

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 346 of 2018

IN THE MATTER OF:

Union of India ...Appellant

Vs

Infrastructure Leasing & Financial
Services Ltd. & Ors.Respondents

With

Company Appeal (AT) No. 347 of 2018

IN THE MATTER OF:

Infrastructure Leasing and
Financial Services Ltd. ...Appellant

Vs.

Union of India & Ors. ...Respondents

With

Company Appeal (AT) No. 24 of 2019

IN THE MATTER OF:

Arun Kumar Saha ...Appellant

Vs.

Union of India, Ministry of Corporate Affairs ...Respondent

O R D E R

12.07.2019: Interlocutory Application No. 1645 of 2019 has been filed by M/s APCO – TITAN (JV) for withdrawal of I.A. No. 340 of 2019. Without expressing any opinion on the merit of I.A. No. 340 of 2019, we allow the applicant to withdraw the same without any liberty to intervene in this appeal. I.A. No. 340 of 2019 and I.A. No. 1645 of 2019 in Company Appeal (AT) No. 346 of 2018 stands disposed of.

Mr. Ramji Srinivasan learned senior counsel appearing on behalf of the Union of India and ILFS submits that:

1. In respect of 'Jharkhand Road Projects Implementation Company Limited' and West Gujarat Expressway Limited', all lenders have signed the Term Sheet.
2. In 'Moradabad Bareilly Expressway Limited', all lenders (including ILFS) except Bank of India have signed the Term Sheet. Bank of India is likely to sign within a day or two.
3. In terms of Term Sheet binding documentation is to be executed for release of payments and declaring it 'Green Entity'.

Mr. Kapil Sibal, learned senior counsel appearing for one of the lender of the aforesaid companies submits that as per the signed Term Sheet, the aforesaid companies will be declared 'Green' on signing of the Term Sheet.

4. In so far as 'Hazaribagh Ranchi Expressway Limited' and other Nine Amber Companies are concerned same procedure will be followed as enunciated in affidavit dated 21st May, 2019 and terms sheet in their regard are likely to be signed.

We record the aforesaid statement made by Mr. Ramji Srinivasan, learned counsel appearing on behalf of ILFS and Union of India and Mr. Kapil Sibal learned counsel appearing on behalf of one of the lender of the aforesaid three companies. The ILFS and Union of India will ensure that with regard to rest of the ten Amber Companies they will follow similar procedure and get agreement signed on an early date, preferably within fifteen days.

Mr. Ramji Srinivasan, learned counsel for ILFS and Union of India is allowed one weeks' time to file affidavit with regard to development as mentioned and noted above.

No specific statement has been made in regard to one or other Red Entity. The ILFS and Union of India are allowed two weeks' time to state as to what action they intend to take with regard to 55 Red Entities and the time frame and specifically state as to whether any one or more Red Entities can be turned as 'Amber Entity' or 'Green Entity'. If it is not possible, they will inform the steps required to be taken for the other Red Entities.

In the said affidavit, the ILFS and Union of India will specifically state as to what steps they will take to release the amount payable towards 'Pension Fund'; 'Provident Fund'; 'Army Group Insurance Fund'; 'Gratuity Fund';

‘Superannuation Fund’; ‘Postal Life Insurance Fund’; etc, if invested in one or other ‘Red Entity’.

It is made clear that if any fund is generated, this Appellate Tribunal may direct ILFS and Union of India to release the amount to the aforesaid fund, even of the Red Entities.

Mr. Ramji Srinivasan, learned senior counsel submits an I.A. has been filed to implead ‘Oil and Natural Gas Corporation Limited’, which is likely to transfer/sell shares held by ILFS Group in Joint Venture at a discounted value instead of fair market value.

On his request, we allow the Appellant to implead ‘Oil and Natural Gas Corporation Limited’ and other related parties as shown in I.A. No. 2009 of 2019, 2010 of 2019, 2011 of 2019 and 2012 of 2019 as party respondents to the concerned appeal. Let necessary correction be made in the cause title and other pages of the paper book by 15th July, 2019.

Let notice be issued to newly added Respondents ‘Oil and Natural Gas Corporation Limited’ and others. Requisites alongwith process fee be filed by 16th July, 2019. *Dasti Service is permitted alongwith copy of this order.*

With regard to Fixed Deposit amount, ILFS and Union of India may bring the same to the notice of Hon’ble Justice Shri D. K. Jain, Former Judge of Supreme Court and may take steps in accordance with the permission as may be granted by the Hon’ble Judge.

Learned counsel for Five Pension Funds referred to I.A. 865 of 2019 and submits that in the order dated 2nd May, 2019 in para 12 wherever the word 'bank' has been used it should be made clear that it includes 'pension and other funds'. Therefore, we make it clear that declaration of NPA by the Banks and any other pension funds in no manner will affect any of the Company (Corporate Debtor) to continue as a going concern. I. A. No. 865 of 2019 stands disposed of.

Post these appeals 'for orders' on **8th August, 2019 at 3:00 PM.**

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/gc