

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 9

IA 192/2023 (NEW IA) CA 338/2021 CA 347/2023 CA 333/2023 in
CP/3638(MB)2018

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON **26.09.2023**

NAME OF THE PARTIES: **UNION OF INDIA V/S INFRASTRUCTURE**
 LEASING AND FINANCIAL SERVICES
 LTD. & ORS.

Section 241-242 of the Companies Act, 2013

ORDER

CA 333/2023

- 1) Mr. Rohan Kadam, Ld. Counsel for the Applicant and Mr. Animesh Bisht, Ld. Counsel for the Respondent are present.
- 2) Applicant submits that the Respondent has filed Affidavit in Reply and they have served a copy of the same upon him. However, Applicant seeks some time to peruse the Affidavit in Reply filed by the IL&FS and further seeks time to place on record Affidavit in Rejoinder, if need be. Time is allowed.
- 3) Affidavit in Rejoinder, if any, be filed well before the adjourned date by duly serving a copy to the other side well in advance.
- 4) Stand over to 17.10.2023, for further consideration and hearing.

CA 347/2023

- 1) Mr. Ashish Mishra, Ld. Counsel for the Applicant is present. None present for the Union of India, when the matter is called out.
- 2) Applicant submits that the Union of India is yet to file Affidavit in Reply, which is still awaiting.
- 3) In that view of the matter, Union of India is directed to file and place on record Affidavit in Reply well before the adjourned date by duly serving a copy to the other side well in advance.
- 4) Stand over to **17.10.2023**, for further consideration and hearing. This will be treated as last opportunity.

CA 338/2021

- 1) Advocate Disha Mohanty, Ld. Counsel for CMA is present.
- 2) Stand over to 29.08.2023, for further consideration and hearing.

IA 192/2023

- 1) Mr. Ashish Mishra, Ld. Counsel for the Applicant is present. None present for the Union of India, when the matter is called out.
- 2) The present Interlocutory Application has been filed by Infrastructure Leasing & Financial Services Limited against Union of India praying for the following reliefs:

a. Pass an order permitting the distribution and utilization of the remaining Purchase Price (after deduction of the resolution process costs) i.e., INR 9,04,18,936 (Indian Rupees Nine Crores

Four Lakhs Eighteen Thousand Nine Hundred and Thirty-Six Only), as mentioned in paragraph 7 above and detailed in Annexure – 3.

- b. Pass an order permitting the distribution and utilization of the interest on the amount of INR 9,04,18,936 (Indian Rupees Nine Crores Four Lakhs Eighteen Thousand Nine Hundred and Thirty-Six Only) accrued i.e. interest accrued on INR 1 to be paid to IEDCL towards equity value, interest accrued on INR 15,00,000/- (Rupees Fifteen Lakh only) to be paid to IEDCL towards consideration for sale of the assets and the interest accrued on the Final Distribution (towards resolution of RREL) of the balance, INR 8,89,18,935 to be paid to the respective creditors as per the distribution formula detailed in Annexure 3. till the date of filing the present application as well as any future interest till the date of actual distribution.*

3) It is submitted that the Applicant had filed Company Application bearing CA No. 272 of 2022, seeking approval of this Bench for sale of 100% of the issued, subscribed, and paid-up share capital held by IL&FS Energy Development Company Limited in Ramagiri Renewable Energy Limited and certain fixed assets owned by IEDCL situated at Ramagiri, Anantapur, Andhra Pradesh, namely, the Wind Mast Equipment and the Solar Irradiation Measurement Equipment.

4) It is further submitted that this Bench, *vide* order dt. 14.10.2022, granted its approval to the Applicant to consummate the proposed Transaction, passing specific directions.

5) It is also submitted that the present Application is filed seeking the relief sought in Prayer F in CA No. 272 of 2022, to seek permission of this Bench to utilize the Purchase Price received from the consummation of the Transaction.

6) Prayer “F” of IA 272 of 2022 is quoted below for the convenience.

“F. Direct that the distribution of the Purchase Consideration or part thereof or withdrawal of any other amounts from the escrow account apart from prior payment of Resolution Process Costs be subject to further orders of this Hon’ble Tribunal”.

7) It is submitted that pursuant to the order dated 14.10.2022 passed by this Tribunal on the culmination of the transaction, a sum of Rs. 9,85,99,999/- was received towards Purchase Price. Additionally, a sum of Rs. 15,00,000 has been received towards consideration for sale of fixed assets. Of the total consideration, a sum of Rs. 96,81,064/- has been paid towards Resolution Process Costs.

8) The Applicant is therefore seeking approval of this Tribunal to distribute/utilize the balance amount after payment of Resolution Process Costs of Rs. 9,04,18,936/- received pursuant to the SPA and the APA (and any interest accrued thereon till the date of filing the present application as well as any future interest till the date of actual distribution), towards the discharge of its outstanding liabilities, in the manner set out in paragraph 32 of CA No. 272/2022, which is as follows:

"...(i) firstly, towards the resolution process costs' that have been incurred in connection with the sale of the relevant entity of IL&FS Group, which would be remitted into such bank account as may be intimated by the relevant entity of IL&FS Group;

(ii) secondly, the remaining Purchase Price, after the deduction of the resolution process costs and after additionally setting aside a nominal amount on INR 1 (Indian Rupee One only) as the equity value, would be transferred to an escrow account towards the discharge of the outstanding liabilities which would be held in trust for the relevant stakeholders of the relevant entity of IL&FS Group; and (ii) lastly, the nominal amount of INR 1 (Indian Rupee One only), set aside earlier as the equity value, would be remitted into the seller's bank account as may be intimated by the relevant entity of IL&FS Group"

9) After having paid the resolution process costs (INR 96,81,064), INR 1 is to be paid to IEDCL. towards equity value, INR 15,00,000/- (Rupees Fifteen Lakh only) is to be paid to IEDCL towards consideration for sale of the assets and the Final Distribution of the balance, INR 8,89,18,935 has been determined by the resolution consultant, i.e. Alvarez & Marshall, and is as follows:

Creditor Class	Creditor Name	Amount (INR)
Unsecured Financial Creditor	IL&FS Energy Development Co. Ltd. (IEDCL)	8,88,97,822/-
Operational Creditor	Atul Karsandas Jasani	21,113

10) Having considered the submissions and on perusal of averments made in the Interlocutory Application, this Bench is satisfied and allows the present Interlocutory Application bearing IA No. 192 of 2023, thereby permitting the distribution and utilization of the remaining Purchase Price (after deduction of the resolution process costs) i.e., Rs. 9,04,18,936 and permitting the distribution and utilization of the interest on the amount of INR 9,04,18,936 accrued i.e. interest accrued on Rs. 1 to be paid to IEDCL towards equity value, interest accrued on INR 15,00,000/- to be paid to IEDCL towards consideration for sale of the assets and the interest accrued on the Final Distribution (towards resolution of RREL) of the balance, INR 8,89,18,935 to be paid to the respective creditors as per the distribution formula till the date of filing the present application as well as any future interest till the date of actual distribution.

11) With the aforesaid observation and direction, the Interlocutory Application bearing IA No. 192 of 2023 is disposed of. No costs.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**

Vedant Kedare