

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Ins) No. 1249 of 2022

[Arising out of the Order dated 24.08.2022, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Ahmedabad Division Bench, Court-1), IA 15 of 2020, IN CP(IB) 14 of 2018]

IN THE MATTER OF:

1. JOGIHALI WIND ENERGY PVT. LTD.

Through its Authorised Representative
Mohammad Zaheen Khan
IL&FS Financial Centre C-22, G Block,
Bandra-Kurla Complex
Bandra (East), Mumbai – 400051
Email:kaustubh.srivastava@dmd.law

...Appellant

Versus

1. YOGESH MEHRA

Managing Director,
Wind World (India) Limited
Wind World Towers
Plot No. A-9, Veera Industrial Estate
Veera Desai Road, Andheri (West)
Mumbai, Maharashtra – 400053
Email:varsha.banerjee@dhirassociates.com

..Respondent No.1

2. WIND WORLD (INDIA) LIMITED

Through Mr. Ravi Sethia
(Resolution Professional)
KPMG Restructuring Services LLP,
Building No. 10, Tower C 8th Floor,
DLF Cyber City, Phase II, Gurgaon,
Haryana-122002
Email: ravisethia @kpmg.com

.Respondent No. 2

3. COMMITTEE OF CREDITORS

Through Mr. Ravi Sethia
(Resolution Professional)
KPMG Restructuring Services LLP,
Building No. 10, Tower C 8th Floor,
DLF Cyber City, Phase II, Gurgaon,
Haryana-122002
Email: ravisethia @kpmg.com

.Respondent No. 3

Present:

For Appellant : Mr. Kuber Dewan, Ms. Neeharika Aggarwal, Mr. Kaustubh Srivastava, Advocates.
For Respondent : Mr. Alok Dhir, Ms. Varsha Banerjee, Ms. Aishwarya Nabh, Advocates for R-1. Ms. Sanaea Laskari, Ms. Neha Naik, Advocates for R2/RP. Ms. Fatema Kachwala, Ms. Vishrutyi Sahni, Ms. Ridhima Sharma, Advocates for R-3.

J U D G M E N T
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

The instant appeal has been preferred by the appellant against the judgment dated 24.08.2022, passed by the Ld. National Company Law Tribunal, Ahmedabad, Court-I (Adjudicating Authority) with regard to IA/15 (AHM)2020 filed in CP (IB) No. 14/NCLT/AHM/2018, whereby the Ld. Adjudicating Authority has rejected the Resolution Plan submitted by the Resolution Professional, however, has also made certain observations with regard to the appellant in paragraph no. 25 and 28 of the same.

2. Brief factual matrix as appears from the record is that vide order dated 20.02.2018 passed in CP (IB) No. 14/NCLT/AHM/2018, the Wind World India Ltd. (CD) was admitted into Corporate Insolvency Resolution Process (CIRP) and Mr. Shailen Shah Resolution Professional (RP) was appointed as the Interim Resolution Professional (IRP). On 08.03.2018, appellant and its associate companies filed their claims to the tune of Rs. 4,822,378,082/- out of this claim amount the claim with regard to Rs. 4,114,335,826/- was admitted. The consortium of Suraksha Asset Reconstruction Pvt. Ltd., Suraksha Reality Ltd. and Lakshdeep Investments and Finance Ltd. (herein after referred as Suraksha Consortium) was

approved by the CoC with a majority vote of 69.87% in its 13th meeting held on 16.11.2018.

3. It is further reflected from the record that on 19.11.2018, IA/476 (AHM)/2018 was filed by the Resolution Professional (RP) under Section 30 (6) of the Code for approval of the Resolution Plan submitted by the aforesaid Suraksha Consortium.

4. Ld. Adjudicating Authority vide its order dated 03.12.2019, directed the CoC to revisit the Resolution Plan in view of the law laid down by the Hon'ble Supreme Court in Committee of Creditors (CoC) of **Essar Steel Ltd. vs. Satish Kumar Gupta & Ors.** and on 23.12.2019, in the 14th CoC meeting of the CoC the Resolution Plan filed by the Suraksha Consortium passed with the addendum dated 13.11.2018 with a majority vote of 93.63%.

5. In the meantime, the Respondent No. 1 Suspended Director of the CD filed an application bearing IA No. 15 of 2020 wherein amongst other the following prayer was made:

“20 (d) Be pleased to declare constitution and thus the acts of committee of creditors as null and void due to the wrongful inclusion of IL&FS group companies as Financial Creditors and part of Committee of Creditors”.

6. In the aforesaid application it was contended by the applicant/Respondent No. 1 that enforcement directorate (ED) has initiated money laundering case against IL&FS Financial Services and its group companies under the prevention of Money Laundering Act, 2002 (PMLA) and in view of the law declared by this appellate tribunal in CA (AT) (Ins) No. 633 of 2018, **Asset Reconstruction Company (I) Ltd. (ARCIL) vs. Mr. Koteswara Rao Karuchola and Ors.** a financial creditor cannot be allowed

to be a member of CoC if a money laundering Case has been initiated against such creditor and since the IL&FS group companies are group companies of IL&FS finance against whom money laundering cases have been initiated they cannot be the part of the CoC.

7. It is also reflected that reply to this application was filed by the appellant on behalf of IL&FS group companies stating that Sipla Wind Energy Ltd. (SWEL), Mahidad Wind Energy Pvt. Ltd. (MWEPL) and Jogihali Wind Energy Pvt. Ltd. (JWEPL)/Appellant are together referred to as IL&FS group companies and these group companies along with 5 other companies, which are direct/indirect subsidiaries of IL&FS Energy Development Company Ltd. (IEDCL) had executed memorandum of understanding on 28.06.2010, with the CD for execution of wind power projects and these IL&FS group companies made certain advances to the corporate debtor (CD) and discharged their liabilities under the MoU but the CD delayed the implementation of the projects, which increased the IL&FS group companies exposure in CD and the CD agreed to reimburse/compensate the IL&FS group companies an amount of Rs. 1,227,000,000/- towards cost incurred by the group companies for the period 01.04.2015 to 31.03.2016 which was ultimately settled vide agreement dated 01.10.2016, to Rs. 8,717,000,000/- and subsequently it was agreed by the IL&FS group companies to adjust the exposure only to the extent of Rs. 6,917,000,000/- (revised project cost). However, the default has been committed by the CD to and upon issuing of public announcement in the CIRP of the CD the IL&FS group companies had filed their claim and their claim was admitted up to the extent of Rs. 4,114,335,826/-.

8. It was also stated in the reply that no money laundering case against the IL&FS group companies in connection with this transaction involving the CD has been initiated.

9. Ld. Adjudicating Authority disposed of IA No. 15/2020 along with many other applications including the Resolution Plan approval application i.e. IA/476 (AHM)2018 and while rejected the Resolution Plan made following observations in paragraph no. 25 and 28 of the impugned judgment:

“25. The IDBI Bank is another financial creditor of the corporate debtor challenged the resolution plan on the ground that IL&FS group companies ought not to be the member of the CoC. The same objection is raised by Mr. Yogesh Mehra- the Managing Director of the corporate debtor. According to him, the RP committed a grave error by the inclusion of IL&FS Group Companies as a member of the CoC and by allotting them voting percentage. According to both IDBI Bank and Mr. Yogesh Mehra, due to this, the entire CIRP gets vitiated. Hence, the resolution plan approved by the CoC, having one unauthorized member as a part of the CoC, is required to be rejected to maintain the purity of the process.

28. The MoU dated 27.07.2010 and subsequent WRAP agreement in between IL&FS Group Companies and the corporate debtor dated 25.03.2015 show that IL&FS Group Companies advanced money to the corporate debtor because the corporate debtor agreed to design, develop, construct, commission, operate and maintain all projects of IL&FS Group Companies. Following that the WRAP agreement was entered into. We have every doubt in our mind “whether only because of subsequent execution of the WRAP agreement, the nature of debt from operational to financial would get converted”? But we leave, the controversy here only for the simple reason that if at all we do not count the voting percentage of the Group Companies, still the fact remains in the record that the resolution plan was approved by more voting percentage than the threshold as sated under section 30(4) of the IBC, 2016. It takes us to consider another controversy that Enforcement Directorate has initiated money laundering case against IL&FS Financial Services and its group companies under the Prevention of Money Laundering Act, 2002. The Hon’ble Appellate Tribunal, the matter of Asset Reconstruction Company Ltd. (ARCIL) vs. Mr. Koteswara Rao Karuchola and

Ors. (CA(AT) (Ins) No. 633 of 2018, has held that a financial creditor cannot be allowed to be a member of CoC, if a money laundering case has been initiated against such a creditor. Admittedly, the IL&FS Group Companies in the instant case are group companies of IL&FS Finance, against whom money laundering cases have been initiated by the Enforcement Directorate. This clarifies that the IL&FS Group Companies must not be allowed to be a part of the CoC”.

Aggrieved by which the instant appeal has been preferred by the appellant who is the part and parcel of IL&FS group companies.

10. Ld. Counsel for the appellant submits that the appellant is aggrieved by the aforesaid observations made by Ld. Adjudicating Authority without considering the reply filed by the appellant and without providing an opportunity of being heard to the appellant and there was absolutely no necessity to make such observations when the plan itself was rejected by the Adjudicating Authority.

11. It is further submitted that the observations in paragraph no. 28 appears to have arrived from the allegations made by the Respondent No. 1 in his application IA No. 15/2020 wherein the allegations were labelled that the ED investigation has been initiated against IL&FS finance and its group companies including the IL&FS group companies, which were baseless and were not supported by any evidence and in response the appellants have placed correct facts by submitting their reply and clarified that the appellant and its associate companies are wholly owned subsidiaries of IL&FS Energy Development Company Ltd. (IEDCL) which is a completely different and separate entity from IL&FS financial services ltd. (IFIN) and there is no investigation pending against IEDCL or appellant and its associated

companies therefore, the observations made by the adjudicating authority in paragraph no. 28 are not supported by any evidence.

12. It is further submitted that the adjudicating authority has not even discussed the reply filed by the appellant and also the documents enclosed therewith while to demonstrate that the appellant and its associated companies are not connected with group companies of IL&FS finance, against whom money laundering cases have been initiated.

13. It is further submitted that in terms of the provisions of the Companies Act, 2013, a holding company is a company which controls another (subsidiary i.e. owns more than 50% of the subsidiary and a fellow subsidiary is another subsidiary of the same holding company, and the companies under a common control i.e. the holding company), collectively known as group companies thus a company drives its group entity from the holding company alone and not a fellow subsidiary.

14. It is further submitted that IEDCL and IFIN are fellow subsidiaries under holding company Infrastructure Leasing and Finance Services Ltd. (IL&FS). The appellant and its associate companies being wholly owned subsidiary of IEDCL, which in turn is a wholly owned subsidiary of IL&FS and are therefore group companies of IL&FS and not of IFIN. Thus, the observations and conclusions arrived at by the adjudicating authority in the aforesaid paragraphs are factually incorrect.

15. It is further submitted that the adjudicating authority has failed to appreciate that the above stated observations have been made as a passing remark without recording any reasons and were not also having any bearing of the facts of this case and therefore are required to be expunged.

16. The appellant has prayed that this Appellate Tribunal may expunge certain observations against the appellant and its associate companies in para 25 and 28 of the impugned order. The modification sought is on the following lines:

“Modify the Impugned Order to the extent that the observations that

‘25. The IDBI Bank is another financial creditor of the corporate debtor challenged the resolution plan on the ground that IL&FS group companies ought not to be the member of the CoC.

28... Admittedly, the IL&FS Group Companies [Appellant and its associate companies] in the instant case are group companies of IL&FS Finance. against whom money laundering cases have been initiated by the Enforcement Directorate. This clarifies that the IL&FS Group Companies must not be allowed to be a part of the CoC’

be expunged from the Impugned Order.”

17. We notice that after conclusion of the submissions on 16.12.2025 we provided opportunity to Ld. Counsel for the parties to file the written submissions and also to file relevant documentary evidence in order to show as to against which of the IL&FS group companies investigation is being done by the ED. However, it is only the Appellant who has filed written submission in pursuance of the aforesaid order.

18. Ld. Counsel for the Respondent No. 1 while relying on the reply to the appeal filed by him submits that no illegality has been committed by Ld. Adjudicating Authority in making the observations in para no. 25 and 28 of the impugned judgment, which were emerging from the record and it was evident that the appellant companies could not be the members of the CoC as apart from investigation by the Serious Fraud Investigation Office (SFIO)

the investigation by Directorate of Enforcement (ED's) was also going on in respect of IL&FS Finance and all its group companies, which includes IEDCL, IFIN and other subsidiaries and none of the IL&FS group companies are financial creditors of the corporate debtor, therefore the Ld. Resolution Professional has committed illegality in including the Appellant companies in the CoC. It is further submitted that voting share of approximately 8.73% was also wrongly allotted to the appellant companies by the RP in the CoC. It is further submitted that RP had also committed an illegality in admitting the claim of the appellant companies as financial debt as the CD in its books of account never acknowledged the claim of the appellant as financial debt. It is further submitted that answering Respondent has also sent a representation to the RP on 23.12.2019 seeking removal of the appellant and two other companies from the CoC which was not considered appropriately. It is further submitted that the observations made by the Ld. Adjudicating Authority in paragraph no. 25 and 28 are based on the material available with the Adjudicating Authority and the same are not required to be interfered with and the appeal of the appellant is liable to be dismissed.

19. Ld. Counsel for the Respondent No. 2/RP of Wind World (India) Ltd., submits that in paragraph no. 25 of the impugned judgment Ld. Adjudicating Authority has recorded that IDBI Bank is another financial creditor of the CD and has challenged the Resolution Plan on the ground that IL&FS group companies ought not to be the member of the CoC and this fact has been wrongly recorded as the IDBI Bank has not challenged the resolution plan before the adjudicating authority and no such submission

has been made on its behalf, thus the said statement in paragraph no. 25 is incorrect.

20. It is further submitted that the observation made in paragraph no. 28 of the impugned order with regard to the initiation of ED investigation against the IL&FS group companies and these companies are the group companies of IL&FS finance is also erroneous and the appellant and its associated companies referred to as IL&FS entities are not undergoing any investigation by the ED and the no money laundering cases have been initiated against the aforesaid companies and thus as such there was no bar on including these IL&FS entities as a member of the CoC.

21. Ld. Counsel for the Respondent No. 3/ CoC submitted that the present appeal is between the appellant and the Respondent Nos. 1 and 2 and the answering Respondent No. 3 (CoC) of the CD is a proforma party.

22. It is further submitted that the facts in the impugned order precisely in paragraph no. 25 with regard to the challenge of plan by the IDBI Bank and also making submissions by the IDBI Bank pertaining to wrong inclusions of the appellant in the CoC have been inadvertently recorded as the IDBI has not made any such statement and the Respondent No. 3 has been neutral towards this issue and would comply any direction which may be issued by the NCLT or NCLAT.

23. Having heard Ld. Counsel for the parties and having perused the record, it is reflected that along with the application filed by the Resolution Professional for acceptance of the Resolution Plan being IA No. 476 of 2018 under Section 30 (6) of the Code various other applications were moved by the parties were also disposed of by Ld. Adjudicating Authority vide order

dated 24.08.2022 including IA No. 15 of 2020 which was moved by the Suspended Director/Promoter of the CD namely, Yogesh Mehra (Respondent no. 1).

24. It is pertinent to mention here that since the observations which has been made by the adjudicating authority in para no. 25 and 28 of the impugned judgment has been challenged by the appellant we will confine our discussion only with regard to these observations.

25. It may be recalled that the Ld. Adjudicating Authority, while dealing with the controversy with regard to the nature of debt noted that the voting percentage of the appellant in the CoC was not sufficient to change the fate of Resolution Plan, observed in para no. 25 that Yogesh Mehra and IDBI Bank (a member of the CoC) has raised the issue that due to the inclusion of the appellant in the CoC, grave error has been committed by the RP and the whole CIRP has been vitiated and goes on to observe in para no. 28 that admittedly the IL&FS group companies in the instant case are group companies of IL&FS finance against whom money laundering cases have been initiated by the ED and thus held that appellant IK&FS group companies must not be allowed to be part of the CoC.

26. The Respondent No. 2/Resolution Professional of the CD as noted earlier has categorically taken a stand that observation in para no. 25 with regard to the fact that IDBI has challenged the Resolution Plan on the ground that IL&FS group companies ought to be not the member of the CoC, is not correct as IDBI has not challenged the plan and no such submission has been made on behalf of the IDBI before Ld. Tribunal.

27. We also notice that Respondent No. 3/CoC in his reply as well as in its submissions also stated that this submission as recorded in para no. 25 has been wrongly recorded.

28. Having perused the observation as has been made in para no. 25 of the impugned judgment we do not find any material or record which may suggest that this submission has been made by the IDBI before Ld. Adjudicating Authority, thus, the name of the IDBI Bank appears to have been inadvertently cropped up along with Respondent No. 1-Yogesh Mehra who has taken this ground in his application i.e. 15/2020.

29. Coming to the observation made in para no. 28 of the impugned judgment with regard to initiation of the ED investigation against IL&FS financial services and its group companies, it is to be noted that Ld. Adjudicating authority in para no. 28 has stated that admittedly the IL&FS group companies (appellant and two other related companies) are the group companies of IL&FS finance, against whom and group companies' money laundering cases have been registered by the ED and these companies must not be allowed to be part of the CoC.

30. We notice that Ld. Adjudicating Authority while recording this observation has not discussed any material or evidence which may suggest that appellant and other two related companies known as IL&FS group companies are the group companies of IL&FS finance. The Adjudicating Authority's finding in para 28 has two parts. The first part holds that IL&FS group companies in the instant case are group companies of IL&FS Finance and in the second part Adjudicating Authority records that money laundering cases have been initiated against IL&FS Finance by the

Enforcement Directorate and accordingly IL&FS group companies must not be allowed to be a part of the CoC.

31. In this regard, we take note of Annual Report of IEDCL for the FY 2019-20 wherein the organisational structure of the IEDCL has been given as part of annual statements of accounts. The relevant page of notes forming part of the IND AS Financial Statements is extracted below:

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IL&FS ENERGY DEVELOPMENT COMPANY LIMITED
NOTES FORMING PART OF THE IND AS FINANCIAL STATEMENTS

59 Related Party Disclosure

a) Related Party Listing (as certified by the management)

Holding Company
Infrastructure Leasing & Financial Services Limited

Subsidiary Companies
IL&FS Tamil Nadu Power Company Limited
Khandke Wind Energy Private Limited (till October 15, 2019)
Lalpur Wind Energy Private Limited (till October 15, 2019)
Mahidad Wind Energy Private Limited
Sipla Wind Energy Limited
Tadas Wind Energy Private Limited (till October 15, 2019)
IL&FS Solar Power Limited
IL&FS Wind Energy Limited
Wind Urja India Private Limited (till October 15, 2019)
Shendra Green Energy Limited
Jogihali Wind Energy Private Limited
Vejas Power Projects Limited
Ratedi Wind Power Private Limited (till October 15, 2019)
Rohtas Bio Energy Limited
Kaze Energy Limited (till October 15, 2019)
Etesian Urja Limited (till October 15, 2019)
Cuddalore Solar Power Private Limited
Patiala Bio Power Company Limited
Mota Layja Gas Power Company Limited
Nana Layja Power Company Limited
IL&FS Wind Power Services Limited (till April 9, 2020)
Ramagiri Renewable Energy Limited
Maritime International Offshore PTE Limited

Fellow Subsidiaries
IL&FS Financial Services Limited
East Delhi Waste Processing Company Private Limited
Porto Novo Maritime Limited
Sealand Ports Private Limited
IL&FS Securities Services Limited
IL&FS Airport Limited
IL&FS Cluster Development Initiative Limited
IL&FS Maritime Infrastructure Company Limited
Livia India Limited
IL&FS Transportation Networks Limited
IL&FS Investment Managers Limited
IMICL Dighi Maritime Limited
IL&FS Environmental Infrastructure & Service Limited

32. We can see from the above statement of IEDCL that:

- a) Holding company of IEDCL is Infrastructure and Leasing and Financial Services Ltd. (IL&FS);
- b) The subsidiary companies of IEDCL include among others
 - i. Mahidad Wind Energy Private Limited
 - ii. Sipla Wind Energy Limited
 - iii. Jogihali Wind Energy Private Limited
- c) IL&FS Financial Services Ltd. (IFIN) is a fellow subsidiary of IEDCL under the holding company IL&FS.

33. It is clear from the above that the three IL&FS group companies referred to in para 28 of the impugned order are the subsidiaries of IEDCL and group companies of IL&FS. We note that contrary to the material on records the Adjudicating Authority gave a finding that the IL&FS group companies in the instant case are group companies of IL&FS finance.

34. We also notice that even in the application moved by the Respondent No. 1 being IA No. 15/2020, no such material was placed which may suggest that appellant and its two group companies are group companies the IL&FS Financial Services Ltd. Moreover, in the reply filed by the appellant before Ld. Adjudicating Authority, it was categorically stated in para no. 5 that IL&FS group companies and other five companies which are direct and in direct subsidiaries of the IL&FS Energy Development Company Ltd. (IEDCL) had executed MoU with the CD and in para no. 18 further stated that no money laundering case against the IL&FS group companies involving the CD has been registered.

35. Regarding the second issue about It appears that the Ld. Adjudicating Authority has not taken cognizance of these objections filed by the appellant and other two IL&FS group companies. We failed to understand that when there was no ECIR lodged by the ED or any other relevant material before the ld. Adjudicating Authority, which may reflect some shadow on the appellant and its associated group companies with regard to lodging of the ECIR or initiation of investigation by the ED, on what basis the impugned observations have been made in para no. 28 of the impugned order and also where from the admission of the appellant to this fact has been derived by Ld. Adjudicating Authority, when the appellant has categorically denied there involvement in any investigation being done by the ED.

36. In our considered view, there was no material available with the ld. Adjudicating Authority, on the basis of which the observations made in the para no. 28 of the impugned judgment may be made with regard to the commencement of the investigation of the ED against appellant and its group companies. As we have noted earlier that the financial statement of FY 2019-20 of IEDCL records that the appellant and two other companies (IL&FS companies) are the group companies of IL&FS. It is not understood as to on what basis the Adjudicating Authority has recorded his findings that these are group companies of IL&FS Finance.

37. It is also reflected that though before this appellate tribunal the Respondent No. 1 has filed annual report of IEDCL of the financial year 2019-2020 but this report has not been considered by the Ld. Adjudicating Authority nor has been mentioned in the impugned judgment. In this regard the reply filed by the Respondent No. 2 may also be referred wherein para

no. 7 it has been stated that no ED investigation is going on against these IL&FS entities and there was no bar in including them as members of the CoC of the CD.

38. During the hearing we requested the counsel for Respondent No.1 to produce any document to show evidence of any existing money laundering proceedings against the appellant and its sister companies. However, Ld. Counsel could not submit any papers in support of his contentions.

39. Therefore, we hold that the aforesaid observations in para 28 have also been made without any evidence/material available before Ld. Adjudicating Authority and consequential direction have been passed that IL&FS companies must not be allowed to be a part of the CoC and these observations in our considered opinion may not be allowed to remain in the judgment.

40. We are of the considered view that exclusion of any member of the CoC, howsoever small voting share it is having, is a serious issue and the same could only be decided after providing ample opportunity of being heard to the parties.

41. In view of the findings above, we **allow** the appeal and expunge the portions of para 25 and 28 of the impugned order as prayed. There would be no order as to costs. Pending I. A.'s if any are closed.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

New Delhi.
22.01.2026.
sr/sa