

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

Item No. 55

CA 396/2021 CA 355/2023 IA 73/2024 IA 66/2024 IA 76/2024 IA 85/2024 IA 129/2024 IA 131/2024 CA 131/2024 CA 116/2024 CA 141/2024 CA 142/2024 CA 179/2024 CA 185/2024 CA 188/2024 CA 210/2024 CA 238/2024 CA 239/2024 CA 249/2024 CA 260/2024 CA 268/2024 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 **23.08.2024**

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

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

ORDER

Ms. Drishti Das, Ld. Counsel for the Applicant in CA 179 & 185 OF 2024, Mr. M.S. Bharadwaj, Ld. Counsel for the Applicant in CA 396 OF 2021, Mr. Vishesh Kalra, Ld. Counsel for the Applicant in CA 117 OF 2023 & CA 355 of 2023, Mr. Hamza Lakhani, Ld. Counsel for the Applicant in CA 268 of 2024 and CA 396 of 2021, Mr. Robin Jaisinghani, Ld. Counsel for Applicants in CA 141 & 142 of 2024 and Respondent Nos. 28, 29 and 30 in CA 293 OF 2024 & CA 396 of 2021, Ms. Prachi Dhavani, Ld. Counsel for Deloitte LLP in CA 396 of 2021 & CA 116 of 2024, Mr. M.S. Bharadwaj, Ld. Counsel for SFIO (in CA 355/2023, IA 73/2024, IA 66/2024, IA 76/2024, IA 85/2024, IA 129/2024, CA 131/2024, CA 116/2024, CA 41/2024, CA 142/2024, CA 188/2024, CA 210/2024, CA 238/2024, CA 239/2024, CA 260/2024 & CA 268/2024), Mr. Rohan Rajadhyaksha, Ld. Counsel

for the Applicant (in IA 66/2024), Mr. Hamza Lakhani, Ld. Counsel for the Respondent No. 18 (in CA 396/2024), Ms. Kanisha Shah, Ld. Counsel for the Respondent No. 13 in CA 396/2024, Mr. V.P. Singh, Ld. Counsel for Respondent Nos. 31 & 32, Mr. Chirag Bhavsar, Ld. Counsel for Applicants in CA 210 & 238 of 2024 and Respondent Nos. 21 & 22 in CA 396/2022 and Mr. Pulkit Sharma, Ld. Counsel for the Respondent No. 20 in CA 396/2021 are present.

CA 260/2024, CA 188/2024, CA 355/2023, CA 210/2024, CA 238/2024

- 1) Ld. Counsel for the Union of India submitted that the interim report submitted by SFIO does not reveal involvement of Respondent No. 6, 14, 17, 18, 19, 21 and 22, in the manner prejudicial to the interest of ILFS Group Company, accordingly, this Bench may consider deleting these Parties as Party Respondent in CA 396/2021. He further submits that their deletion as party Respondents, be ordered without prejudice to the rights of the Union to seek their impleadment in other matters or to file appropriate Application in these proceedings in case they are found to be involved in the affairs of IL&FS and its group Companies in the manner prejudicial to its interest in course of investigation into the remaining Companies of the IL&FS Group.
- 2) Considering this submission, we consider it appropriate to allow CA 260/2024, CA 188/2024, CA 210/2024 and CA 238/2024 filed by Respondent No. 14, 17, 21 and 22, thereby deleting their name as Party Respondents in CA 396/2021. Further, this Bench finds that CA 117 of 2023, filed by Respondent No. 6 is pending with this Bench for pronouncement of

Orders seeking deletion as Party Respondents. In view of the submissions of the Counsel for the Union, CA 117 of 2023, is also allowed and disposed of. During the Course of hearing Counsel for Respondent No. 19 submitted that their Application filed by **Diary No. 2709138049202024**, also seeks deletion as Party Respondent and may be disposed of in view of submissions of Counsel for Union of India. We find that the said Application is yet to be numbered and placed before us, however, we consider it appropriate on the verbal submissions of both the Parties to delete Respondent No. 19 also as Party Respondent to CA 396/2021. In view of this, the Registry is directed to dispose of this matter in their records and not to place the Application before this Bench having **Diary No. 2709138049202024** for further orders.

3) Ld. Counsel for Respondent No. 6 also submitted that CA 355 of 2023 seeks recall of order dt. 28.06.2023, passed by this Tribunal in CA No. 396 of 2021, directing Respondent No. 6 amongst others to disclosed on oath details of their properties, in view of deletion of name of Respondent No. 6 as party Respondents, this Application is rendered infructuous, because, the order dt. 28.06.2023, ceases to be operation qua Respondent No. 6. Accordingly, CA 355 of 2023, is also disposed of as rendered infructuous.

4) Ld. Counsel for Respondent No. 14 also submitted that CA 323 of 2023 seeks recall of order dt. 28.06.2023, passed by this Tribunal in CA No. 396 of 2021, directing Respondent No. 14 amongst others to disclosed on oath details of their properties, in view of deletion of name of Respondent No. 14

as party Respondents, this Application is rendered infructuous, because, the order dt. 28.06.2023, ceases to be operation qua Respondent No. 14.

- 5) In that view of the matter, **CA 117 of 2023, CA 260 of 2024, CA 188 of 2024, CA 268 of 2024, CA 210 of 2024, CA 238 of 2024, CA 355 of 2023 and CA 323 of 2023**, stand disposed of.

IA 73/2024 IA 76/2024 IA 85/2024 IA 129/2024 IA 131/2024 CA 116/2024 CA 141/2024 CA 142/2024, CA 396/2021, CA 239/2024

- 1) These are the Applications challenging the admissibility of SFIO Report. CA 396 of 2021, is the main matter, wherein SFIO Report has been filed.
- 2) Stand over to 27.09.2024, for further consideration and hearing.

IA 66/2024

- 1) Mr. Rohan Rajadhyaksha, Ld. Counsel for the Applicant is present.
- 2) The present Interlocutory Application seeks copy of the Interim Report of the SFIO relied upon by the Union. In that view of the matter, Respondent, Union of India is directed to supply the copy of the SFIO Report along with relied upon documents. The Applicant, who is R26 in CA 396 of 2021 shall file Reply within Three weeks.
- 3) Stand over to 27.09.2024, for further consideration and hearing.

CA 249/2024

- 1) This is an Application filed by Union of India to bring on record the final investigation report dt. 14.07.2023 and to implead individuals mentioned in

para 2 of the Application as Party Respondents in order to adjudicate the issue in relation to IL&FS Securities Services Ltd. (ISSL).

- 2) This Tribunal consider it appropriate to direct the Union of India to consider filing an updated composite Application bringing therein all Parties Respondent and their case against them along with documents relied upon to substantiate those grounds and consider the withdrawal of existing Applications in relation to this matter to expedite the adjudication thereof. It is made clear that if Union proceeds to do so it shall not prejudice the Union's Composite Application, as suggested in this Order, on any ground which otherwise is not available to the Respondents in relation to Applications on record as on date in this Connection.
- 3) The Union of India shall file the composite Application after filing a copy thereof to all the Respondents who shall in turn file their Reply, within Four weeks.
- 4) Stand over to 27.09.2024, for further consideration and hearing.

CA 131/2024

- 1) Mr. Shyam Kapadia, Ld. Counsel for the Applicant and Mr. Aditya Sikka, Ld. Counsel for the Respondent are present.
- 2) The present Company Application has been filed by the Applicant inter alia for the limited purpose of variation and/or modification of the Order dated 03.12.2018, thereby seeking withdrawal of an amount to the tune of Rs. 8,00,000/- to meet the expenses.

- 3) Applicant submits that they are ready to lower the limit of withdrawal of an amount from Rs. 8 Lakhs per month to Rs. 6.50 Lakhs per month. However, Counsel for the Union of India pointed out certain discrepancies and objected for withdrawal of an amount to the tune of Rs. 6.50 Lakhs per month and agrees to allow withdrawal of an amount to the tune of Rs. 1,00,000/- per month.
- 4) However, Applicant seeks some time to file and place on record Rejoinder. Time is allowed. Affidavit in Rejoinder be filed and placed on record well before the adjourned date. Applicant is directed to comply with the order passed by this Bench on 05.07.2024.
- 5) Stand over to 30.08.2024, for further consideration and hearing.

CA 185/2024

- 1) Ld. Counsel for the Parties are present.
- 2) The present Company Application has been filed by the Applicant/Infrastructure Leasing & Financial Services Limited seeking the following reliefs:
 - i. *Approve and allow the closure of ITNL Road Investments Trust by dissolution and permit the Applicant, IL&FS Transportation Networks Limited and ITNL Road Investments Trust to take such steps as may be necessary to effectively dissolve ITNL Road Investments Trust, including:*
 - i. *executing and implementing the deed of dissolution and such other agreements/ documents as may be required, for the dissolution of ITNL Road Investments Trust; and*

- ii. undertaking in-specie distribution of the assets of ITNL Road Investments Trust to IL&FS Transportation Networks Limited.*
- ii. Approve and allow the closure of IL&FS-ORIX Trust by dissolution and permit the Applicant and IL&FS-ORIX Trust to take such steps as may be necessary to effectively dissolve IL&FS-ORIX Trust, including:*
 - i. executing and implementing the deed of dissolution and such other agreements/ documents as may be required, for the dissolution of IL&FS-ORIX Trust; and*
 - ii. undertaking distribution of the available net cash of IL&FS-ORIX Trust.*
- iii. Approve and allow the closure of IL&FS Investment Trust-4 by dissolution and permit the Applicant and IL&FS Investment Trust4 to take such steps as may be necessary to effectively dissolve IL&FS Investment Trust-4, including:*
 - i. executing and implementing the deed of dissolution and such other agreements/ documents as may be required, for the dissolution of IL&FS Investment Trust-4; and*
 - ii. writing off investments/ receivables made by IL&FS Group holders of the Pass-Through Certificate.*
- iv. Approve and allow the closure of IL&FS Investment Trust-1 by dissolution and permit the Applicant and IL&FS Investment Trust1 to take such steps as may be necessary to effectively dissolve IL&FS Investment Trust-1, inter alia, by:*
 - i. executing and implementing the deed of dissolution and such other agreements/documents as may be required, for the dissolution of IL&FS Investment Trust-1; and*
 - ii. undertaking distribution of the available net cash of IL&FS Investment Trust-1.*

- 3) The Applicant has filed the present Company Application (“Application”) in the Company Petition (IB) No. 3638 of 2018 (“Petition”) arrayed as Respondent No, 1 in the Captioned Petition. The present Application is being filed seeking approval of this Tribunal for closure of ITNL Road Investments Trust (“IRIT”), IL&FS-ORIX Trust (“IOT”), IL&FS Investment Trust-4 (“IIT-4”) and IL&FS Investment Trust-1 (“IIT-1”).

Closure of IRIT

- 4) IRIT was set up by ITNL pursuant to Indenture of Trust dated February 22, 2007 for the purposes of investing in equity related instruments or convertible instruments for the benefit of beneficiaries of the trust. ITNL is the 100% beneficiary of IRIT.
- 5) IRIT is one of the promoter entities of Roadstar Infra Private Limited (“RIPL”) which is the sponsor entity of Roadstar Infra Investment Trust (“RUT”). RIPL/ RUT was setup under the SEBI Infrastructure Investment Trust Regulations (“SEBI InvIT”). IRIT holds around 22.70% of equity in RIPL and balance 77.30% of equity is directly held by ITNL as on August 31, 2023. According to the audited financial statements for financial year (“FY”) ending 2023, IRIT has total assets of INR 24.88 crores which comprises of cash and cash equivalent of INR 0.002 crore and investments of INR 24.88 crores. The investment comprises of 2,31,22,803 equity shares of INR 10 each in RIPL and investments of 38,60,456 equity shares of INR 10 each in Roadstar Investments Managers Limited (“RIM L”), the investment manager appointed by RUT. As against these assets, the liability of IRIT is nil.
- 6) At present, IRIT has no assets other than investments and cash and bank balances as stated above, which investments can otherwise be directly held by IRIT’s sole beneficiary, ITNL. Further, in addition to continuing to operate IRIT will not only cause incurrence of additional liabilities and

administrative costs, its closure will also enable the Applicant to meet the overall mandate of resolving IL&FS Group entities. It is also pertinent to mention that there are no creditors of IRIT. Therefore, it is proposed to distribute the aforementioned investments held by IRIT in-specie to ITNL as part of/ consequent to closure of IRIT by execution of a dissolution deed/ agreement.

- 7) Under the Resolution Framework, the Resolution Consultant has *vide* their recommendation note dated September 4, 2023, recommended closure of IRIT by execution of dissolution deed on the ground that the same appears to be just and equitable. Thereafter, the board of directors of ITNL vide resolution dated November 8, 2023, approved the same. Subsequently, on November 29, 2023, the New Board approved redemption of units held by ITNL in IRIT by way of in-specie distribution. Thereafter, the trustee of IRIT, i.e., Vistra ITCL (India) Limited vide its resolution dated December 28, 2023 has provided its consent for closure of IRIT through execution of dissolution deed.

Closure of IOT

- 8) IOT was established pursuant to the Indenture of Trust dated February 1, 2008 executed between the Applicant and the Trustee and subsequent Supplementary Indenture of Trust dated February 13, 2009. IOT has also been registered as a venture capital fund vide Certificate of Registration granted by SEBI on July 21, 2009. IL&FS Financial Services Limited (“IFIN”) is the sole subscriber to the units of the IOT and holds 100% units in IOT. Hence, IFIN is the sole beneficiary of IOT. IOT had made two investments viz. in Multi Commodity Exchange of India Limited, which was transferred to IFIN in FY 2009-2010; and the other in Maithan Steel Limited, which was later divested in FY 2014-2015. After these investments were transferred/ liquidated IOT has not made any further investments, and there

have been no activities in IOT till date. IOT has no business operations since April 2015 and does not have any other assets or liabilities. As on March 31, 2023, there is only cash balance available for INR 1,398/-. It is proposed that IOT be closed by executing a dissolution deed between IL&FS and ITCL pursuant to which the available net cash, after any expenses be distributed to IFIN being the sole beneficiary.

- 9) It was decided by the New Board, that normal resolution process applicable to companies of the IL&FS Group Entities would also be made applicable to IOT. In furtherance thereof, vide letter dated May 2, 2023, ITCL intimated to IFIN to initiate the process of surrendering the VCF license and wind-up IOT at the earliest in order to comply with the VCF Regulation.
- 10) Under the Resolution Framework, the Resolution Consultant has recommended, vide their Recommendation Note dated June 12, 2023, dissolution of IOT. Thereafter, board of directors of IFIN vide resolution dated July 28, 2023, approved initiating the closure of IOT. Subsequently, the New Board vide resolution dated July 28, 2023, also approved the closure of IOT subject to the approval of Hon'ble Justice (Retd.) D. K. Jain and this Hon'ble Tribunal. Thereafter, the Trustee vide its resolution dated January 24, 2024 also provided its consent for closure of IOT through execution of dissolution deed.

Closure of IIT -4

- 11) The Applicant, in its capacity as the settlor, and the Trustee, established IIT4 pursuant to the Trust Deed dated September 26, 2003 for the purposes of holding receivables (in relation to various loans granted by IL&FS to third party borrowers) in trust for the benefit of the holders of PTC of IIT-4. In this regard, the Applicant and the Trustee entered into various securitization agreements setting out the terms and conditions for the acquisition of the receivables by IIT-4. These loans which were originally extended by the Applicant, were subsequently assigned to IFIN, IL&FS

Maritime Infrastructure Company Limited (“IM ICL”) and IL&FS Education & Technology Services Ltd (“IETSL”) by way of PTCs. As a result, IIT-4 has three beneficiaries- IFIN, IMICL and IETSL. Pursuant to the ongoing asset monetization process in the Applicant group, the entire shareholding of IETSL was sold to Falafal Technology Private Limited in 2020. Pursuant to such sale, the name of IETSL was changed to Schoolnet India Limited.

- 12)** According to the unaudited financial statements for FY 2021, IIT-4 has total assets of INR 0.06 lakh which comprises of cash & cash equivalent of INR 0.06 lakh. Against these assets, IIT-4’s liability comprises of trade payable of INR 1.77 lakh. As IIT-4 has no ongoing business operations and no substantial assets, keeping it alive will incur additional liabilities and administrative costs. Therefore, it is proposed to close IIT-4 by execution of a dissolution deed. Under the Resolution Framework, the Resolution Consultant has recommended, vide their recommendation dated November 30, 2022, IIT-4 to be resolved by execution of dissolution deed. Further, the PTC holders as beneficiaries have passed board resolutions approving the writing off the investment made by the PTC holders and thereby to dissolve IIT-4. The GEC has also approved the initiation of the closure process for IIT-4. Thereafter, the board of directors of IMICL vide resolution dated July 25, 2023, approved initiating the closure of IIT-4. The board of directors of Schoolnet India Limited vide resolution dated August 3, 2023 also approved initiating the closure of IIT-4. Subsequently, board of directors of the IFIN through its resolution vide circulation dated September 20, 2023, approved initiating the closure of IIT-4. Thereafter, vide resolution dated October 6, 2023, the New Board also approved the closure of IIT-4. Subsequently, the Trustee vide resolution dated March 8, 2024 has provided its consent for closure of IIT-4 through execution of dissolution deed.

Closure of IIT -1

- 13)** IIT-1 was established up on March 22, 2003 through an Indenture of Trust dated March 22,2003 executed between the Applicant and the Trustee for the purposes of sub-leasing premises in the IIFC to IBM under the Memorandum of Agreement. The Applicant is the sole beneficiary of IIT-1. IIT-1 had also entered into a sub-lease agreement with IBM on March 26, 2003. During the financial year ending 2016, the sub-lease agreement was terminated, and IIT-1 surrendered the leased assets to the lessor. On surrendering the leased assets, IIT-1 discontinued its sub-leasing business from March 29, 2016. Having surrendered the premises at TIFC, the IIT-1 has not engaged in any business or operational activities since the last 8 years.
- 14)** According to the audited financial statements for the year ending 2020, IIT1 has total assets of INR 3.02 lakhs comprising cash and cash equivalents. Against these assets, IIT-1's audited statements of FY 2020 show a total current liabilities of INR 41.91 lakhs which comprise of the following:
- i. Trade payables worth INR 0.24 lakhs; and
 - ii. Tax liability of INR 41.67 lakhs which pertains to the tax deducted at source (TDS) payable for the period June 2013 to Feb 2014 which is not actually a liability since IIT-1 had already discharged the total tax liability of INR 105.71 lakhs for the period June 2013 to February 2014.
- 15)** IIT-1 has not been engaged in any other activity except for the transactions as mentioned. It is proposed that IIT-1 be closed by executing a dissolution deed between IL&FS and the Trustee pursuant to which the available net cash, after any expenses be distributed. Under the Resolution Framework, the Resolution Consultant has recommended, vide their Recommendation Note dated May 26, 2023, dissolution of IIT-1. In furtherance of the IIT-1 Recommendation, the GEC approved the initiation

of the closure process for IIT-1 on May 31, 2023. Thereafter, vide resolution dated July 26, 2023, the New Board also approved the closure of IIT-1. Subsequently, the Trustee vide its resolution dated March 8, 2024 has provided its consent for closure of IIT-1 through execution of dissolution deed.

16) It is submitted that by a letter dated February 29, 2024, Justice (Retd.) Mr. D. K. Jain has accorded his approval for dissolution of IRIT and IOT, subject to the proposal being presented before this Tribunal for its approval. Further, by a letter dated March 20, 2024, Hon'ble Justice (Retd.) Mr. D. K. Jain has accorded his approval for dissolution of IIT-4 and IIT, subject to the proposal being presented before this Tribunal for its approval.

17) It is lastly submitted that in light of the circumstances faced by the aforementioned entities and in the face of the extraordinary debt contagion plaguing the Applicant Group, it is just and equitable to permit taking steps towards the initiation of closure and dissolution of the Entities.

18) Heard the Ld. Counsel for the Parties.

19) We find that Hon'ble Justice (Retd.) Mr. D. K. Jain has also accorded his approval for dissolution of IRIT, IOT, IIT-4 and IIT, vide letter 29.02.2024 and 20.03.2024. The Union of India has filed their reply stating that the Approval for the dissolution of these entities may be considered by these Tribunal subject to compliance with all other applicable Statues/Laws and subject to condition that all records including books of accounts, ledgers, bank statements, Approval memorandums, minutes and other statutory records pertaining to these four trusts shall be preserved by IL&FS till completion of Supplementary Investigation.

20) In view of this, we consider it appropriate to Approve and allow the closure of all these Four Trust Entities (i.e. IRIT, IOT, IIT-4 and IIT). The Applicant is also allowed to execute and implement the deed of dissolution and such other agreements/ documents as may be required, for the

dissolution of IL&FS Investment Trust-4; and write off investments/receivables made by IL&FS Group holders of the Pass-Through Certificate. *These entities shall* comply with all other applicable Statutes/Laws for its dissolution. Further, IL&FS shall preserve all records including books of accounts, ledgers, bank statements, Approval memorandums, minutes and other statutory records in relation to these entities till completion of Supplementary Investigation.

- 21) With the aforesaid observations and directions, the Company Application bearing CA No. 185 of 2024, is disposed of as Allowed.

CA 179/2024

- 1) Ld. Counsel for the Parties are present.
- 2) The present Company Application has been filed by the Applicant/Infrastructure Leasing & Financial Services Limited seeking the following reliefs:
 - a. *Approve and allow the transfer of two (2) Licenses each under License Agreements dated February 25, 2016 by Porto Novo Maritime Limited to IL&FS Tamil Nadu Power Company Limited for construction, development and usage of the Captive Port against a consideration of INR 11.05 crores;*
 - b. *Permit Porto Novo Maritime Limited and IL&FS Tamil Nadu Power Company Limited to execute, implement and give effect to all definitive agreements, including the transaction documents, and any other documents that are incidental or ancillary to or necessary, to be executed and registered to give effect to the transfer of two (2) Licenses under each License Agreements dated February 25, 2016 by Porto Novo Maritime Limited to IL&FS Tamil Nadu Power Company Limited;*

- c. *Permit Porto Novo Maritime Limited to receive an amount of INR 11.05 crores from IL&FS Tamil Nadu Power Company Limited to be paid into and maintained in a designated/ relevant escrow/ bank account to be intimated by Porto Novo Maritime Limited;*
- d. *Direct that the amounts deposited/ received as per prayer C above shall only be utilized/ transferred in the manner prescribed in the Resolution Framework and shall not be adjusted or set off against any dues pertaining to any bank and/or financial institution.*

- 3) The Applicant has filed the present Company Application (“Application”) in the Company Petition (IB) No. 3638 of 2018 (“Petition”) and the applicant is arrayed as Respondent No. 1 in the captioned Petition. The present Application is being filed seeking approval of this Tribunal on the transfer of two licenses each dated February 25, 2016 (collectively “Licenses”) by Porto Novo Maritime Limited (“PNML”) to IL&FS Tamil Nadu Power Company Limited (“ITPCL”) for a captive port at Parangipettai, Cuddalore, Tamil Nadu (“Captive Port”) for a consideration of Rs. 11.05 Crores (the “Proposed Transaction”). PNML is a wholly owned subsidiary of IL&FS Maritime Infrastructure Company Limited (“IMICL”) and was set up for the development and construction of a captive port for ITPCL. The Applicant holds 90% shareholding in IMICL, therefore PNML is a step-down subsidiary of the Applicant and is a part of the IL&FS group. Additionally, ITPCL is a direct subsidiary of IL&FS Energy Development Company Ltd. (TEDCL), and IEDCL is a direct subsidiary of the Applicant. Therefore, ITPCL, is also a step-down subsidiary of the Applicant, and a part of the IL&FS Group.
- 4) The Captive Port was initially licensed to ITPCL by Tamil Nadu Maritime Board (“TNMB”) vide a license agreement dated August. 15, 2010 for the use of port lands for marine purpose, wherein 74% shareholding in ITPCL was held by IL&FS and 26% by IL&FS Energy Development Company

Limited. However, in 2011, IL&FS Group's shareholding in ITPCL was diluted and an external party was consequently holding 40.04% equity stake in ITPCL. As a consequence of this dilution of IL&FS Group's shareholding in ITPCL, TNMB stipulated a condition that the project should be domiciled in a special purpose vehicle wherein IL&FS Group would hold at least 74% shareholding. Thereafter, it was mutually agreed upon between TNMB and ITPCL that the project be transferred to another entity in the IL&FS Group, viz. PNML. Therefore, two license agreements were executed between TNMB and PNML thereafter, granting the licenses to PNML:

- a. license agreement dated February 25, 2016 for use of port land for marine purpose; and
 - b. license agreement dated February 25, 2016 for erection of a jetty or pier or wharf or any other marine structure, (collectively "License Agreements")
- 5) In 2015, ITPCL had initially proposed to develop a 3600 MW thermal power plant, resulting in the Captive Port being designed and planned for a capacity of handling 15 million metric tonnes per annum (the "mmtpa") of imported coal to cater to the requirements of operating a 3600 MW thermal plant. However, it only constructed for the Captive Port to hold 1200 MW and made the same operational by 2015, further reducing its capacity to handle only 5 mmtpa of imported coal. Consequently in 2017, PNML decided to construct a lighterage jetty of 5 mmtpa to cater to the 1200 MW power plant to make the project viable for them, however as it was not viable for PNML to raise the fund for constructing the same on a standalone basis, it was proposed in 2018 that ITPCL be given the right to build this lighterage jetty for use in 2018. Subsequently, PNML vide its letter dated May 29, 2018 ("May 29 letter") sought ITPCL's assistance and provided it with the right to finance, construct and use the lighterage jetty for a period of 20 years. ITPCL found PNML's proposal acceptable, as the development of the

lighterage jetty would result, in substantial cost saving by ITPCL and would reduce its reliance and dependency on Karaikal Port thus contributing to its long-term functioning. Thereafter, ITPCL proceeded to fund over 50% of the construction work of the lighterage jetty till February 2019 post which it declined due to commencement of the resolution process for the IL&FS Group.

- 6) Subsequently, vide an Order dated October 1, 2018 (“October 1 Order”) this Tribunal passed an order (i) suspending the then existing directors of IL&FS; and (ii) appointing 6 new directors to the Board of the IL&FS in place. (“New Board”). Thereafter, through an order passed by the Hon’ble National Company Law Appellate Tribunal (“NCLAT”) dated October 15, 2018 (“October 15 Order”) which was further affirmed vide order dated March 12, 2020 (“March 12 Order”) passed by Hon’ble NCLAT, the New Board was permitted to proceed with the resolution of the Applicant Group as per the Resolution Framework (defined below). In lieu of the liquidity assessment undertaken for the entire Applicant group, the Resolution Consultant M/s Alvarez & Marsal (“Resolution Consultant”) assisted in the resolution process of the Applicant Group and categorised the Applicant Group’s entities into 3 categories basis their ability to fulfil their payment obligations, these being. Green, Amber and Red, wherein, Green entities, including ITPCL, are those which hold no payment defaults/overdue and the cash flows generated from its operations are sufficient to meet its payment obligations, while Red entities including PNML are those which cannot meet its payment obligations even towards its senior secured financial creditors
- 7) As per an order passed by Hon’ble NCLAT dated August 8, 2019, any selling, transferring, encumbering, alienating, dealing with or creating any third party right, title or interest on any movable or immovable assets of “Red” entities would be subject to the approval of Justice (Retd.) D.K. Jain. Thereafter, two independent registered valuers, being RNC Valuecon LLP

(“RNC”) and Adroit Valuation Services Private Limited (“Adroit”), were appointed to undertake determination of the fair value of specified assets of PNML, i.e., the Licenses (as on March 31, 2020), according to which the average fair value for the licenses was determined to be INR 20.26 crores. Whereas, in accordance with the May 29 letter and further correspondences, the amount accepted by PNML as offered by ITPCL for the acquisition of the license (“Consideration”) was INR 11.05 Crores. Subsequently, corporate authorizations in the form of (i) Board Resolution of PNML dated September 28, 2022, (ii) New Board’s approval of the proposed transaction dated September 29, 2022 (iii) Board resolution of ITPCL dated October 11, 2022 and (iv) Approval of PNML’s Committee of Creditors dated November 28, 2022, Thereafter, vide a letter dated December 8, 2023, Justice (Retd.) D.K. Jain has accorded his approval for the Proposed Transaction i.e., as well, subject to the approval of this Tribunal.

- 8) The Applicant submitted that PNML is presently undergoing certain investigations conducted by the Serious Fraud Investigation Officer and the Enforcement Directorate, who have concluded that the sale of equity shares of PNML is not feasible, thereafter the only monetizable assets that remain are the licenses which are issued for a restrictive purpose and will not approve for any other transfer to a third party by TNMB, therefore the proposed transaction would be the best way forward for the stakeholders ITPCL, PNML and the Applicant Group. It is submitted that the Applicant has followed the Asset Level Resolution outlined in the Resolution Framework and has endeavored to obtain the best possible price for the transfer of license to ITPCL and have received the required approvals by including by Justice D.K Jain as well.
- 9) Therefore in lieu of the abovementioned approvals and circumstances the Applicant has brought forward the present Application.
- 10) Heard the Learned Counsel and perused the material on record.

- 11) The Counsel for the Union of India had submitted on 15.07.2024 that they have filed the Reply and there may be certain licenses under the attachment of Enforcement Directorate. Subject to this, he conveyed that Union has no objection.
- 12) Enforcement Director filed their Letter dt. 30.07.2024, clarifying that their office has attached 8.86% shares of ITPCL held by AS Coal PTE, Singapore in terms of PAO No. 01/2021 dt. 05.01.2021. In view of this clarification, we find that the Two Licenses, the subject matter of this Application, are not subjected to any attachment order. SFIO has filed its reply stating that it has no objection.
- 13) In view of the approval of Hon'ble Justice (Retd.) D.K. Jain, Reply received from Enforcement Directorate and No objection of the Union, we consider it appropriate to allow *the transfer of two (2) Licenses each under License Agreements dated February 25, 2016 by Porto Novo Maritime Limited to IL&FS Tamil Nadu Power Company Limited for construction, development and usage of the Captive Port against a consideration of INR 11.05 crores. Porto Novo Maritime Limited and IL&FS Tamil Nadu Power Company Limited are permitted to execute, implement and give effect to all definitive agreements, including the transaction documents, and any other documents that are incidental or ancillary to or necessary, to be executed and registered to give effect to the transfer of two (2) Licenses under each License Agreements dated February 25, 2016 by Porto Novo Maritime Limited to IL&FS Tamil Nadu Power Company Limited. Further, Porto Novo Maritime Limited is permitted to receive an amount of INR 11.05 crores from IL&FS Tamil Nadu Power Company Limited to be paid into and maintained in a designated/ relevant escrow/ bank account to be intimated by Porto Novo Maritime Limited and amount so deposited/received shall only be utilized/ transferred in the manner prescribed in the Resolution*

Framework and shall not be adjusted or set off against any dues pertaining to any bank and/or financial institution.

- 14)** In view of the forgoing, the Company Application bearing CA No. 179 OF 2024, is disposed of as Allowed. No costs.

Sd/-

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**

Vedant Kedare