

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

C.A. 233 OF 2021

Under Section 242(4) and Section 420 of
Companies Act, 2013

Mr. Pradip Puri

...Applicant

In the matter of

C.P. No. 3638/MB/2018

Union of India

...Petitioner

Vs.

IL&FS Limited Others

...Respondents

Order delivered on: 10.04.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances:

For the Applicant : Mr. Piyush Joshi, Advocate

For the UOI : Mr. Aditya Sikka, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

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

**C.A. 233 OF 2021
In
CP 3638/MB-1/2018**

1. This Company Application CA 233/2021 was filed by Mr. Pradip Puri under Section 242(4) and Section 420 and Companies Act, 2013 in Company Petition 3638 of 2018 filed by Union of India against Infrastructure Leasing and Financial Services seeking following reliefs:
 - a) That it be taken on record that the Applicant was only a non-executive director of ITNL and the said Order dated 18.12.2020 be deemed to stand modified accordingly to include reference to the said fact.
 - b) That it be taken on record that the Applicant was not a member of the Board of Director or in any manner the management of IL&FS and the said Order dated 18.12.2020 be deemed to stand modified accordingly to include reference to the said fact.
 - c) That it be taken on record that the SFIO Final Report on IFIN dated 28.05.2019 does not name the Applicant as a member of the alleged "coterie" that controlled the affairs of IL&FS and its group companies and the said Order dated 18.12.2020 be deemed to stand modified accordingly to include reference to the said fact.
 - d) That it be taken on record that the SFIO Charge Sheet filed before the designated special court pursuant to the SFIO Final Report on IFIN dated 28.05.2019 does not name the Applicant as an accused and no prosecution proceedings have been initiated against the Applicant and the said Order dated 18.12.2020 be deemed to stand modified accordingly to include reference to the said fact.
 - e) That the second sentence of Para 8 be deleted from Order dated 18.12.2020 and Para 8 of said Order stand modified accordingly;
 - f) That the third sentence of Para 8 be deleted from Order dated 18.12.2020 and Para 8 of said order stand modified accordingly;

- g) That, in light of the fact that SFIO Final Report on IFIN dated ARY 28.05.2019 does not name the Applicant as part of the alleged coterie that controlled IL&FS and in light of the fact that no 10639 prosecution has been initiated by SFIO against the Applicant, the restraints against the movable properties of the Applicant (i.e. the bank accounts, mutual funds, fixed deposits etc.) be removed;
2. This Application for Urgent Hearing and Modification of Order dated 18.12.2020 is being submitted by the Applicant who is Respondent No. 316 in Company Petition No. 3638 of 2018 for seeking modification of specific identified sentences in the Order dated 18th December 2020 passed by this Hon'ble Tribunal in respect of certain sentences that have recorded erroneous facts that would, if not rectified, cause prejudice to the Applicant and are in themselves not correct reflection of the facts.
3. The specific sentences in the Order dated 18th December 2020 that are being humbly sought to be modified so as to reflect the actual facts are as follows:
- a. In para 8 the second sentence that presently state: "The SFIO in its interim report dated 30.11.2019 inter alia named the Applicant as the mind and will of the company who perpetrated the fraud." This is a wrong factual statement because of the following obvious reasons and must therefore be modified:
- I. The SFIO in its interim report dated 30.11.2019 does not identify the Applicant as the mind and will of IL&FS who perpetrated the fraud. In fact the Applicant never held any position in the Board of Directors of IL&FS. The Applicant was only a non-executive director on the Board of IL&FS Transport *Networks Limited. In fact there is a conflict in the SFIO Report in relation to the Applicant itself, which is as follows:

(i) Para 9 identifies the Executive Directors of IL&FS, IL&FS Financial Services Limited, IL&FS Transport Networks Limited, IL&FS Energy Development Company Limited, IL&FS Maritime Infrastructure Company Limited and IL&FS Security Services Limited, which does not mention the Applicant. Thus, the SFIO Report in Para 9 is clearly highlighting that the Applicant was not an executive director in any of IL&FS or the identified main subsidiaries

(ii) Para 11 states that the Committee of Directors of important subsidiaries comprised of Managing Director, Joint Managing Director and executive Directors of IL&FS Limited to deal with all operational matters.

(iii) However, the Table 3 in Para 11 only identifies the Applicant as a Member of the Committee of Directors of IL&FS Transportation Networks Limited for the years 2017-18, 2016-17 and 2015-16, without stating that the Applicant was only a Non-Executive Director when in fact the extracts of the Annual Reports of ITNL for those years clearly identify the Applicant as only a non-executive Director of ITNL. This gives a wrong impression that the Applicant could have been an executive director. This factual error, of not identifying the Applicant as a non-executive director that has been committed in Para 11 of the SFIO Interim Report has caused severe prejudice to the Applicant as this apparent factual error on the face of the record, is then carried into the table in Para 12 of the SFIO Interim Report. The copies of the relevant extracts of the Annual Reports of ITNL that clearly identify the Applicant as only a non-executive director of ITNL in the

years 2017- 18, 206-17 and 2015-16 are provided as Annexure B hereto.

(iv) Para 12 of the said SFIO Report wrongly identifies the Applicant in item 7 of the table in Para 12 as being "Director and CoD member of ITNL", when the Applicant was in fact only a non-executive Director of ITNL

(v) Thereafter in Para 13, the same SFIO Report states "Further IL&FS and its group companies were tightly controlled by Ravi Parthasarathy, who acted as the Chairman/Managing Director/CMD of IL&FS Limited from 1989 to 2017 and Non-Executive Chairman from Oct 2017 and was on the Board of the key group companies IL&FS Financial Services Limited, IL&FS Transportation Networks Limited, IL&FS Energy Development Company Limited etc.. The Other individuals listed above, especially Hari Sankaran, who was a Vice Chairman/MD/JMD of IL&FS Limited and director in number of IL&FS Group companies; Arun Saha, who was a Director/JMD/CEO of IL&FS Limited and director in number of IL&FS Group Companies; Vaibhav Kapoor, who was Chief Investment Officer of IL&FS Limited and Chairman of IL&FS Employee Welfare Trust, assisted in maintaining and exercising this control." Therefore, the very next para does not identify the Applicant as being part of the persons who actually controlled IL&FS and its group companics.

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.A. 233 OF 2021
In
CP 3638/MB-1/2018

4. The relevant para 11,12 and 13 of the SFIO Interim Report dated 28.11.2018 are provided as Annexure C hereto.
5. Thereafter in the SFIO final report on IFIN dated 28.05.2019 no longer identifies the Applicant as part of the coterie that constituted the "will and mind" of IL&FS and its group companies.
6. Therefore, in light of the SFIO Final Report on IFIN dated 28.05.2019 removing the Applicant from the list of persons who constituted the alleged coterie governing IL&FS and its group companies, the second sentence of Para 8 of the Order ought to be deleted from the Order dated 18.12.2020.
7. In para 8 the third sentence presently states "The SFIO initiated prosecution against persons including the Applicant named in its report dated 28.05.2019 in designated special court.". This is wrong statement on face of the record as the SFIO Final Report on IFIN dated 28.05.2019 does not identify the Applicant as being part of the coterie considered to be the will and mind of IL&FS and its group companies. Furthermore, the Applicant is not an accused in the Charge Sheet filed by SFIO before the designated special court. In A light of this clear record, the third sentence of Para 8 should be deleted.
8. Heard learned Counsel and perused the material on record.
9. On careful reading of Order dated 18.12.2020, we note that the said order was passed considering that the applicant was one of the director of ITNL, the subsidiary of the IL&FS. It nowhere records that the appellant was either a whole time director of ITNL or director of IL&FS. Since, the Order dated 18.12.2020 came to be passed by this Tribunal after consideration of the facts before it recorded correctly in the order, we do not find any merit in prayer for modification of the Order. Similarly, the applicant's contention to clarify in the order that he has not been found member of the alleged "coterie" that controlled the affairs of IL&FS and its group companies, we are of considered view that the Order dated 18.12.2020 passed in relation to all the directors and key managerial

personnel. The charge sheet filed by the SFIO is a matter of record and can be relied upon in any proceedings to contend what the applicant wish to convey. The second & third sentence of Para 8 be deleted from Order dated 18.12.2020 reads as follows :

“The continuous failure of IL & FS and its group entities in servicing their debt burden and accompanying mismanagement induced the Respondent to initiate action under section 241-242 of the Act and to prevent the possibility of a “contagion effect” in the financial milieu. The suspended Board of Directors of IL & FS and its key subsidiaries, which included the Applicant, in abuse of powers thrust upon them increased the debt burden across the IL & FS group through various iniquitous acts including circuitous transactions”.

10. The above two sentences record the facts adverted by the Union of India in its petition, which is still pending for consideration before this Bench. Rule 11 and Rule 154 have been included in the National Company Law Tribunal Rules, 2016 which somewhat throws light as what powers are being enjoyed by the Tribunal.

Rule 11. Inherent Powers - Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

Rule 154. Rectification of Order

(1) Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on application of ay party by way of rectification. (2) An application under sub-Rule (1) may be made in Form No. NCLT-9 within two years from the date of the final order for rectification of the final order not being an interlocutory order

11. The powers of this Tribunal to rectify its own Order came to be dealt with in the case of ***Union Bank of India versus Dinakar T. Vekatasubramanian & Ors I.A.No.3961 in Company Appeal (AT)(Ins) No. 729 of 2022*** by

Hon'ble NCLAT and the said decision was subsequently upheld by Hon'ble Supreme Court.

20. *The above judgments of the Hon'ble Supreme Court clearly lays down that there is a distinction between review and recall. The power to review is not conferred upon this Tribunal but power to recall its judgment is inherent in this Tribunal since inherent power of the Tribunal are preserved, powers which are inherent in the Tribunal as has been declared by Rule 11 of the NCLAT Rules, 2016. Power of recall is not power of the Tribunal to rehear the case to find out any apparent error in the judgment which is the scope of a review of a judgment. Power of recall of a judgment can be exercised by this Tribunal when any procedural error is committed in delivering the earlier judgment; for example; necessary party has not been served or necessary party was not before the Tribunal when judgment was delivered adverse to a party. There may be other grounds for recall of a judgment. Well known ground on which a judgment can always be recalled by a Court is ground of fraud played on the Court in obtaining judgment from the Court. We, for the purpose of answering the questions referred to us, need not further elaborate the circumstances where power of recall can be exercised.”*

21. None of the fact sought to be clarified in Order 18.12.2020 falls within the domain of *any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission*. We do not find any facts having been incorrectly stated in the Order dated 18.12.2020 in relation to status of the Applicant. As regards finding of facts emerging from the SFIO report and charge sheet filed by the SFIO in relation to investigation concluded in case of one of subsidiary of the IL & FS, we are of the view that those facts were not in existence when the Order dated 18.12.2020 was passed, hence it could not be said that facts emerging from subsequent evidences necessitate the rectification of the Order dated 18.12.2020.

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.A. 233 OF 2021
In
CP 3638/MB-1/2018

22. Needless to say, the facts as pleaded are matter of record and can always be pleaded in subsequent proceedings with preciseness.

23. Since the restraint order was passed to protect the interest of the Creditors and public at large, and the applicant has not been discharged so far from the matter by the criminal court also, we do not find any merit in prayer for vacating the restraint order in place.

24. In view of the foregoing, IA 233 of 2021 is dismissed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)

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

C.A. 338 OF 2021

In

C.P. 3638 OF 2018

Under Rule 11 of NCLT Rules 2016

Pradeep Puri

...Applicant

V/s

The Union of India

... Respondent

In the matter of

C.P. No. 3638/MB/2018

Union of India

...Petitioner

V/s.

Infrastructure Leasing & Financial
Services Limited & others

... Respondents

Order delivered on: 10.04.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances:

For the Applicant : None

For the CMA : Mr. Shwetank Nigam,
Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Company Application CA 338/2023 is filed by Mr. Rajesh Davuleri & others in the Company Petition (IB) No. 3638 of 2018 ("Petition") seeking an order from this Tribunal seeking directions to consider the Applicants as employees of ITNL and grant them an opportunity to participate in the Resolution Process and issue directions to the Respondent to reconsider the claim of Rs. 317,39,268/- (Rupees Three Crore Seventeen Lakh Thirty-Nine Thousand Two Hundred and Sixty-Eight only) filed by the Applicants under FORM-E dated 13.06.2018 to provide the relief to the Applicants on their question of survival.

2. That Applicants i.e. a group of 36 expatriate employees were appointed as employees of IL&FS Transportation Networks India Limited (ITNL) and ESLAMEX Group Joint Venture (JV) for a project in Addis, Ethiopia.
 - 2.1. That ITNL Terminated the Applicants from their employment without any prior notice and have not paid due salaries of the Applicant, citing the reason of financial crisis.
 - 2.2. That the Applicants at the time of employment and even after employment constantly requested to make payment of their unpaid salary. However, ITNL failed to provide any positive response and stated that, the payment of unpaid salary was delayed due to want of some necessary clearances at their end.
 - 2.3. Thereafter, the ITNL sent an email confirming the payment of unpaid salaries of the Applicant within two days. Further, the board appointed salaries have been verified by the restructuring experts "Alvarez &

Marsal" and have also been recommended for release of payment vide email communication.

- 2.4. The Applicants have complied with the request of ITNL for submitting of salary calculations summary sheet vide email communication.
- 2.5. That ITNL at several occasion has ensured the part payment of unpaid salaries and also shared the tax opinion pertaining to their payment of salaries vide email communication.
- 2.6. That, due to constant lag on part of ITNL, the Applicants requested ITNL to confirm the salary balances and pay off the unpaid salary within 30 days' time, to which ITNL responded to remove the 30 days' time-frame from template with the promise of payment of unpaid salaries within such time.
- 2.7. Thereafter, ITNL agreed to pay the unpaid salary once the Applicants come back to India vide email communication. However, ITNL failed to fulfil the promise and completely disregarded and abandoned their obligations.
- 2.8. That pursuant thereof, ITNL Demanded three declarations to be signed by the Applicants for the release of part payment of salary and the declarations were drafted in such a manner that they were paying amount equal to the unpaid salaries of the Applicants up to August, 2018 and were termed an ex-gratia' payment.
- 2.9. Further, ITNL refused to release any payment without the signatures of the Applicants vide email communication. Therefore, the Applicants signed the first declaration.
- 2.10. Thereafter, the Applicants signed the second declaration, confirming identity, tax and banking information. Upon signing of such declarations, there was no release of the due payments of salary.
- 2.11. That the Applicants have unwillingly signed the declaration for payment of the part salary to get the temporary relief from the financial difficulties caused due to non-payment of salary for more than a year.
- 2.12. Further, the unprofessional conduct of ITNL resulted in the prosecution, illegal confinements, and imprisonment of Applicants

under foreign laws for non-payment of taxes to the local government, wherein, the Applicants were in no-fault and ITNL was entirely responsible for the obligations.

2.13. That Applicants owing to constant delay in non-payment of salaries from ITNL and increase in financial struggle. The Applicants had to issue demand notices to ITNL. However, no positive reply was received from ITNL against the Demand Notice.

2.14. Therefore, the Applicants filed a Claim before the National Company Law Tribunal, Mumbai vide Form E for unpaid salary of the Applicants amount of Rs. 3,17,39,268/-. However, the claim of the Applicants was not admitted by the Respondent stating that the Applicants are no longer employees of the ITNL.

2.15. Therefore, being aggrieved by the rejection of claim, the Applicants has preferred the present Company Application (CA) to reconsider the claim of Rs. 3,17,39,268/-.

3. Heard learned Counsel and perused the material available on record.
4. On perusal of the E-mail dt. 28.06.2019, we note that claim management advisor had asked the Applicant to submit the appropriate form because the Form E was meant only for employees on Payroll. We note that the Applicants were undisputedly the employees of the ITNL and their services were terminated prior to the commencement of Insolvency Resolution Process on account of financial difficulty. It is also undisputed that these employees salary is due and pending for payment as can be seen from various communications from the Parties.
5. A question before us is whether employees include past employees and if not whether there is any other form prescribed for that the category of the persons not specially covered under the laid down Resolution Process. It is undisputed fact that the former employees are entitled to file a claim which they were not able to do in the absence of knowledge about what is the appropriate Form. We note that claim management advisor instead of guiding the claimant what shall be appropriate form just asked them to file appropriate form. It is trite law that filing the claim

under wrong form cannot be ground for rejection if all the facts pertaining to the said claims are captured in the claim forms submitted by the Applicants. Nonetheless, we are of the considered view that the employees include the former employees and in the absence of any specific form for former employees claims ought to have been admitted in terms of Form E. We noticed that claims were to be filed by 25.06.2019 and Claim Management Advisor vide email dt. 28.06.2019 had informed the Applicants to file claim in the appropriate form which clearly suggest that Form E was filed before the Claim Management Advisor within time. Accordingly, we direct the Claim Management Advisor to admit the claims of the Applicant and include the Applicants in the list of Creditors to be settled in the Resolution of ITNL.

6. With the aforesaid observation, IA 338 of 2021, is disposed of as Allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)

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

Item No. 20

CA 101/2024

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 10.04.2024

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

Section 241-242 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

1. Mr. Vijeet Trivedi, Ld. Counsel for the Applicant present. Mr. Aditya Sikka, Ld. Counsel for UOI present.
2. Connected matters are posted on 15.04.2024. In the meantime, the Respondents are directed to file reply to CA 101/2024 after duly serving the copy to the other side.
3. Post this matter on 15.04.2024.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
/NP/

Sd/-

JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)