated in the Agreed Form Revised SPA to be executed by and between the JSEL, ITNL, Sekura and the Applicant subject inter alia to the approval of this Tribunal. Further, the New Board has, vide its resolution dated November 29, 2022, approved, inter alia, the consummation of the acquisition of 100% of the share capital of JSEL held by ITNL and ITNL jointly with its nominees by Sekura, at the Sekura Revised Offer on terms and conditions stipulated in the Agreed Form Revised SPA to be executed by and between JSEL, ITNL, Sekura and the Applicant subject to the approval of this Tribunal.

15. The Applicant vide order dated April 12, 2023 in the present Company Application, was directed to obtain the approval of Hon'ble Justice (Retd.) D.K. Jain in light of new developments in the transaction. Accordingly, the Applicant filed supplementary memorandum dated March 8, 2023 and May 8, 2023 with Justice (Retd.) D.K. Jain (the retired judge of the Supreme Court appointed by the Hon'ble NCLAT to oversee the resolution process of the Applicant Group) inter alia seeking his views and approval for the Sekura Revised Offer.

16. Justice (Retd.) D.K. Jain has approved the Sekura Revised Offer by a letter dated May 13, 2023 subject to the approval of this Tribunal. A copy of the Justice Jain Approval is placed on record vide the Further Additional Affidavit dated May 15, 2023 at Annexure 3.
17. The Applicant submits that the sale process of JSEL has been conducted keep in mind the resolution framework keeping in mind the rights and interest of all the stakeholders of JSEL and the Applicant group with a view to maximize value. It is also submitted that the Sekura Revised Offer represents significantly higher value as compared to the Sekura Initial Bid, as well as offers greater certainty regarding closure of the transaction since a lot of the onerous conditions have been waived by Sekura, which will facilitate and expedite the sale resolution process of JSEL, as more particularly contemplated in the Agreed Form Revised SPA.
18. It is submitted that the Resolution Framework contemplates upfront distribution of proceeds of sale of shares of a Category II entity, such as JSEL, accordingly, the completion of the sale of the Shares would result in upfront payment to creditors of JSEL.
19. It is further submitted that Sekura had separately filed Commercial Suit No. 235 of 2021 (the "Suit") against ITNL, the Applicant and JSEL

before the Hon'ble Bombay High Court in respect of the Earlier SPA along with interim applications therein. Thereafter, the Sekura also filed Company Application No. 328 of 2021 in the captioned Application seeking impleadment as a respondent in the captioned Application. It is submitted that upon receipt of approval of this Tribunal, Sekura has agreed to withdraw the Suit as well as CA 328, and following such withdrawal, the Applicant shall withdraw the appeal filed by it (in the Suit) before the Division Bench of the Bombay High Court (being Commercial Appeal (L) 25664 of 2021), bringing quietus to the ongoing litigation concerning JSEL between the parties.

20. Further, Original Petitioner/Respondent has filed an Affidavit-in-reply dated 15.03.2023 and submitted that since its concerns qua the bid and valuation have been addressed and the Original Petitioner was not involved in the process of JSEL and Justice (Retd.) D.K. Jain had approved the sale of JSEL. The Original Petitioner has no objection to the matter being dealt with on its merits.

Findings:

21. We have considered the matter in hand in the background of facts and circumstances stated above; it is observed that Hon'ble Justice D.K. Jain has examined the revised Sekura Bid/Offer and has accorded his

approval vide letter dated 13.05.2023.

22. We observe since there are time constraints within which the resolution of IL&FS group has to be achieved and the New Board has also vide resolution dated November 29, 2022 approved the revised offer. In addition to the above the said sale is approved by the CoC of JSEL by 83.46% of mandate as per provisions of the Code. Since, the above transaction is finalized through a high powered committee constituted in pursuance of the orders of the Hon'ble NCLAT, monitored by Justice (Retd.) D.K. Jain of the Hon'ble Supreme Court. This Tribunal has very limited scope and jurisdiction to interfere in such commercial decisions as it would lead to reopening of the decisions of a high powered committee which will ultimately affect the speed recovery process in the larger interest of public.
23. Therefore, in the aforesaid backdrop, we **approve** the proposed transaction in the interest of justice.
24. Company Application No. 328 of 2021 was filed by Sekura Roads Limited for impleadment in CA No. 1192 of 2020 as a party respondent. Since, the grievance of the Applicant in CA No. 328 of 2021 is resolved as CA No. 1192 of 2020 for approval of sale of JSEL to Sekura is allowed, nothing survives in CA No. 328 of 2021 and is accordingly

disposed of as infructuous.

25. CA No. 102 of 2021 is filed by Yes Bank Limited, the reliefs sought by Yes Bank in the said Application *inter alia* are that JSEL shall not be sold and that JSEL shall form part of proposed Infrastructure Investment Trust. When the matter was listed for clarification on 11.07.2023, the Ld. Counsel Mr. Lalit Munshi i/b Samvad Partners appearing for Yes Bank submitted that they have no objection to sale of JSEL to Sekura in terms of revised offer.
26. Accordingly, the above Company Application is allowed in terms of prayer clause (A) to (C). The parties are directed to approach the respective stakeholders for grant of other reliefs claimed in the above Application.
27. In the aforesaid backdrop, **CA No. 1192 of 2020 in C.P No. 3638/MB/C-I/2018** stands disposed of as allowed in terms of prayer clause (A) to (C) hereinabove. **CA No. 328 of 2021** stands disposed of as infructuous.

Sd/-

ANU JAGMOHAN SINGH

Member (Technical)

14.07.2023

SAM

Sd/-

H.V. SUBBA RAO

Member (Judicial)

