

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

Item No. 13

IA 31/2023 INV.P.05/2023 CA 1001/2020 CA 10/2021 CA 424/2023 CA
25/2023 CA 9/2023 CA 08/2023 CA403/2021 CA 397/2023 CA 209/2021 CA
434/2023 MA 3002/2019 CA 212/2023 CA 137/2023 CA 170/2023
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 **22.12.2023**

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

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

ORDER

1. Mr. Aditya Sikka, Learned Counsel a/w Mr. Gaurav Jaiswal, Advocate appeared for the Union of India.
2. Ms. Drishti Das, Advocate a/w Ms. Roma Bhajani, Advocate i/b Cyril Amarchand Mangaldas appeared for the Applicant in CA No. 209/2021.
3. Mr. Shyam Kapadia, Advocate a/w Mr. Dhiraj Mhetre, Advocate i/b M/s. Khaitan Legal Associates appeared for the Applicant in CA No. 424/2023.
4. Mrs. Vinita Sahity, Advocate appeared for the Applicant in CA No. 1001/2020 and Respondent no. 2 in CA No. 10/2021.
5. Mr. Sidharth Joshi, Advocate a/w Ms. Kavita Brid, Advocate appeared for the Applicant in MA No. 3002/2019 and Respondent in CA No. 212/2023.
6. Ms. Samrudhi Chothani, Advocate i/b Trilegal appeared for the Applicant in CA No. 397/2023.

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7. Ms. Drishti Das, Advocate a/w Ms. Roma Bhajani, Advocate i/b Cyril Amarchand Mangaldas appeared for the IL & FS in IA No. 31/2023, INV.P. 5/2023, CA 10/2021, 1001/2020, 25/2023, CA 403/2021.
8. Mr. Deep Roy, Advocate appeared for the CMA in IA No. 31/2023, IVN. P. 5/2023, 1001/2020, 10/2021, 434/2023 & 424/2023.
9. Mr. M. S. Bhardwaj, Advocate appeared for the Respondent in CA No. 397/2023.
10. Mr. Dhaval Vora, Advocate a/w Mr. Rohan Satija, Advocate i/b AZB & Partners appeared for the Respondent no. 3.

CA Nos. 137/2023 & 170/2023 –

1. Mr. Janak Dwarkadas, Senior Counsel, Mr. Prateek Seksaria, Senior Counsel, a/w Mr. Rohan Rajadhyaksha, Ms. Tina Abraham, Mr. Akshay Puri, Mr. Pundrkaksh Mitruka, Advocate i/b Trilegal appeared for the Applicant.
2. Mr. Ashish Kamat, Senior Counsel a/w Mr. Animesh Bisht, Advocate Ms. Drishti Das, Ms. Roma Bhajani i/b Cyril Amarchand Mangaldas appeared for the Respondent nos. 2 & 3.
3. Mr. Aditya Sikka, Learned Counsel a/w Mr. Gaurav Jaiswal, Advocate appeared for the Union of India.
4. Heard Counsel appearing for the parties on CA Nos. 137/2023 & 170/2023 and **Reserved for Order**.
5. All parties can file short notes of the arguments not more than 4 pages by 05.01.2024.
6. Parties are directed to supply the copies of the synopsis, pleadings and applications (excluding annexures) in word copy format on email id. ncltmum001@gmail.com.

MA No. 3002/2019 –

1. Mr. Sidharth Joshi, Advocate a/w Ms. Kavita Brid, Advocate appeared for the Applicant.
2. Mr. Aditya Sikka, Advocate appeared for the Union of India.
3. The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by Applicant who was a Director in Respondent no. 1 Company and other group entities till 01.10.2018 seeking following prayers:
 - a) *To order and direct the Additional Respondent nos. 1 to 5 to defreeze the bank accounts of the Applicant and his family members held with the Additional Respondent nos. 1 to 5 with immediate effect.*
 - b) *In the alternative to prayer clause (a) to allow the Applicant to withdraw/utilize funds from his bank accounts for his day to day expenses, medical expenses, legal expenses and statutory dues including payment of Income Tax Returns;*
 - c) *Pending the hearing and final disposal of this application, to permit the Applicant to operate the bank accounts; and*
 - d) *Pass any order as this Bench deems fit.*
4. Vide Additional affidavit dated 26.07.2022 the Applicant stated that he is liable to pay his statutory dues to the Income Tax Department for Financial Year 2020-2021 and Financial Year 2021—2022. The Applicant is required to pay his income tax for FY 2020-2021 to the tune of Rs. 35,49,850/- and for FY 2021-2022 to the tune of Rs. 34,98,270/-. The Applicant may also require to pay interest and penalty levied on the amounts for clearing these statutory dues.
5. Union of India has filed Company Application No. 212/2023 seeking disclosure of the documents and information under Rule 11 of the NCLT

Rules, 2016 r/w Section 339, 246 and 242(4) of the Companies Act, 2013. The CA No. 212/2023 is filed on account of the additional affidavit dated 26.07.2022 filed by the Applicant in MA No. 3002/2019 seeking disclosure of information and documents.

6. It is submitted by Union of India that Applicant is seeking to pay his income tax dues for the FY 2020-2021 and 2021-2022 of an amount of INR 70,00,000/- (Approx.) without disclosing his sources of income or in the income tax computation.
7. An additional affidavit dated 20.12.2023 on behalf of Mr. Arun K Saha has been filed disclosing the income of the Applicant.
8. The account from which the Applicant intends to pay his pending statutory dues for the Relevant years in his Axis Bank Account bearing number 028010100044837. This is his primary bank account. All income other than interest in respect of saving bank and fixed deposit account is credited to the above Axis Bank account. The amount of Rs. 2 Lakhs per month which he is permitted to withdraw is being withdrawn from this Bank account.
9. The Applicant reiterates that with every month of delay in payment of income tax dues, he incurs a 1% penalty of the total dues. Accordingly, as of date, the Applicant is already incurring heavy penalties for delayed payment.
10. We have perused the documents and additional affidavit dated 20.12.2023 on behalf of the Applicant disclosing the income of the Applicant.
11. In view of the aforesaid, we find it appropriate to allow Applicant to pay his statutory dues to the Income Tax Department for Financial Year 2020-2021 and Financial Year 2021—2022. However, the income tax dues attributable to the income of Spouse liable to be clubbed in his hands shall

be paid out of the income credited in Spouse Account. For this purpose, the Applicant shall transfer the equivalent sum from wife's account to his account and the total dues of the income tax can be paid from his account.

12. Accordingly, Applicant is allowed to pay his statutory dues to the Income Tax Department for Financial Year 2020-2021 and Financial Year 2021—2022 in the manner stated in foregoing para.

13. List MA No. 3002/2019 & CA No. 212/2023 on **24.01.2024** for hearing.

IA No. 31/2023 –

1. Learned Counsel for the IL & FS appears and informs that approval process is taking some time and she submits that it will take around three weeks more.
2. Learned Counsel for the Applicant may persuade this Bench whether this Bench has jurisdiction to entertain this application at this stage.
3. INV.P No. 05/2023 is connected to IA No. 31/2023.
4. List these IAs' on **24.01.2024** for further consideration.

CA No. 1001/2020 & CA 10/2021 -

1. Learned Counsel for the Applicant in CA No. 10/2021 submits that this is an application in nature of counter claim to CA No. 1001/2020 and inter-se claim of the parties has to be settled.
2. List these CAs' on **24.01.2024** for further consideration.

CA No. 25/2023 -

1. Mr. Harshit Tiwari, Advocate a/w Mr. Akshat Goel, Adv. Ashwin Hirulkar appeared for the Applicant.
2. Learned Counsel for the Applicant informs they have moved an IA to amend the cause title and seeks some time.
3. List this CA on **24.01.2024** for further consideration.

CA No. 9/2023 -

1. Learned Counsel for the Union of India informs that SFIO comments on the OTS are awaited.

2. List this CA on **24.01.2024** for further consideration.

CA Nos. 8/2023 & 403/2021 –

1. None present for the Applicant.
2. In case on the next date of hearing none appears on behalf of the Applicants, the present applications will be dismissed for want of non-prosecution.
3. List these CAs' on **24.01.2024** for dismissal.

CA No. 397/2023 –

1. The present application is filed by Murray Stahl, Original Respondent no. 9 seeking deletion of the name from the array of parties in CA No. 396/2021 under Rule 11 of the NCLT Rules, 2016.
2. 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.
3. It is contended that 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.
4. We have heard the Counsel appearing for the parties and perused the record.
5. Under the Companies Act, 2013, the Alternate Director holds office of

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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.

6. In view of this, we consider it appropriate to delete the name of the Respondent no. 9 i.e. Murray Stahl in Company Application No. 396/2021.
7. Applicant shall be at liberty to file a fresh application.
8. Accordingly, **CA No. 397/2023** is **allowed** and **disposed of**.

CA No. 209/2021 –

1. Learned Counsel for the IL & FS informs that Hon'ble Justice D K Jain's approval to the intended sale has been received and draft of LOI has been issued to the buyer. Appropriate documents shall be placed before this Bench on the next date of hearing.
2. List this CA on **24.01.2024** for further consideration.

CA No. 424/223 & 434/2023 -

1. Learned Counsel for the CMA is directed to place on record one decision of this Tribunal which has defined the scope of inquiry while processing the claim.
2. They are also directed to confirm whether company has deposited service taxes, as claimed to have been paid by the Applicant also separately.
3. List these CAs' on **24.01.2024** for further consideration.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)