

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**NEW DELHI**

**Company Appeal (AT) No. 29 of 2019**

**IN THE MATTER OF:**

**Hari Sankaran**

**...Appellant**

**Versus**

**Union of India**

**Ministry of Corporate Affairs & Ors.**

**...Respondents**

**Present:**

**For Appellant : Mr. Rao, Advocate**

**For Respondents : Mr. Parvez Nainwadi, Assistant Director, Legal & Prosecution for R-1.**

**Mr. Vikash Kumar Jha and Mr. Karan Khanna,  
Advocates for R-2, R-3 and R-4**

**ORDER**

**31.01.2019** Heard Mr. Rao, learned counsel for the Appellant and Mr. Parvez Nainwadi, Assistant Director (Legal & Prosecution) for 1<sup>st</sup> Respondent.

Due to mis-management of 'Infrastructure Leasing & Financial Services Limited', 'IL&FS Financial Services Limited' and 'IL&FS Transportation Networks Limited' (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents respectively),

the Union of India, Ministry of Corporate Affairs filed petition u/s 133 of Companies Act, 2013 before the National Company Law Tribunal, Mumbai Bench (hereinafter referred to as 'Tribunal') wherein the Tribunal passed order dated 1<sup>st</sup> January, 2019 with the following observations and directions:-

*“Section 130(i) & (ii) lays down the **following pre condition for passing an order for recasting and re-opening the accounts of a company.***

*(i) The relevant earlier accounts were prepared in a fraudulent manner;*  
**or**

*(ii) The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements”.*

*At this stage, we cannot hold that alleged accounts of the companies were prepared in a fraudulent manner, because investigation is still pending. In our earlier order dated 1.10.2018 on the basis of prima facie report that the affairs of the company were mismanaged during the relevant period and that the affairs of the company and subsidiary companies were being mismanaged during the relevant period and that the affairs of the company and subsidiary companies were being managed during the relevant period as contemplated under Section (1) and (2). Therefore, we need not examine or express any opinion on the allegations made against the auditors in this Petition, at this stage.*  
**The Union of India, without prejudice, is not pressing any allegation at this stage.**

*In the circumstances, we allow this petition filed under Section 130 of the Companies Act, 2013 for re-opening the books of accounts and recasting the financial statements of Infrastructure Leasing & Financial Services Limited (R1), IL&FS Financial Services Limited (R2) and IL&FS Transportation Networks Limited (R3) for the past five financial years, viz. from Financial Year 2012-13 to Financial Year 2017-2018.*

*We further issue directions to Central Government to appoint such person / firm as the Chartered Accountants to recast the accounts / financial statements of all the three companies, i.e. Infrastructure Leasing & Financial Services Limited (R1), IL&FS Financial Services Limited (R2) and IL&FS Transportation Networks Limited (R3) for the past five financial years, viz. from Financial Year 2012-13 to Financial Year 2017-2018.*

*Regional Director may submit the name of the Auditor for our approval for the said purpose so that recasting of accounts can be done.*

*We further clarify that this order is without prejudice to the right of the auditors and all the parties present and will not affect the proceedings before ICAI in any manner, which will be decided independently on its own merits.*

*By passing an order for recasting the accounts will have no bearing on the main Company petition which is pending under Section 241-242 of the Companies Act, 2013.*

*Petition is disposed of accordingly.”*

The Appellant, former Vice-President and Director, has challenged the said order dated 1<sup>st</sup> January, 2019 on the ground that the impugned order was passed ex-parte though notice was served to the Appellant and sought for time, but the Tribunal proceeded with the impugned order. According to him, the provision of Section 230 is Draconian Section introduced in Companies Act, 2013. However, such submission cannot be accepted till any person challenges the provisions before the Court of Competent Jurisdiction such as the Hon'ble High Court and the Hon'ble Supreme Court.

Even if it is accepted that the Appellant on receipt of notice wanted to file reply-affidavit but as no ground is made out to hold the impugned order dated 1<sup>st</sup> January, 2019 as illegal, we are not inclined to remit the matter to the Tribunal on the ground of violations of rules of natural justice.

We find no merit in this appeal. It is accordingly dismissed. No Cost.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

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