
(2025) 01 NCLAT CK 1659

In the National Company Law Appellate Tribunal

Case No : Interlocutory Application Nos.3169 and 5300 of 2023 in Company Appeal (AT) No. 346 of 2018

Union of India

APPELLANT

Vs

Infrastructure Leasing and Financial Services Ltd. & Ors.

RESPONDENT

Date of Decision : 16-01-2025

Acts Referred:

Insolvency and Bankruptcy Code 2016 — Section 7

Citation : (2025) 01 NCLAT CK 1659

Hon'ble Judges : Ashok Bhushan, Chairperson; Barun Mitra, Member (T)

Bench : Division Bench

Advocate : Aditya Shukla, Onshi Jakhar , Digvijay Singh, Arun Kathpalia, Arijit Mazumdar, Shambo Nandy, Diksha Gupta , Bhaskar Anand, Ramji Srinivasan, Raunak Dhillon, Vikas Kumar Jha, Isha Malik, Nihad Dewan, Angela Dua , Rakesh Chaterjee, Awasthi, Krishnendu Dutta

Final Decision : Allowed

Judgement

ASHOK BHUSHAN, J.

These two IAs (IA Nos.3169 & 5300 of 2023) have been filed by Infrastructure Leasing & Financial Services Ltd. ("IL&FS") praying for certain directions. We proceed to notice pleadings and prayers in both IAs. IA No.3169 of 2023

2. This Application has been filed by IL&FS seeking direction from the Tribunal to approve the decision of New Board to collapse/ unwind the transactions whereby IL&FS Financial Services Ltd. ("IFIN") has provided loans to third parties ("Third Party Borrowers"), which further lent such loan amounts to certain IL&FS group entities. In paragraph 1 of the Application, following has been stated:

"1. The present Application is being filed on behalf of Infrastructure Leasing and Financial Services Limited ("IL&FS") seeking inter alia necessary directions from this Hon'ble Appellate Tribunal to approve the proposal of the New Board to collapse/unwind transactions whereby IL&FS Financial Services Limited ("IFIN")

has provided loans to third parties ("Third Party Borrowers") which further lent such loan amounts to certain IL&FS group entities. The said proposal subject to this Hon'ble Tribunal's order(s) inter alia would entail IFIN passing the necessary accounting entries, engaging with the concerned Third Party Borrowers, the concerned IL&FS Group entities and Grant Thornton Bharat LLP (i.e. the Claims Management Agency (CMA), intimating or taking the requisite approvals from inter alia regulatory authorities as may be necessary, as well as entering into the necessary documentation to enable IFIN being recognized by the CMA as the claimant/direct lender qua the concerned IL&FS Group entities with regard to their respective transactions, thereby ultimately collapsing/unwinding the transactions undertaken with such Third Party Borrowers."

3. In pursuance of the Resolution Framework as approved by this Tribunal in Company Appeal (AT) No.346 of 2018, the New Board has taken steps to unravel the issues resulting in the financial mismanagement within the IL&FS group. It is useful to notice the pleading in paragraphs 6 and 7 of the Application, which are as follows:

"6. The New Board as part of its efforts to unravel the issues resulting in the financial mismanagement within the IL&FS Group, discovered that one of the primary challenges that plagued the IL&FS Group were the significant intra group borrowings. From the records available it was also discovered that loans to some IL&FS Group entities were lent by routing the loans through other IL&FS Group entities/ third parties, reflecting adoption of circuitous transactions to circumvent regulatory prescriptions. In view thereof, the New Board by way of affidavit dated October 30, 2018 filed before the Hon'ble NCLT also informed the Hon'ble NCLT of all the aforesaid challenges and it was stated that appropriate authorities are undertaking investigations into the same. The relevant extract of the aforesaid affidavit is reproduced hereinbelow:

"7. Insights of the New Board on the State of Affairs

7.1. The New Board has spent significant time in familiarising itself with the factual business and financial position of the IL&FS Group and believes that the situation requires the New Board to navigate through all the complexities enumerated earlier to arrive at the Final Resolution.

7.2. The New Board recognises the systemic importance of the IL&FS Group, the high level of debt that requires resolution and therefore the speed for execution required to ensure the Final Resolution is achieved.

7.3. The New Board continues its efforts in unravelling the intra-group borrowings and believes that large parts of the IL&FS Group were, in the past, operated as a single enterprise with no boundaries of legal entities and separate managements. This appears to be one of the key governance shortcomings that has led to a large contagion impact on creditors of the IL&FS Group. For instance, on a preliminary analysis of the financial statements and records of IFIN for the last 3 financial years, it is noticed that IFIN had outstanding loans

and investments to companies in the IL&FS Group of Rs. 5,728 Crore, Rs. 5,127 Crore, and Rs. 5,490 Crore in FY16, FY17 and FY18 respectively. Prima facie these appear to be significantly in excess of permissible norms, in all of the 3 years. If this is applied for calculation of capital adequacy, IFIN would have significant negative capital adequacy in each of these 3 years. Further, we note from records available that loans to one of the companies in the IL&FS Group in excess of Rs. 1,500 Crores had been routed through eight (8) other companies of the IL&FS Group, reflecting adoption of circuitous transactions to circumvent regulatory prescriptions. The New Board understands that appropriate authorities are undertaking investigations into the affairs of the IL&FS Group”

7. Additionally,

(a) the Serious Fraud Investigation Office (SFIO) in its Report dated May 28, 2019 (“SFIO Report”) as well as the Criminal Complaint filed by SFIO dated May 30, 2019 before the court of Ld. Additional Sessions Judge cum special judge (companies act), at Mumbai, being Criminal Complaint No. 20 of 2019 (“Criminal Complaint”), has red flagged instances of loan evergreening, non compliance with various norms including inter alia instances where accounts of borrowers of IFIN and/or third parties were used by IFIN for onward lending to ITNL and/or its subsidiaries.

(b) the audit report prepared by Grant Thornton LLP, an external audit firm engaged by the New Board (“Grant Thornton”), records that the loans disbursed by IFIN to a few third party borrowers were identified as circuitous transactions.”

4. Paragraph-8 of the Application gives the detail of loans given by IFIN to IL&FS group entities and its subsidiaries through external/ third parties. Paragraph 8 gives instances of 16 such borrowings by IFIN.Paragraph 8 of the Application is as follows:

“8. After November 2017, IFIN began providing loans to IL&FS Group entities including inter alia IL&FS Transport Network Limited (“ITNL”) and its subsidiaries through external/third parties i.e. the Third Party Borrowers. Accordingly, in the books of accounts of IFIN, IFIN was the primary lender and the Third Party Borrowers were the borrowing entities (such loan, being the “Initial Loan”). Thereafter, such loans were subsequently on-lent by the Third Party Borrower and/or through its associate/group company to another IL&FS Group entity (being the “Final Borrower” and such loan, being the “Final Loan”). The particulars of the said transactions involving Third Party Borrowers (“Subject Transactions”) are stated hereinbelow:.

S

No.

Lender

Third Party Borrower

Outstanding Amount Under the Initial Loan as on October 15, 2018 (INR Cr.)

Final Borrower (lent by the Third Party Borrower and/or through its associate/group company)

Amount outstanding under the Final Loan as on October 15, 2018 (INR Cr.)

1.

IFIN

Empower India Ltd.

178.25

Sikar Bikaner

Highway Limited

29.91

2.

IFIN

Srinagar Sonmarg Tunnel way Limited

147.06

3

IFIN

Advance Technologies Limited

155.88

Srinagar Sonmarg

Tunnel way Limited

157.48

4.

IFIN

Beigh

Constructions Co. Pvt. Ltd.

218.81

ITNL

216.98

5.

IFIN

Kalyan

Sangam Infratech Ltd.

104.93

ITNL

260.66

6.

IFIN

Sangam

Business Credit Ltd.

157.05

ITNL

7.

IFIN

/GHV Hotel

(India)Private Limited

106.31

Srinagar

Sonamarg Tunnel way

108.99

Limited

8.

IFIN

Wavell Investment Private

Limited

104.07

ITNL

104.85

9.

IFIN

Attivo Economic Zone (Mumbai)Pvt.

Ltd.

115.33

ITNL

207.83

10.

IFIN

Sahaj E- Village Ltd. (now known as E-Village
KendraLtd.)

93.77

11.

IFIN

Attivo Economic Zone (Mumbai) Pvt.

Ltd.

203.39

Fagne Songadh Expressway Limited

208.01

12.

IFIN

Vistar Financers Pvt Ltd

163.40

Chenani Nashri Tunnel way
Limited

207.81

13.

IFIN

Sahaj E- Village Ltd. (now known
as E-Village Kendra Ltd.)

292.10

Gujarat Integrated Maritime
Complex Pvt. Ltd.

251.38

14.

IFIN

Bharat Road Network
Limited

74.15

Seal and Ports Pvt. Ltd.

100.49

15.

IFIN

Giridhan Projects Pvt.
Ltd.

115.13

ITNL

115

16.

IFIN

New India

Structures Pvt. Ltd.

283.51

ITNL

282.80"

Thereafter, the aforesaid loans were not serviced and accordingly turned NPA in 2018. Further, the total exposure of IFIN to these entities comes out to be INR 2366.09 Crore as on October 15, 2018."

5. The IFIN also initiated proceedings under Section 7 against 13 such third party borrowers for recovery of its dues. Two of the Applications under Section 7 were rejected and few have been admitted. The New Board in its meeting dated 30.05.2023, with a view to find a solution to the aforesaid complexities took a decision to unwind/ collapse the subject transactions with third party borrowers. A decision was taken in the meeting dated 30.05.2023, Minutes of which have been brought on record as Annexure-1 to the Application. In paragraph 14 of the IA, the Applicant has mentioned about the modalities for unwinding/ collapse the transactions. Paragraph 14 of the Application is as follows:

"14. The said proposal envisages IFIN taking the necessary steps/ approvals that would enable IFIN to become the lender to and/or claimant against the Final Borrower, thus effectively collapsing/unwinding the transaction between IFIN/the Final Borrower with the Third Party Borrower. The modality that has been proposed for the same is as follows:

STEP 1: MAKING THE NECESSARY ACCOUNTING ENTRIES

(a) IFIN will make the necessary entries in its books of accounts to change the name of the borrower from the existing Third Party Borrower and will move the exposure in the name of respective IL&FS Group entity.

(b) IFIN has been charging interest to all the Third Party Borrowers up to date i.e. even post the cut off date of October 15, 2018, however, since the transactions with Third Party Borrowers will be now treated as an exposure to the relevant Final Borrower, the accrual of interest will be restricted only up to October 15, 2018.

(c) Accordingly, IFIN will be required to pass entries to match the receivable in the IFIN books as on October 15, 2018, with the claim accepted by the Claims Management Authority i.e. Grant Thornton LLP from the respective Third Party Borrower against the relevant Final Borrower in respect of the Subject Transaction. This may result in IFIN either writing off or booking income depending on case to case basis. As part of the "Proposal to Unwind/Collapse the Subject Transactions with the Third Party Borrowers" IFIN reserves its right to recover such sums from the Third Party Borrowers which they may have received from the Final Borrower and/or retained as part of the routing transactions, but which were either not ultimately paid to IFIN (including but not limited to interest which may have been received) and/or may result in wrongful gains to the Third Party Borrower upon collapse of the Subject Transaction.

STEP 2: MUTUAL DISCHARGE/ RELEASE OF CLAIMS

IFIN, the Third Party Borrower as well as the Final Borrower will enter into the necessary documents enabling mutual discharge/ release of obligations arising out of the Subject Transactions

STEP 3: INTIMATION TO THE CLAIMS MANAGEMENT AUTHORITY

The Claims Management Authority will be intimated about the aforesaid accounting entries/ discharge of obligations resulting in the CMA recognising the claim of IFIN against the Final Borrower.

STEP 4: NECESSARY INTIMATION TO THE RBI

Necessary intimation will be provided to RBI about collapsing/ substitution of the Subject Transactions, subject to orders of this Hon'ble Appellate Tribunal."

6. In paragraph 16 of the Application, particulars of loan outstanding against the Final Borrowers have been mentioned, which is as follows:

"16. After undertaking the aforesaid steps, the particulars of the loan outstanding in the books of IFIN will be as follows:

S

Lender

Final Borrower

Outstanding

No.

Outstanding Amount

Amount as of

Under the

October 15,

Initial Loan

2018 (INR Cr)

as on

October 15,

2018 (INR Cr.)

1.

IFIN

Srinagar Sonamarg Tunnel way

108.99

Limited

2.

IFIN

ITNL

104.85

3.

IFIN

ITNL

260.66

4.

IFIN

Fagne Songadh Expressway

208.01

Limited

5.

IFIN

ITNL

207.83

6.

IFIN

Chennai Nashri Tunnel way

207.81

Limited

7.

IFIN

Gujarat Integrated Maritime

251.38

Complex Pvt. .Ltd.

8.

IFIN

Sealand Ports Pvt. Ltd.

100.49

9.

IFIN

ITNL

115

10.

IFIN

Sikar Bikaner Highway Limited

29.91

11.

IFIN

Srinagar Sonamarg Tunnel way

147.06

Limited

12.

IFIN

Srinagar Sonamarg Tunnel way

157.48

Limited

13.

IFIN

ITNL

216.98

14.

IFIN

ITNL

282.80

7. In the background of the aforesaid pleadings, following reliefs have been prayed for in the Application:

“(a) approve the Proposal to Unwind/Collapse the Subject Transactions with Third Party Borrowers and permit IFIN to enter into and give effect to the said Proposal, by following the modality/steps broadly delineated in Para 14 hereinabove, including to make the necessary accounting entries enabling IFIN to

become the direct lender/claimant to for the Final Borrower;

(b) direct Grant Thornton LLP to recognise IFIN as the lender in place of the concerned Third Party Borrower against the Final Borrower i.e. relevant IL&FS Group entity in respect of the Subject Transactions for the purpose of interim/final distribution, and”

8. In the Application, 13 Respondents were impleaded, who were third party borrowers, to whom loan was extended by IFIN. Notices were issued in the Application. An Application – IA No.4953 of 2023 was filed by Srei Infrastructure Finance Limited (“SIFL”) pleading that it has extended financial facilities to IL&FS entities and the different amounts are reflected as receivable from the IL&FS entities. The Applicant prays for impleadment in the Application and has pleaded that the Application be allowed and SIFL be impleaded as one of the Respondent. SIFL has filed reply to the Application – IA No.3169 of 2023, to which a rejoinder affidavit has also been filed and an additional affidavit has also been filed by SIFL. Reply has also been filed by Respondent Nos.2 (Empower India Ltd.) and 3 (Avance Technologies Ltd.) as well as Respondent No.11 (Bharat Road Networks Ltd.)

IA No.5300 of 2023

9. This IA has been filed by IL&FS, praying for setting aside the order/ letter dated 12.09.2023 issued by IRP of Attivo Economic Zone (Mumbai) Pvt. Ltd. (“Attivo”) rejecting the claim of the Applicant, which was already admitted in the Corporate Insolvency Resolution Process (“CIRP”).

10. The Applicant submits that the Applicant is a Financial Creditor of Attivo. On an Application filed by the Applicant, CIRP against Attivo commenced, in which Respondent – Bimal Kanti Choudhuri was appointed as IRP. The claim was filed by IL&Fs, which was about Rs.593 crores and the IRP has admitted the claim to the extent of Rs.593,36,20,259/- and the Applicant was allocated share of 39.14% in the CoC. It is pleaded that on the ‘Resolution’ to approve the IRP as RP, the Applicant has voted against the IRP. It is pleaded that Applicant informed the IRP about filing of IA No.3169 of 2023 before the Appellate Tribunal and requested the IRP not to proceed with CIRP of the CD, till Application is decided. The IRP issued a letter on 12.09.2023, rejecting the claim of the Applicant as Financial Creditor. The IRP relied on the pleadings in IA No.3169 of 2023 and relying on the said pleading has rejected the claim. Aggrieved by the action of the IRP in rejecting the claim, after it being admitted in the CIRP, this Application – IA No.5300 of 2023 has been filed. It is submitted that after the exclusion of Applicant from the CoC, SIFL has become the 100% CoC Member and also passed resolution for liquidation. In the Application, following prayers have been made by the Applicant:

“(a) Setting-aside and quashing the letter dated September 12, 2023 issued by the Respondent to IFIN rejecting the claim of the Applicant and ousting it from the CoC of Attivo ;

(b) Pending adjudication and final disposal of the present Application, staying the effect and operation of the letter dated September 12, 2023 sent by the Respondent to IFIN,;

(c) Directing that further meetings of the CoC of Attivo be kept in abeyance till such time the Collapsing Application is adjudicated upon and finally decided;

(d) Declaring that the filing of the Collapsing Application (being I.A. No. 3169 of 2023 in CA(AT) No. 346 of 2018) before this Hon'ble Appellate Tribunal) may not be treated as an admission in any other proceedings and/or precipitative steps be taken against the Applicant basis the said application;

(e) Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

11. In IA No.5300 of 2023, a reply has been filed by Bimal Kanti Choudhury, IRP, pleading that Applicant claim has been rejected by IRP on account of the pleadings made by the IL&FS itself in IA No.3169 of 2023, where the IL&FS itself has pleaded that transaction with Corporate Debtor was circuitous. In the reply, various pleadings and averments made in IA No.3169 of 2023 have been relied.

12. We have heard Shri Ramji Srinivasan, learned Senior Counsel appearing for the Applicant. We have also heard learned Counsel appearing for Respondent in IA No.3169 of 2023 and Bimal Kant Choudhury, IRP in IA No.5300 of 2023.

13. The background and reasons for filing IA No.3169 of 2023 has already been noticed above. In pursuance of Resolution passed by the New Board dated 30.05.2023, Applications have been filed. It is to be noted that in Company Appeal (AT) No.346 of 2018, we have already passed an order permitting collapse of various transactions, where Agreements was entered between IL&FS and third party borrowers. In the affidavit filed on behalf of the Applicant dated 07.08.2024, reference to order passed by this Tribunal on 19.07.2024 has been made, where with regard to certain third party borrowers, IL&FS was directed to be recognized as Lender. In IA No.3169 of 2023, in paragraph 14, under heading "Step 2" it is stated that the third party borrower as well as the final borrower will enter into the necessary documents enabling mutual discharge/ release of objections arising out of the subject transactions. Thus, this Tribunal by order, where on the basis of document entered between parties for mutual discharge/ release of the obligation, orders have been passed with regard to different third party borrowers accepting the settlement agreed and necessary directions have been issued with respect to three of the third party borrowers for recognizing IFIN as the Lender. In the reply, which has been filed by SIFL, objection has been raised with regard to collapse of the Agreement with respect to IL&FS entities namely – Fagne Songadh Expressway Ltd. ("Fagne"); Chenani Nasri Tunnelway Ltd. ("CNTL"); Gujarat Integrated Maritime Complex Pvt. Ltd. ("GIMCO") and Sealand Ports Pvt. Ltd. ("SPPL"). It is submitted by SIFL that to the aforesaid IL&FS entities, SIFL has sanctioned loans. SIFL's case is that Applicant averment

in the Application is that amount advanced by IL&FS to the third party borrowers were routed through SIFL to IL&FS entity. IL&FS claims to have extended loan facilities to - (1) Attivo Economic Zone (Mumbai) Pvt. Ltd.; (2) Vistar Financers Pvt. Ltd.; (3) Sahaj E- Village Ltd.; (4) Bharat Road Network Ltd.; and Giridhan Projects Pvt. Ltd., which third party borrowers claims to have routed the said amount through SIFL to IL&FS entities. It is useful to extract paragraph 15 to 18 of the reply of the SIFL, where following have been pleaded:

"15. It would be pertinent to mention here that SIFL is also a creditor/lender of the entities to which IFIN (except Vistar Financers Private Limited) has lent money. The amounts advanced (as loan) by SIFL to the entities mentioned in paragraph 10 above are as below:

Sl.

From SREI to

different

Loan

Sanction

No.

entities

Sanctioned

Date

(Rs. Cr.)

1

BRNL

270

06.12.2017

2.

Sahaj e-Village Ltd.

(now Known as E-Village

350

27.06.2017

Kendra Ltd.) (in CIRP)

3.

Attivo

Economic

Zone

350

20.12.2017

(Mumbai) Pvt. Ltd. (in CIRP)

4.

Giridhan

Projects Pvt. Ltd.

260

29.03.2018

(in liquidation)

16. The contention of IL&FS that the amounts advanced by IFIN to various Third-Party Borrowers has been re-lent to the IL&FS Group entities is not applicable to the amounts advanced by SIFL to IL&FS Group entities in as much as SIFL is itself also a lender to the same Third-Party Borrowers. The question of any circuitous transaction in respect of the amounts advanced by SIFL to IL&FS entities therefore cannot and does not arise.

17. Further as admitted by IL&FS, the Third-Party Borrowers had not lent any funds to the IL&FS entities and such funds were in fact advanced by SIFL. The same would also be evidenced from the balance sheets of Fagne, CNTL, GIMCO and SPPL for FY 2021-22.

18. Therefore, the proposal of IL&FS as submitted in paragraph 14 of IA 3169 seeking permission of this Hon'ble Tribunal for collapsing/unwinding of circuitous transactions of certain IL&FS entities ought not to be permitted in so far as Fagne, CNTL, GIMCO and SPPL are concerned."

14. With respect to paragraph-8 of the Application – IA No.3169 of 2023, where details of entities, third party borrowers given, it was reiterated by SIFL that to IL&FS entities namely – Fagne, GIMCO, SPPL and CNTL, money was advanced by SIFL and third party borrowers namely – Attivo Economic Zone (Mumbai) Pvt. Ltd.' Vistar Financers Pvt. Ltd.; Sahaj E-Village Ltd.; Bharat Road Network Ltd. and Giridhan Projects Pvt. Ltd. have not advanced any amount to IL&FS entities as alleged by the Applicant.

15. Shri Ramji Srinivasan, learned Senior Counsel appearing for the Applicant referring to Fagne Songadh Expressway Limited submits that IFIN has advanced Rs.110 crores to Attivo on 23.08.2017 and on the same date SIFL had also lent Rs.110 crores on same date. Similarly, on 31.03.2018, IFIN advanced money of Rs.195 crores to Attivo and SIFL claims to have advanced to ITNL (Fagne) on

29.03.2018 Rs.200 crores. The submission of SIFL that amount which has been advanced by IFIN to Attivo is not routed through SIFL is wholly incorrect. Similar dates and figures has been given with regard to Sahaj, GIMCO, Vistar, BRNL and GPPL. Learned Counsel for the SIFL/ SREI submits that SREI has lent money to the IL&FS entities even prior to lending money to IFIN and also subsequent to lending money to IFIN. The amount, which is claimed to be lent by third party borrowers to ILFS entities, alleged to be routed through SREI/ SIFL is incorrect. The amount given by third party borrowers to SREI were repayment amount and repayment of loan already given. The SREI being a registered NBFC, in its usual course of lending had lent money to the third party borrowers prior to IL&FS group entities. SREI/ SIFL lent money both prior to and subsequent to the date when IFIN has lend money to the said third party borrowers. IL&FS has not been able to prove that said transactions are circuitous and fraudulent transactions. In the reply filed by SREI dates of amount lent by SIFL to Attivo, Vistar, Sahaj, BRNL and GPPL have been pleaded. It is further submitted that SIFL is not a party to dispute between IFIN and Attivo.

16. We have already noticed from the pleadings in IA No.3169 of 2023 that one of the steps, which has been contemplated is an Agreement between IL&FS and third party borrowers for collapsing the Agreement and the orders were sought only with respect to collapsing the Agreement, when Agreement is entered. Admittedly, there is no Agreement, which claimed to have been admitted / entered with regard to Respondent Nos.8 to 12 of IA No.3169 of 2023 and objections having been raised with regard to Respondent Nos.8 to 12 by SIFL , claiming that amount advanced to IL&FS entities by third party borrowers, like Respondent Nos.8 to 12 was the amount given by the SIFL and not by third party borrowers. Hence, the said transactions with IL&FS entities, cannot be collapsed. It is also relevant to notice that in the Application, which was filed by IL&FS, in paragraph 19, following was pleaded:

"19. It is clarified that the present application shall in no manner have a bearing on any investigations/proceedings that are being carried out with regard to whether the Subject Transactions were indeed fraudulent in nature or not. The rights/legal recourse/remedies available to IL&FS/IFIN with respect to the aforesaid are reserved, in the event the need so arises."

17. Proceedings are already pending with regard to several third party borrowers for example, Attivo, where Section 7 Application is admitted and proceedings are going on. The pleadings in paragraph 19, clearly mentions that IA No.3169 of 2023 in no manner to effect the proceedings or investigations being carried out with regard to subject transactions. We, thus, are of the view that as on date direction for collapsing the Agreement with regard to Respondent Nos.8 to 12 in the Application, cannot be issued. However, we make it clear that direction permitting collapsing of the Agreement, shall have no bearing or effect on any pending proceedings, including proceedings under Section 7, or any other proceedings, pending before the NCLT. It shall be open for the Adjudicating

Authority to examine any averments or pleadings made by the parties with regard to third party transactions and it is open for the Adjudicating Authority to come to a conclusion with regard to third party transactions and to issue any directions or orders as may be deemed fit.

18. In view of foregoing discussions and reasons, we are of the view that for issuing any directions as prayed by the Applicant with regard to Respondent Nos.8 to 12, a deeper and thorough consideration is required with regard to transactions with third party borrowers as well as lending money to IL&FS entities. Present Applications, are not the appropriate proceedings to grant declaration as prayed by the Applicant and direct for collapsing the third party Agreements and transactions entered with Respondent Nos.3 to 12. We, however, make it clear that the said issues can be gone into and examined by NCLT in the pending proceedings and appropriate decisions can be taken with regard to borrowing with respect to Respondent Nos.8 to 12.

19. In result, IA No.3169 of 2023 is partly allowed (except against Respondent Nos.8 to 12). As noticed above for collapsing transaction, necessary Agreement as contemplated in Step-2, noticed above is precondition. Mutual agreement for collapsing the transaction with other Respondents (except with regard to whom orders have already been passed) is necessary. We, however, clarify that rights and remedies of IFIN shall remain open and would not be prejudice by the submissions made by the IFIN in IA No.3169 of 2023. IA No.3169 of 2023 is disposed of accordingly.

20. In result, we allow IA No.3169 of 2023 and prayers made therein. This, however, shall not have any consequence on any pending proceedings against third party borrowers, including Respondent Nos.8 to 12 and that can be gone into and examined in accordance with law.

21. Now, coming to IA No.5300 of 2023, from the facts noticed above, it is clear that in the CIRP of Attivo Economic Zone (Mumbai) Pvt. Ltd., the claim filed by IFIN was admitted and IRP has allowed voting share of 39.14% and after filing of IA No.3169 of 2023, the IFIN informed the RP about filing of the Application. After receipt of the said Application from IL&FS, the IRP in response to letter dated 17.08.2023 of the IFIN, issued a letter on 12.09.2023, rejecting the claim of IFIN. The letter dated 17.08.2023 is filed as Annexure-7 to the IA, which is as follows:

"To, August 17 2023

The Interim Resolution Professional/

Resolution Professional

Mr. Bimal Kanti Chaudhary

77N50, Raja S.C.Mallick Road, 8 S.P.B Block

Kolkata- 700092

Subject: IL&FS Financial Services Ltd. v Attivo Economic Zone (Mumbai) Pvt. Ltd. C.P. (IB) 43/K.B/2022

Dear Sir,

1. As you are aware, the Hon'ble National Company Law Tribunal, Kolkata Bench (Court I) vide order dated June 09, 2023 passed in IL&FS Financial Services Ltd. v Attivo Economic Zone (Mumbai) Pvt. Ltd. C.P. (IB) 43/K.B/2022 ("Admission Order") has allowed the application filed under Section 7 of the Insolvency and Bankruptcy Code, 2015 ("Section 7 Petition") on behalf of IL&FS Financial Services Limited ("IFIN"), whereby Corporate Insolvency Resolution Process for Attivo economic Zone (Mumbai) Pvt. Ltd. ("Corporate Debtor") has been initiated. It is pertinent to note that IFIN has the significant voting rights in the Committee of Creditors of the Corporate Debtor, with IFIN holding 39.14 %.

2. Pursuant to the aforesaid, the New Board in its meeting dated May 30, 2023_with a view to find a solution to the various complexities arising out of loan transactions undertaken between IFIN and some third party borrowers took a decision to unwind/ collapse such transactions, subject to orders of the Hon'ble National Company Law Appellate Tribunal, New Delhi.

3. Thereafter, IL&FS approached the Hon'ble National Company Law Appellate Tribunal, New Delhi by way of an application filed on July 18, 2023, being I.A. 3169 of 2023, seeking a relief to inter alia collapse certain transactions whereby IFIN has provided loans to certain third parties, which includes the transaction with the Corporate Debtor herein (..NCLAT Application"). The aforesaid NCLAT Application is still pending adjudication.

4. Please note that in the event the NCLAT Application is permitted, then it will result in IFIN's exposure to the Corporate Debtor being changed to another IL&FS Group entity, with IFIN becoming the creditor of that particular entity instead of the Corporate Debtor. Therefore, evidently, the outcome of the NCLAT Application will have a direct bearing on the CIRP of the Corporate Debtor since it effectively seeks to collapse/unwind the very transaction which formed the basis of the Section 7 Petition and the Admission Order.

5. In light of the aforesaid, it is requested that voting by the Committee of Creditors on various matters relating to the CIRP of the Corporate Debtor be kept in abeyance till such time the NCLAT Application is adjudicated upon and finally decided by the Hon'ble NCLAT.

6. Please note that the present letter is without prejudice to the rights and remedies available to IFIN.

For IL&FS Financial Service Limited

Sd/-

Authorised signatory"

22. After receiving the letter dated 17.08.2023, the IRP on 12.09.2023 issued a letter, which is prayed to be quashed by the Applicant. The letter dated 12.09.2023 by IRP is as follows:

Bimal Kanti Choudhury 77 A/50
Raja S.C.Mallick Road

IRP of Attivo Economic Zone 8
S.P.B.Block

(Mumbai) Pvt. Ltd. Kolkata
700092

Email:ip.attivo@gmail.com

Phone No. 9831522717

Date: 12.09.2023

IL & FS Financial Services Limited

The IL&FS Financial Centre

Plot No.C-22, "G" Block

Bandra Kurla Complex,

Bandra East

Mumbai-400051

Dear Sirs,

I refer to the application to the Hon'ble NCLAT, New Delhi, being LA 3169 of 2023 filed by Infrastructure Leasing and Financial Services Limited (IL&FS) in Company Appeal (AT) No. 346 of 2018 in the matter of Union of India V s. Infrastructure Leasing and Financial Services Limited and Ors. seeking a relief to, inter alia, collapse certain transactions whereby IL&FS Financial Services Limited (IFIN) has provided loans to certain third parties, which include the transaction with Attivo Economic Zone (Mumbai) Private Limited (Attivo).

From your application and the correspondence I understand that in the event the NCLAT application is permitted, then it will result in IFIN's exposure to Attivo being changed to another IL&FS Group entity, with IFIN becoming the creditor of that particular entity instead of Attivo.

It is learnt from the aforesaid application to NCLAT that loans to some IL&FS Group entities were given by routing the loans through their IL&FS Group entities/third parties reflecting adoption of circuitous transactions to circumvent regulatory prescriptions.

Evidently, the claim submitted by you with the undersigned in the CIRP of Attivo is frivolous and ureal.

At the last meeting of the CoC of Attivo held on 31st August 2023 you have expressed your decision that IL&FS Financial Services Limited would abstain from voting on the matters relating CIRP of the CD (Attivo) (though you voted once thereafter).

It may be mentioned here that in the CIRP of Attivo I admitted Rs.593,36,20,250/- as your claim based on your submissions.

From your application, correspondence and conduct it is clear that the transactions which led to your claim in Attivo were adopted to bypass the law of the land only. The genuineness of the transactions is in question now. Under such circumstances, I am not inclined to admit your claim in the CIRP of Attivo.

I, therefore, reject your claim of Rs. 593,36,20,259/- which I admitted earlier in the corporate insolvency resolution process of Attivo Economic Zone (Mumbai) Private Limited (In CIRP).

With rejection of your claim, IL&FS Financial services Limited has also ceased to be a member of the Committee of Creditors of Attivo Economic Zone (Mumbai) Private Limited (In CIRP) with effect from the date of issue of this letter.

Thank you,

Sd/-

Bimal Kanti Choudhury

IRP of Attivo Economic Zone (Mumbai) Private Limited (In CIRP)”

23. We having already passed an order in IA No.3169 of 2023, not permitting collapse of the Agreement with regard to Attivo Economic Zone (Mumbai) Pvt. Ltd., the very basis of issuing of letter dated 12.09.2023, rejecting the claim of IFIN is knocked out.

24. In result, the letter dated 12.09.2023, issued by IRP is set aside. The claim of IFIN as admitted in the CIRP and voting share of 39.14% is restored in the CIRP of Attivo Economic Zone (Mumbai) Pvt. Ltd. IA No.5300 of 2023 is disposed of accordingly. Parties shall bear their own costs.