

**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

**Present:**

Mr. Ramji Srinivasan, Senior Advocate with Mr. Sanjay Shorey and Mr. Rakesh Tiwari, Advocates for MCA, Union of India.

Mr. Ramji Srinivasan, Senior Advocate with Ms. Gauri Rasgotra, Mr. L. Vishwanathan, Mr. Abhijeet Dad, Mr. Raunak Dhillon, Mr. Vikash Kumar Jha, Mr. Karan Khanna, Ms. Ananya Dhar Chodhury and Mr. Hariharan for ILFS

Mr. Kapil Sibal and Mr. Arun Kathapalia, Senior Advocates with Mr. Manmeet Singh, Mr. Abhinandan Banerjee and Ms. Ria Kohli, Advocates for Intervener.

Dr. Abhishek Manu Singhvi, Senior Advocate with Mr. Diwakar Maheshwari, Mr. Avishkar Singhvi, Mr. Shreyas Edupuganti and Ms. Nidhi Ram, Advocates for Indus Ind Bank, Respondent 16.

Mr. Salman Khurshid, Senior Advocate with Mr. Amit Agrawal, Mr. Aadil Singh Baparai, Ms. Aanchal Tikmani and Ms. Ayesha Jamal, Advocates with Major General S. Mempaj, Brigadier Rahul and Lt. Col. S. K. Mishra, for Army Group Insurance Fund (AGIF), Dy. No. 11382/19.

Mr. Gopal Jain, Sr. Advocate with Mr. Ashish Mukhi, Ms. Madhurima Sarangi, Mr. Nirvikar Singh and Ms. Nikhar Luthra, Advocates for UTI PF, UTI AMC, UTI RSL, UTI MF, HDFC PF, Kotak Mahindra PF, SBI PF, LIC PF.

Mr. Arun Kathpalia, Sr. Advocate with Mr. Ravi Hegde, Mr. D. N. Pattnaik and Mr. Pranav Sarthi, Advocates for Intervenors (Dy. No. 12562/19).

Mr. Shivansh Jolly, Advocate for APCO-TITAN (JV) (I.A. No. 1645 & 340 of 2019)

Mr. Ankit Vijaywargiya and Mr. Shrey Patnaik, Advocates for IRCON ECPF Trust, IRCON Medical Trust.

Mr. Aditya Verma and Mr. Shrey Patnaik, Advocates for Coastal Marine Construction & Engineering Company Ltd.

1(b)

Mr. Vishnu Sharma, Mr. Saurav Roy and Mr. Prashant Kumar, Advocates for Noida Authority.

Mr. T. Sunder Ramanathan and Ms. Prerana De, Advocates for HPCL Provident Fund and HPCL Post-Retirement Medical Benefit Fund

Mr. T. Sunder Ramanathan and Ms. Prerana De, Advocates for BPCL Provident Fund BPCL Employees Post-Retirement Medical Benefit Fund Cochin Refineries Ltd. Staff Provident Fund.

Mr. Rajiv S. Roy, Mr. Avrojoyti Chatterjee, Mr. Abhijit Roy and Ms. Jayasree Saha, Advocates for Canara Bank & UCO Bank.

Mr. PBA Srinivasan, Mr. Avinash Mohapatra and Ms. Ichcha Kalash, Advocates for Andhra Bank and other consortium lenders including Indian Bank, Punjab & Sind Bank, UCO Bank, Dena Bank, PNB, IOB & BOI (Dy. No. 9722,9727 & 9723).

Mr. Naveen Chawla and Ms. Arushi Sralech, Advocates for Tata Projects PF Trust.

Mr. R.P. Agarwal and Mr. Prateek Kushwaha, Advocates for Nainital Bank

Mr. Abhinav Goyal and Mr. Pallav Mongia, Advocates for Yokogawa India Employees Provident Fund and BALCO Employees Provident Fund, Interveners.

Mr. Alok Kumar, Ms. Soniya Yadava and Ms. Snigdha Singh, Advocates for Intervenor

Mr. Abhirup Dasgupta and Mr. Ishaan Duggal, Advocates for DHFL Pramerica Insurance Ltd. and Tata Power Consolidated PF.

Mr. Yasharth Misra, Advocate for Shinhan Bank

Mr. Nishant Menon, Ms. Kavita Sarin, Mr. Shafiq Ahmed, Advocates for ECIPL Provident Fund.

Ms. Aparna Iyer, Advocate for Intervener – Canara HSBC Oriental Bank of Commerce

Mr. Aakash Sirohi and Mr. Indralal, Advocates for M/s Shakti Traders (Diary No.9649/19)

Mr. Adarsh Tripathi, Ms. Ruchi Mishra and Mr. Anish Gupta, Advocates for NTPC Limited Employees Provident Fund Trust.

Mr. Alishan Naqvee, Mr. Saurabh Chaturvedi and Ms. Swet Shikha, Advocates for HCCB Group PF Trust, HCCBL Employees Group Gratuity Trust and HCCBL Employees Group Gratuity Trust.

Mr. Pankaj Vivek and Ms. Bidya Rani, Advocates for R-13, Bank of Baroda

Ms. Priyanka, Advocate for M/s Adinath.

Mr. Vivek Malik, Mr. Vivek Sinha and Mr. Kartikeya Jain, Advocates for MTNL GPF Trust.

Mr. Rohit Gandhi, Ms. Bindu Saxena, Ms. Aparajita Swarup and Mr. Dhruv C. Saxena, Advocates for Indian Farmers Fertilizers Cooperation Ltd., IFFCO Employees PF Trust, IFFCO Employees Development Trust & IFFCO Kisan Logistics Ltd., IFFCO Tokio

Mr. Sanjeev Singh, Ms. Amisha Agarwal, Mr. Shivam Rai and Mr. Karan Singh, Advocates for Aditya Birla Finance Ltd. (Impleader/ Intervener)

Mr. Saurabh Jain and Mr. Siddharth Jain, Advocates for Applicant/Intervener/ Financial Creditor -Hindustan Copper Limited Indian Copper Complex Employees Provident Fund, Ambuja Cement Ltd. Staff Provident Fund Trust

Mr. Diwakar Maheshwari and Mr. Shreyas Edupuganti, Advocates for Himami Ltd. Staff Provident Institution, Bajaj Finance Ltd., CESC Limited Provident Fund and CESC Ltd., Asian Paints Factory PF Trust, Asian Paints Office PF Trust, Asian Paints Gratuity Trust and Asian Paints SAF Trust.

Mr. Atul Shanker Mathur and Ms. Priya Singh, Advocates for National Dairy.

Mr. Atul Shanker Mathur and Ms. Sweta Singh, Advocates for BHEL PF Trust.

Mr. Ajay Bhargava, Ms. Vanita Bhargava, Mr. Aseem Chaturvedi, Ms. Wamika Trehan, Advocates for Mashreq Bank, Max Bhupa, Apollo Munich, West Coast Paper Mills Ltd., HUL Union Fund, McLeod Russel India Ltd.

Mr. Ravitej Chilumuri, Advocate for Aditya Birla Finance Ltd.

Mr. Jeevan B. Panda, Ms. Shalini Sati Prashad, Mr. Satish Padhi and Mr. Mehar Tondan, Advocates for Birla Industries Provident Fund

Ms. Anushka Sharda and Ms. Smriti Nair, Advocate for PPL & Zaruri Industries

Mr. Anand Shankar Jha, Mr. Arpit Gupta and Md. Ali, Advocates for Mahindra and Mahindra Ltd., Mahindra and Mahindra Staff Provident Fund and MCC India Employees Provident Fund Trust. & DHFL General Insurance Ltd.

Ms. Richa Bhardwaj, Advocates for Sunflag Iron & Steel

Ms. Yati Sharma and Ms. Priya Puri Advocate for Indian Oil Corporation Ltd.

Mr. Vardhman Kaushik and Mr. Archit Gupta, Advocates for Intervenor, Tata Motors Fin. Ltd.

Mr. Shailesh Suman, Advocate for NHPC Ltd. EPF Trust

Mr. Rajeev Panday, Advocate for Citizen Cooperative Bank

Mr. Arun Mani, Mr. Abhinav Raghuvanshi and Ms. Gaurika Mohan, Advocates for Intervenors.

Mr. Arun Kathpalia, Senior Advocate with Mr. Pranaya Goyal, Mr. Dharav Shah and Mr. Chiranjivi Sharma, Advocates for HDFC Mutual Fund.

Mr. Pranaya Goyal, Mr. Dharav Shah and Mr. Chiranjivi Sharma, Advocates for DCPL, DSPL, Titan Provident Fund, ARAI, WBPDC, Thomson Reuter, Intervenors.

Mr. Amit Tyagi and Mr. Sourav Tyagi, Advocates for TLG India Pvt. Ltd. Employees Provident Fund and Sapient Consulting Employees Provident Fund Trust.

Mr. Ashish Mukhi and Mr. Kamendra P. Singh, Advocates for MUFG Bank- Intervener

Mr. Ashish Mukhi and Ms. Madhurima Sarangi, Advocates for CTBC Bank- Intervener

Mr. Anshuman Gupta, Mr. Syed Asalam Abib and Mr. Prateek Khaitan, Advocates for Jammu & Kashmir Bank.

Ms. Palak Rohmetra and Ms. Surbhi Kapoor, Advocates for Tractebel Engineering Pvt. Ltd.

Mr. Alok Dhir, Mr. Kunal Godhwani, Ms. Juhi Bhambhani and Ms. Varsha Banerjee, Advocates for Punjab National Bank.

Ms. Jayashree Shukla and Ms. Saloni Chowdhary, Advocates for Wavewell

Ms. Richa Sandilya, Advocate for Indian Overseas Bank

Ms. Anushree Kapadia and Ms. Rajshri, Advocates (I.A. No. 774,775,776,778 of 2019

Mr. Rishi Sood and Mr. Gaurav Singh, Advocates for Bhopal Co-operative Bank Ltd. (I.A. No. 1382,1383 of 2019)

Ms. Ritu Singh Mann, Mr. B. Banerjee and Mr. Dheeraj Kumar Garg, Advocates for Intervention Application No. 841/19 – British Airways PLC Staff Pension Fund, 842/19 – British Airways Cabin Crew Pension Fund, 847/19 – British Airways Superannuation Scheme

Mr. Brijesh K. Tamber and Mr. Avirup Benjamin, Advocates for Indian Bank & Allahabad Bank

Mr. Muthuvel Palani M., Advocate for Loyal Textile Mills Ltd. and Valli Cotton Traders Ltd.

Mr. Kamal Kant Jha and Mr. Siddharth Jha, Advocates for IA No. 556, 557/19

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Mr. Sanjay Kapur, Ms. Meghna Karnwal, Mr. Bharath Ganga Dharan, Advocates for SBI.

Ms. Priya Puri and Ms. Yati Sharma, Advocates for IOCL.

Mr. Kumar Abhishek Singh, Advocate for Boxco Far East Pvt. Ltd. (Intervener)

Mr. Ramesh Babu and Ms. Manisha Singh, Advocates for RBI

Mr. R. Sudhinder and Ms. Nimita Kaul, Advocates for Gratuity Fund of Housing Development Finance Corporation Ltd., Superannuation Fund of Housing Development, Finance Corporation Ltd., Housing Development Finance Corporation Ltd., Provident Fund, Gruh Finance Ltd., Employees Gratuity Trust Fund, Gruh Finance Ltd., Officer's superannuation Fund, Gruh Finance Ltd. Employee's Provident Fund Trust.

Mr. Anil Kher, Sr. Advocate and Ms. Disha Bajaj, Advocates for Everest Industries

Mr. Abhijeet Sinha, Mr. Arijit Mazumdar, Mr. Shambo Nandy and Mr. Saikat Sarkar, Advocates for SREI Infrastructures Finance Ltd. (Dy. No. 10349/19)

Mr. Praveen Mahajan and Mr. Akhil Nene, Advocates (Interveners) for Future Generali Life Insurance Company Limited, Future Generali India Insurance Company Limited, Reliance Nippon Life Insurance Co. Ltd.

Mr. Rudreshwar Singh, Advocate for Punj Lyodd Ltd., First Rank Bank & Punj Lloyd Group Employees

Mr. Sandeep Bajaj, Mr. P. Maini, Mr. Abhimann Chopra, Mr. S. Qureshi and Mr. Rishabh Gupta, Advocates for South Indian Bank

Ms. P.S. Chandralekha and Mr. P.I. Jose, Advocates for Bassein Catholic Cooperative Bank

Mr. Ravi Krishan Chandra, Advocate for Oriental Structural Engineers

Mr. Abhijeet Sinha, Mr. Ajitesh Soni and Mr. Saikat Sarkar, Advocates for SBI General Insurance, Maihar Cement, 63 Moons Ltd. and Ultratech Cement Ltd.

Mr. Debarshi Bhuyan, Advocate for Godrej Consumer Products Provident Fund

Mr. Vikram Hegde, Advocate for IREDA

Mr. Hard S. Soni, Advocate (Interveners) – I.A. No. 774,778,776,775 of 2019

Mr. Amish Tandon, Mr. Sameer Abhyankar and Mr. Ayush Beotra, Advocates (Intervener) – IFCI Ltd.

Mr. Karan Mehra, Ms. Risha Mittal and Ms. Simran Mehrotra Advocates for SAS Employees Provident Fund Trust (Intervener)

Sri Parna Dutta, Advocate (Intervener) for Titan

Mr. Saransh Jain and Mr. Madhavam Sharma, Advocates for Jupiter Capital

Ms. Riya Chopra, Advocate (Intervener)- Infosys Ltd. Employees Provident Fund Trust (I.A. No. 808,846 of 2019).

Mr. Abhishek Kumar and Ms. Arushi Gupta, Advocates for R-14 (PFC) and PFC EPF, PFC EGF and PFC SMF.

Mr. Krishnendu Datta, Mr. Mayank Mishra, Mr. Sidharth Sethi and Mr. Ashish Joshi, Advocates for Aidqua Holdings Mauritius (Intervenor).

Mr. Ashish Joshi, Advocate for Standard Chartered Bank – Intervenor.

Mr. Manik Dogra and Mr. Balkrishn Ladhania, Advocates for Shapoorji Pallonji Employees Provident Fund (Intervener).

Mr. Abhishek Gupta, Mr. Saurav Baveja and Mr. Harshil Gupta, Advocates for NALCO Employees Provident Fund Trust.

Mr. Abhishek Gupta, Mr. Saurav Baveja and Mr. Harshil Gupta, Advocates for OPGC EPF Trust.

Mr. Arun Kathpalia, Senior Advocate with Mr. Sidharth Sethi and Ms. Tanya Tiwari, Advocates for PTC India Financial Services – Intervenor.

Mr. R. B. Trivedi, Advocate with Mr. C. R. Latha, AGM and Ms. Ipishita, Law Officer for Bank of India (R-15)



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Mr. Manish Paliwal, Mr. Dheeraj Singh and Mr. Vikas Kumar, Advocates for Bharat Electronics Ltd.

Mr. P. V. Dinesh and Mr. R. S. Lakshman, Advocates for SIDBI and MUDRA.

Mr. Jayant Mehta and Mr. Mohit Singh, Advocates for ICICI Bank.

Ms. Kanika Singhal, Advocates for Axis Bank.

Ms. Samridhi Hota, Advocate for JK Paper Employees PF.

Mr. Harshad Patak and Mr. Shivam Pandey, Advocates for Tata Elxsi (India) Ltd. Employees PF, Tata Teleservices Limited PF Trust, Tata Asset Management Ltd., PF of Tinsplate Co Ltd. and Tata Steel Gratuity Fund.

Ms. Madhu Sweta and Ms. Shivangi Khanna, Advocates for NHAI, IA No. 641 & 642/2019.

Mr. Alok Kumar, Ms. Somya Yadava and Ms. Smigdha Singh, Advocates for I.A. No. 932 of 2019.

Mr. Abhishek Anand and Mr. Anant A. Pavgi, Advocates for Federal Bank – Intervenor.

Mr. Tushar Tyagi, Advocate for Shree Gautam Construction Co. Ltd.

Mr. Arjun Harkauli, Mr. Anshuman Gargesh and Ms. Arunima Bishnoi, Advocates for CG Power and Industrial Solutions – Intervenor.

Mr. Anil Kaushik, Mr. Abhishek Mishra and Mr. Akash Bhardwaj, Advocates for EIL (Intervener).

Mr. Ashish Virmani and Mr. Harsha Gollamudi, Advocates for EGIS India Consulting Engineers Pvt. Ltd.

Mr. Pawan Kr. Bansal, Advocate – I.A. 1820/19.

**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 21<sup>st</sup> 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 15<sup>th</sup> 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 16<sup>th</sup> 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 2<sup>nd</sup> 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 **8<sup>th</sup> August, 2019 at 3:00 PM.**

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

*am/gc*