

ITAT Hyderabad Dismisses IL&FS Tax Appeals Due to NCLAT Restraint

IL & FS Engineering And Construction Company Limited
Vs DCIT (ITAT Hyderabad)

When NCLAT Says “Stay”, Even Tax Appeals Must Wait — Fourteen Cross-Appeals Dismissed with Liberty to Revive

The Hyderabad Bench of the ITAT has dismissed fourteen cross-appeals filed by IL&FS Engineering and Construction Company Ltd. and the Revenue in view of an operative interim order of the NCLAT restraining the institution or continuation of proceedings against IL&FS and its 348 group companies. The dismissal was only in limine, with liberty to both parties to seek revival after the NCLAT proceedings are concluded or the interim restraint is vacated.

The appeals concerned AYS 2009-10 to 2015-16 and involved eight appeals by the assessee and six appeals by the Revenue. They had travelled through an unusual procedural history.

The Tribunal had originally disposed of the batch of sixteen cross-appeals through a consolidated order dated 19.09.2022. At that stage, it dismissed the appeals in limine by applying sections 13 and 14 of the [Insolvency and Bankruptcy Code, 2016](#), apparently proceeding on the assumption that Corporate Insolvency Resolution Proceedings were pending against the assessee-company.

The assessee thereafter filed miscellaneous applications pointing out that the factual assumption underlying the order was incorrect. IL&FS was a financial service provider, and no application for commencement of CIRP had been filed or admitted against it u/s 7, 9 or 10 of the IBC. The resolution process concerning the IL&FS group was being undertaken under [sections 241 & 242 of the Companies Act, 2013](#), and not under the IBC.

The NCLT had itself observed that the IBC provisions did not apply to IL&FS in the ordinary manner and that IL&FS could not move an

application u/s 10 of the Code. Consequently, a statutory moratorium u/s 14 of the IBC had not been declared.

Recognising this factual mistake, the Tribunal recalled its earlier consolidated order on 25.07.2025. It held that the appeals had been wrongly dismissed on the assumption that CIRP proceedings were pending and that the IBC moratorium applied.

Out of the original sixteen appeals, the two cross-appeals relating to AY 2008-09 were subsequently decided by the Tribunal on 11.02.2026. The remaining fourteen appeals were then listed for adjudication.

At this stage, the Department produced a report from the AO along with an interim order dated 15.10.2018 passed by the NCLAT, New Delhi, in Company Appeal (AT) No. 346 of 2018. Through that order, the NCLAT had restrained the institution or continuation of suits and other proceedings by any party, person, bank or company against IL&FS and its 348 group companies before any court, tribunal, arbitration panel or arbitration authority.

The Department contended that although the IBC moratorium was technically inapplicable, the independently operating restraint imposed by the NCLAT prevented the Tribunal from proceeding with the pending income-tax appeals.

Reliance was also placed upon the Delhi Bench's order in ACIT v. IL&FS Energy Development Company Ltd., ITA Nos. 2701 & 2768/Del/2024, dated 24.06.2026, where appeals had similarly been dismissed with liberty to seek restoration upon an appropriate subsequent order.

The assessee, however, submitted that the Tribunal had already decided the two cross-appeals relating to AY 2008-09 and that the remaining appeals should also be disposed of on the same basis.

The Tribunal examined the procedural history and the NCLAT's interim order. It acknowledged that its earlier order dated 19.09.2022 had been recalled because of the mistaken assumption that proceedings under the IBC were pending. The proceedings concerning IL&FS had instead arisen under sections 241 & 242 of the Companies Act.

However, correcting that statutory mistake did not eliminate the effect of the actual NCLAT restraint. The Tribunal found that the NCLAT's interim order independently prohibited the continuation of proceedings against IL&FS and its identified group companies before courts and tribunals.

Neither the assessee nor the Revenue produced any material to demonstrate that the interim restraint had subsequently been vacated, modified or set aside by the NCLAT or any higher court. Therefore, the order continued to operate.

The Tribunal also clarified that the cross-appeals for AY 2008-09 had earlier been decided because the NCLAT restraint had not been brought to the Bench's notice. That earlier disposal could not justify proceeding with the remaining appeals after the restraint had been specifically placed on record.

Accordingly, all fourteen appeals were dismissed in limine. However, the Tribunal protected the rights of both sides by granting liberty to seek revival depending upon the final outcome of the proceedings before the NCLAT or upon vacation of the interim stay.

Author's Comments

The ruling highlights an important distinction between an IBC moratorium and a restraint order passed under the Companies Act. The Tribunal's first dismissal was recalled because section 14 of the IBC did not apply to IL&FS. Nevertheless, the practical result ultimately remained the same because the NCLAT had passed an independent and broadly worded interim order restraining continuation of proceedings against the group companies.

The statutory source of the restraint matters. An authority cannot invoke an IBC moratorium where no CIRP has been admitted. But once an operative judicial order issued under another statutory framework is produced, every subordinate court and tribunal must respect it according to its terms.

The dismissal in limine should not be mistaken for a decision on merits. Neither the assessee's grounds nor the Revenue's grounds were adjudicated. The appeals have effectively been placed in

procedural suspension, with express liberty to revive them once the legal restraint ceases.

The treatment of the AY 2008-09 appeals also conveys a useful principle. An earlier order passed without knowledge of a binding restraint cannot compel repetition of the same procedural mistake. Consistency is desirable, but it cannot override an operative order of a superior judicial forum.

For both parties, the practical requirement is to monitor the NCLAT proceedings and promptly move restoration applications once the interim restraint is vacated or the restructuring proceedings reach an appropriate stage. The appeals may have been dismissed, but the underlying tax disputes remain very much alive.

Cases Discussed

- [Union of India Vs. Infrastructure Leasing & Financial Services Ltd. & Ors.](#) [CA(AT)(Ins) No. 346/2018 & Ors.] – NCLAT interim order dated 15.10.2018.
- ACIT, Circle-10(1), Delhi Vs. M/s. IL & FS Energy Development Company Limited, Delhi – ITA Nos. 2701 & 2768/Del./2024, order dated 24.06.2026.

FULL TEXT OF THE JUDGMENT/ORDER OF ITAT, HYDERABAD

These 8 appeals by the Assessee and 6 appeals by the Revenue are directed against the respective Orders of the learned CIT(A) for the assessment years 2009-2010 to 2015-2016. Earlier these appeals were disposed off vide Order dated 19.09.2022 and were dismissed in limine in view of provisions of [secs.13 and 14 of Insolvency and Bankruptcy Code, \[in short “IBC”\] 2016](#). Thereafter, on the miscellaneous applications filed by the assessee, the earlier Order dated 19.09.2022 of the Tribunal was recalled by the Tribunal vide Order dated 25.07.2025 as there was a mistake in considering the provisions of IBC, 2016 in Para nos.11 to 14 as under:

“11. We have thoughtfully considered the contentions advanced by the learned Authorized Representatives for the respective applicants, i.e., the assessee company and the revenue in the backdrop of the consolidated order passed by the Tribunal, dated 19.02.2022 and the material available on record.

12. We have thoughtfully considered the facts as have been brought to our notice by the Ld. Authorized Representatives for both parties, i.e in the case of the assessee company, the resolution plan is being carried out under the provisions of Section 242(1) of [Companies Act, 2013](#), and there is no such application for Corporate Insolvency Resolution Process which has been made or admitted by the adjudicating authority under Section 7 or Section 9 or Section 10 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016). On the contrary, the Ld. AR by referring to the miscellaneous application filed by the assessee company, submitted that the NCLT in its order dated 12.10.2018 had categorically observed that as the provisions of Insolvency Bankruptcy Code, 2016 do not apply to the IL & FS – a financial service provider, therefore, it cannot move an application under Section 10 and an order of moratorium cannot be passed in its case under Section 14 of the Insolvency Bankruptcy Code, 2016. We concur with the learned Authorized Representatives for both parties that the Tribunal had inadvertently, based on a factually wrong observation that Corporate Insolvency Resolution Proceedings (CIRP) were pending against the assessee company as per the provisions of Insolvency and Bankruptcy Code, 2016, dismissed the captioned appeals in limine.

13. We thus, taking cognizance of the fact that the dismissal of the cross-appeals of the assessee company and the revenue by the Tribunal, vide its consolidated order dated 19.09.2022, is based on a wrong observation on its part that Corporate Insolvency Resolution Proceedings (CIRP) were pending against the assessee company as per the provisions of Insolvency and Bankruptcy Code, 2016, thus, are constrained to recall the respective orders passed in the cross-appeals.

14. Resultantly, the respective applications filed by the assessee company and revenue are allowed and the consolidated order passed by the Tribunal disposing off the captioned appeals, viz. ITA Nos.1886 to 1894/Hyd/2019 (assessee's appeals) and ITA Nos. 129 to 135/Hyd/2020 (revenue's Appeals), dated 19.09.2022, is recalled in terms of our aforesaid observations. The Registry is directed to fix the cross-appeals of the assessee company and the revenue on 14.08.2025. As the date of hearing of the respective appeals was announced in the presence of the Ld. Authorized Representatives for both parties in the open Court, therefore, the issuance of separate notices is being dispensed with."

2. Thus, out of 16 appeals, two cross-appeals i.e., ITA.No.129/Hyd./2020 and ITA.No.1886/Hyd./2019 filed by the Revenue and Assessee respectively, for the assessment year 2008-2009 were already disposed of by this Tribunal vide Order dated 11.02.2026 and therefore, the remaining 14 appeals are now listed before us.

3. The learned DR has filed report from the Assessing Officer along with an interim order of the National Company Law Appellate Tribunal [in short "NCLAT"], New Delhi, dated 15.10.2018 in Company Appeal (AT) No.346 of 2018 whereby the NCLAT has passed an interim stay against institution or continuation of suits or any other proceedings by any party or person or Bank or Company etc. against 'IL & FS' and its 348 group companies in any Court of Law/Tribunal/Arbitration Panel or Arbitration Authority etc. The learned DR has submitted that in view of the said restraint by the NCLAT, these appeals cannot be proceeded with further. He has also relied upon the Order of the Delhi Benches of the Tribunal dated 24.06.2026 in the case of ACIT, Circle-10(1), Delhi vs. M/s. IL & FS Energy Development Company Limited, Delhi in ITA.Nos.2701 & 2768/Del./2024 whereby the Tribunal has dismissed the appeals with liberty to get the appeals restored in case any favourable order with regard to the claim of the department is passed.

4. On the other hand, learned Counsel for the Assessee has submitted that when the Tribunal has already decided the two cross-appeals for the assessment year 2008-2009 then, these appeals may also be decided in the same terms.

5. Having considered the rival submissions and careful perusal of the relevant record, at the outset, we note that earlier this Tribunal has dismissed all these 16 appeals in limine vide Order dated 19.09.2022 and thereafter, because of some mistake in considering the fact that proceedings under IBC, 2016 were pending in the case of the assessee, the Tribunal recalled the earlier Order dated 19.09.2022 in M.A.Nos.19 to 25/Hyd./2023, M.A.Nos.26 and 27/Hyd./ 2023, M.A.Nos.34 to 40/Hyd./2025 vide Order dated 25.07.2025. Thus, the earlier order dated 19.09.2022 was recalled for the limited purpose of rectifying the mistakes in the earlier order for assuming the wrong facts and pendency of proceedings under I & B Code, 2016 whereas the Order of

the NCLAT was passed in the appeal arising from the proceedings [u/secs.241 and 242 of the Companies Act, 2013](#).

For ready reference, the Order of NCLAT dated 15.10.2018 is reproduced as under:

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) No. 346 of 2018

IN THE MATTER OF:

Union of India
...Appellant

Vs.

Infrastructure Leasing and
Financial Services Ltd. & Ors.
...Respondents

Present:

For Appellant: – Mr. Tushar Mehta, Solicitor General
with Mr. Sanjay Shorey, Director (Legal & Prosecution) MCA, Mr. S.
Ramakantha, Joint Director (Regional Director, WR), Mr. Parvez
Naikwadi,
Assistant Director (MCA), Mr. Kanu Agrawal, Advocate.

For Respondents: – Mr. Ramji Srinivasan, Senior Advocate
with Ms. Gauri Rasgotra, Mr. L. Vishwanathan, Mr. Raunak Dhillon,
Mr. Vikash Kumar Jha, Mr. Karan Khanna, Mr. Anudeep Sikka and Ms.
Ananya
Dhar Choudhury, Mr. Bunmeet Singh Grover, Advocates for R-1.

WITH
Company Appeal (AT) No. 347 of 2018

IN THE MATTER OF:

Infrastructure Leasing and
Financial Services Ltd.
...Appellant

Vs.

Union of India & Ors.

...Respondents

Present:

For Appellant: – Mr. Ramji Srinivasan, Senior Advocate with Ms. Gauri Rasgotra, Mr. L. Vishwanathan, Mr. Raunak Dhillon, Mr. Vikash Kumar Jha, Mr. Karan Khanna, Mr. Aditya Sikka and Ms. Ananya Dhar Choudhury, Mr. Bunmeet Singh Grover, Advocates.

For Respondents: – Mr. Tushar Mehta, Solicitor General with Mr. Sanjay Shorey, Director (Legal & Prosecution) MCA, Mr. S. Ramakantha, Joint Director (Regional Director, WR), Mr. Parvez Naikwadi, Assistant Director (MCA), Mr. Kanu Agrawal, Advocate.

ORDER

15.10.2018— These appeals have been listed on urgent mentioning and taken up for admission even on a holiday taking into consideration the nature and importance of the appeals.

2. From the impugned order dated 12th October, 2018 in MA 1173/2018 in C.P. No. 3638(MB)/2018, we find that the National Company Law Tribunal ('Tribunal' for short) while accepted that no petition under any of the provision of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) can be preferred by any party for initiation of 'Corporate Insolvency Resolution Process' against 'Infrastructure Leasing and Financial Services Limited' ('IL&FS' for short) and its 348 Group Companies till the Central Government issue appropriate notification with regard to one or other making the provisions applicable to them, refused to pass the interim order in view of prayer of 'Moratorium' made by the Appellant- 'Union of India'. Otherwise the Tribunal has appreciated the difficulties which are being faced by the 'IL&FS' and its 348 Group Companies.

3. The questions arise for consideration in these appeals are:

(i) Whether the Tribunal can pass appropriate order under Section 241 read with Section 242 of the Companies Act, 2013 for resolution of the problems faced by the Company in a time-bound manner for maximisation of value of assets of the Company, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders, and in case of failure of resolution pass appropriate order of liquidation; and

(ii) Whether the Tribunal in exercise of powers conferred Under Section 242 (1)(b) read with Section 242 (2)(m) and Section 242(4) of the Companies Act, 2013 read with Rule 11 of the National Company Law Tribunal Rules, 2016, can pass appropriate interim order similar to order under Section 14 of the Insolvency and Bankruptcy Code, 2016.

4. According to Mr. Tushar Mehta, Learned Solicitor General for the Appellant- 'Union of India' and Mr. Ramji Srinivasan, Learned Senior Counsel for the 'IL&FS', the Tribunal has much wider power under Sections 241 and 242 of the Companies Act, 2013 than the powers vested under provisions of Insolvency and Bankruptcy Code, 2016.

5. Taking into consideration the nature of the case, we are of the view that five largest creditors should be also impleaded as party Respondents to these appeals in the representative capacity of the Creditors. Learned counsel for the Appellant(s) will make necessary correction in the cause title and other pages of the appeals in course of the day. Defects, if pointed out by office, may be removed before the next date.

6. Issue notice on Respondents, including newly impleaded Respondents by speed post. Requisite along with process fee, if not filed, be filed in course of the day. If the Appellant(s) provides the e-mail address of Respondents, let notice be also issued through e-mail. Dasti service is permitted particularly in the newly impleaded Respondents.

Post these appeals 'for admission' on 13th November, 2018 on the top of the list.

Taking into consideration the nature of the case, larger public interest and economy of the nation and interest of the Company and 348 group companies, there shall be stay of

(i) The institution or continuation of suits or any other proceedings by any party or person or Bank or Company, etc. against 'IL&FS' and its 348 group companies in any Court of Law/Tribunal/Arbitration Panel or Arbitration Authority; and

(ii) Any action by any party or person or Bank or Company, etc. to foreclose, recover or enforce any security interest created over the assets of 'IL&FS' and its 348 group companies including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(iii) The acceleration, premature withdrawal or other withdrawal, invocation of any term loan, corporate loan, bridge loan, commercial paper, debentures, fixed deposits, guarantees, letter of support, commitment or comfort and other financial facilities or obligations availed by 'IL&FS' and its 348 group companies whether in respect of the principal or interest or hedge liability or any other amount contained therein.

(iv) Suspension of temporarily the acceleration of any term loan, corporate loan, bridge loan, commercial paper, debentures, fixed deposits and any other financial facility by the 'IL&FS' and its 348 group companies by any party or person or Bank or Company, etc. as of the date of first default.

(v) Any and all banks, financial institutions from exercising the right to set off or lien against any amounts lying with any creditor against any dues whether principal or interest or otherwise against the balance lying in any bank accounts and deposits, whether current or savings or otherwise of the 'IL&FS' and its 348 group companies.

The interim order will continue until further orders and not be applicable to any petition under Article 226 of the Constitution of India before any Hon'ble High Court or under any jurisdiction of the Hon'ble Supreme Court.

(Justice S.J. Mukhopadhyaya)
Chairperson

(Justice A.I.S. Cheema)
Member (Judicial)

6. Thus, it is clear that there is an interim stay against the proceedings and nothing has been brought before us by either of the parties to show that the said interim stay has been vacated by the NCLAT or by any higher Court. The cross appeals for the assessment year 2008-2009 were disposed of by this Tribunal as this fact was not brought to the knowledge of the Tribunal. Therefore, in view of the stay order of NCLAT, all these appeals are dismissed in limine with liberty to the parties to get these appeals revived as per the outcome of the proceedings before the NCLAT or vacation of the interim stay granted by the NCLAT. Accordingly, these appeals of the Assessee and Revenue are dismissed.

7. In the result, appeals of the Assessee and Revenue are dismissed. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 10.09.2026.