

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

Item No. 29

CA 511/2020 CA 209/2021 CA 538/2022 CA 9/2023 CA 95/2023 IA 25/2023
CA 52/2024 CA 120/2024 IA 31/2023 IVN.P 5/2023 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 15.05.2024

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

Section 241-242 of the Companies Act, 2013

ORDER

CA 95/2023 in CP/3638(MB)2018

- 1) Mr. Abhishek Anand, Ld. Counsel for the Applicant and Ms. Drishti Das, Ld. Counsel for ITNL are present.
- 2) Ld. Counsel for the Applicant seeks some time to proceed further in the matter contending that the Affidavit in Reply filed by the Respondent No. 2 has been served upon them today's morning.
- 3) Stand over to 04.07.2024, for further consideration and hearing. Parties shall complete and exchange the pleadings well before the adjourned date so that the matter will be taken up on the next date of hearing.

CA 511/2020, CA 52/2024 in CP/3638(MB)2018

- 1) Mr. Amit Anand Tiwari, Ld. Sr. Counsel for the Applicant (in CA 511 & Respondent in CA 52), Ms. Drishti Das, Ld. Counsel for IL&FS are present.
- 2) Counsel for IL&FS seeks some time to file Affidavit in Rejoinder in CA 52 of 2024. Time is allowed. Affidavit in Rejoinder be filed and placed on record well before the adjourned date thereby duly serving a copy to the other side well in advance.
- 3) Stand over to 31.07.2024, for further consideration and hearing. The matter will be taken up at 2:30 P.M. post lunch. Parties shall complete and exchange the pleadings well before the adjourned date so that the matter will be taken up on the next date of hearing.

CA 209/2021, CA 9/2023 in CP/3638(MB)2018

- 1) Ms. Drishti Das, Ld. Counsel for the Applicant (in CA 209), Mr. Kuber Dewan, Ld. Counsel for the Applicant (in CA 9) and Mr. Aditya Sikka, Ld. Counsel for the Union of India are present.
- 2) Ld. Counsel for the Union of India have no objection if the order is passed allowing the Sale, without prejudice to the rights and contentions of SFIO to proceed against. Ld. Counsel for the Applicant submits that they have filed one Affidavit wherein they have sought amended Reliefs in the matter, thus, submits that the same be considered.
- 3) Heard Ld. Counsel for the Parties for a considerable time. Reserved for Orders.

CA 538/2022 in CP/3638(MB)2018

- 1) Mr. Ryan D'souza, Ld. Counsel for the Applicant is present. None present for the Respondents, when the matter is called out.
- 2) Counsel for the Applicant seeks some time to proceed further in the matter. Time is allowed. At the request of the Counsel for the Applicant, stand over to 13.06.2024, for further consideration and hearing.

IA 25/2023 in CP/3638(MB)2018

- 1) Mr. Ashwin, Ld. Counsel for the Applicant is present. None present for the Respondents, when the matter is called out.
- 2) Ld. Counsel for the Applicant seeks some time to proceed further in the matter contending that the Arguing Counsel is not available today. At the request of the Counsel for the Applicant, stand over to 04.07.2024, for further consideration and hearing.
- 3) Registry is directed to accept the Hard Copies of the Pleadings for the record purpose.

CA 120/2024 in CP/3638(MB)2018

- 1) None present for the Applicant, when the matter is called out. Mr. Shwetank Nigam, Ld. Counsel for the CMA are present.
- 2) Ld. Counsel for the CMA submits that the copy of the present Application has not yet been served upon the CMA. In that view of the matter, Applicant is hereby directed to serve a copy of the present Application upon the CMA, forthwith.

3) Stand over to 04.07.2024, for further consideration and hearing.

IA 31/2023 IVN.P 5/2023 in CP/3638(MB)2018

- 1) Mr. Shyam Kapadia, Ld. Counsel for Applicants (ICICI Bank – in IA 31 & Respondents in INV.P. 5), Mr. Animesh Bisht, Ld. Counsel for IL&FS and Mr. Dhaval Vora, Ld. Counsel for the Respondent No. 3 in IA 31 & INV.P. 5 are present.
- 2) The Interlocutory Application has been filed by the Applicant, ICICI Bank Limited, seeking directions setting aside the Resolution to put to vote the Resolution Plan for IECCL and to re-start the Debt Resolution Process in terms of the Resolution Framework and in compliance with Application Laws and other Appropriate Reliefs as under:
 - a. *Declare and set aside the Resolution passed by the Committee of Creditors in the meeting dated 18.01.2023 to put to vote the Resolution Plan for IECCL as illegal in view of violation of the Resolution Framework and settled principles of law;*
 - b. *Direct re-assessment of liquidation value of IECCL taking into account the updated cash and receivables of IECCL, as well as proportionate values in special purpose vehicles, joint ventures and investee companies where IECCL holds a stake;*
 - c. *Direct the Respondents to conduct proper checks of the Bidder in terms of Section 29A of the Code and provide a report to the Committee of Creditors;*

- d. Direct the Respondents to re-instate the claims of the Consortium Lenders which have been illegally and belatedly reduced by the Respondents;*
- e. Direct the Respondents to re-start the debt resolution process of IECCL in terms of the Resolution Framework and in compliance with the applicable laws;*
- f. In the interregnum, suspend the ongoing debt resolution process of IECCL including voting on the resolution plan submitted by the Bidder, until the disposal of the present Application.*

3) The present Interlocutory Application ("Application") is being filed by ICICI Bank Limited (ICICI Bank Applicant), on behalf of and under authorization from the consortium of lenders of ILFS Engineering and Construction Company Limited ("Respondent No. 1/IECCL") comprising of State Bank of India, Bank of India, Punjab National Bank, Bank of Baroda, Indian Overseas Bank, Indian Bank (alongwith merged Allahabad Bank). Bank of Maharashtra, IDBI Bank Limited and the Applicant Consortium Lenders) who have extended various credit facilities to IECCL and are severely aggrieved by the arbitrary and illegal manner in which the debt Resolution Process of IECCL has been conducted by the management of Infrastructure Leasing and Financial Services Ltd. ("IL&FS Respondent No.2), assisted by Alvarez & Marsal India Pvt. Ltd. as the Resolution Advisor ("Resolution Adviser Respondent No. 3) and Gram Theron Bharat LLP, formerly known as Grant Thornton India LLP ("Claims Management

Advisor/Respondent No. 4"). The total outstanding dues payable as on 30.09.2022 to the Consortium Lenders by IECCL are in excess of INR 1854.57 Crores.

- 4) During the course of hearing, the Applicant pressed for urgent adjudication of Prayer clause "d" in view of the fact that the voting of the CoC was to conclude on 31.05.2024; accordingly, this Bench heard the Counsel on limited issued on reduction of the claim of the Applicant and other Lenders by CMA on the ground that reduced amount of the debt claimed at pertains to expired bank guarantees and amount of the Bank Guarantees involved in the suits/legal proceedings. These Bank Guarantees were earlier either treated as contingent claim or as claim neither rejected nor admitted. The Applicant submits that the Respondent could not have re-visited the amount of claim already admitted by them; because, the claims are to be verified as on cut off date and any subsequent event having bearing on the quantum of such claim cannot be taken into consideration by the CMA for reduction in the claim amount of the Creditors which has already been admitted after verification.
- 5) In this case, the CMA had admitted a sum of Rs. 1775.84 Crores as the claim of the Applicant and other Lenders. It is the case of the CMA that out of this Admitted claim, the some part of the claim pertains to the Bank Guarantee which though were in force as on the cut off date but has subsequently expired and there exist no exposure in relation thereto.

6) Further, in relation to the remaining reduced amount, the amount of claim against Bank Guarantee is either under adjudication or is contested before various forums and hence, accordingly, is nothing but a contingent liability and these claims are taken as “claims neither admitted nor rejected by CMA”. Accordingly, the amount pertaining to these two categories was reduced from the admitted claim of the Applicant; the Respondent submitted that such reduction cannot be said in the nature of adjudication; because, such finding is based on the verification in the light of subsequent events. Accordingly, the CMA submitted that the verification includes the re-verification of evidences on record in the light of subsequent events. The Counsel for the Applicant vehemently objected to this proposition and submitted that CMA has indulged into the adjudication which is not within their scope.

7) We have considered the rival submissions and is of the considered view that the Respondent No. 4 i.e. CMA was well within its rights to verify the claim amounts in the light of subsequent events more so when such claims are held as contingent claims. Upon expiry of the Bank Guarantee, no claims survive against the issuer of the Bank Guarantee and in turn the person on whose behalf the Bank Guarantee is issued is relieved of the exposure thereunder. Hence, no claim, even contingent in nature, can be said to be in existence after expiry of the Bank Guarantee. Therefore, we do not find any infirmity in the action of the Respondent No. 4 in this regard. As regards claim

pertaining to Bank Guarantees under contest/Appeal, we find that these claims are held as contingent claims which are neither admitted nor rejected, in view of the uncertainty attached to it. The process of resolution under the approved Resolution Framework is taken to the Resolution under the Insolvency and Bankruptcy Code and the word “claim” includes disputed right to payment also as provided in Section 3(6) of the Code. However, the Code is silent as to what shall be the value at which such disputed claims are to be admitted. Generally, these claims are considered as notional value just to keep its existence in records, which in the present case also the CMA has retained it under the category “claims neither rejected nor admitted”. We are also of the view that disputed right of payment cannot be equated with the undisputed right of payment. Accordingly, we do not find any infirmity in so far as treatment of claims is concerned for the purpose of determination of voting rights of the CoC members.

8) In view of the forgoing, we do not find any merit in the prayer “d” made by the Applicant. Rest of the Prayers shall be taken up after the detailed arguments in relation thereto are made before us.

9) Stand over to 24.06.2024, for further consideration and hearing.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**