

398/2023, CA 403/2023 and for Respondents Nos. 9 and 11 in CA 396/2021. Adv. Shyam Kapadia a/w. Adv. Virgil Braganza i/b JSA for Respodnent No.2 in CA/396/2021. Ms. Nikita Mishra a/w Mr. Shamant Satiya i/b Rashmikant and Partners, for the Applicant in CA 394/23 and CA/395/23 and for Respondent Nos. 10 & 12 in CA 396/21. Gaurav Sharma a/w Rajnni Kuttyy i/b Avyuktaa Legal for Respondent No.17 in CA No. 396 of 2021 and Applicant in CA No. 131 of 2022. Mr. Aamir Arsiwala a/w Kavisha Shah i/b KDS Law Associates for Respondent No.13 in CA No. 396 of 2021. Mr. Aditya Sikka a/w Ms. Vasudha Vijaysheel | For Union of India. Mr. Siddharth Joshi a/w Devesh Juvekar, Kavita Brid- Chavan, Unnati Vijay and Honey Chandnani for Original Respondent No. 3 (Arun Saha) in CP 3638/2018. M. S. Bhardwaj for Applicant in CA/396/2021 and Respondent No. 1 SFIO/UOI in CAs in CA/396/2021. Mr. Siddharth Joshi a/w Devesh Juvekar; Kavita Brid-Chavan, Unnati Vijay & Honey Chandnani i/b Rajani Associates for the Applicant in CA 419/2023. Adv. Ryan D'souza a/w Adv. Ekta Tyagi, Adv. Priyamvada Singhania, Adv. Sneha Barange i/b DSK Legal for the Applicant in CA 538 of 2022. Adv Mutahhar Khan a/w Hamza Lakhani for Respondent No. 18 in CA 396 of 2021 and Applicant in CA 354 of 2023.

CA 538/2022

1. Ld. Counsel for the Applicant seeks time to file rejoinder. Time granted.
2. Ld. Counsel for the Applicant is directed to file rejoinder within two weeks after duly serving the copy to the other side.
3. List this matter on 12.12.2023.

CA 398/2023

1. The Applicant was appointed as an Alternate Director to Original Respondent No. 9 i.e. Mr. Murray Stahl, the nominee non-executive Director on the board of ISSL, pursuant to the execution of the Share Subscription Cum Shareholder Agreement dated 30.10.2008 between ILF&S, ISSL and Croupier Prive Mauritius (Croupier), pursuant to which Croupier was given the right to nominate a director to the board of ISSL.
2. Under the Companies Act, 2013, the Alternate Director holds office of Director during the absence of Original Director from India and the individual can be appointed Alternate Director only if he/she eligible for appointment as Independent Director. The Alternate Director does not have any authority of power during the presence of original director in India. Further, it is not disputed that the original director was a nominee director of an overseas investor having limited participation in the affairs of the Company.
3. In view of this, we consider it appropriate to recall the order dated 28.06.2023 passed in CA 396/2021 in so far as that order applies to the Applicant i.e. Mr. Naveen Kumar, and clarify that order dated 28.06.2023 shall not be applicable to the applicant.
4. We also order the deletion of Respondent No.11 in CA 396/2021, who is the applicant in CA 403/2023 as well as present application, and dismiss CA 396/2021 as against the Respondent No.11 therein who is applicant in CA 403/2023 also.
5. In view of above, the CA 398/2023 and CA 403/2023 are allowed and disposed.

CA 396/2023

1. The Applicant Mr. Murray Stahl (Original Respondent No. 9) was appointed as the nominee non-executive Director on the board of ISSL,

pursuant to the execution of the Share Subscription Cum Shareholder Agreement dated 30.10.2008 between ILF&S, ISSL and Croupier Prive Mauritius (Croupier), pursuant to which Croupier was given the right to nominate a director to the board of ISSL.

2. It is not disputed that the Applicant was a nominee director of an overseas investor having limited participation in the affairs of the Company, and was not engage into day to day affairs/management of the Company.
3. In view of this, we consider it appropriate to recall the order dated 28.06.2023 passed in CA 396/2021 in so far as that order applies to the Applicant i.e. Mr. Murray Stahl, and clarify that order dated 28.06.2023 shall not be applicable to the applicant.
4. In view of above, the CA 396/2023 is allowed and disposed.

CA 395/2023

1. The Applicant Mr. Kiyokazu Ishinabe, was appointed as an Alternate Director to Mr. Hiroshi Nishio, the nominee non-executive Director on the board of ISSL from 29.03.2017 to 28.03.2018 and thereafter as the Alternate Director to Mr. Harukuzu Yamaguchi, the Non-Executive Nominee Director of Orix Corporation Limited a Japanese Company on the board of ISSL from 28.03.2018 till he resigned on 27.11.2019. The Applicant was not on any of the sub committees of the Board of Directors of ISSL. He had no role to pay in the day to day affairs, operations and Management of ISSL.
2. Under the Companies Act, 2013, the Alternate Director holds office of Director during the absence of Original Director from India and the individual can be appointed Alternate Director only if he/she eligible for appointment as Independent Director. The Alternate Director does not have any authority of power during the presence of original director in India. Further, it is not disputed that the original director was a nominee director

of an overseas investor having limited participation in the affairs of the Company.

3. In view of this, we consider it appropriate to recall the order dated 28.06.2023 passed in CA 396/2021 in so far as that order applies to the Applicant i.e. Mr. Kiyokazu Ishinabe, and clarify that order dated 28.06.2023 shall not be applicable to the applicant.
4. In view of above, the CA 395/2023 is allowed and disposed.

CA 394/2023

1. The Applicant Mr. Harukazu Yamaguchi, was appointed as the Non-Executive Nominee Director of Orix Corporation Limited a Japanese Company on the board of ISSL from 28.03.2018 till he resigned on 27.11.2019. The Applicant was not on any of the sub committees of the Board of Directors of ISSL. He had no role to pay in the day to day affairs, operations and Management of ISSL.
2. Under the Companies Act, 2013, the Alternate Director holds office of Director during the absence of Original Director from India and the individual can be appointed Alternate Director only if he/she eligible for appointment as Independent Director. The Alternate Director does not have any authority of power during the presence of original director in India. Further, it is not disputed that the original director was a nominee director of an overseas investor having limited participation in the affairs of the Company.
3. In view of this, we consider it appropriate to recall the order dated 28.06.2023 passed in CA 396/2021 in so far as that order applies to the Applicant i.e. Mr. Harukazu Yamaguchi, and clarify that order dated 28.06.2023 shall not be applicable to the applicant.
4. In view of above, the CA 394/2023 is allowed and disposed.

**IA 164/2023 IA 163/2023 CA 388/2023 CA 409/2023 396/2023 CA 117/2023
CA 131/2022 419/2023 CA 436/2023**

Counsel for the Union informs that SFIO investigation is complete and final recommendation has been forwarded. The counsel further informs that they will be filing an application making clear which of the parties are to be kept on board and which are to be deleted.

List this matter on 20.12.2023.

IA 203/2023

Ld. Counsel for the Union informs that though there they are not against the approval of this Tribunal for implementation the OTS agreement between IFIN and Novel FTWZ & others, however, that implementation of OTS shall be without prejudice to their rights and contentions, which may arise from the final findings of the SFIO or any case made therefrom against the parties.

In view of the submissions, this IA 203/2023 is allowed in terms of prayer A & B, and implementation of OTS shall be without prejudice to Union of India's rights and contentions, which may arise from the final findings of the SFIO or any case made therefrom against the parties.

CA 424/2023 CA 434/2023

Counsel for the Applicant seeks some time to file rejoinder. Two weeks time is granted to the Applicant to file rejoinder after duly serving the copy to the other side.

List this matter on 22.12.2023.

CA 1001/2020 CA 10/2021

Counsel for the CMA seeks some time to further verify the documents supplied by ITNL in relation to the counter claims/claims of the Corporate Debtor as well

as the Operational Creditor. Counsel for the Operational Creditor seeks the documents supplied by the ITNL to the CMA agency. However, this Bench is of considered view that the documents to the extent relied upon and made the basis of the counter claim shall be provided to them in due course as and when the counter claim is moved before us.

List this matter on 22.12.2023.

CA 25/2023

This is wrongly stated as CA instead of IA.

Ld. Counsel for the CMA informs that the amendment to the cause title by the applicant has been filed yesterday only. Accordingly, the amendment is yet to be allowed.

List this matter on 12.12.2023.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)

/NP/