(2023) 07 NCLT CK 0010

In the National Company Law Tribunal

Case No : CA No. 647/2022 In CP No. 3638/MB/2018

Infrastructure Leasing & Financial Services Limited Vs Union Of India ?

Date of Decision : 06-07-2023

Acts Referred:

Citation : (2023) 07 NCLT CK 0010

Hon'ble Judges : H. V. Subba Rao, Member (J);Anu Jagmohan Singh, Member (T)

Bench : Division Bench

Advocate : Abhishek Tilak, Aditya Sikka

Final Decision : Disposed Of

Judgement

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

A. Approve the consummation of the following transactions between SCOL and the H1 Bidder(s):

i. Approve the proposed transfer of the ownership right, title and interest in the premises being Unit No. 2 admeasuring 6,041 sq. ft. on the 1st Floor of building known as "Gift One" standing on a land parcel admeasuring 4800 square meters and bearing revenue survey/block number 262/1/P situate lying and being at Village-Ratanpur, District-Gandhinagar in the State of Gujarat (the said "Leased Land") along with the assignment of the leasehold rights and interest in the undivided proportionate share of 36.49sq. mts. out of the said Leased Land for the residue period of the 99 years lease, in favour of IED Infrastructure Private Limited, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) as on 15 October 2018 subject to receipt of consideration of INR 3,09,45,000 (Three Crore Nine Lakhs Forty Five Thousand only) from IED Infrastructure Private Limited;

ii. Approve the proposed transfer of the ownership right, title and interest in the premises being Units No. 1, 2, 3 and 4 admeasuring 30,572 sq. ft. on the 2nd Floor of building known as "Gift One" standing on a land parcel admeasuring 4800 square meters and bearing revenue survey/block number 262/1/P situate lying and being at Village-Ratanpur, District-Gandhinagar in the State of Gujarat (the said "Leased Land") along with the assignment of the leasehold rights and interest in the undivided proportionate share of 184.71 sq. mts. out of the said Leased Land for the residue period of the 99 years lease, in favour of Sagar Mukesh Sheth, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) as on 15 October 2018 subject to receipt of consideration of INR 12,90,00,000 (Twelve Crore Ninety Lakhs only) from Sagar Mukesh Sheth;

iii. Approve the proposed transfer of the ownership right, title and interest in the premises being Unit No. 3 admeasuring 9,276 sq. ft. on the 3rd Floor of building known as "Gift One" standing on a land parcel admeasuring 4800 square meters and bearing revenue survey/block number 262/1/P situate lying and being at Village-Ratanpur, District-Gandhinagar in the State of Gujarat (the said "Leased Land") along with the assignment of the leasehold rights and interest in the undivided proportionate share of 56.04 sq. mts. out of the said Leased Land for the residue period of the 99 years lease, in favour of Namit Dua, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) as on 15 October 2018 subject to receipt of consideration of INR 4,65,84,072 (Four Crore Sixty Five Lakhs Eight Four Thousand and Seventy Two only) from Namit Dua;

iv. Approve the proposed transfer of the ownership right, title and interest in the premises being Units No. 2 and 3 admeasuring 18,552 sq. ft. on the 4th Floor of building known as "Gift One" standing on a land parcel admeasuring 4800 square meters and bearing revenue survey/block number 262/1/P situate lying and being at Village-Ratanpur, District- Gandhinagar in the State of Gujarat (the said "Leased Land") along with the assignment of the leasehold rights and interest in the undivided proportionate share of 112.09 sq- mts. out of the said Leased Land for the residue period of the 99 years lease, in favour of Smartsense Consulting Solutions Private Limited, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) as on 15 October 2018 subject to receipt of consideration of INR 8,44.30,152 (Eight Crore Forty Four Lakhs Thirty Thousand One Hundred and Fifty Two only) from Smartsense Consulting Solutions Private Limited;

v. Approve the proposed transfer of the ownership right, title and interest in the premises being Units No. 1 and 2 admeasuring 15,107 sq. ft. on the 10th Floor of building known as "Gift One" standing on a land parcel admeasuring 4800 square meters and bearing revenue survey/block number 262/1/P situate lying and being at Village-Ratanpur, District-Gandhinagar in the State of Gujarat (the said "Leased Land") along with the assignment of the leasehold rights and interest in the undivided proportionate share of 91.27 sq. mts. out of the said Leased Land for the residue period of the 99 years lease, in favour of Gujarat Electricity Regulatory Commission, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) as on 15

October 2018 subject to receipt of consideration of INR 6,34,49,400 (Six Crore Thirty Four Lakhs Forty Nine Thousand Four Hundred only) from Gujarat Electricity Regulatory Commission;

vi. Approve the proposed transfer of the ownership right, title and interest in the premises being Units No. 1 and 2 admeasuring 29.588 sq. ft. on the 28th Floor of building known as "Gift One" standing on a land parcel admeasuring 4800 square meters and bearing revenue survey/block number 262/1/P situate lying and being at Village-Ratanpur, District-Gandhinagar in the State of Gujarat (the said "Leased Land") along with the assignment of the leasehold rights and interest in the undivided proportionate share of 178.76 sq. mts. out of the said Leased Land for the residue period of the 99 years lease, in favour of Yashasvi Wealth Management LLP, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) as on 15 October 2018 subject to receipt of consideration of INR 16,01,00,668 (Sixteen Crore One Lakh Six Hundred and Sixty Eight only) from Yashasvi Wealth Management LLP.

B. Permit the Applicant to execute the Draft Transaction Documents (other than the LOIS) and the Direct Sale Transaction Documents (other than the GERC LOI) with the H1 Bidder(s);

C. Direct that the Applicant be permitted to utilize and pay an amount of INR 1,98,36,866 excluding taxes from the Consideration received from the Proposed Transactions towards Resolution Process Costs that have accrued or been incurred or are likely to accrue in connection with the resolution of SCOL;

D. Direct that the amount received towards CAM deposits and Utility Connection Charges and Deposits (subject to deduction of applicable taxes) from the H1 Bidders be received in a separate bank account to be intimated by SCOL;

E. Direct that after paying Resolution Process Costs, the balance funds from the Consideration be permitted to be deposited into the relevant bank/ escrow account, as per the details provided by the Applicant/SCOL, and that the same shall not be adjusted or set off against any other dues pertaining to any bank/ financial instituion;

F. Direct that the distribution of the Consideration or part thereof or withdrawal of any other amounts from the escrow account apart from prior payment of Resolution Process Costs be subject to further orders of this Hon'ble Tribunal;

G. For any further reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances.

Facts and Submissions advanced are as follows:

2. The present Application is filed in accordance with the Order and Judgment dated 12 March 2020 of the Hon’ble NCLAT in the Company Appeal Nos. 346 and 347 of 2020 seeking the reliefs detailed hereinabove. (Annexure 1 at pages 45 – 145)

3. The present application has been filed by the applicant seeking the approval of this Tribunal for sale of office spaces/ commercial units (along with leasehold rights therein) situated in the GIFT ONE Building, GIFT City, Gandhinagar, Gujarat ("Commercial Premises") on behalf of Sabarmati Capital One Limited ("SCOL") ("Proposed Transaction").

4. SCOL is a wholly owned subsidiary of IL&FS Township & Urban Assets Limited ("ITUAL"), which is a wholly owned subsidiary of IL&FS, i.e., the Applicant herein.

5. In line with the mandate granted to the New Board and in terms of various orders passed by the NCLT and the NCLAT, and the authority delegated to the Asset Sale Committee ("ASC") by the New Board in relation thereto, the ASC approved the initiation of the public bidding process for the sale of the vacant units of the Building on 11 November 2021.

6. The applicant engaged two independent valuers, viz RBSA Valuation Advisors LLP ("RBSA") and V S Jadon and Co. Valuers LLP ("Jadon") (collectively "Valuers"), for the purpose of determining the fair market value and liquidation value of the Commercial Premises.

7. Subsequently, the applicant published an advertisement in the Economic Times, the Divya Bharati and Times of India, each dated 28 January 2022 ("Advertisements"), for the Proposed Transaction.

8. The Gujarat Electricity Regulatory Commission ("GERC"), vide its letters to SCOL dated 10 March 2022 ("GERC Letter 1") and 19 March 2022 ("GERC Letter 2") expressed its interest/intent to purchase Unit No. 1 and Unit No. 2 admeasuring 15107 8q. ft on the 10th floor of the Building ("10th Floor Units") on a direct basis at a reasonable rate, for the purpose of expanding its existing office on the 6th floor of the same Building. The New Board at its meeting held on 28 March 2022 noted the decision taken by the ASC at its meeting held on 22 March 2022 and approved the direct sale of the 10th Floor Units to GERC at the price proposed by the ASC, i.e., INR 4,234/- (Indian Rupees Four Thousand Two Hundred and Thirty-Four only) per sq. ft.

9. In respect of the other floors, on the final bid due date, out of the 28 (Twenty Eight) applicants that were granted access to the VDR, 10 (ten) applicants submitted their bids.

10. The ASC vide its email dated 11 June 2022, identified and approved, altogether, the bid values and offer prices specified below for the 6 (six) Office Spaces (the bid values submitted by the bidders for certain Office Spaces (i.e., other than those comprising of the 10th Floor Units and the 25th Floor Units) and the offer price agreed with GERC for the Office Spaces comprising of the 10th Floor Units)) as the highest bid values/ offer price for such Office Spaces ("H1 Bids") and recommended to place the H1 Bids before the New Board. The details of the H1 Bids are as set forth below:

Sr.

No.

Office Space Particulars

Name of the Bidder/Offeror

H1 Bid (including Direct Offer Price) in INR

H1 Bid (including Direct Offer Price) as percentage of

Average FMV

1.

Unit No. 2 on the

1st Floor (6,041 Sq.ft.)

IED

Infrastructure Private Limited

3,09,45,000

121%

2.

Unit Nos. 1,2,3 & 4 on the 2nd Floor (30,572 Sq.ft)

Sagar Mukesh Sheth

12,90,00,000

100%

3.

Unit No. 3 on the 3rd Floor (9,276 Sq. ft)

Namit Dua

4,65,84,072

119%

4.

Unit Nos. 2 & 3 on the 4th Floor (18,552 Sq. ft)

Smartsense Consulting Solutions

Private Limited

8,44,30,152

107%

5.

Unit Nos. 1 & 2 on the 10th Floor (15,107 Sq. ft)

Gujarat Electricity Regulatory

Commission

6,34,49,400

99%

6.

Unit No. 1 & 2 on the 28th Floor (29,588 Sq. ft)

Yashasvi Wealth Management

LLP

16,01,00,668

110%

Total

51,45,09,292

--

11. The Board of SCOL at its meeting held on 30 June 2022 identified and approved the Hi Bids and authorised the submission of the H1 Bids received, the FMVs and the liquidation values (determined by the Valuers) to the CoC of SCOL for its consideration and evaluation.

12. The H1 Bids for the Proposed Transactions were placed for approval of the financial creditors of SCOL in the CoC meeting of SCOL held on 8 July 2022. The members of the CoC of SCOL voted unanimously to approve the proposed sale of the Units on 29 July 2022.

13. The New Board at its meeting held on dated 4 August 2022 took note of the approval accorded by the CoC of SCOL with respect to the H1 Bids and approved the submission of the H1 Bids for the Proposed Transactions, authorised and approved the submission of the H1 Bids to Justice (Retd.) Mr. D.K. Jain along with the proposal regarding the Proposed Transactions for consideration and evaluation and authorised the ASC to seek requisite authority and other relevant approvals, including approval from this Tribunal.

14. Pursuant to the approval of the New Board and in terms of the Resolution Framework, the Applicant filed an application dated 19 August 2022 before Justice (Retd.) D.K. Jain seeking his approval for consummation of the Proposed Transaction.

15. Subsequently, pursuant to application made by the Applicant (Annexure 47 at pages 980 – 1000), Justice D.K. Jain, former judge of the Hon'ble Supreme

Court vide letter dated 29 September 2022 granted his approval to Proposed Transaction (Annexure 48 at pages 1001 – 1006).

Findings:

16. We have considered the matter on hand in the background of facts and circumstances stated above. The Proposed Transaction has also been approved by Justice (Retd.) 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 in line with the Resolution Framework; and the mandate given by this Tribunal to the New Board.

17. In addition to the above the said sale is approved by the CoC of SCOL unanimously as per the provisions of the Code. Since, the above transaction is finalized through a high powered committee constituted in pursuance of the orders of the Hon’ble NCLAT, monitored by Justice (Retd.) D.K. Jain of the Hon’ble Supreme Court, this Tribunal has very limited scope and jurisdiction to interfere in such commercial decisions as it would lead to reopening of the decisions of a high powered committee which will ultimately affect the speed recovery process in the larger interest of public.

18. Thus, we approve the Proposed Transaction in terms of prayer clause (A) and (B) in the interest of justice. The parties are directed to approach the respective stakeholders for grant of other reliefs claimed in the above Application.

19. With the aforesaid observation present CA No. 647 of 2022 in CP No. 3638/ MB/C-I/2018 stands disposed of as allowed in above terms without prejudice of course to any proceedings that any investigative or any other authorities may take against the erstwhile directors of the companies that are subject matter of this application.