

**BEFORE THE HON'BLE NATIONAL COMPANY LAW
APPELLATE TRIBUNAL AT NEW DELHI**

COMPANY APPEAL (AT) NO. 346 OF 2018
(Arising out of the Impugned Final Order dated October 12, 2018
passed by the Hon'ble National Company Law Tribunal, Mumbai
Bench in M.A. No. 1173 of 2018 in Company Petition No. 3638
(MB)/2018)

IN THE MATTER OF:

Union of India ...Appellant

Versus

Infrastructure Leasing & Financial
Services Limited & Ors. ...Respondents

INDEX

Sl. No.	Contents	Page Nos.
1.	Further Affidavit on behalf of Appellant	1 - 7
2.	ANNEXURE 1 Copy of the letter dated May 27, 2019 issued by the Respondent No. 1 to the Appellant	8 - 11

RAKESH KUMAR TIWARI



RAKESH TIWARI (MUMBAI)

Joint Director

Western Region

Ministry of Corporate Affairs,

Everest, 5th Floor, 100 Marine Drive,

Mumbai - 400 002

Dated: 29.05.2019

Place: New Delhi

**BEFORE THE HON'BLE NATIONAL COMPANY LAW
APPELLATE TRIBUNAL AT NEW DELHI**

**COMPANY APPEAL (AT) NO. 346 OF 2018
(Arising out of the Impugned Final Order dated October 12, 2018
passed by the Hon'ble National Company Law Tribunal, Mumbai
Bench in M.A. No. 1173 of 2018 in Company Petition No. 3638
(MB)/2018)**

IN THE MATTER OF:

Union of India

... Appellant

Versus

Infrastructure Leasing & Financial
Services Limited & Ors.

... Respondents

FURTHER AFFIDAVIT ON BEHALF OF APPELLANT

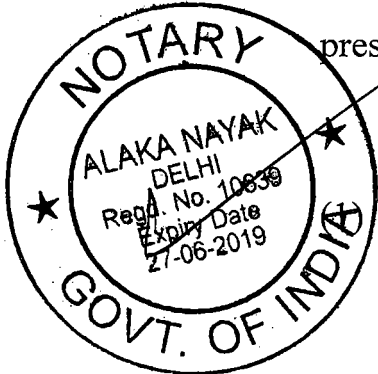
I, Rakesh Tiwari, aged 52 years working as Joint Director in the office of the Regional Director (Western Region), Ministry of Corporate Affairs, having office at Everest, 5th Floor, 100 Marine Drive, Mumbai – 400 002, presently in New Delhi, do hereby solemnly affirm and state as under:

I have been authorized to file the instant affidavit on behalf of the Appellant abovenamed. I have made myself acquainted with the facts of the present case based on the records of the Appellant and am able to depose thereto.

- (2) At the outset, I repeat, reiterate, confirm and adopt the contents of the further affidavits filed by the Appellant with this Hon'ble Tribunal in the present Appeal on January 25, 2019 (**25th January Affidavit**), February 11, 2019 (**11th February Affidavit**), March

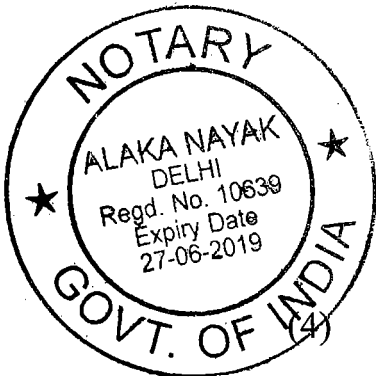
RAKESH KUMAR TIWARI

JOINT Director (MUMBAI)



13, 2019 (13th March Affidavit) and May 21, 2019 (May 21 Affidavit) as if it were set out herein *in extenso*.

- (3) By the present affidavit, the Appellant seeks:
- (a) to set out the development in respect of the 13 “Amber” Entities of the Respondent No. 1 Group (listed in the February 11 Affidavit and March 12 Affidavit) including Moradabad Bareilly Expressway Limited (MBEL) pursuant to the order dated May 21, 2019 passed by this Hon’ble Tribunal; and
- (b) directions from this Hon’ble Tribunal for:
- (i) release of “going concern” payments in respect of an entity in the Respondent No. 1 Group; and
- (ii) creation of fixed deposits from amounts lying in escrow and other accounts of certain Respondent No. 1 Group entities.



The present affidavit is being filed on the basis of a letter dated May 27, 2019 issued by the Respondent No. 1 to the Appellant. A copy of the said letter dated May 27, 2019 is hereto annexed and marked as **Annexure 1**.

(I) UPDATE ON THE AMBER ENTITIES

- (5) As set forth in the May 21 Affidavit (**paragraph 21 of the May 21 Affidavit**), Respondent No. 1 received a restructuring proposal

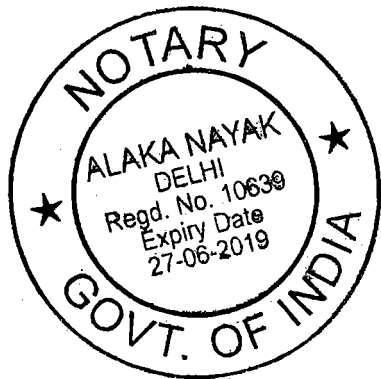
(MBEL Proposal) from the MBEL Secured Lenders (**defined at paragraph 21 of the May 21 Affidavit**) for MBEL which is categorized as an “Amber” Entity (by the February 11 Affidavit).

The May 21 Affidavit summarily set forth, amongst other things:

- (a) the concessions and reliefs that would be granted by the MBEL Secured Lenders in respect of the financial facilities availed by MBEL from the MBEL Secured Lenders (**paragraph 21 of the May 21 Affidavit**); and
- (b) that the MBEL Proposal was being discussed between the MBEL Secured Lenders and Respondent No. 1 (**paragraph 22 of the May 21 Affidavit**).

- (6) Presently, the MBEL Proposal continues to be under discussions between the MBEL Secured Lenders and Respondent No. 1. As set forth in the May 21 Affidavit (**paragraph 22**), subject to the receipt of approvals and the implementation of the MBEL Proposal (as may be agreed upon), MBEL would be reclassified as a “Green” Entity (as defined in the 25th January Affidavit and the 11th February Affidavit).

- (7) As regards the remaining 12 “Amber” Respondent No. 1 Group entities (**listed in February 11 Affidavit and the March 12 Affidavit**), the newly appointed Directors will consider restructuring proposals which would, if implemented (subject to the



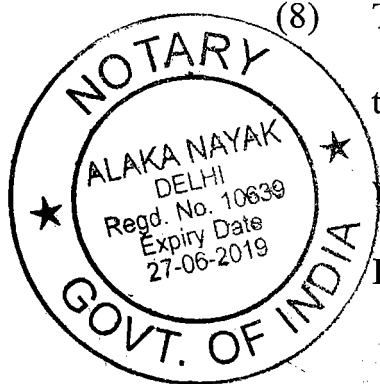
RAKESH KUMAR TI
 JOINT Director (MUMBAI)

principles and conditions set out at **paragraph 23 and 25 of the May 21 Affidavit**):

- (a) facilitate the relevant Respondent No. 1 Group entity in becoming positive net-worth (i.e. it is able to repay all creditors over the life of the project/ business being currently undertaken by the Respondent No. 1 Group entity); and
- (b) enable the relevant Respondent No. 1 Group entity to be classified as a "Green" Entity (as per the definition for "Green" Entities set out in the 25th January Affidavit and the 11th February Affidavit).

In cases where the entity is not positive equity, the newly appointed Directors retain the right to consider such other proposals which are mutually beneficial with regard to the facts and circumstances specific to that entity.

- (8) The Appellant (upon intimation by Respondent No. 1) craves leave to file an additional affidavit to update this Hon'ble Tribunal as and when any proposal is finalised for the remaining 12 "Amber" Entities.



(II) GOING CONCERN STATUS

- (9) As set forth in the May 21 Affidavit (**paragraph 26 to 30**), Allahabad Bank is refusing to release going concern payments in respect of Road Infrastructure Development Company of Rajasthan Limited (**RIDCOR**) a group company of the Respondent No. 1 Group contrary to the order dated October 15, 2018 and despite the

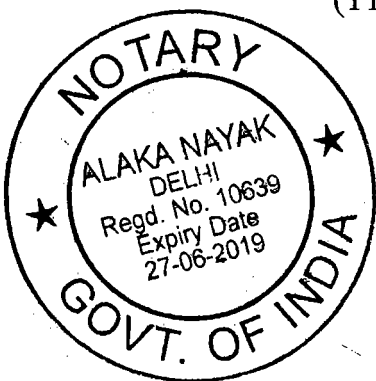
RAKESH KUMAR TILAK
 JOINT Director (MUMBAI)

order dated February 11, 2019 passed by this Hon'ble Tribunal. If Allahabad Bank continues with such action(s) the result will be that the "going concern" status of RIDCOR will be affected leading to disruption in operation and consequent value deterioration.

- (10) It is submitted that these "going concern" payments are essential to preserve and protect the value of the Respondent No. 1 Group Entities and if not paid in a timely manner may materially impact the successful implementation of the Resolution Framework. Therefore, it is necessary that this Hon'ble Tribunal pass directions to Allahabad Bank for release of Operations & Maintenance payments and / or other operational payment in respect of RIDCOR.

(III) CREATION OF FIXED DEPOSITS

- (11) As set forth in the May 21 Affidavit (**paragraph 31 and 32**) in order to maximise value to all stakeholders, various Respondent No. 1 Group Entities have sought to invest amounts lying in the escrow and other accounts of the relevant Respondent No. 1 Group entity inter alia by creating fixed deposits which will in turn be used to discharge the claims of the relevant Respondent No. 1 Group entity (existing as of the Cut-Off Date) in the manner prescribed in the manner as contemplated in the Resolution Framework Report (**as defined in the 25th January Affidavit**). However certain banks have refused to create fixed deposits from amounts lying in the accounts of certain Respondent No. 1 Group Entities.

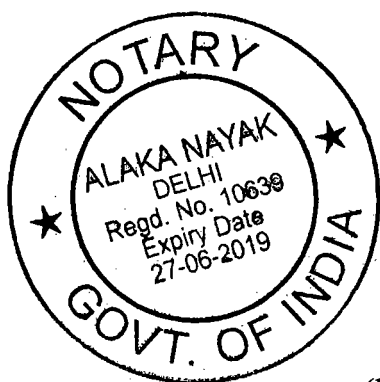


RAKESH KUMAR T...
JOINT Director (MUMBAI)

(12) In larger public interest and in the interest of implementation of a fair resolution plan for the Respondent No. 1 Group which would ensure value maximization to all stakeholders, it is necessary that this Hon'ble Tribunal pass directions for creation of fixed deposits from the amounts lying in the escrow and other accounts of the Respondent No.1 Group entities.

(13) In view of the above, it is respectfully submitted that this Hon'ble Tribunal:

- (a) direct Allahabad Bank, Punjab National Bank, Oriental Bank of Commerce, Bank of India and Union Bank of India to create fixed deposits from amounts lying in escrow and other accounts of the relevant Respondent No. 1 Group entities as per the instructions of the relevant Respondent No. 1 Group entities; and
- (b) direct Allahabad Bank to release Operations & Maintenance payments and / or other operational payment, including salaries, which are essential for maintaining the "going concern" status of Road Infrastructure Development Company of Rajasthan Limited.



RAKESH KUMAR TIWARI

Deponent

JOINT Director (M)

VERIFICATION

I, Rakesh Tiwari, the deponent abovenamed, do hereby verify that the contents of paragraph nos. 1 to 13 above are derived from official records of the Appellant and nothing material has been concealed therefrom.

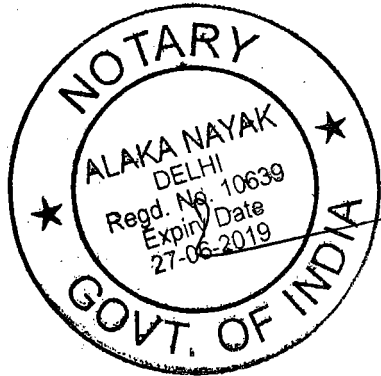
Verified at New Delhi on this 29TH day of May, 2019.

29 MAY 2019

RAKESH KUMAR TIWARI
Deponent
JOINT Director (MUMBAI)

Verified the deponent who has signed in my presence

CERTIFIED THAT THE DEPONENT
Shri / Smt. / Mra : Rakesh Tiwari
S/o, W/o R/o : Joint Director, Mumbai Corporation
I identified by Shri / Smt. V.K.A. Kurshin
Has solemnly affirmed before me at
Delhi on as Sl. No. 189
That the contents of the affidavit which
have been read & explained to
him are true & correct to his knowledge



29 MAY 2019

NOTARY

ANNEXURE - 1

INFRASTRUCTURE LEASING & FINANCIAL SERVICES LIMITED

May 27, 2019

To,
The Ministry of Corporate Affairs,
 Everest 5th Floor, 100 Marine Drive,
 Mumbai – 400 002

Kind Attn.: Regional Director (Western Region)

Dear Sir,

Re: Before the National Company Law Appellate Tribunal, New Delhi

Company Appeal (AT) No. 346 of 2018

Union of India ...Appellant

versus

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

Company Appeal (AT) No. 347 of 2018

Infrastructure Leasing & Financial Services Ltd. ...Appellant

versus

Union of India & Ors. ...Respondents

(1) We refer to:

- (i) the order dated May 21, 2019 (**21st May Order**) passed by the Hon'ble National Company Law Appellate Tribunal (**Hon'ble NCLAT**) in the captioned Appeals; and
- (ii) our letters dated February 9, 2019 (the **9th February Letter**), March 11, 2019 (**11th March Letter**), April 7, 2019 (**7th April Letter**) and May 20, 2019 (**20th May Letter**) issued to you in respect of the captioned matter.

All capitalized terms used but not defined in this letter shall have the meaning given to them in the 9th February Letter, the 11th March Letter, the 7th April Letter and the 20th May Letter respectively.



- (2) The present letter is being issued to:
- (i) enable compliance with the 21st May Order which seeks an update on the development in respect of the 13 "Amber" Entities of the IL&FS Group (listed in the 9th February Letter and 11th March Letter) including Moradabad Bareilly Expressway Limited (MBEL); and
 - (ii) request your offices to apply to the Hon'ble NCLAT for directions in respect of:
 - (a) release of "going concern" payments in respect of an entity in the IL&FS Group; and
 - (b) creation of fixed deposits from amounts lying in escrow and other accounts of certain IL&FS Group entities.

(1) **UPDATE ON THE AMBER ENTITIES**

- (3) As set forth in the 20th May Letter (**paragraph 20 of the 20th May Letter**), IL&FS received a restructuring proposal (**MBEL Proposal**) from the MBEL Secured Lenders (**defined at paragraph 20 of the 20th May Letter**) for MBEL which is categorized as an "Amber" Entity (by the 9th February Letter). The 20th May Letter summarily set forth, amongst other things:
- (i) the concessions and reliefs that would be granted by the MBEL Secured Lenders in respect of the financial facilities availed by MBEL from the MBEL Secured Lenders (**paragraph 20 of the 20th May Letter**); and
 - (ii) that the proposal was being discussed between the MBEL Secured Lenders and IL&FS (**paragraph 21 of the 20th May Letter**).
- (4) Presently, the MBEL Proposal continues to be under discussions between the MBEL Secured Lenders and IL&FS. As set forth in the 20th May Letter (**paragraph 21**), subject to the receipt of approvals and the implementation of the MBEL Proposal (as may be agreed upon), MBEL would be reclassified as a "Green" Entity (as defined in the affidavit filed by your offices on January 25, 2019 before the Hon'ble NCLAT in the abovementioned appeals (**25th January Affidavit**) and the 9th February Letter).
- (5) As regards the remaining 12 "Amber" IL&FS Group entities (**listed in 9th February Letter and the 11th March Letter**), the New Board will consider restructuring proposals which would, if implemented (subject to the principles and conditions set out at **paragraphs 22 and 23 of the 20th May Letter**):
- (i) facilitate the relevant IL&FS Group entity in becoming positive net-worth (i.e. it is able to repay all creditors over the life of the project/ business being currently undertaken by the IL&FS Group entity); and



- (ii) enable the relevant IL&FS Group entity to be classified as a "Green" Entity (as per the definition for "Green" Entities set out in the 25th January Affidavit and the 9th February Letter).

In cases where the entity is not positive equity, the New Board retain the right to consider such other proposals which are mutually beneficial with regard to the facts and circumstances specific to that entity. We will update you as and when any proposal is finalised for the remaining 12 "Amber" Entities.

(II) GOING CONCERN STATUS

- (6) As set forth in the 20th May Letter (**paragraphs 24 to 28**), Allahabad Bank is refusing to release going concern payments in respect of Road Infrastructure Development Company of Rajasthan Limited (**RIDCOR**) a group company of the IL&FS Group contrary to the order dated October 15, 2018 and despite the order dated February 11, 2019 passed by this Hon'ble Tribunal. If Allahabad Bank continues with such action(s) the result will be that the "going concern" status of RIDCOR will be affected leading to disruption in operation and consequent value deterioration.
- (7) It is submitted that these "going concern" payments are essential to preserve and protect the value of the IL&FS Group Entities and if not paid in a timely manner may materially impact the successful implementation of the Resolution Framework. Therefore, directions to Allahabad Bank for release of Operations & Maintenance payments and / or other operational payment in respect of RIDCOR are necessary.

(III) CREATION OF FIXED DEPOSITS

- (8) As set forth in the 20th May Letter (**paragraph 29 and 30**) in order to maximize value to all stakeholders, various IL&FS Group Entities have sought to invest amounts lying in the escrow and other accounts of the relevant IL&FS Group entity inter alia by creating fixed deposits which will in turn be used to discharge the claims of the relevant IL&FS Group entity (existing as of the Cut-Off Date) in the manner as contemplated in the Resolution Framework Report (**as defined in the 25th January Affidavit**). However certain banks have refused to create fixed deposits from amounts lying in the accounts of certain IL&FS Group Entities.
- (9) In larger public interest and in the interest of implementation of a fair resolution plan for the IL&FS Group which would ensure value maximization to all stakeholders, we request you to seek directions for creation of fixed deposits from the amounts lying in the escrow and other accounts of the IL&FS Group entities.
- (10) In view of the above, we request you to kindly place this letter before the Hon'ble NCLAT and seek the necessary directions to:
- (i) direct Allahabad Bank, Punjab National Bank, Oriental Bank of Commerce, Bank of India and Union Bank of India to create fixed deposits from amounts

b



lying in escrow and other accounts of the relevant IL&FS Group entities as per the instructions of the relevant IL&FS Group entities; and

- (ii) direct Allahabad Bank to release Operations & Maintenance payments and / or other operational payment, including salaries, which are essential for maintaining the "going concern" status of Road Infrastructure Development Company of Rajasthan Limited.

Yours sincerely,

Bijay Kumar
27.5.17

.....
Authorised Signatory
Name: Bijay Kumar
Designation: Deputy Managing Director
Infrastructure Leasing & Financial Services Limited