

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 and
Financial Services Ltd. & Ors.** **...Respondents**

Present: **For Appellant:** - Mr. Tushar Mehta, Solicitor General with Mr. Sanjay Shorey, Director (Legal & Prosecution) MCA, Mr. S. Ramakantha, Joint Director (Regional Director, WR), Mr. Parvez Naikwadi, Assistant Director (MCA), Mr. Kanu Agrawal, Advocate.

For Respondents: - Mr. Ramji Srinivasan, Senior Advocate with Ms. Gauri Rasgotra, Mr. L. Vishwanathan, Mr. Raunak Dhillon, Mr. Vikash Kumar Jha, Mr. Karan Khanna, Mr. Aditya Sikka and Ms. Ananya Dhar Choudhury, Mr. Bunmeet Singh Grover, Advocates for R-1.

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**

Present: **For Appellant:** - Mr. Ramji Srinivasan, Senior Advocate with Ms. Gauri Rasgotra, Mr. L. Vishwanathan, Mr. Raunak Dhillon, Mr. Vikash Kumar Jha, Mr. Karan Khanna, Mr. Aditya Sikka and Ms. Ananya Dhar Choudhury, Mr. Bunmeet Singh Grover, Advocates.

For Respondents: - Mr. Tushar Mehta, Solicitor General with Mr. Sanjay Shorey, Director (Legal & Prosecution) MCA, Mr. S. Ramakantha, Joint Director (Regional Director, WR), Mr. Parvez Naikwadi, Assistant Director (MCA), Mr. Kanu Agrawal, Advocate.

ORDER

15.10.2018— These appeals have been listed on urgent mentioning and taken up for admission even on a holiday taking into consideration the nature and importance of the appeals.

2. From the impugned order dated 12th October, 2018 in MA 1173/2018 in C.P. No. 3638(MB)/2018, we find that the National Company Law Tribunal ('Tribunal' for short) while accepted that no petition under any of the provision of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) can be preferred by any party for initiation of 'Corporate Insolvency Resolution Process' against 'Infrastructure Leasing and Financial Services Limited' ('IL&FS' for short) and its 348 Group Companies till the Central Government issue appropriate notification with regard to one or other making the provisions applicable to them, refused to pass the interim order in view of prayer of 'Moratorium' made by the Appellant- 'Union of India'. Otherwise the Tribunal has appreciated the difficulties which are being faced by the 'IL&FS' and its 348 Group Companies.

3. The questions arise for consideration in these appeals are:
- (i) Whether the Tribunal can pass appropriate order under Section 241 read with Section 242 of the Companies Act, 2013 for resolution of the problems faced by the Company in a time-bound manner for maximisation of value of assets of the Company, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders, and in case of failure of resolution pass appropriate order of liquidation; and
 - (ii) Whether the Tribunal in exercise of powers conferred Under Section 242 (1) (b) read with Section 242 (2)(m) and Section 242(4) of the Companies Act, 2013 read with Rule 11 of the National Company Law Tribunal Rules, 2016, can pass appropriate interim order similar to order under Section 14 of the Insolvency and Bankruptcy Code, 2016.
4. According to Mr. Tushar Mehta, Learned Solicitor General for the Appellant- 'Union of India' and Mr. Ramji Srinivasan, Learned Senior Counsel for the 'IL&FS', the Tribunal has much wider power under Sections 241 and 242 of the Companies Act, 2013 than the powers vested under provisions of Insolvency and Bankruptcy Code, 2016.
5. Taking into consideration the nature of the case, we are of the view that five largest creditors should be also impleaded as party Respondents

to these appeals in the representative capacity of the Creditors. Learned counsel for the Appellant(s) will make necessary correction in the cause title and other pages of the appeals in course of the day. Defects, if pointed out by office, may be removed before the next date.

6. Issue notice on Respondents, including newly impleaded Respondents by speed post. Requisite along with process fee, if not filed, be filed in course of the day. If the Appellant(s) provides the e-mail address of Respondents, let notice be also issued through e-mail. Dasti service is permitted particularly in the newly impleaded Respondents.

Post these appeals 'for admission' on 13th November, 2018 on the top of the list.

Taking into consideration the nature of the case, larger public interest and economy of the nation and interest of the Company and 348 group companies, there shall be stay of

- (i) The institution or continuation of suits or any other proceedings by any party or person or Bank or Company, etc. against 'IL&FS' and its 348 group companies in any Court of Law/Tribunal/Arbitration Panel or Arbitration Authority; and
- (ii) Any action by any party or person or Bank or Company, etc. to foreclose, recover or enforce any security interest created over

the assets of 'IL&FS' and its 348 group companies including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- (iii) The acceleration, premature withdrawal or other withdrawal, invocation of any term loan, corporate loan, bridge loan, commercial paper, debentures, fixed deposits, guarantees, letter of support, commitment or comfort and other financial facilities or obligations vailed by 'IL&FS' and its 348 group companies whether in respect of the principal or interest or hedge liability or any other amount contained therein.
- (iv) Suspension of temporarily the acceleration of any term loan, corporate loan, bridge loan, commercial paper, debentures, fixed deposits and any other financial facility by the 'IL&FS' and its 348 group companies by any party or person or Bank or Company, etc. as of the date of first default.
- (v) Any and all banks, financial institutions from exercising the right to set off or lien against any amounts lying with any creditor against any dues whether principal or interest or otherwise against the balance lying in any bank accounts and deposits, whether current or savings or otherwise of the 'IL&FS' and its 348 group companies.

The interim order will continue until further orders and not be applicable to any petition under Article 226 of the Constitution of India before any Hon'ble High Court or under any jurisdiction of the Hon'ble Supreme Court.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member (Judicial)

AR/g