

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)**

**CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 19.04.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (CA)/242/2023 in Company Petition /30/2022
NAME OF THE COMPANY	Pondicherry-Tindivanam Tollyways Pvt Ltd & 2 others
NAME OF THE PETITIONER(S)	Terra Projects Pvt Ltd
NAME OF THE RESPONDENT(S)	Pondicherry-Tindivanam Tollyways Pvt Ltd & 2 others
UNDER SECTION	241

**ORDER**

**IA (CA)/242/2023**

Orders pronounced, recorded vide separate sheets. In the result, the application is allowed and the CP/30/2022 is held as non-maintainable and therefore dismissed. Any other IAs lying in this CP/30/2022 have also become infructuous.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH-II**

**IA No.242 of 2023 in  
CP No.30/241/HYD/2022**

**Between:**

NCC Limited (NCC)  
NCC House, Madhapur,  
Hyderabad - 500081

...Applicant/Respondent

And

1. Terra Projects Private Limited  
T-40, MIDC Industrial Area,  
Hingna Road, Nagpur – 440016

...Respondent/Petitioner

2. Pondicherry-Tindivavam Tollway Private Limited  
VI Floor, NCC House, Survey No. 64, Madhapur,  
Hyderabad – 500081

3. NCC Infrastructure Holdings Limited  
NCC House, Madhapur,  
Hyderabad – 500081

...Respondents/Respondents

**Date of Order : 19.04.2024**

**CORAM:**

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

**Counsel/Parties present:**

For the Petitioner : Mr. Avinash Desai, Senior Counsel

For the Respondent : Mr. Rahul Pandey and Mr. Harshit Tiwari,  
Counsels

**Per: Sanjay Puri, Member (Technical)**

**ORDER**

1. This application has been filed by M/s NCC Limited (**NCC**) challenging maintainability of CP No.30/241/HYD/2022 (**the Company Petition**), which was filed by:

Terra Projects Private Limited (**TPPL**)  
T-40, MIDC Industrial Area,  
Hingna Road, Nagpur – 440016

... Petitioner

VERSUS

1. Pondicherry-Tindivavam Tollway Private Limited (**PTTPL**)  
VI Floor, NCC House, Survey No. 64, Madhapur,  
Hyderabad – 500081
2. NCC Limited (**NCC**)  
NCC House, Madhapur,  
Hyderabad – 500081
3. NCC Infrastructure Holdings Limited (**NCCIHL**)  
NCC House, Madhapur,  
Hyderabad – 500081

...Respondents

2. It is contended that the aforementioned Company Petition is not maintainable for “deliberate non-joinder of the necessary party” i.e. M/s IL&FS Engineering and Construction Company Limited (**IECCL**), a company of IL&FS<sup>1</sup> Group. This omission is significant, it is implied, because TPPL has leveled “wild and baseless” allegations against IL&FS Group without impleading them as a party in the Company Petition.

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<sup>1</sup> Infrastructure Leasing & Finance Services Ltd

3. It is submitted that a Road Project in the State of Tamil Nadu was awarded by NHAI to a Consortium comprising of Maytas Infra Limited and NCC<sup>2</sup> on a build, operate and transfer basis. The project was to be executed by PTTPL which was formed in March, 2007 with NCC holding 49% equity and Maytas Infra Limited holding 51% equity shares<sup>3</sup>. Subsequently, Maytas Infra Limited was converted into IL&FS Engineering and Construction Company Limited (IECCL), which will henceforth be referred to as **Maytas/IECCL**.
4. Following the award of the Road Project and the signing of the Concession Agreement, TPPL agreed to invest in PTTPL. This investment led to a redistribution of equity shares in PTTPL as follows<sup>4</sup>: NCC at 25%, NCCIHL at 24%, Maytas/IECCL at 26.1%, and TPPL at 24.9%. A subsequent agreement<sup>5</sup> in 2010 further adjusted the shareholding structure, resulting in NCC and its affiliate NIHL holding 47.8%, Maytas/IECCL with 21.6%, and TPPL also at 21.6%. In terms of the MOU dated 18.06.2009 under which TPPL had invested in PTTPL, the EPC Contract of Mytas/IECCL was also terminated and balance work under that Contract was sub-contracted to TIDL<sup>6</sup> an affiliate of TPPL.
5. It is submitted that, TIDL delayed the execution of the project work which was one of the reasons due to which the commercial operations of the PTTPL were delayed. However, the work was

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<sup>2</sup> Earlier named as 'Nagarjuna Construction Company Ltd'

<sup>3</sup> Shareholders Agreement Dated 11.01.2008 – Pages 265 to 290 of 'Company Petition'

<sup>4</sup> Supplementary Shareholding Agreement dated 18.08.2009 – Pages 351 to 356 of the 'Company Petition'

<sup>5</sup> Additional Supplementary Shareholders Agreement dated 25.03.2010 – Pages 357 to 362 of the 'Company Petition'

<sup>6</sup> Terra Infra Development Private Limited

completed and commercial operations of PTTPL commenced on 12.12.2011. PTTPL thereafter faced problems with regard to Toll Collection and was facing “precarious financial situation” on account of the non-payment of legitimate dues by NHAI.

6. It is asserted that, TIDL delayed the execution of the project work which was one of the reasons due to which the commercial operations of the PTTPL were delayed. Despite these setbacks, it is submitted, the project was completed and PTTPL began its commercial operations on 12.12.2011. Subsequently, PTTPL encountered challenges related to toll collection and faced a precarious financial situation due to the non-payment of legitimate dues by the NHAI.
7. It is submitted that PTTPL then engaged in settlement discussions with NHAI and other lenders to safeguard its interest. It is alleged that, TPPL and TIDL have been scuttling the settlement process by pursuing “continuous litigation” against PTTPL and by using it as “leverage to recover unsubstantiated dues”.
8. It is submitted that, TPPL had earlier filed a petition<sup>7</sup> before the Hon’ble Commercial Court against NCC and IL&FS under Section 9 of the Arbitration and Conciliation Act, where TIDL was also a party. The Hon’ble Commercial Court vide order dated 24.06.2020, returned the Petition as **no cases could have been instituted against IL&FS in view of the orders passed by the Hon’ble NCLAT in Company Appeal (AT) No.346 of 2018, ordering moratorium on cases against IL&FS group of companies.** It is stated that aggrieved by the orders of the Hon’ble

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<sup>7</sup> COP (SR) No. 1454 of 2020

Commercial Court, TPPL had filed a Writ Petition<sup>8</sup> before the Hon'ble High Court for the State of Telangana, where the matter remains pending.

9. It is submitted that, TPPL then filed an application bearing IA No. 695 of 2022 before the Hon'ble NCLAT in Company Appeal (AT) No. 346 of 2018 wherein vide its Order dated 30.03.2022, the Hon'ble NCLAT observed as follows:

“In this Application learned counsel for the Applicant has confined his prayers only against M/s Pondicherry Tindivanam Tollway Private Limited (PTTPL) and not against IL&FS or its group companies; it is submitted that Applicant is taking proceedings against PTTPL only and the interim order passed by this Appellate Tribunal in Company Appeal (AT) No. 346 of 2018 including order dated 12.03.2020 does not cause any impediment in proceedings against PTTPL.

2. Learned counsel for the IL&FS submits that in case Applicant is proceedings only against M/s PTTPL, the Respondent – IL&FS Group Companies have no objection with regard to such proceeding.
3. Recording above submission, we observe that in event proceedings are taken by the applicant only against PTTPL, the order passed by this Appellate Tribunal in Company Appeal (AT) No. 346 of 2018 shall not cause any impediment. Application IA No. 695 of 2022 is disposed of with the above observation.”

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<sup>8</sup> WP No.17335 of 2020

10. It is contended that the Company Petition has been filed, relying on the above order of the Hon'ble NCLAT by mistakenly referring to the order of the Hon'ble NCLAT as granting liberty, when the Hon'ble NCLAT have given no such liberty. It is further argued that the final reliefs sought by the TPPL in Company Petition clearly affects the rights of IL&FS as a substantial shareholder in PTTPL and who have not been made party to the Company Petition. It is claimed that TPPL has done so to circumvent the moratorium order passed by the Hon'ble NCLAT in Company Appeal (AT) No. 346 of 2018 in all matters relating to IL&FS group companies.
11. It is submitted that by seeking a declaration of oppression of the minority shareholders and mismanagement of the PTTPL, the Company Petition filed by TPPL is seeking a declaration against IL&FS. It is averred that TPPL is indirectly making allegations against IL&FS which it is part of the controlling the shareholders of PTTPL.
12. It is further submitted that in the Company Petition itself, TPPL has categorically admitted that IL&FS is a necessary party, yet has not arrayed IL&FS as a Respondent due to the orders of the Hon'ble NCLAT in Company Appeal (AT) No. 346 of 2018. It is further contended that the reliefs sought in the Company Petition by TPPL clearly indicate that IL&FS was a necessary party for adjudicating the matters raised.
13. Specifically, the Company Petition challenges the Board Resolution dated 17.09.2020, which was approved by the shareholders of PTTPL, including IL&FS, thereby affecting IL&FS's

rights. The omission of IL&FS as a party to the Company Petition renders it liable for dismissal, it is averred.

### **Counter**

14. The Respondent TPPL, who is a Petitioner in the Company Petition, has countered the present application by referring to its application<sup>9</sup> before the NCLAT (Delhi). In that application, according to the Respondent, IL&FS and IECCL were made parties and all facts surrounding the resolution dated 17.09.2020 passed by PTTPL Board were placed before the Hon'ble NCLAT.
15. It was categorically stated before the Hon'ble NCLAT, it is submitted that, NCC and IECCL have suppressed and oppressed the rights of TPPL, the minority shareholders. It is claimed that IECCL, which was a party to the application before NCLAT, was well aware of the fact that TPPL was aggrieved by the board resolution dated 17.09.2020, and gave its no objection to initiate proceedings against PTTPL.
16. It is thus contended that IECCL having waived off its right of being party to any litigation concerning challenge to the Board's resolution of 17.09.2020, wherein the decision of termination of concession agreement was taken, there arises no occasion on the part of TPPL to make IECCL a party to the Company Petition i.e. CP No.30/241/HYD/2022.

### **Rejoinder**

17. In its rejoinder, NCC, the Applicant, has largely reiterated the arguments presented in their Application. It has also been

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<sup>9</sup> IA No. 695 of 2022 under CA(AT) 346 of 2018



highlighted that TPPL's application in IA No. 695 of 2022, before the NCLAT (Delhi) was in connection with its earlier petition<sup>10</sup> under Section 9 of the Arbitration & Conciliation Act, which had been returned by the Commercial Court. It is asserted that a bare perusal of this application "makes it abundantly clear TPPL did not seek permission from the Hon'ble NCLAT" for the filing of the Company Petition, the maintainability of which, is being contested here.

18. It is further submitted that NCC, the Applicant, was not included as a party in the application before the NCLAT (Delhi). As a result, NCC inquired about the status of TPPL's application with IECCL. In response, IECCL explicitly stated that it had not given any no-objection to TPPL for filing of the Company Petition in question.

### **The Decision**

19. We have heard the parties and have gone through the records. The Company Petition, maintainability of which is under challenge here, has been filed against the resolution passed on 17.09.2020 by the Board of PTTPL. We also note that at the material time, NCC (with its affiliates) was holding 47.8% and IL&FS (with its affiliates) was holding 26.1% shares, forming the controlling interest of 73.1% in PTTPL. Rest 26.1% of the shares were with TPPL the Petitioner in the Company Petition.
20. The resolution dated 17.09.2020 was passed with the approval of the shareholders having controlling interest in PTTPL, which included representative of IECCL, an IL&FS group company. This resolution is under challenge in the Company Petition. In essence,

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<sup>10</sup> COP (SR) No. 1454 of 2020 - supra

the challenge is against the actions of the controlling interest representing the majority shareholding, which includes an IL&FS entity. Therefore, any adverse ruling in the Company Petition against PTTPL will necessarily affect IECCL, and consequently the IL&FS Group.

21. In Para 67 of the Company Petition, the petitioner TPPL has also accepted that:

.....though IECCL is a necessary party pursuant to being a shareholder and a party being part of the majority shareholders, the said shareholder party is not added as a Respondent in this petition pursuant to the bar under the NCLAT's orders in Company Appeal (AT) No. 346 of 2018.

Thus, according to TPPL, even though IECCL is a necessary party to the Company Petition, it has not been made a Respondent, as it being an IL&FS entity, no action can be taken against it in view of the restrictions imposed by the NCLAT order<sup>11</sup>.

22. Ostensibly, to overcome this restriction of NCLAT order, TPPL approached NCLAT in IA No.695 of 2022 seeking the following reliefs:

- A. "Modification of the interim orders dated 12.03.2020 of the Hon'ble Appellate Tribunal in Company Appeal (AT) No. 346 of 2018 restraining "The institution or continuation of suits or any other proceedings by any party or person or Bank of Company etc., against 'IL&FS' and its 348 group companies in any Court of Law/ Tribunal/Arbitration Panel or Arbitration Authority" by excluding the operation of the said interim orders with respect to non-financial creditors/banks,

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<sup>11</sup> NCLAT (Delhi) order dated 12.03.2020 in CA(AT) 346 of 2018:: (2020) *ibclaw.in* 447 NCLAT

including the Applicants herein, who have contractual disputes with the group companies of IL&FS Group; or

- B. Alternatively, **grant liberty to the Applicants, to pursue their construction contract(s) related disputes against M/s. IL&FS Engineering & Construction Company Limited, a group company of IL&FS before any Court of Law and/or Arbitration Tribunal**; and
- C. Pass such other order or orders as the Hon'ble Tribunal may be pleased in the interests of justice."

(Emphasis supplied)

23. The requested reliefs, specifically those concerning contractual disputes with IL&FS group companies, were not granted by the Hon'ble NCLAT in their order dated 30.03.2022. Hon'ble NCLAT also did not give any relief on the prayer specifically seeking liberty to pursue litigation against IECCL concerning its construction contracts.
24. The Company Petition in question in this application is about the disputes TPPL has with PTTPL, where IECCL being 26.1% shareholder in PTTPL is an interested party. The specific relief sought by TPPL for pursuing litigation against IECCL was not granted by the Hon'ble NCLAT.
25. While the main prayers were not granted, the prayers for interim measures were pressed before the Hon'ble NCLAT, where (*inter-alia*) it was stated that:

"...the interim measure of protection under Arbitration and Conciliation Act is sought only against M/s PTTPL and **not against IL&FS Engineering & Construction Company Limited (a group company of IL&FS Group)**).

..... **IL&FS Engineering & Construction Company Limited is the only a proforma party and no relief is sought against it** under section 9 of Arbitration and Conciliation Act, 1996

(emphasis supplied)

26. Thus contradictory statements were made in the application, with regard to IECCL, in the relief sought in the main prayers and the prayers for the interim measures. In the main prayers the relief was specifically sought against IECCL, but in the prayers for the interim measures, it was stated that no relief was sought against it.
27. The NCLAT order of 30.03.2022 however took note of the submissions made by the counsel of TPPL that their prayers were only against PTTPL and not against IL&FS or its group companies, and that TPPL was pursuing proceedings against PTTPL only and the NCLAT order in CA (AT) No. 346 of 2018 does not cause any impediment in proceedings against PTTPL.
28. Hon'ble NCLAT also took into consideration the submissions of the counsel for the IL&FS that in case TPPL was pursuing proceedings only against PTTPL – IL&FS Group Companies would have no objection with regard to such proceeding.
29. Based on these submissions, Hon'ble NCLAT **observed** that "*in event proceedings are taken by the applicant only against PTTPL, the order passed by this Appellate Tribunal in Company Appeal (AT) No. 346 of 2018 shall not cause any impediment*" and disposed of IA No. 695 of 2022, without giving any specific relief on the prayers made in that application.

30. As noted earlier in this order, Hon'ble NCLAT did not give any relief in respect of the specific prayer of TPPL against IECCL. Moreover, their observations were in relation to the interim measures specifically sought in the context of proceedings under Arbitration and Reconciliation Act.
31. Further, there was no reference in any of the prayers in IA No. 695 of 2022 about the potential petition to be filed by TPPL under section 241 of the Companies Act alleging oppression and mismanagement by the majority shareholders, including an IL&FS entity having a substantial shareholding of 21.6%.
32. Regarding whether IECCL is a necessary party to the Company Petition filed by TPPL, the affirmative answer remains uncontested. The subsequent question—whether the Company Petition is maintainable without including IECCL, who is admittedly a necessary party, hinges on the interpretation of the NCLAT order dated March 30, 2022.
33. TPPL, the Petitioner in the Company Petition, seeks an exemption from including IECCL as a Respondent, while acknowledging its necessity but citing a prohibition by the NCLAT. It is argued that this prohibition was lifted by the Hon'ble NCLAT in its order dated 30.03.2022 in IA 695/2022, allowing it to file a lawsuit against PTTPL, even though IECCL was a substantial shareholder at the relevant time and a party to the resolution of 17.09.2020 that is under challenge in the Company Petition.
34. We disagree. In our view, the Hon'ble NCLAT's order on March 30, 2022, does not relieve TPPL from the restriction against filing suit against IECCL, a company within the IL&FS group. TPPL sought

specific relief in that regard from the Hon'ble NCLAT in IA 695/2022, which was not granted. The prohibition against including IECCL in any lawsuit, due to its affiliation with the IL&FS group, remains in effect.

35. Hon'ble NCLAT did not give any liberty to TPPL to pursue any suit against IECCL, a group company of IL&FS, before any Court of Law and/or Arbitration Tribunal. Hence, considering that IECCL is admittedly a necessary party in the Company Petition of TPPL against PTTPL, but impleading of IECCL is barred due to the NCLAT's ruling in CA (AT) 346/2018, coupled with the absence of any relief granted to TPPL concerning IECCL in IA No. 695/2022, it follows that the Company Petition of TPPL against PTTPL is not maintainable.

The present application is therefore allowed and the Company Petition CP No. 30/241/HYD/2022 filed by TPPL is dismissed as not maintainable. All connected IAs are also disposed of accordingly, as having been rendered infructuous.

**Sd/-**

**(SANJAY PURI)  
MEMBER (TECHNICAL)**

**Sd/-**

**(RAJEEV BHARDWAJ)  
MEMBER (JUDICIAL)**