

(2023) 03 NCLT CK 0080

In the National Company Law Tribunal

Case No : CA No. 636/MB/2022 In C.P No. 3638/MB/2018

Infrastructure Leasing and Finance Services Limited Vs Union Of India ?

Date of Decision : 31-03-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 53
Companies Act, 2013 — Section 241, 242, 242(4), 271(a), 361
National Company Law Tribunal Rules, 2016 — Rule 11

Citation : (2023) 03 NCLT CK 0080

Hon'ble Judges : H.V. Subba Rao, Member (J); Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Ashish Kamat Animesh Bisht, Drishti Das, Roma Bhojani, Aniruddh Gambhir, Aditya Sikka

Final Decision : Disposed Of

Judgement

1. This Application is filed seeking approval of this Tribunal for the following reliefs:

A. Allow the Applicant to file necessary Applications for winding up of GRICL Rail Bridge Development Company Limited under Section 271(a) of the Companies Act, 2013.

B. Allow the sale and transfer of 50% equity shares held by India Tourist and Heritage Village Private Limited in Sealands Ports Private Limited and Avash Logistic Park Private Limited to IL&FS Maritime Infrastructure Company Limited for consideration of Rs.1, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory and tax claims)

C. Allow the Applicant to initiate summary winding up of India Tourist and Heritage Village Private Limited under Section 361 of the Companies Act, 2013

D. For any further reliefs as this Tribunal deems fit and proper in the facts and circumstances.

Facts leading to the present Application and Submissions advanced are as follow:

2. On 1 October 2018 this Tribunal suspended the erstwhile Board of the Applicant and appointed a new board comprising of six directors nominated by the Original Petitioner. Pursuant to appeals filed by the Applicant, the Hon'ble NCLAT vide Order dated 15 October 2018 inter alia stayed coercive creditor and other action against the Applicant Group in larger public interest.

3. At the outset, the Applicant has laid down the events which resulted in resolution of the Applicant group.

4. Eventually the Hon'ble NCLAT vide its Order dated 12 March 2020 permitted the resolution of the applicant to continue as per procedure suggested by the Original Petitioner which included a Resolution Framework. Thereafter, in compliance with the Hon'ble NCLAT Orders various progress reports were filed which inter alia sets out resolutions framework of the Applicant group.

5. It is pertinent to note that initial resolution framework in particular also inter alia sets forth that with regard to companies of the Applicant Group where there are no operations or the cashflows are insufficient to meet the current operating and statutory liabilities, the New Board may take steps for these companies to be wound up.

6. GRICL Rail Bridge Development Company Limited ("GRBDCL") was incorporated in 2014 for the purpose to inter alia promote, develop and establish (whether individually or as a joint venture), the railway bridges in Gujarat. GRBDCL is a wholly owned subsidiary of Gujarat Road and Infrastructure Company Ltd. ("GRICL"), a subsidiary of IL&FS Transportation Networks Limited ("ITNL"). A concession agreement dated March 2, 2015 ("Concession Agreement") was entered into between the Roads and Buildings Department, Government of Gujarat and GRBDCL ("Authority"). The purpose of the Concession Agreement was to grant concession to GRBDCL for the development of 8 railway over bridges, construction of approach road, widening of existing service road and other facilities in State of Gujarat on build, operate and transfer on annuity basis ("Project").

7. By letter dated February 10, 2016, GRICL, requested the Authority to assign the Project to ITNL which was accepted by the Authority by its letter dated March 31, 2016 pursuant to which a Share Purchase Agreement was entered into between GRICL and ITNL and consequentially the legal and beneficial ownership of entire share capital of GRBDCL was transferred to ITNL.

8. As per the Concession Agreement, the scheduled Project completion date was July 29, 2019. However, no work has been done on the Project since September 2018. GRBDCL had then requested the Authority by its letter dated August 6, 2019 to foreclose the Concession Agreement, under the guidelines issued by Ministry of Road Transport and Highway dated March 9, 2019, classifying the Project as 'stuck-up' project. In response to the request, the Concession Agreement was terminated by the Authority on December 7, 2021 with no dues receivable as no milestone as per the purpose of the Concession Agreement was

achieved.

9. Since the said Project could not be completed/ proceeded with in accordance with the Concession Agreement, GRBDCL, has no business operations, cash flows or revenue stream and keeping the entity alive will incur additional liabilities. Hence, the present application for winding up of GRBDCL under Section 271(a) of the Companies.

10. India Tourist and Heritage Village Private Limited ("ITHVPL") was incorporated on June 4, 2008 wherein Mr. Shashi Kiran Shetty and Mrs. Arathi Shetty held 100% equity share capital in ITHVPL. Mr. Shetty was in the process of setting up a special economic zone ("SEZ Project") and it approached IL&FS to participate in the SEZ Project. It was decided that two special purpose vehicles would be incorporated for the purpose of carrying out works in the SEZ Project, accordingly, Sealands Port Private Limited ("SPPL") and Avash Logistic Park Limited ("ALPL") were incorporated. Subsequently, the parties executed two share subscription cum shareholders agreements dated August 28, 2008 and February 5, 2009 pursuant to which Mr. Shetty held the entire shareholding in ALPL and SPPL. Pursuant to the said agreements dated August 28, 2008 and February 5, 2009, IL&FS held 50% and ITHVPL held the balance 50% in ALPL and SPPL. Thereafter, vide an agreement dated June 20, 2012 executed between Mr. Shetty, Mrs. Shetty, IMICL, ITHVPL, ALPL and SPPL, IMICL acquired 100% of shareholding held by Mr. and Mrs. Shetty in ITHVPL. Currently, ITHVPL holds 50% in SPPL and ALPL whereas IL&FS holds 50% in SPPL and IMICL holds 50% in ALPL.

11. SPPL and ALPL hold vast land parcels of approximately 2,850 acres in Kutch district of Gujarat. In view of the ongoing resolution process of IL&FS and its group companies, efforts were made to monetize the land parcels held by SPPL and ALPL during the period from July 2019 till July 2020, however, no binding bids were received. Since ITHVPL was always incorporated as an investment vehicle to hold 50% in SPPL and ALPL, it has no on-going business operations and has no assets other than equity shares of SPPL and ALPL and has cash and bank balance of INR 27,227 as on March 31, 2022.

12. ITHVPL has no ongoing business operations, cash flows or revenue stream. Keeping the entity alive will only incur additional costs. Hence, the present application for transfer of 50% equity shares held by ITHVPL in each SPPL & ALPL at a consideration of Rs. 1 only for each such transfer to IMICL and to initiate summary winding up of ITHVPL under section 361 of the Companies Act.

13. The Board of Directors of GRBDCL, ITNL, ITHVPL, IMICL, and the Board have accorded their approval for winding up of GRBDCL and ITHVPL.

14. By a letter dated July 18, 2022 Justice (Retd.) D.K. Jain accorded his approval to initiate winding up of GRBDCL and ITHVPL under Section 271(a) and under section 361 of the Companies Act, respectively.

15. The Union of India has filed its affidavit in reply dated 20.01.2023 upon perusal of which it is observed that no objection has been raised by the Union of India for taking the matter on its merits.

Findings:

16. We have considered the matter in hand in the background of facts and circumstances stated above; it is observed that the winding up of GRBDCL and ITHVPL has also been approved by Justice D.K.Jain former judge of the Hon'ble Supreme Court appointed by the Hon'ble NCLAT to oversee the resolution process of the Applicant Group and to enable a resolution of the Applicant Group in line with the Resolution Framework; and the mandate given by this Tribunal to the New Board.

17. Moreover, it is observed that GRBDCL and ITHVPL are not engaged in any revenue generating activities and does not have plans to undertake any business activity in the future. Hence keeping the entities alive will not serve any purpose.

18. Thus, we approve the proposal to initiate winding up of GRICL Rail and Bridge Development Company Limited and further allow the sale and transfer of 50% equity shares held by India Tourist and Heritage Village Private Limited ("ITHVPL") in Sealands Port Private Limited ("SPPL") and Avash Logistic park Private Limited ("ALPL") to IL&FS Maritime Infrastructure Company Limited ("IMICL") for consideration of Rs.1 and thereafter allow initiation of winding up of ITHVPL under Section 361 of Companies act, 2013 in the interest of justice.

19. In the aforesaid backdrop, CA No. 636 of 2022 in C.P No. 3638/MB/C-I/2018 stands disposed of as allowed in terms of prayer clause (A) to (C) in paragraph 1 hereinabove.