

ANNEXURE A

In-Chamber

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-I, MUMBAI BENCH**

*** *** ***

IA No. 1041 of 2020

In

CA No. 3711 of 2018

In

CP No. 3638 of 2018

**Pradeep Puri,
A 30 Westend,
New Delhi – 110 021**

... Applicant / Org. Respondent No. 316

Versus

**Union of India, Ministry of Corporate Affairs
Through Regional Director (Western Region)
Everest, 5th Floor, 100, Marine Drive,
Mumbai – 400 002**

... Respondent / Org. Petitioner

In the matter of:

Union of India

... Petitioner

Versus

IL&FS Ltd. & Others

... Respondents

Order dated: 24.12.2021

Coram:

**Bhaskara Pantula Mohan, Hon'ble Member (Judicial)
Narender Kumar Bhola, Hon'ble Member (Technical)**

Present:

For the Applicant: In person.

For the Respondent: Mr. M.P. Shah – Regional Director (Western Region), Mr. Rakesh Tiwari – Joint Director in the office of Regional Director (Western Region), Mr. Anil Yadav – Deputy Director in the office of Regional Director (Western Region and Ms. Rupa Sutar – Deputy Director in the office of Regional Director (Western Region

Per: Bhaskara Pantula Mohan, Hon'ble Member (Judicial)

ORDER

This is an Application by Respondent No. 316 in Company Petition No. 3638 of 2018 seeking the following directions from this Tribunal:

- a. *The Applicant be discharged and removed from being a respondent in the present proceedings of Company Application 3638 of 2018 before this Hon'ble Tribunal as also all other proceedings pending before this Hon'ble Tribunal in the present proceedings;*
- b. *For costs;*
- c. *Pass any other order(s) as deemed fit and proper under the circumstances by this Hon'ble Tribunal.*

2. The Respondent, Union of India, filed the captioned Company Petition under sections 241 & 242 of the Companies Act, 2013 (the Act) against Infrastructure Leasing & Financial Services Limited (IL&FS) inter alia alleging mismanagement in the Company being prejudicial to public interest and therefore, sought suspension of the Board of Directors and other reliefs. This Tribunal by order dated 01.10.2018 superseded the Board of Directors of IL&FS and constituted a new Board. The new Board was directed to furnish a roadmap essentially for revival/resolution of the Company and its group entities. The Board of Directors appointed by the Tribunal, in terms of the order dated 01.10.2018, proposed a 'Resolution Framework' under its Third Progress Report dated 17.12.2018. It made certain recommendations for resolution of the IL & FS and its group companies. This was later approved by the Hon'ble NCLAT by their order dated 11.01.2019. Subsequently, the Hon'ble NCLAT has approved the Revised Distribution Framework vide their order dated 12.03.2020. Thus, the Resolution, a process akin to that of Corporate Insolvency Resolution Process (CIRP) under the Insolvency & Bankruptcy Code, of IL&FS and its group entities is underway.

3. By subsequent orders of this Tribunal, Directors and Key Managerial Personnel of different group entities of IL&FS were impleaded as Party Respondents in the Company Petition. The present Applicant was one of the Directors and a member of the Committee of Directors of IL&FS Transportation Networks Limited (ITNL), a wholly owned subsidiary of IL & FS. The Respondent, Union of India, on the basis of an Interim Report of the Serious Fraud Investigation Office (SFIO) dated 30.11.2018 sought issuance of further orders by this Tribunal, including orders of restraint on alienation of properties, movable and immovable, of the Respondents in the captioned Company Petition pending investigation of its affairs by the SFIO. Vide order dated 03.12.2018 this Tribunal directed impleading of the Applicant as a Party Respondent and he came to be numbered as Respondent No. 316.

4. The SFIO's interim report of the IL&FS investigation dated 30.11.2018 placed on record the following key findings:

- a) There was complete control of affairs of the IL&FS group (and therefore each entity therein) in the hands of the erstwhile suspended Board of Directors. Particularly, the erstwhile suspended Board of Directors constituted Committee of Directors ("CoD") in IL&FS holding

company and its key subsidiaries which was empowered to take decisions pertaining to the operations of the said Companies, amongst others. The said CoD, in abuse of their powers, through various acts including circuitous transactions increased the debt burden across the IL&FS group. In other words, the said suspended Directors acted as the controlling will and mind of the IL&FS group.

- b) Further, hefty salaries were drawn by the erstwhile suspended Board of Directors which increased despite the poor financial performance/condition of IL&FS group that too without proper authorization under law.
- c) The intent was to show profitable financials at the holding company and at immediate subsidiary levels by hiding depleted financial conditions, in order to avoid breach of regulatory ceiling of leverage, obtain high credit ratings to access market funds, and reap personal benefits by way of high managerial remunerations.
- d) The IL&FS group procured funds from the market through short term instruments and invested in its group companies by way of giving long term loans and advances, which was

prejudicial to the interest of the group and therefore the financial markets at large. Based on its bogus and fictitious but good credit rating and financial statements, IL&FS and its key subsidiaries such as IL&FS Financial Services Ltd. (IFIN) and IL&FS Transportation Networks Ltd. (ITNL) raised short term market funding through commercial papers /inter corporate deposits and passed the same to their project SPVs/ group companies (which were unable to raise funds externally), for helping them service their debt obligations. The CoD being fully aware, thereby hid and avoided possible defaults resulting into increasing indebtedness on a standalone basis. This is virtually an act of fraud leading to a spiraling debt of over Rs. 91,000 crores of the IL&FS group.

- e) Had there been proper due diligence by the lenders, creditors, or the independent directors of the IL&FS group in the capacity of approving the financial statements in the audit committees, decorated and colored financial statements representing pink health and northward profits could have been detected at the infancy stage.

- f) The revenue of the IL&FS group, in the form of interest, dividend, brand fee, consultancy fee, advisory fee etc. were fabricated, inflated and not real because of indulging in financial transactions that are layered within the Group. Various circuitous transactions were also noted.
- g) Non-current loans to group companies to the tune of Rs 317.13 Crore in the financial year 2016-17 and the same was increased to Rs 2490.11 Crore in the Financial Year 2017-18. The source of funds is short term loans borrowed by way of Commercial Papers, which stood at Rs 499.25 Crore in Financial Year 2016-17 and increased to Rs 2007.29 Crore in Financial Year 2017-18, and Inter Corporate Deposits Rs. 459.20 Crore in Financial Year 2016-17 increased to Rs 1100.35 Crore in Financial Year 2017-18.
- h) The Employee Welfare Trust of IL&FS was used as an instrument to enrich the erstwhile suspended Directors of the company at the cost of the IL&FS group. In fact, the said Trust has been used to perpetuate fraud on the IL&FS group.

5. Considering the gravity of the allegations and findings by the investigative agency, this Tribunal on 03.12.2018 passed the following Order:

"We at this moment pass the interim order and directing the Respondent Nos. 2, 3, 9 and 313 to 318 (namely S/Shri Hari Sankaran, Arun K Saha, Ravi Ramaswami Parthasarthy, Vaibhav Kapoor, K. Ramachandra, R.C. Bawa, Pradeep Puri, S. Rangarajan and Mukund Sapre, to disclose their moveable and immoveable properties/assets, including bank accounts, lockers owned by them in India or anywhere in the world, including jointly held properties.

Further direction is being issued against the above-mentioned Respondent Nos. 2, 3, 9 and 313 to 318 restraining them from mortgaging or creating charge or lien or creating third party interest or in any way alienating, the moveable or immoveable properties owned by them, including jointly held properties."

6. The Applicant then moved IA No. 3138 of 2019 seeking permission to withdraw an amount of Rs. 5 lacs (Rupees Five Lakh Only) from HDFC Bank A/c. No. 50100030061772. The Union of India (UoI) represented by the Regional Director, Western Region, Ministry of

Corporate Affairs (MCA) in its affidavit endorsed 'No Objection' for withdrawal of the amount as a 'one- time measure' to meet his living expenses and liabilities. This Tribunal by an order dated 27.09.2019 allowed the Application and permitted the Applicant to withdraw Rs. 5 lacs as a 'one-time measure'.

7. Thereafter, citing difficulty in meeting his living expenses and that of this family, vide a subsequent application CA No. 3428 of 2019 the Applicant sought modification of the order dated 27.09.2019, so as to permit withdrawal of Rs. 5 lacs per month during the continuance of the proceeding in the captioned Company Petition. In support thereof, the Applicant contended that he is bereft of a job and has no regular source of income since September 2017, when he severed all links with the IL&FS group except for continuing as a Director of the Noida Toll Bridge Company Ltd. till 23.08.2018. The Applicant also provided details of various Fixed Deposits, Mutual Funds, LIC Policies and Real Estate Funds, which the Applicant averred had been put under freeze in terms of the order of this Tribunal dated 03.12.2018. After hearing the matter at length, this Tribunal vide its order dated 18.12.2020 permitted the Applicant to withdraw Rs. 3 Lacs (Rupees Three Lakh only) per month with effect from December 2020 from his Bank A/c. No.

50100030061772 with the HDFC Bank until further orders or disposal of the Company Petition, whichever is earlier. This Tribunal also directed that the Applicant within one month of the order may liquidate all or any of the mutual funds and deposit the proceeds thereof in one fixed deposit in any Nationalised bank under intimation to this Tribunal with proof of liquidation and the respective values of the mutual funds duly certified by the Asset Managers. This Tribunal further clarified that the order dated 03.12.2018 did not prevent the mutual funds from appreciating in terms of their respective schemes. The fixed deposit were directed to be renewed every six months and no withdrawal permitted from the same, till disposal of the Company Petition.

8. Subsequently, the Respondent, Union of India, received another Report from SFIO dated 28/05/2019 titled "Investigation Report of IL&FS Financial Services Ltd." which extensively details the perpetration of fraudulent activities by the management of IL&FS Financial Services Ltd. (IFIN). Vide the present Application IA No. 1041 of 2020, the Applicant has averred that the said SFIO's Report on IFIN and the consequential SFIO criminal complaint before the Special Court dated 30/05/2019, no longer identifies him as a member of the alleged "coterie" that managed

IL&FS and its group companies. The Applicant has further averred that as a consequence of orders dated 03.12.2018, 27.09.2019 and 18.12.2019 passed by this Tribunal, the Applicant is being made to suffer hardships, duress, mental stress, trauma and extreme humiliation of being denied access to his bank accounts, funds, savings and having to live by borrowing monies from family. Accordingly, the Applicant has sought to be discharged and removed from being a respondent in the captioned proceedings of Company Petition 3638 of 2018 before this Tribunal as also all other proceedings pending before this Tribunal in the said petition.

9. The Respondent, Union of India, has filed its affidavit in reply to the present Application and has stated that the Applicant's claim that the SFIO's Report on IFIN dated 28/05/2019 and SFIO criminal complaint dated 30/05/2019, no longer identifies him as a member of the alleged "coterie" that managed IL&FS and its group companies, is inaccurate and wide off the mark. The Respondent, Union of India, has further averred in the reply affidavit that the Applicant is basing his argument on the findings of the SFIO's Report on IFIN and the consequential SFIO criminal complaint, when in fact the Applicant was not a member of the Board of Directors of IFIN. The Union of India has stated

that the Applicant was impleaded in the main CP 3638/2018 on the basis of the findings in the SFIO's interim report dated 30/11/2018 which pertained to IL&FS Ltd. The subsequent SFIO report dated 28/05/2019 and the consequent complaint dated 30/05/2019 filed by SFIO before the Special Court, pertain only to IFIN and not IL&FS or its other group entities in which the Applicant was a Director/member of COD. The investigation of the IL&FS Group is still underway by SFIO and IFIN is only one of the major verticals of the IL&FS group of companies. On the other hand, the interim report dated 30/11/2018 records the key findings in respect of the IL&FS Group and the manner in which the affairs thereof were conducted contrary to public interest.

10. The Respondent, Union of India, has also submitted that on humanitarian and compassionate grounds, the Respondent has been regularly considering the representations and the applications filed by the Respondents in Company Petition No. 3638 of 2018, wherein the respondents have been seeking enhancements to the monthly subsistence amounts for discharge of specific obligations. As deemed fit, such applications are being allowed to the extent possible by this Tribunal. However, the Union of India submits that no further modification in this Tribunal's orders qua the

Applicant is required at this stage, considering that the investigations by SFIO into the affairs of IL&FS group of companies, including the holding company IL&FS Ltd., are still ongoing.

11. In support of its contentions, the Respondent - Union of India, has also submitted 3 Status Notes of SFIO dated 22.05.2020, 23.09.2020 and 06.10.2020, qua the Applicant, in sealed cover. Citing that the investigation is still underway by SFIO, the Union of India has requested that the status notes may not be shared with the Applicant, the same are being submitted for the eyes of this Hon'ble Bench only.

12. Considering the aforementioned, an in-chambers hearing was called by this Tribunal, where this Tribunal privately perused the 3 Status Notes of SFIO dated 22.05.2020, 23.09.2020 and 06.10.2020. The report indicates that the investigation is underway and also specifies the functions assigned to the applicant and remuneration drawn by him during his tenure. This state of affairs cannot continue endlessly. Already, over 3 years have elapsed and the report is still awaited and status report cannot form the basis to continue freezer endlessly looking at the age and hardships being faced by the applicant. Therefore, SFIO is directed to complete the investigation of IL&FS expeditiously, especially the

investigation of ITLN be completed in next four months. The matter was argued by the Applicant in person. The Union of India was represented by Mr. M.P. Shah – Regional Director (Western Region), Mr. Rakesh Tiwari – Joint Director in the office of Regional Director (Western Region), Mr. Anil Yadav – Deputy Director in the office of Regional Director (Western Region and Ms. Rupa Sutar – Deputy Director in the office of Regional Director (Western Region.

13. We have heard the matter at length. It is seen that the SFIO has submitted two reports till date – one interim report dated 30.11.2018 that dealt with the IL&FS group as a whole and another report dated 28.05.2019 that only pertains to a subsidiary of IL&FS, IFIN. The Applicant has been arrayed as a Respondent in Company Petition No. 3638 of 2018 on the basis of the serious findings in the interim report dated 30.11.2018. The averment of the Applicant that the SFIO report dated 28.05.2019 on IFIN has absolved him by making a single allegation against him, does not seem to hold water, considering that the Applicant was not engaged with the said subsidiary and the said report only pertains to one subsidiary of IL&FS. The Applicant has also admitted the fact that he continued his association with the IL&FS group as a Director of the Noida Toll Bridge Company Ltd. till 23.08.2018. The

Respondent, Union of India, has relied on the 3 Status Notes of SFIO dated 22.05.2020, 23.09.2020 and 06.10.2020. They have nothing further to add.

14. In light of the aforesaid facts, this Tribunal feels that it would not be opportune at this stage to allow the prayer of the Applicant for discharge from the proceedings of Company Petition No. 3638 of 2018. As such, the Applicant's prayer for discharge is denied and disposed.

15. The Applicant also prayed for enhancement of monthly expenditure limits for the Applicant, considering his advancing age and the difficulties in managing household expenses of his family. The Applicant further submitted that he has not been able to deal with securities/shares standing in his or his family's name since the passing of the order of this Tribunal dated 03.12.2018. Citing the present volatility in the stock markets, the Applicant requested for permission to deal with the securities.

16. It is noted that the Applicant has been permitted vide order of this Tribunal dated 18.12.2020 to withdraw Rs. 3 Lacs (Rupees Three Lakh only) per month with effect from December 2020 from his Bank A/c. No. 50100030061772 with the HDFC Bank until

further orders or disposal of the Company Petition, whichever is earlier. This Tribunal also directed that the Applicant within one month of the order dated 18.12.2020 may liquidate all or any of the mutual funds and deposit the proceeds thereof in one fixed deposit in any Nationalised bank under intimation to this Tribunal with proof of liquidation and the respective values of the mutual funds duly certified by the Asset Managers.

17. Considering the case of the Applicant, this Tribunal is inclined to partially allow the prayers of the Applicant. Hence Ordered.

ORDER

The Application is allowed partially. The Applicant's Bank Account shall be de-frozen by Rs.8 lakh (Rupees Eight lakh) every month progressively with effect from the date of filing of this application on 05.08.2020 vide IA number 1041 of 2020 until further orders or disposal of the Company Petition, whichever is earlier. In case of further social, medical or other obligations, the applicant is at liberty to apply for further withdrawal, over and above these limits, specifying the purpose thereof and the same shall be considered on merits. The Applicant, if so desires, may liquidate/redeem all or any of his securities, shares or

mutual funds and deposit the proceeds thereof in one linked bank account as fixed deposit in any Nationalised bank under intimation to this Tribunal with proof of liquidation and the respective values of the securities/shares duly certified by the Depository Participant of the Applicant. The fixed deposit shall be renewed every six months till disposal of the Company Petition. This order shall have no bearing on the restraint orders dated 03.12.2018 qua the individually and jointly held immoveable properties of the Applicant. No costs.

Sd/-

Narender Kumar Bhola
Member (Technical)

Sd/-

Bhaskara Pantula Mohan
Member (Judicial)