

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

C.A. 19 OF 2024

Under Rule 11 of NCLT Rules, 2016

DSP Asset Management Pvt. Ltd.

...Applicant

Vs.

Grant Thornton India (Bharat) LLP

...Respondents

In the matter of

C.P. No. 3638/MB/2018

Union of India

...Petitioner

Vs.

IL&FS Limited Others

...Respondents

Order delivered on: 13.05.2024

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Justice Shri V.G. Bisht

Hon'ble Member (Judicial)

Appearances:

For the Applicant

:

Adv. Naozad Golwala i/b.

Mahernosh Humranwala,

Advocate

For the Respondent No.3

:

Mr. Satyam Asrani, Advocate

For the CMA

:

Mr. Shwetank Nigam, Advocate

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.A. 19 OF 2024

In

C.P. No. 3638/MB/2018

For the IL&FS : Mr. Animesh Bisht a/w Ms.
Drishti Das, Ms. Roma Bhojani
and Mr. Deevanshu Jaswani i/b
Cyril Amarchand Mangaldas

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Company Application CA 19/2024 is filed by DSP Asset Management Pvt. Ltd. Against Grant Thornton India Bharat LLP under Rule 11 of NCLT Rules, 2016 in Company Petition 3638 of 2018 filed by Union of India in the matter of Infrastructure Leasing and Financial Services seeking following reliefs
 - a. This Tribunal be pleased to condone the delay in filing of the Applicant's Claim, through IDBI Trusteeship Limited ("Respondent No.3"), with the Claims Management Advisor of Infrastructure Leasing and Financial Services Limited ("Respondent No.1") in the insolvency resolution process of M/s. Infrastructure Leasing and Financial Services Limited ("Respondent No.2");
 - b. This Tribunal be pleased to direct the Claims Management Advisor of Infrastructure Leasing and Financial verify and include the Applicant's Claim amounting to INR 3,57,32,53,474/- (along with applicable interest upto and including 15th October, 2018) in the insolvency resolution process of M/s. Infrastructure Leasing and Financial Services Limited ("Respondent No. 2"); and
 - c. This Tribunal be pleased to direct that any distribution of monies made to financial creditors/ claimants of Respondent No.2 pursuant to any resolution framework, interim distribution mechanism and/or

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

C.A. 19 OF 2024

In

C.P. No. 3638/MB/2018

under the final resolution plan, as the case be, shall (and will) include (and provide for) pay outs to the Applicant in the same manner and proportion, as provided for the financial creditors of Respondent No. 2 in the same class and category,

d. This Tribunal be pleased to direct that no resolution plan in relation to Respondent No.2 shall be finalised and put for approval before the committee of creditors of Respondent No.2, pending disposal of this application and;

2. This Company Application seeks a direction from this Tribunal to Respondent No.1 viz Grant Thornton India (Bharat) LLP/ Claim Management Advisor, to verify and admit the financial debt amounting to INR 3,57,32,53,474/- (along with applicable interest upto and including 15th October, 2018) owed and payable to the Applicant ("Applicant's Claim"), in the insolvency resolution process of the Respondent No.2 viz Infrastructure Leasing and Financial Services Limited.

2.1. It is the case of the Applicant that its Claim is a financial debt owed and payable by Respondent No.2. It comprises of investments and life savings of numerous retail investors and salaried members of the society.

2.2. IL&FS Transportation Networks Limited ("ITNL"), a wholly owned subsidiary and group entity of Respondent No.2 had issued and allotted 7,800 redeemable, unsecured, unlisted and rated non-convertible, zero coupon debentures of a nominal value of INR 5,00,000 each ("NCDs") on a private placement basis, aggregating to not more than INR 3,900,000,000 divided into two Series pursuant to a Debenture Trust Deed dated 22nd March 2016 ("DTD").

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.A. 19 OF 2024

In

C.P. No. 3638/MB/2018

- 2.3. The Respondent No. 3 i.e. IDBI Trusteeship Limited was appointed as the Debenture Trustee ("DT") under the DTD. DSP Mutual Fund (i.e. the debenture holder), through several schemes, had subscribed to the said NCDs of ITNL. The Applicant, herein, is the asset manager to DSP Mutual Fund. ITNL had unconditionally undertaken to pay all amounts as due, in respect of such debentures redeemed, on the redemption date to each debenture holder.
- 2.4. As a condition precedent to the execution of the DTD, a Parent Agreement dated 22nd March 2016 ("Parent Agreement") was executed, pursuant to which, the Respondent No. 2 i.e. IL&FS, as a primary obligor and guarantor, had irrevocably and unconditionally undertaken to make payment of any outstanding debt in the event of any default or failure by ITNL in its payment obligations towards the debenture holders in relation to the NCDs under the DTD.
- 2.5. Owing to an occurrence of an Event of Default ("EoD"), the Respondent No.3, on instructions of the Applicant, vide its letter dated 21 September, 2018 declared that the outstanding debt under the DTD, in respect NCDs were due and payable by ITNL, forthwith, on 28th September, 2018 ("EoD Redemption Date"). ITNL defaulted in its payment obligations by the said EoD Redemption Date.
- 2.6. As per the said guarantee obligation undertaken by Respondent No.2 under the Parent Agreement, it was obliged and liable to make payment of the outstanding debt in respect of the debentures to the debenture holders under the DTD. The said guarantee obligation is definite, undisputed, uncontroverted.
- 2.7. Meanwhile, the Union of India filed Company Petition No.3638 of 2018 before this Tribunal under Sections 241 and 242 of the

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

C.A. 19 OF 2024

In

C.P. No. 3638/MB/2018

Companies Act, 2013 inter alia contending mismanagement in the affairs of Respondent No. 2.

- 2.8. This Tribunal vide its order dated 1st October 2018 superseded and replaced the board of Respondent No. 2. The National Company Law Appellate Tribunal vide an order dated 11th January 2019 observed that for the purpose of proper resolution of Respondent No.2 and its group companies (including ITNL), the process similar to that of corporate insolvency resolution process under Insolvency and Bankruptcy Code, 2016 is required to be followed.
- 2.9. The Respondent No.1 made public announcements in May 2019, inviting claims from creditors of Respondent No.2 (and its other group entities including ITNL) in respect of liabilities due up to and including 15th October 2018.
- 2.10. Pursuant to said public announcement and as per the extant statutory framework, the claim of the Applicant (i.e. debt owed and outstanding under NCDs) in the insolvency resolution process of ITNL and Applicant's Claim (pursuant to the guarantee obligation) in the insolvency resolution process of Respondent No.2 could have been filed only through the Respondent No. 3.
- 2.11. The Applicant was under a bonafide and valid assumption that Respondent No.3 shall file the Applicant's Claim, in the insolvency resolution process of Respondent No. 2, with Respondent No.1 in timely and steadfastly manner.
- 2.12. The Respondent No.3 ie. the Debenture Trustee, omitted/neglected to file Applicant's Claim in the insolvency resolution process of Respondent No.2. In March 2023, the Applicant sought explanation/clarification from Respondent No.3 as to why the Applicant's Claim was not filed in the insolvency resolution process

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

C.A. 19 OF 2024

In

C.P. No. 3638/MB/2018

- of Respondent No. 2. No satisfactory reply was given by Respondent No. 3.
- 2.13. In March 2023, the Applicant wrote and informed Respondent No. 1 about the guarantee obligation undertaken by Respondent No. 2 towards the Applicant. In May 2023, the Respondent No.1. noting the above, informed that Applicant's Claim in the insolvency resolution process of Respondent No. 2 was not filed by the Respondent No. 3.
- 2.14. Upon persistent enquires made by the Applicant, the Respondent No.3 filed the Applicant's Claim, in the insolvency resolution process of Respondent No. 2, with Respondent No.1 in June and August 2023. Admittedly, this delay is not attributable to the Applicant.
- 2.15. In November 2023, Applicant wrote to Respondent No.1 and the board of directors of Respondent No. 2 seeking a confirmation that Applicant's Claim in the insolvency resolution process of Respondent No. 2 is admitted. Apart from a holding reply, no response is received, thus far.
- 2.16. No cogent reason is given as to why Applicant's Claim is not admitted in the insolvency resolution process of Respondent No.2 which, understandably, is still at the intermediate stage and hasn't attained finality. Neither the final resolution plan in relation to Respondent No.2 is finalized nor is pending approval before its committee of creditors. Pertinently, the requisite information and records in relation to the Applicant's Claim was available with Respondent No. 1 and No.2 since the time the insolvency resolution process of Respondent No.2 had commenced.
- 2.17. The retail investors and salaried members of the society will be subject to unwarranted prejudice discrimination, injury, and harm,

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

C.A. 19 OF 2024

In

C.P. No. 3638/MB/2018

if Applicant's Claim is not admitted in the insolvency resolution process of Respondent No.2. It will be viewed as an antithesis in the context of a resolution process of Respondent No.2 which is, essentially, mandated towards value maximization of Respondent No. 2 and balancing the interest of all its stakeholders. No loss, prejudice, and injury will be caused to Respondent No. 1 and/or Respondent No. 2, if the relief(s) prayed in this Application are allowed.

3. The Respondent No.3 IDBI Trusteeship Limited, the debenture trustee has filed the Reply and written submission that it has specifically and expressly through email dated 23.05.2019 and 24.05.2019 requested the Applicant to submit their claims and requisite documents on or before 28.05.2019 so the same can be checked and verified, before filing the same. The Applicants then submitted their claims with the documents to Respondent No.3 vide email dated 28.05.2019, the Claims were with respect to two entities being ITNL and Group Company of Respondent No.2 being IL&FS Energy Development Company Limited (IEDCL), there was certainly no mention of the Respondent No.2, therefore on the basis of the prior instructions of the Applicant, and according to the Clause 11(b) and Schedule 2 (Provisions for the Meeting of the Debenture Holders) under the Debenture Trustee Deed dated 22.03.2016, the Respondent No.3 then filed the Applicant's Claim with ITNL and IEDCL. The Claim of the Applicant was accepted by the Respondent No.1 as seen in the mail dated 05.01.2014. Further on the basis of instructions sent for the first time through mail dated 25.05.2023 and 26.05.2023, for the claim to be filed with Respondent No.1 for Respondent No.2, it acted promptly filed Applicant's claim on 05.06.2023. Hence there was no delay on its part in filing the claim

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

C.A. 19 OF 2024

In

C.P. No. 3638/MB/2018

4. Heard learned Counsel for the Applicant and perused the materials available on record.

4.1. We note that the Applicant has sought admission of their claim in relation to guarantee obligation of IL&FS to the debentures issued by ITNL, while their claim in relation to the debentures qua ITNL has already been admitted by claim management advisor. We further note that the Applicants were one of the Attendees of the Third Committee of Creditors' (COC's) Minutes of the Meeting dated 11.06.2021, where they were well aware of the status of the matter.

4.2. Respondent No.3 i.e. the Debenture Trustee has submitted explicitly that it had no instruction to file any claim qua Respondent No.2's obligation in relation to debentures issued by ITNL prior to 25.05.2023 and it filed the claim with the claim management agency on 25.06.2023. It is undisputed fact that the creditors were required to file their claim in response to public announcements in May 2019 and within the period stated therein. It is also not disputed that the Applicants were conscious of this timelines and there is no communication from Applicant to Respondent No.3 to file any claim qua IL&FS obligation in relation to the debentures. Accordingly, it cannot be said that the delay was bonafide. Hence this Tribunal is not inclined to issue any direction or admission of belated claim considering that the resolution was conceived to be claimed base process, and claims of creditors which have been received, verified and admitted are to be considered for the purpose of settlement of their dues. Needless to say, the Applicant's claim qua ITNL's obligation to pay for its debentures has already been admitted and we do not see any prejudice being caused to the applicant in this regard.

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.A. 19 OF 2024

In

C.P. No. 3638/MB/2018

4.3. In view of the foregoing, CA 19 of 2024 is dismissed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)