

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

Item No. 25

CA 136/2022 IVN.P 5/2023 CA 25/2023 IA 31/2023 CA 95/2023 CA 224/2024
CA 120/2024 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 **24.07.2024**

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 136/2022 IN CP/3638(MB)2018

- 1) Ms. Urvika Suri, Ld. Counsel for the Applicant and Mr. Animesh Bisht, Ld. Counsel for the Respondent are present.
- 2) Ld. Counsel for the Applicant seeks some time to proceed further in the matter contending that Arguing Counsel is not available. Time is allowed.
- 3) At request, stand over to 19.08.2024, for further consideration and hearing.
Parties shall be at liberty to complete and exchange the pleadings so that the matter shall be proceeded further on the next date of hearing.

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

- 1) Mr. Shyam Kapadia, Ld. Counsel for Applicants and Mr. Animesh Bisht, Ld. Counsel for the Respondents are present.

- 2) Ld. Counsel for Applicants seeks some time to have further instructions from the Bank and to proceed further in the matter. Time is allowed.
- 3) At request, stand over to 13.08.2024, for further consideration and hearing. Parties shall be at liberty to complete and exchange the pleadings so that the matter shall be proceeded further on the next date of hearing.

CA 25/2023 IN CP/3638(MB)2018

- 1) Mr. Ashvin Hirukar, Ld. Counsel for the Applicant and Mr. Animesh Bisht, Ld. Counsel for the Respondent are present.
- 2) Ld. Counsel for the Applicant seeks some time to proceed further in the matter contending that Arguing Counsel is not available. Time is allowed.
- 3) At request, stand over to 28.08.2024, for further consideration and hearing. Parties shall be at liberty to complete and exchange the pleadings so that the matter shall be proceeded further on the next date of hearing.
- 4) Applicant submits that the present Application is incorrectly mentioned as “Company Application” instead of “Interlocutory Application”. In that view of the matter, Registry to correct the said inadvertent error.

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

- 1) Advocate Krishna Sharma for the Applicant and Mr. Shwetank Nigam, Ld. Counsel for the Respondent are present.
- 2) Ld. Counsel for the Parties submit that Pleadings are complete and the matter is ripe for hearing.

3) The present Company Application has been filed by the Applicant, VIL Limited, praying for the following reliefs:

- a. *The Respondent No. 1 be directed to admit the claim of the Applicant to the tune of Rs. 208,88,60,021/-;*
- b. *ad-interim orders in terms of prayers above.*

4) The present Company Application is filed seeking admission of the claim of the Applicant filed with the Respondent No. 1 to the tune of Rs. 208,88,60,021/-. It is submitted that the claim of the Applicant in respect of the Resolution Framework Process of the Respondent No. 2 is divided in three heads, as enumerated hereinbelow:

- a. **Claim A** – Outstanding payments of Rs. 24,63,60,021/- (comprising of Rs. 21,51,32,236/-, towards Bills certified by R2 and Rs. 3,12,27,785/-, towards Bills raised by the Application pending final certification from R2).
- b. **Claim B** – Rs. 12,53,00,000/- (towards arbitrary and mala fide invocation of the Performance Bank Guarantee).
- c. **Claim C** – Rs. 17,72,00,000/-, towards prorated claim on account of damages obtained by the R2 from NHAI on account of delay in handover and providing encumbrance free site.

5) It is also submitted that in the month of September, 2022, various correspondences were exchanged between the Respondent No. 1 and the Applicant for clarifying the claim made by the Applicant.

- 6) The Respondent No. 1 issued an E-mail on September 28, 2022 w.r.t. the claim filed by the Applicant in relation to the Resolution Framework of the R2. It is also submitted that in the said E-mail, R1 has admitted the claim of the Applicant for a sum of Rs. 21,51,32,236/- against aggregate claim of Rs. 208,88,60,021/-.
- 7) It is submitted that the R1 has refused to admit the claim of the Applicant to the tune of Rs. 208,88,60,021/- and has requested the Applicant to approach appropriate authorities for admission of the entirety of the claim made by the Applicant.
- 8) Heard Ld. Counsel for the Parties, extensively for a considerable time and perused the material available on record.
- 9) There are three components of the amounts claimed by the Applicant. The first component i.e. "A" pertains to invoices raised by the Applicant on the Respondent No. 2. It is not dispute between the Parties that the Resolution Professional has admitted the claim in respect of the invoices to the extent by the Respondent No. 2, in terms of clause 12.1 of the Construction Agreement which specifically contemplates certification by the Respondent No. 2. As regards balance of Rs. 3,12,27,785/-, we note that the Applicant through Era Pandey, had communicated to CMA on 28.09.2022, *vide* E-mail that "*we are in agreement with the sum admitted by you of Rs. 21,51,32,236/- along with the interest at the rate of 18% due date till the date of payment*", and no dispute was raised in that E-mail in relation to the

claim for outstanding payment pertaining to uncertified invoices. We find that terms of clause 12.1, are clear and unambiguous providing that “the actual payable amount to the contractor may defer from the contract price based on the quantities executed and certified by ITNL including any approved extra item”. It is not in dispute that the invoices pertaining to the claim of Rs. 3,12,27,785/- are not certified, hence, the same has not become due and payable in accordance with clause 12.1. Accordingly, we do not find any infirmity in the decision of CMA in this relation.

- 10)** As regards claims for Component “B” i.e. towards invocation of the Performance Bank Guarantee, we find that this Guarantee was invoked by the Respondent No. 2 to recover towards the defect liability on account of termination. The Applicant has filed this claim for return of the money received by the Respondent No. 2 upon encashment of Performance Bank Guarantee, terming it as “wrongful and arbitrary”. We find that the performance guarantee was duly invoked in accordance with the terms of contract and the Applicant has failed to demonstrate how the said invocation contravenes the terms of the construction agreement. There seems to be some dispute between the Parties in relation to the contractual obligations, however, we note that CMA does not have adjudicatory powers. Further, the performance bank guarantee in question was invoked on 03.06.2019, after the cut off date for admission of claims i.e. 15.10.2018 Accordingly, we do

not find any merit in the claim for the amount collected by invocation of the Performance Bank Guarantee by the Respondent No. 2.

- 11) The Applicant has claimed damages as component “C” on the ground that the claim of the concessionaire under the letter dt. 16.07.2018 has been mutually settled for a sum of Rs. 672.62 crores and the share of the Applicant in the length of the project towards to whole land is 25.53%. Accordingly, the Applicant is entitled to sum of Rs. 171.72 Crores. The Respondent No. 1 has stated that the CMA is not in a position to review and verify the claim pertaining to the damages and has therefore, neither admitted nor rejected this component of claim filed by the Applicant. The CMA has classified this Claim as “claim under dispute”. We note that the quantification of the claim requires adjudication before appropriate forum and it cannot be said that the amount in question is admissible as clear debt. Accordingly, we do not find any infirmity in classification of these components of claim as under dispute.
- 12) With the aforesaid observation, the Company Application bearing CA 95 of 2023, is disposed of as dismissed.

CA 224/2024 IN CP/3638(MB)2018

- 1) Mr. Animesh Bisht, Ld. Counsel for the Applicant and Ms. Onshi Jakhar, Ld. Counsel for the Respondent are present.
- 2) Ld. Counsel for the Union of India seeks further time to file and place on record Affidavit in Reply. Time is allowed.

- 3) Affidavit in Reply be filed and placed on record well before the adjourned date thereby duly serving a copy thereof to the other side well in advance.
Stand over to 19.08.2024, for further consideration and hearing.

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

- 1) Mr. Abhishek Khare, Ld. Counsel for the Applicant and Mr. Animesh Bisht, Ld. Counsel for the Respondent are present.
- 2) Ld. Counsel for the Respondent submits that a copy of the present Company Application has not yet been served upon the Respondent. Ld. Counsel for the Applicant undertakes to serve a copy of the present Application upon the Respondent.
- 3) Thereafter, Respondents shall file and place on record Affidavit in Reply well before the adjourned date thereby duly serving a copy thereof to the other side well in advance.
- 4) Stand over to 19.08.2024, for further consideration and hearing.

Later on, Ld. Counsel, Mr. Animesh Bisht submits that certain inadvertent typographical errors appearing in the daily order dt. 05.07.2024, passed by this Bench in CA 640/2022, wherein it was recorded that *“the resolution in case of BAEL has already been concluded and this matter may be heard on merits and decided”*. However, Ld. Counsel submits that the word “Concluded” gives an impression that the sale has been implemented, hence, further submits that the said word be replaced with the word “approved”.

After reading the said para as a whole, we found the above said submissions substantiated. Accordingly, this Bench replace the word “Concluded” with the word “approved”. Now, the whole order passed in CA 640/2022 on 05.07.2024, will read as under:

CA 640/2022

Ld. Counsel for the IL&FS submits that the resolution in the case of BAEL has already been approved and this matter may be heard on merits and decided. List this matter on Board on 19.08.2024.

Rest of the order dt. 05.07.2024, passed in the present matter shall stand unaltered.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Vedant Kedare

Sd/-

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**