

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI (SPECIAL) BENCH

C.P. No. 3638/2018

(Under Section 241 and 242 of the Companies Act, 2013)

In the matter of

**Union of India, Ministry of
Corporate Affairs** Petitioner

v/s.

**Infrastructure Leasing And
Financial Services Limited** ... R1
Mr. Hari Sankaran ... R2
Mr. Arun K Saha ... R3
Mr. Sunil Behari Mathur ... R4
Mr. Ravindra Chandra Bhargava ... R5
Mr. Michael Philip Pinto ... R6
Mr. Jaithirth Rao ... R7
Ms. Rina Kamath ... R8
Mr. Ravi Ramaswamy Parthsarathy ... R9
Mr. Maharudra Manohar Wagle ... R10
Ms. Varsha Shivaji Sawant ... R11

Heard and Delivered on 1.10.2018

Coram: Hon'ble Shri M. K. Shrawat, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner:

Shri Manmohan Juneja, RD, WR, Shri Sanjay Shorey, JD (Legal),
MCA, New Delhi, Shri R. K. Dalmia, JD. O/o RD, WR, Shri R. K.
Tiwari, ROC, Mumbai, Shri Anil Yadav, DROC, Mumbai, Shri
Indrajeet Vania, AROC, Mumbai, Shri Neelambuj, CP, O/o ROC,
Mumbai, Shri Dharmanath Prasad, CP O/o ROC, Mumbai.

For the Respondent:

Mr. Ravi Kadam, Senior Counsel with Mr. Vivek Memon with Mr.
Aditya Sikka with Ms. Priyanka Mitra, i/b Cyril Amarchand
Mangaldas for R1.

Per Bench

INTERIM ORDER

The Union of India filed this instant Petition on 01.10.2018 on
an urgent basis by seeking following reliefs:

- “1. That the existing Board of Directors of Respondent No.1 company, comprising of R2 to R8, be suspended with immediate effect and 10(ten) persons be appointed as directors in terms of provisions of Section 242(2) (k) of the Act, to manage the affairs of the R1 company and its group companies through their nominees, and such directors may report and function under the Hon’ble Tribunal on such matters as it may direct.
2. That the Board of Directors appointed by the Hon’ble Tribunal in terms of 242(2)(k) of the Act be authorised to replace such number of directors of subsidiaries, joint ventures and associate companies as may be required to make the R1 and its group companies as going concern.”

2. From the side of the Central Government, duly authorised officer representing Ministry of Corporate Affairs Mr. Sanjay Shorey, Joint Director (Legal), appeared and explained the merits of the case.

3. At the outset, it is worth to mention that Senior Advocate Mr. Ravi Kadam appeared representing R1 namely, Infrastructure Leasing And Financial Services Ltd (IL&FS Ltd) and stated that under the instructions of R1 neither he is opposing the Petition of the Central Government nor he is supporting this Petition. During the hearing, he remained present and assisted the Court by explaining the provisions of Section 241 (2) of the Companies Act, 2013 that under exceptional circumstances the Central Government if of the opinion that the affairs of a company are being conducted in a manner prejudicial to public interest may apply to the Tribunal for an appropriate order under Chapter XVI of the Companies Act, 2013.

4. The Respondent No.1 (IL&FS Ltd) was incorporated under the Companies Act, 1956 having its registered office in Mumbai thus NCLT, Mumbai has territorial jurisdiction. This is a core investment company and systemically important Non-Banking Finance Company duly approved under the Reserve Bank of India Act, 1931. The Respondent company was promoted by Central Bank of

India, HDFC Ltd., Unit Trust of India in the year 1987. The company is at present holding prominent infrastructure development and finance companies. Over the years, it had inducted institutional shareholders listed below with percentage of holding:-

Sr. No.	Name of the Shareholder	Percentage Holding
1.	Life Insurance Corporation of India	25.34%
2.	ORIX Corporation – Japan	23.54%
3.	IL&FS Employees Welfare Trust	12%
4.	Abu Dhabi Investment Authority	12.56%
5.	Housing Development Finance Corporation Limited	9.02%
6.	Central Bank of India	7.67%
7.	State Bank of India	6.42%
8.	UTI- Unit Linked Insurance Plan – UTI Asset Management Company Limited	0.82%
9.	India Discovery Fund	0.86%
10.	Others	1.77%
	TOTAL	100%

5. That the Petitioner submits that the R1 during the financial year 2017-18 has 169 group companies out of which, 24 companies are direct subsidiaries, 135 companies are indirect subsidiaries, 6 companies are joint ventures and 4 companies are associate companies. The R1 underwent an organisational structuring in 2008, whereby it converted itself into a holding company after demerging its lending and advisory business to its subsidiary company IL&FS Financial Services Limited. The holding company is a systemically important Non-Banking Finance Company (NBFC) and a core investment company as per RBI norms. The rationale for such classification is that, the activity of such NBFCs will have a bearing on financial stability of overall economy. The six major group companies of the R1 contribute over 60% to the consolidated

assets of the IL&FS Group. The six major group companies are as under:

- a. IL&FS Transportation Networks Limited (ITNL)
- b. IL&FS Financial Services Limited (IFIN)
- c. IL&FS Energy Development Company Limited (IEDCL)
- d. IL&FS Tamil Nadu Power Company Limited (ITNPCL)
- e. Noida Toll Bridge Limited
- f. IL&FS Engineering and Construction Co. Limited.

6. Ld. Representative of the Union of India has narrated the background of the functioning of the present Board of Directors. He has stated that Respondent Nos. 2 to 8 are at present directors of IL&FS Ltd. He has informed that Respondent No.9 Mr. Ravi Ramaswamy Parthsarathy is one of the longest serving Whole Time Director. At this juncture, he has also informed that Mr. Parthsarathy has already resigned and relieved from the services of the company from July, 2018. Further informed that Respondent No.10 and Respondent No.11 are at present Chief Financial Officer and Company Secretary respectively. The allegation is that the Managerial persons are responsible for negligence and incompetence. According to the allegations, a rosy financial statement was projected. He has further emphasized that the directors of R1 have failed to discharge their fiduciary duties which is based on mutual trust and confidence. It is informed that to unearth the irregularity and for investigation, the provisions of Section 212 (1) (c) of the Companies Act were invoked for investigation into the affairs of the company.

6.1 He has further stated that ROC has conducted an enquiry under Section 206 of the Companies Act, 2013 and prima facie concluded that mismanagement and compromise in corporate governance norms and risk management has been perpetuated on R1 company and its group companies by indiscriminately raising long term and short term loans/borrowings through Public Sector Banks and financial institutions.

6.2 R1 has been presenting rosy picture and camouflaging its financial statements by hiding severe mismatch between its cash flows and payment obligations, total lack of liquidity and adverse financial ratios, pleaded by the Ld. Representative.

6.3 R1 has first defaulted on commercial paper and then on short term borrowings, i.e. inter corporate deposits, negative cash flows in operating activities, etc.

6.4 The Ld. Representative further highlighted that on a limited review report by the Statutory Auditor of the R1 company namely SRBC & Company, the Auditor had drawn the company's board of directors' attention to the "existence of material uncertainty on the company's ability to continue as a going concern" and the "management plan to raise funds."

6.5 He has further highlighted the consolidated balance sheet of the R1 company which indicated extremely precarious financial position and virtually in deep red. The intangible assets of approx. ₹18,540 crores as on 31.3.2017 has increased to approx. ₹20,004 crores as on 31.3.2018, thus creating doubt about the correctness of the financial statements.

6.6 It has also been informed by the Ld. Representative of the Government that the Dept. of Economic Affairs has raised "Red Signals" expressing great concern of likelihood of collapse thus expressed immediate further necessary action by the Ministry of Corporate Affairs under the Companies Act, 2013. For ready reference the said "Office Memorandum" bearing No.10/41/SM/2018, dated 30.9.2018 of the Adviser (FSRL), Ministry of Finance, Department of Economic Affairs is reproduced below:

"The Department of Economic Affairs has been watching the developments in the financial market arising out of default by IL&FS Group. The matter has been examined from the point of the financial stability angle, considering the systemically important nature of the IL&FS Group, the impact on the debt, money and capital markets. A note has been prepared pointing out the deleterious effect of financial defaults by the Group on the financial markets, the problem of high leverage and

apparent misgovernance and mismanagement and a solution is proposed to handle the financial crisis.

It is felt that the governance and management change is required to bring back the IL&FS Group from financial collapse, which may require, among other things, a change in the existing Board and management and appointment of a new management. Therefore, a new management is required to be constituted on account of aforesaid misgovernance and mismanagement in the company as the continuance of the present Board is prejudicial to the interests of the company and its members and it is also not in public interest because of its adverse impact on financial stability. Therefore, the NCLT may be approached by the Government under Section 242 of the Companies Act, 2013 to order reconstitution of the present Board of Directors and its substitution by a new Board of Directors. Then the new Board may attempt to restore the financial solvency of the company and the Group."

7. As a consequence, now the Union of India, vide an Additional Affidavit dated 1.10.2018 has proposed the following names of Directors:

- a. Shri Uday Kotak, MD, Kotak Mahindra Bank Ltd
- b. Shri Vineet Nayyar, IAS (Retired)
- c. Shri G. N. Bajpai, Ex. Chairman, SEBI
- d. Shri G. C. Chaturvedi, Non-Executive Chairman, ICICI Bank Ltd
- e. Dr. Malini Shankar, IAS
- f. Shri Nand Kishore, IA&AS (Retired)

Directions

8. On the basis of the foregoing discussions and after considering the facts of the case, as narrated in the Petition filed by the Union of India, this Bench is of the considered view that it is judicious to invoke the jurisdiction prescribed under Section 241(2) of the Companies Act, 2013 and the Tribunal is of the opinion that as per Section 242 (1) of the Companies Act, 2013, the affairs of the IL&FS were being conducted in a manner prejudicial to public interest. The interim prayer of suspending the present Board of Directors and reconstitution of the new Board of Directors is hereby

allowed. At present, by an additional affidavit only 6 names (supra) of the Board members have been proposed by the Union of India.

8.1 Further directed that the present Board of Directors be suspended with immediate effect. The six Directors as reproduced supra shall take over the R1 company immediately. Newly constituted Board shall hold a meeting on or before 8th October, 2018 and conduct business as per the Memorandum and Articles of Association of the company and the provisions of the Companies Act, 2013. Liberty is granted to the Board of Directors to select a Chairman among themselves. Thereafter, report the roadmap to NCLT, Mumbai Bench at the earliest possible not later than the next date of hearing. The suspended directors henceforth shall not represent the R1 company as a Director and shall also not exercise any powers as a Director in any manner before any authority as well.

9. As a consequence of "Admission" of the Petition, issue notice to intimate next date of hearing. The Petitioner is to serve copy of this order along with Petition to all the Respondents. The Respondents in turn may file their reply by 15th October, 2018, only after serving copy to the Petitioner. The Petitioner can file rejoinder, if deem fit, by 30th October, 2018.

10. List for next hearing on 31st October, 2018.

SD/-

RAVIKUMAR DURAISAMY
Member (Technical)

SD/-

M. K. SHRAWAT
Member (Judicial)