

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

Item No. 2

CA 499/2023 CA 500/2023 (NEW CA) CA 29/2023 CA44/2023 CA 397/2023

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 11.12.2023

NAME OF THE PARTIES: UNION OF INDIA VS INFRASTRUCTURE
LEASING AND FINANCIAL SERVICES
LTD. & ORS.

Section 241-242 of the Companies Act, 2013

ORDER

Mr. Shamant Satiya, Advocate a/w Ms. Nikita Mishra, Advocate i/b Rashmikant & Partners appeared for the Applicants in CA No. 499/2023 & 500/2023.

Ms. Samrudhi Chothani, Advocate a/w Ms. Ananyaa Jagirdar, Advocate appeared for the Applicant in CA No. 397/2023.

Mr. Aditya Bapat, Advocate a/w Mr. Bhat, Advocate i/b Junnarkar & Associates appeared for the Applicant in CA No. 29/2023 & 44/2023.

Mr. M. S. Bhardwaj, Advocate appeared for the Respondent in CA No. 499/2023, 500/2023, 397/2023.

Mr. Rohan S. Nandy, Advocate appeared for Union of India.

CA No. 499/2023–

1. The present applications have been filed by Kiyokazu Ishinabe who is the Japanese Citizen and was the alternate Directors to an non-executive nominee Directors on the Board of IL & FS Securities Services Limited (hereinafter referred as “ISSL”) from 29.03.2017 to 28.03.2018 and from 28.03.2018 till his resignation on 27.11.2019 under Rule 11 of the National Company Law Tribunal Rules, 2016 seeking dismissal of Company Application no. 396/2021 as against the Applicants and for deletion of the applicant’s name from the array of Respondents. The applicant is original Respondent no. 12 in the Company Application No. 396/2021.
2. Applicant was nominated on the Board of ISSL by ORIX Corporation, a Japanese Company, which had acquired 5% of ISSL’s shareholding in 2007. Applicant has no role to play in the day-to-day affairs, operations, and management of ISSL. During his entire tenure as the Alternate Director to the Non-Execute Nominee Director on the ISSL Board, the Applicant acted in utmost good faith and exercised due and reasonable care, skill and diligence as was required of him. The Applicant did no serve on any committee of ISSL.
3. Company Application No. 396/2021 has been filed by the Respondent under Sections 242, 246 r/w Section 339 and 340 of the Companies Act, 2013 for recovering the alleged losses caused to ISSL due to the alleged acts of breach of trust/fraudulent conduct/omissions by its directors/key managerial personnel/ employees including the Applicant.
4. A bare perusal of Company Application No. 396/2021 reveals that the same is not maintainable and ought to be dismissed at the very threshold, as against the Applicant as it inter alia miserably fails to show even a single instance as to how, the Applicant as a non-executive director, through board processes, had knowledge of any of the irregularities/wrongdoings alleged to have been committed by ISSL or consented to them or was

involved in any manner in them. No case has been made out against the Applicant in CA No. 396/2021.

5. We have heard the Counsel appearing for the parties and perused the record.
6. 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.
7. In view of this, we consider it appropriate to delete the name of the Respondent no. 12 i.e. Kiyokazu Ishinabe in Company Application No. 396/2021.
8. Accordingly, **CA No. 499/2023 is allowed and disposed of.**

CA No. 500/2023 –

1. The present applications have been filed by Harukazu Yamaguchi who is the Japanese Citizen and was an non-executive nominee Directors on the Board of IL & FS Securities Services Limited from 28.03.2018 till his resignation on 27.11.2019 under Rule 11 of the National Company Law Tribunal Rules, 2016 seeking dismissal of Company Application no. 396/2021 as against the Applicants and for deletion of the applicant's name from the array of Respondents. The applicant is original Respondent no. 12 in the Company Application No. 396/2021.
2. Applicant was nominated on the Board of ISSL by ORIX Corporation, a Japanese Company, which had acquired 5% of ISSL's shareholding in 2007. Applicant has no role to play in the day-to-day affairs, operations, and management of ISSL. During his entire tenure as the Alternate

Director to the Non-Execute Nominee Director on the ISSL Board, the Applicant acted in utmost good faith and exercised due and reasonable care, skill and diligence as was required of him. The Applicant did not serve on any committee of ISSL.

3. Company Application No. 396/2021 has been filed by the Respondent under Sections 242, 246 r/w Section 339 and 340 of the Companies Act, 2013 for recovering the alleged losses caused to ISSL due to the alleged acts of breach of trust/fraudulent conduct/omissions by its directors/key managerial personnel/ employees including the Applicant.
4. A bare perusal of Company Application No. 396/2021 reveals that the same is not maintainable and ought to be dismissed at the very threshold, as against the Applicant as it inter alia miserably fails to show even a single instance as to how, the Applicant as a non-executive director, through board processes, had knowledge of any of the irregularities/wrongdoings alleged to have been committed by ISSL or consented to them or was involved in any manner in them. No case has been made out against the Applicant in CA No. 396/2021.
5. We have heard the Counsel appearing for the parties and perused the record.
6. 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 is eligible for appointment as Independent Director. The Alternate Director does not have any authority or 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.

7. In view of this, we consider it appropriate to delete the name of the Respondent no. 10 i.e. Harukazu Yamaguchi in Company Application No. 396/2021.
8. Accordingly, **CA No. 500/2023** is **allowed** and **disposed of**.

CA No. 397/2023 –

1. Learned Counsel for the Respondent informs that this an application filed by many Directors who had never attended the meeting.
2. Proxy Counsel for the Union of India seeks adjournment.
3. List this CA on **22.12.2023** along with main Company Petition for hearing.

CA No. 29/2023 –

1. Learned Counsel for the Applicant informs that Applicant has since deceased and they wish to bring on record legal heirs of the Applicant and seeks time.
2. Legal heirs, after having being brought on record, may place on record rejoinder, if any.
3. List this CA on **11.01.2024** for further consideration.

CA No. 44/2023 –

1. Learned Counsel for the Applicant informs that one of the Applicant has since deceased and seeks some time to bring on record legal heirs.
2. Legal heirs, after having being brought on record, may place on record rejoinder, if any.
3. List this CA on **11.01.2024** for further consideration.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)

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