

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**I.A. 83 OF 2024**

Under Rule 11 of NCLT Rules, 2016

Securities and Exchange Board of India

**...Applicant**

Vs.

Grant Thornton Bharat LLP & others

**...Respondents**

In the matter of

C.P. No. 3638/MB/2018

Union of India

**...Petitioner**

Vs.

IL&FS Limited Others

**...Respondents**

***Order delivered on: 20.08.2024***

***Coram:***

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**  
Hon'ble Member (Judicial)

***Appearances:***

For the Applicant : Mr. Abhay Chavan, Advocate

For the ILFS : Ms. Drishti Das & Mr.  
Devvanshu Jaswani, Advocate

**ORDER**

***Per: Justice V.G. Bisht, Member (Judicial)***

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I.A. 83 OF 2024

In

CP 3638/2018

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1. This Application IA no. 83 of 2024 is filed by Securities and Exchange Board of India ("Applicant") against Grant Thornton Bharat LLP under the Company Petition no. 3638 of 2018 filed in the matter of Infrastructure Leasing and Financial Services Ltd. & Ors. In terms of Section 241-242 of the Companies Act, 2013. The Applicant seeks following relief :
  - a. *This Tribunal be pleased to set aside the decision of Respondent No. 1 vide Email dated 29.03.2023, rejecting the Applicant's Proof of Claim;*
  - b. *This Tribunal be pleased to set aside the decision of Respondent No. 2 vide Email dated 30.08.2023, rejecting the Applicant's Proof of Claim;*
  - c. *This Tribunal be pleased to condone the delay, if any, in filing the Proof of Claim;*
  - d. *This Tribunal be pleased to direct the Respondent No. 1 to admit the claim of the Applicant of Rs. 10,00,000/- (Rupees Ten Lakh only) along with interest @ 1 % per month which is due and payable by the Respondent No. 2 in terms of the LODR Regulations, SCRA, Rules, Bye-Laws and Regulations of the Applicant, Circulars issued by the Applicant from time to time.*
  - e. *This Tribunal be pleased to pass such other or further orders as this Tribunal may deem fit in the facts and circumstances of the case, in the interest of justice and equity.*
2. The Applicant - Securities and Exchange Board of India (hereinafter referred to as "SEBI"), a statutory body under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act, 1992") has preferred the present Application challenging the Respondent No. 1 Resolution Professional's (hereinafter referred to as "RP") decision vide email dated 29.03.2023 rejecting the Applicant's Form B - Proof of Claim of Rs. 10,00,000/- (Rupees Ten Lakh only) along with interest @ 1 % per month and a consequential direction to Respondent No. 1 to admit the claim of the Applicant.

3. The Respondent No. 2 in its Board of Directors Meeting dated 21.07.2018 inter alia passed resolutions in respect of increasing the equity through right issue, acceptance of resignation of Mr. Ravi Parthasarthy viz. Non-Executive Chairman and appointment of Mr. Hemant Bhargava as the new Non-Executive Chairman. Thereafter, the Respondent No. 2 in its Board of Directors meeting held on 29.08.2018 inter alia, approved a public issue of Secured Redeemable NCDs amounting to Rs.4,500 crores, Specific Asset Disinvestment plan to reduce the overall debt by Rs.30,000 crores and recapitalization of group companies to the extent of Rs.5,000 crores.

3.1. As per regulation 51 (1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (herein after referred to as "LODR Regulations"), a listed company is required to inform the stock exchange( s) of all the information relating to the performance of the listed entity, price sensitive information or any action that shall affect payment of interest or dividend of non-convertible preference shares or redemption of non-convertible debt securities or redeemable preference shares. In terms of the aforementioned LODR Regulations, the Respondent No. 2 being a listed company was under an obligation to inform the decisions/resolutions passed in the Board of Directors Meeting dated 21.07.2018 and 29.08.2018 to Bombay Stock Exchange.

3.2. It was observed that the Respondent No. 2 disclosed the following information to Bombay Stock Exchange:

- a. Resignation of Non-Executive Chairman Mr. Ravi Parthasarthy and appointment of Mr. Hemant Bhargava as the new Non-Executive Chairman during the Board of Directors Meeting dated 21.07.2018; and

b. Approval of raising of funds by way of public issue of Secured Redeemable Non-Convertible Debentures during the Board of Directors Meeting dated 29.08.2018.

3.3. However, the Respondent No. 2 failed to disclose the following information:

- a. the decision of Board of Director to raise equity capital by way of rights issue during the Board of Directors Meeting dated 21.07.2018 ; and
- b. the decision of Board of Director of approval of a Specific Asset Divestment Plan to reduce the overall debt by Rs.30,000 Crores

3.4. In view of the above, the Respondent No. 2 failed to comply with the aforementioned provisions of the LODR Regulations and Section 21 of Securities Contract (Regulation) Act, 1956 (herein after referred to as "SCRA"). Therefore, the Applicant initiated adjudication proceedings for violation of the LODR Regulations and provisions of SCRA.

3.5. During the pendency of the adjudication proceedings, Union of India filed the present Company Petition under Section 241 and Section 242 of the Companies Act, 2013 alleging mismanagement of the Respondent No. 2. The Hon'ble National Company Law Tribunal vide its Order dated 01.10.2018 suspended the Board of Directors and reconstituted a new Board to take over the affairs of the Company. In terms of the Order dated 01.10.2018, the new Board of Directors, in its 3rd Progress Report proposed a framework for the resolution of the Respondent No. 2 and its Group Companies.

- 3.6. Thereafter, the Hon'ble National Company Law Appellate Tribunal (hereinafter referred to as "NCLAT") vide its Order dated 11.01.2019 observed that the process required to be followed for resolution of the Respondent No. 2 and its group companies was similar to that of corporate insolvency resolution process. The NCLAT also observed that a Committee of Creditors is required to be constituted and appoint a Resolution Professional.
- 3.7. To ensure fair and transparent consideration of the stakeholder's right during the resolution of the Respondent No. 2, the New Board of Directors appointed the Respondent No. 1 as "Claims Management Consultant" to inter alia undertake the process of collection and verification of claims from the Creditors. As per the Resolution Framework, the role and responsibility of the Respondent No. 1 as a Claims Management Consultant is to invite claim from all creditors and to verify the claims submitted by such Creditors. Accordingly, the Respondent No. 1 published a Public Announcement dated 22.05.2019 calling for the creditors of the Respondent No. 2 to submit their claims before 05.06.2019.
- 3.8. In the interregnum, the Applicant in exercise of its powers under Section 23-1 of SCRA vide Adjudication Order No: Order/SS/AS/2019-20/4523 dated 18.09.2019 (hereinafter referred to as "Adjudication Order") imposed penalty of Rs.10,00,000/- (Rupees Ten Lakhs only) on the Respondent No. 2 for its violations under the provisions of LODR Regulations and provisions of SCRA. The Respondent No. 2 was provided 45 days to remit the amount of penalty imposed failing which interest thereon would be payable.
- 3.9. On 11.11.2022, the Applicant filed its Form B - Proof of Claim for an amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) along with interest @1 % per month (hereinafter referred to as "Claim Amount")

towards penalty imposed on account of non-compliance of the provisions of the LODR Regulations and SCRA. The Form B - Proof of Claim was received by the Respondent No. 1 on the same day. However, the Respondent No. 1 vide an Email dated 29.03.2023 inter alia expressed his inability to accept the Claim on the ground the same is filed post 18.08.2022 i.e. the last date of submission of claim. In pursuance to Section 15JA of SEBI Act, 1992 all sums realized by way of penalties under the Act is to be credited to the Consolidated Fund of India. Since the claim which is a penalty ought to have been considered. Hence, the Applicant issued a Letter dated 13.06.2023 requesting the Board of the Corporate Debtor to accept the Claim of the Applicant. In response to the aforementioned Letter, the Respondent No. 2 informed the Applicant that the request for acceptance of claim was put before the Board Meeting held on 30.06.2023 for consideration. However, the same was not accepted on the ground that reopening of claim window has implication on remapping of the creditors and therefore, the claim window cannot be opened selectively for a specific party. Thus, the Applicant, being aggrieved by the rejection of its Claim by the Respondent No. 1 has, therefore, preferred the present Application seeking setting aside of the impugned decision dated 29.03.2022 of the Respondent No. 1 and decision dated 30.08.2023 of the Respondent No.2. Consequently, the Applicant has sought to condone the delay if any in filing their Claim.

4. The Respondent filed affidavit in reply dated 12<sup>th</sup> June 2024 thereby deny each and every allegation contained in the application. The Respondent submits that the Applicant submitted its claim with the CMA only on November 11, 2022, after a period of nearly 2 years of the Applicant issuing the order dated September 18, 2019. The CMA by its email dated

March 29, 2023 informed the Applicant that in terms of the public announcement dated August 04, 2022, the last date of submission of claims on IL&FS, with the CMA was August 18, 2022 and as the Applicant had submitted their claim post August 18, 2022, the CMA was not in a position to verify or look at the claim. Through such email, the CMA informed the Applicant that the CMA is functioning as per the instructions of the IL&FS and unless the IL&FS decides to extend the last date for submission of claims, the CMA cannot consider the claim.

4.1. The CMA in pursuance to the Resolution framework, has been mandated to only verify the status of the claims submitted by the creditors pertaining to IL&FS and its group entities with regard to liabilities that have arisen as on stipulated Cut-off Date and Formulate and prepare list of creditors. The CMA in its role in the resolution framework prescribed by the Hon'ble NCLAT, can only act in accordance with the principles enshrined in the Code and the CIRP Regulations, and cannot exercise any other functions. In the instant case, by a public notice, the deadline for submission of claim, was kept at August 18, 2022.

4.2. The Code and the Regulations does not prescribe any provision by which the Resolution Professional can *suo moto* admit claims. A claimant is mandated to file its claim in the prescribed form and in absence of any such, claim, the Resolution Professional cannot *suo-moto* admit the claim, such principle has been upheld by this Tribunal in the case of JC Flowers Asset Reconstruction Company Private Limited Vis Claims Management Advisor of Infrastructure Leasing and Financial Services Limited & Others in [CA 210/2023 in CP No. 3638/2018}.

4.3. The role of the CMA is limited to only verifying the status of the claims submitted by the creditors pertaining to IL&FS and its group

entities with regard to liabilities that have arisen as on the stipulated Cut-Off Date i.e. October 15, 2018, and formulating and preparing the list of creditors in terms of the procedure as has been set out in Resolution framework. In the instant case, the last date for invitation of claims in relation to the Respondent No. 2 was August 18, 2022, and the Applicant has filed its claim in Form-F on November 11, 2022, and therefore the CMA cannot look into any claim submitted post August 18, 2022.

5. Heard the learned counsel and perused the materials available on record.
  - 5.1. The Applicant is seeking condonation of delay in submission of its claim arising from the Adjudication Order dated 18.09.2019. In this case, the Respondent No. 2 Company was admitted into the Resolution Process pursuant to Order dated 15.10.2018 passed by Hon'ble National Company Law Appellate Tribunal and a comprehensive moratorium was declared. In furtherance to the resolution framework approved by the Hon'ble NCLAT, the creditors of the IL&FS Group were required to file their claims up to October 15, 2018 ("Cut-Off Date") with the CMA, the Respondent No. 1, who was given responsibility of verification and collation of such claim. The Public Announcement for inviting claims from creditors in respect of the liability due up to the Cut-Off Date was published on 22.5.2019. The New Board appointed by the order of this Tribunal have set deadlines for the submission of the claims by the creditors. These deadlines were also extended on some occasions, in order to enable the creditors to file their claims.
  - 5.2. In the present case, the adjudication order giving rise to claim was passed on 18.09.2019 and the claims of creditors as on 15.10.2018 were to be resolved under approved resolution framework. The latest extended date for submission of claim was 18.08.2022 and the



Applicant filed its claim on 11.11.2022 despite the demand having been created on 18.09.2019 giving rise to the claim. We note that the Resolution of the IL&FS and its entities received wide publicity in view of it having been initiated by the Government of India after taking note of huge amount of debt exposure it was reeling under. It can not be the case of the applicant that it had no knowledge of the process, when it was expressly made aware in course of adjudication proceedings itself. Nonetheless, the claim having arisen from the adjudication order dated 18.09.2019 can not be said to be in existence as on cut off date i.e. 15.10.2018. Accordingly, the claim of the Applicant is not admissible on this ground itself.

5.3. Nonetheless, we note that the request of the applicant was duly considered by the Respondent No. 2 i.e. Board of the IL&FS and was turned down vide email dated 30.8.2023 for the reasons that “*the claim window has been reopened by the Company multiple times in the past and reopening of window would have implications on remapping of the creditors, as the window cannot be opened selectively for a specific party. The interim distribution exercise for the Company has been already delayed due to various impediments and reopening of window would further derail the ongoing steps pursued by the Company for effecting interim distribution of the Company*”.

5.4. We do not find any reason to interfere in the decision of Respondent No. 2.

6. In view of the above, IA 83 of 2024 is dismissed and disposed of accordingly.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)