

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

**Item No. 41**

**CA 417/2021 CA 131/2022 CA 29/2023 CA 31/2023 CA 44/2023 CA**  
**167/2023 IA 31/2023 INVP 05/2023 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 27.09.2023**

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

Section 242(4),241- 242 of the Companies Act, 2013

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**ORDER**

Counsel, Mr. Aditya Sikka a/w Adv. Gaurav Jaiswal appeared for the Union of India.

Adv. Kunal Kanungo i/b Adv. Atishay Jain appeared for the Intervener in Inv.P. 6/2023.

Adv. Sareen i/b Shardul Amarchand Mangaldas appeared for the Applicant in IA No. 31 of 2023.

Adv. Tanya Mehta i/b DSK Legal appeared for the applicant in Ca No. 167/2023.

Counsel, Aditya Bapat appeared for the applicant in CA no. 417/2021, 44/2023, 29/2023.

Adv. M. S. Bhardwaj appeared for the respondent no. 1 in CA No. 131/2022.

Adv. Madhur Arora i/b AZB & Partners appeared for the respondent no. 2 in CA Nos. 417/2021, 29/2023, 44/2023.

Adv. Aditi Bhansali a/w Adv. Dhaval Vora i/b AZB & Partners appeared for the respondent no. 3 in IA No. 31/2023.

Adv. Modi a/w Adv. Monika Tanna i/b Singhania Legal Services appeared in INVP. 5/2023.

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Adv. Animesh Bisht i/b Cyril Amarchand Mangaldas appeared for the IF & FS. Advocate in CA 167/2023, 31/2023, Invp. 6/2023 i/b Equilex present.

List CA Nos. 417/2021, 29/2023, 44/2023, INVP. 6/2023 on **17.10.2023** for hearing.

List IA No. 31/2023, INVP No. 5/2023 on **02.11.2023** for hearing.

**CA 167/2023** –

1. The present application is filed by Indra Sistemas India Pvt. Ltd. under Rule 11 of the NCLT Rules 2016 for setting aside the rejection of /reduction in the claim of the applicant and reinstatement of the full claim already admitted.
2. Indra Sistemas India Pvt. Ltd. has filed the application on account of the illegal, arbitrary and unsustainable action of the Grant Thornton Bharat LLP & Ors., which is the Claims Management Consultant of the IL & FS Transportation Networks Limited alleging that the respondent no. 1 reduced the amount of its admitted claim from Rs. 2,27,14,126/- to Rs. 19,78,050/- without any reason or explanation or notice to the applicant.
3. The respondent no. 2 was selected as the bidder by NHAI for the four laning of the Chennai Nashri section of NH1A from Km 89 to Km 130 (New alignment) of NH1A including 9km long tunnel (2 lane) with parallel escape design on DBFOT basis and for execution of the project, the respondent no. 2 entered into a contract with the applicant for the design, supply, installation, testing & commissioning for the project. The applicant completed the project in 2017 and was accordingly issued the handover/takeover certificate and the total amount net payable to the applicant for the work done under the Contract was equal to a sum of Rs. 42,94,88,704/-.

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4. It is at this point of time that the Board of IF& FS appointed respondent no. 1 as the Claims Management Consultant of the respondent no. 1 for the purposes of collection and verification of claims of the creditors of IL&FS and its group companies wherein, the applicant vide its letter dated 04.06.2019 submitted its claim for a sum of Rs. 2,27,14,126/- and the same was admitted on 18.11.2019 and reaffirmed thereafter in subsequent status list.
5. However, it came to the notice of the applicant that in the status list of claims of creditors of the respondent no. 2, received upto 14.03.2022 and updated as on 31.03.2022, issued by the respondent no. 1, the amount of its admitted claim has been shown as reduced from Rs. 2,27,14,126/- to Rs. 19,78,050/- i.e., a reduction by a sum of Rs. 2,07,36,076/- or more than 91% of its original claim.
6. On the other hand, Counsel appearing for the Respondents submits that it is pertinent to mention the claim verification process for the claims against the respondent no. 2 is a process in the nature of a work in progress and after the CMA collates and verifies the claims, it creates a report which shows the updated list of creditors. This report provides a disclaimer that all verifications are based on the existing documents provides and may be revised on the basis of additional documents and information. During the period May, 2020 and June, 2020 through various mails the CMA had raised queries upon the applicant in relation to its claim and the applicant had provided the relevant documents as sought by the CMA in relation to its queries.
7. It was also submitted by the Counsel for Respondent that upon receipt of these additional documents and information from the applicant, the CMA consulted with the Respondent no. 2 and provided these documents and

information to the Respondent no. 2 for their comments. Upon reviewing these documents, the Respondent no. 2 informed the CMA that the applicant had not considered an amount of Rs. 19,78,050/- on account of Tax Deduction at Source (“TDS”) deposited by the Respondent no. 2, in their claim amount and provided additional documents in support of such fact.

8. It was finally submitted that upon verifying the additional documents received from the respondent no. 2, the CMA sent an email on 02.09.2021 to the applicant, stating that a sum of Rs. 19,78,050/- will be reduced from their admitted claim amount as the applicant had not considered the TDS already deposited and deducted by the respondent no. 2 in relation to the claim amount. Hence, the Applicant was informed by the CMA that its claim amount had been reduced from Rs. 2,27,14,126/- to Rs. 2,07,36,676/- due to non-admission of Rs. 19,78,050/- on account of TDS. The Applicant has not responded to the 2<sup>nd</sup> September E-mail sent by the CMA.
9. We heard the Counsel, and find that the Respondents have admitted claim of Rs. 2,07,36,676/- finally, and an amount of Rs. 19,78,050/- has been rejected for admission because this amount represented the tax deducted at source by Respondent No. 2, which is payable to the Central Government in accordance with the provisions of Income Tax Act, 1961 and the amount of Tax deducted at source represents the tax paid on behalf of the payee, which is claimant in this case. Accordingly, we do not find any infirmity in the decision of the Respondent No. 1, as whole of the claim of the Applicant stands admitted.
10. In view of the aforesaid, **the CA No. 167/2023 is dismissed and disposed of.**

**CA 131/2022** -

1. The present application is filed by Mr. Girish Palshikar i.e. original respondent no. 17 in the present company petition seeking directions to the respondent no. 1 and 2 to produce certified true copies of the documents as more sought in Annexure-A of the interim application so that they can prove their innocence and bonafide in the Company Application no. 396/2021.
2. On the other hand, Counsel appearing for the respondents denied the such right accruing to the application in toto. It is further submitted that applicant alleged that the answering respondent, vide their email dated 15.01.2022, with malafide intention, has eluded/evaded from furnishing/sharing the required relevant details and/or documents. Such allegation is misplaced, devoid of any merit, misleading and denied.
3. It is stated that company application no. 396/2021 has been filed by Respondent no. 1 seeking certain reliefs against respondents no. 2 to 22 and the answering respondent is only a proforma respondent therein. It is relevant to mention that company application no. 396/2021 came to be filed subsequent to an investigation conducted into the affairs of the answering Respondent by Respondent no. 1. It was during the course of the said investigation that the answering respondent provided access to Respondent no. 1 to all company records and other documentation.
4. Therefore, respondent no. 1 being the investigating agency, it would only be appropriate that the documents and records sought in terms of the application under reply to the extent relied upon by the respondent no. 1 as evidence while conducting the investigation, be sought from the respondent no. 1.
5. We heard the Counsel and find that, in addition, by way of the present

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application, the applicant also seems to be engaging in a fishing and roving inquiry, in an attempt to gain access to documents confidential to the answering respondent. For instance, legal opinions issued to the answering respondent are protected under client-attorney privilege, and the answering respondent is under no obligation to furnish the same to the applicant. The Applicant shall have opportunity to rebut the allegations based on the documents/information relied upon by the Investigating Agencies, whenever the Investigation is concluded and final findings are arrived at. At that juncture, the applicant shall be entitled to have access to the documents/information relied by the Investigating Agency against him. Accordingly, this application seems to be premature.

6. In view of aforesaid, **CA No. 131/2022** is **dismissed** and **disposed of**.

**Sd/-**  
**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**JUSTICE VIRENDRASINGH BISHT**  
**MEMBER (JUDICIAL)**

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