

NATIONAL COMPANY LAW TRIBUNAL

COURT ROOM NO. 1,

MUMBAI BENCH

Item No. 16

IA 19/2024 (NEW IA) MA 2070/2019 MA 2071/2019 CA 1001/2020 CA 10/2021 CA 361/2021 CA 362/2021 CA 364/2021 CA 427/2021 CA 479/2022 CA 459/2022 CA 51/2022 CA 97/2022 CA 102/2022 CA118/2022 CA 119/2022 CA 121/2022 CA 127/2022 IA 1/2022 IA 2/2023 CA 9/2023 CA 391/2023 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 **21.02.2024**

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

Section 241-242 of the Companies Act, 2013 & Rule 11

ORDER

**IA 19/2024 (NEW IA) MA 2070/2019 MA 2071/2019 CA 10/2021 CA 361/2021
CA 362/2021 CA 364/2021 CA 427/2021 CA 459/2022 CA 51/2022 CA 97/2022
CA 102/2022 CA118/2022 CA 119/2022 CA 121/2022 IA 1/2022 IA 2/2023**

1) Mr. Pulkit Sharma, Harsh Kesharia, Advocates for Respondent No. 333 and Applicant in CA/427/2021, Adv. Ishan Paradkar I/b J Shekhar Associates for Respondent No. 330, Mr. Dinesh Purandare a/w Adv Sanat Ragde and Soumya Srinivasan i/b legasis Partners for respondent Nos 328 and 329, Mr. Kunal Mehta, Mr sanat ragde, Ms. Soumya Srinivasan i/b Legasis partners For Respondent No.334, Mr. Navroz Seervai, Ld. Sr. Counsel with Vijayendra Pratap Singh, Aditya Vikram Jalan, Ambareen Mujawar, Raghav Seth, Bhagya Yadav, Shreya Choudhary, Anant Misra and Prince Todi, Advocates for Respondent Nos. 325 & 327, Kuber Dewan, Neeharika Aggarwal, Kaustubh Srivastava, Advocates for the Applicant (in CA 9/2023), Anusha Nagarajan, Aakanksha Bhola, Mansi Bhavnani - Olive Law, for the Respondent No. 1 (CA 391/2023), Prithvi Raj JS, Counsel for the Applicant in CAs 459 & 479 of 2022, Mr. Aditya Sikka, Mr. Meghav Gupta a/w Ms. Onshi Jakhar, for the Union of India Adv. Ishan Paradkar I/b J Shekhar Associates, for Respondent No. 330, Mr. Kunal Mehta, Mr sanat ragde, Ms. Soumya Srinivasan i/b Legasis Partners for Respondent No. 334 Ms. Vinita Sahitya, Ld. Counsel for the Applicant (in CA 1001 & R2 in CA 10), Mr. Shrikant Pillai, Ld. Counsel for the Applicant (in CA 391), Mr. Janak Dwarkadas, Ld. Sr. Counsel for the Respondent No. 326, Mr. Robin Jaisinghani, Ld. Counsel for Respondents Nos. 323, 324, 337, 338, 339 & 341, Mr. Rohan Cama, Ld. Counsel for the Respondent No. 321 (in MA 2070/2019), Mr. Chirag Naik, Ld. Counsel for the Respondent No. 332, Mr.

Shwetank Nigam, Ld. Counsel for the CMA, Mr. Animesh Bisht, Ld. Counsel for IL&FS, Mr. Kazan Shroff, Ld. Counsel for Respondent No. 322 (in MA 2070), Mr. Dinesh Purandare, Ld. Counsel for the Respondents 328, 329 (in MA 2070) AND Mr. Kunal Mehta, Ld. Counsel for the Respondent No. 334 in MA 2070 & CA 121, are present.

- 2) Heard Ld. Counsel for the Union of India and Ld. Sr. Advocates for other sides for a considerable time on the issue of amendment which has been recently carried out in the Company Petition. Stand over to 11.03.2024, for hearing further arguments.

CA 1001/2020

- 1) Ld. Counsel for the Parties are present.
- 2) Ld. Counsel for the Applicant submits that they will furnish documents after expiring of Ten days. However, Ld. Counsel for the Claims Management Advisor informs that the Final Report has already been tendered with this Tribunal and thus, vehemently opposed for submission of documents by the Applicant.
- 3) However, in the interest of justice, this Bench deems it fit and appropriate to direct the Claims Management Advisor to consider and entertain the documents of the Applicant. It is made very clear that no further documents shall be filed by the Applicant.
- 4) Stand over to 13.03.2024, for further consideration and hearing.

CA 479/2022

- 1) Ld. Counsel for Parties are present.
- 2) The present Interlocutory Application has been filed by the Applicant Mrs. Arul Mozhi, against Respondents viz. IL&FS Engineering and Construction Company Limited and Grant Thornton Bharat LLP, seeking the following reliefs:
 - i. *Set aside the rejection/adjudication of the Applicant's claim Rs. 93,58,885/- by the Respondent No. 2 in respect of the outstanding lease rentals payable by the Respondent No 1 to the Applicant pursuant to the Lease Agreement dated 10/09/2018.*
 - ii. *Direct Respondent No. 2 to reinstate and admit the claim of the Applicant of Rs. 84,14,890/- in respect of the outstanding lease rentals payable by Respondent No. 1.*
 - iii. *Direct Respondents to pay rent to the Applicant for the period from April 2022 till the date of vacation of leased premises by Respondent No. 1.*
 - iv. *Direct Respondents to pay the costs of these proceedings.*
- 3) It is submitted that the Applicant and Respondent No. 1 entered into a Lease Agreement dt. 10.09.2018, where under the Applicant leased the land – *“having Survey Nos. 119/1, 119/7, 120/1, 120/2, 123/1 and 123/2, Situated in Ward B, Block No. 2, adm. to 70,085 sq. ft situated at No. 2, Manali Highways, Ernavur Village, Chennai – 600 057 to Respondent No. 1 for the purpose of its works in connection with the execution of Chennai Metro Rail*

Project awarded to Respondent No. 1. The Monthly Rent for the said lease was fixed at Rs. 2,00,000/- + 18% GST.

- 4) Respondent No. 1 paid only partial rent till January, 2019 and defaulted the rent from February, 2019 to till date. Further, upon the expiry of the lease period on 09.08.2019, Respondent No. 1 did not execute any new Lease Deed with the Applicant; however, continued to utilize the leased premises for its purposes without the lease being renewed.
- 5) Thereafter, on 31.10.2019, Respondent No. 1 sent a Notice to the Applicant, stating to vacate the leased land by 31.12.2019; but, the Respondent No. 1 failed to vacate the leased premises as on 31.12.2019. It is submitted that the Applicant sent numerous letters requesting the Respondent No. 1 to clear the pending rental dues and to vacate the leased premises; however, the Respondent No. 1 neither cleared the outstanding rental dues nor replied to the letters of the Applicant.
- 6) Finally, the Applicant herein proceeded and filed Form-B on 14.03.2022, with the Respondent No. 2, claiming a sum of Rs. 93,58,885/- towards the outstanding lease rentals payable by the Respondent No. 1 to the Applicant. However, Respondent No. 2, rejected the claim of the Applicant without assigning any remarks or clarification for its action and also did not communicate the status of the claim to the Applicant.
- 7) Hence, this Application.

- 8) The Respondent No. 2 has filed their Affidavit in Reply to the present Interlocutory Application and we have perused the same. Respondent No. 2 submits that the cause of action for the claim filed by the Applicant has arisen after the Cut-Off Date. It is submitted that the Applicant and the Respondent No. 1 had entered into a lease agreement and the Respondent No. 1 had leased a property from the Applicant on account of the storage of the materials required for a project that Respondent No. 1 had undertaken with regard to the Chennai Metro Rail Link Project.
- 9) Applicant filed Form B with CMA on 14.03.2022 claiming an amount of Rs. 93,58,885/-. Further, the Applicant revised the claim amount to Rs. 84,14,890/- on account of a calculation error by the Applicant in the computation of the claim amount in relation to the rental dues payable by the Respondent No. 1 to the Applicant.
- 10) Respondent No. 1 has paid the rental lease payments till January, 2019 and upon a review of the documents provided by the Applicant, CMA understands that the liability under the claim filed by the Applicant has arisen after the Cut-Off date, in pursuance to the Resolution Framework approved by the Hon'ble Appellate Court, with regard to the verification of claims pertaining to ILFS and its entities i.e. 15.10.2018. This was made clear in the public advertisement issued at the start of the process. Therefore, all claimants were well aware that the process being run by CMA is only for claims till the Cut-Off Date.

- 11) Hence, it is submitted that the CMA does not have the power to decide upon the treatment of claims which have arisen after the Cut-Off Date and maybe currently ongoing. Further, CMA does not have any power to recognise and admit any claims that are Resolution costs. The current process is not an Insolvency Resolution Process of the IL&FS Group; hence, in the absence of any such mandate to determine the acceptance and subsequent treatment of claims which may be considered as ongoing and whose cause of action has arisen after the Cut-Off Date, the CMA currently does not have the power to determine the treatment of the claim submitted by the Applicant.
- 12) We have perused the documents and material available on record.
- 13) It is an undisputed fact that the claim in the present Application pertains to the period after the cut-off date; accordingly, is not to be dealt with by the Claim Management Agency which is engaged merely for the purpose of collation and verification of claims up to the cut-off date against the Corporate Debtor. However, the amount of claim for the period post cut-off date is to be settled as Resolution Cost and the has to be paid in full in terms of the approved Resolution Framework. Accordingly, we direct IL&FS Engineering and Construction Company Limited to admit the claim of Rentals for the Period from cut-off date as the Resolution cost and settle in accordance with the approved Resolution Framework.

- 14) Further, Company shall decided on the issue of vacation of premises in case the same is not relevant on the purpose of Resolution of the Company.
- 15) With the aforesaid observation the Company Application bearing CA No. 479 of 2022, is disposed of as partly allowed.

CA 9/2023

- 1) Ld. Counsel for the Parties are present.
- 2) Counsel for Union of India submits that the comments of Serious Fraud Investigation Office are awaited in the present matter; thus, seeks leave of this Bench to adjourn the matter.
- 3) At request, stand over to 13.03.2024, for further consideration and hearing.

CA 127/2022

- 1) None present for the Applicant when the matter is called out. Ld. Counsel for the Claims Management Advisor is present.
- 2) Applicant is directed to persuade this Bench how this Application is tenable in the eyes of law as the present Application is seeking amendment to the dissolution Framework which has been approved by the Hon'ble National Company Law Appellate Tribunal.
- 3) Stand over to 13.03.2024, for further consideration and hearing. Arguing Counsel for the Applicant is directed to remain present in the Court on the next date of hearing and apprise the Bench.

CA 391/2023

- 1) Ld. Counsel for the Parties are present.
- 2) Applicant seeks leave of this Bench to file and place on record Affidavit in Rejoinder. Leave as prayed is allowed. Affidavit in Rejoinder be filed and placed on record well before the adjourned date thereby duly serving a copy thereof to the other side well in advance.
- 3) Stand over to 13.03.2024, for further consideration and hearing.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**

Vedant Kedare