

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1, MUMBAI BENCH

CA 262/2024, CA 194/2025 & CA 208/2025 in CP No. 3638/(MB)/2018

In the matter of

CA 262/2024 in CP No. 3638/(MB)/2018

Chronos Properties Private Limited

... Applicant

v/s

Infrastructure Leasing & Financial Services
Limited,

... Respondent

In the matter of

CA 194/2025 in CP No. 3638/(MB)/2018

Infrastructure Leasing & Financial Services
Limited

... Applicant

v/s

Chronos Properties Private Limited,

... Respondent No. 1

Union of India

... Respondent No. 2

In the matter of

CA 208/2025 in CP No. 3638/(MB)/2018

Chronos Properties Private Limited

... Applicant

v/s

Infrastructure Leasing & Financial Services
Limited,

... Respondent No. 1

Union of India

... Respondent No. 2

In the matter between

CP No. 3638/(MB)/2018

Union of India

... Original Petitioner

v/s

Infrastructure Leasing & Financial Services
Limited and Ors.

... Original Respondents

Order delivered on 28/11/2025

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For Chronos Properties
Pvt Ltd.

: Sr. Advocate Janak Dwarkadas,
Advocates Ritvik Kulkarni & Benaisha
Hansatia

For IL&FS in
CAs 262, 194 & 208 : Sr. Advocate Zal Andhyarujina, with
Advocates Kuber Dewan, Neeharika
Aggarwal, Kaustubh Srivastava, &
Naomi Ting

For the Union of India : Advocates Aditya Sikka and
Onshi Jakhar

ORDER

CA 262/2024 in CP No. 3638/(MB)/2018

- 1) A Company Application 262 of 2024, is filed on 06.08.2024, by the **Chronos Properties Private Limited ('Chronos')**, who is Successful Bidder for IL&FS Financial Centre at Bandra Kurla Complex, Mumbai and holding a Letter of Intent dt. 21.03.2022 ('LoI') issued by IL&FS in this relation. Chronos is seeking certain directions to IL&FS for execution of a Definitive Agreement and consummation of the Transaction pursuant to said LoI.
- 2) **Chronos** has sought directions to the Respondents, viz. **IL&FS and another** to take all the steps necessary to execute, sign and register the Definitive Agreement before the relevant Authorities and take steps necessary to ensure the consummation of the Proposed Transaction as contemplated in the LoI and **for quashing and setting aside the letter dt. 16.08.2024, by which the unilateral amendment**

to the LoI, enhancing the consideration of the proposed Transaction of sale of the property was made by IL&FS.

3) The brief facts leading to the filing of this Company Application are as under:

a. Pursuant to the Resolution Framework of the Respondent No. 1, viz. IL&FS as approved by the Hon'ble National Company Law Appellate Tribunal *vide* its Order dt. 12.03.2020, IL&FS sought proposal for acquisition of its rights in the IL&FS Financial Centre and underlying Land located at Bandra Kurla Complex (hereinafter referred to as the Property).

b. Chronos affiliate emerged as the Successful Bidder. After negotiations, the Bid was finalised for INR 1080 Crores. As per the mechanism provided in the Framework, the approval was required from various Authorities. The IL&FS Committee of Creditors (i.e. CoC), approved the said Bid on 17.12.2021. The New Board of IL&FS approved on 27.01.2022. The approval was also granted by the Hon'ble (Retired) Justice Shri. D.K. Jain ('Justice Jain') on 08.03.2022. After the approval from Justice Jain, the LoI was executed between the Parties on 21.03.2022, and as per the said LoI, Chronos was required to

furnish Performance Guarantee of INR 1080 Crores i.e. 10% of the consideration, which was executed. This Tribunal, *vide* its Order dt. 23.09.2022, also granted its approval to the proposed Transaction. Thereafter, MMRDA also accorded sanction *vide* its Letter dt. 16.04.2024 to the proposed Transaction for its consummation within 90 days viz. 15.07.2024. The said consent was further extended *vide* Letter dt. 06.06.2024, with validity till 04.09.2024. MMRDA approval was obtained on 18.07.2024.

- c. Chronos obtained stamped adjudication of the Deed of Assignment and also took inspection of Original Documents available with IL&FS on 26.06.2024, and thereafter, requested the IL&FS to execute the Definitive Agreement, however, IL&FS did not respond. Therefore, the Applicant was constrained to file main Application *inter alia* seeking directions against IL&FS to consummate the proposed Transaction on 16.08.2024.
- d. The IL&FS issued unilateral amendment purporting to enhance the compensation to INR 1481 Crores and therefore, the present Application, contending that the IL&FS cannot

unilaterally amend the consideration on the ground that there is enhancement of prices of the property and the object of the Framework being the value maximization.

- e. It is contended that the LoI is a concluded contract between the Parties and is not a contingent one, therefore, it is enforceable contract. It is a binding contract, as all the essential terms of the binding contract are contained in the said LoI.
- f. The Id. Counsel for the respondent appeared and filed Reply on behalf of the IL&FS, contending that all the sale of Assets, being undertaken by the Respondent and/or its group Companies, are founded on its basic principle of maximization of the value of the assets involved being a matter that has been appearing in public interest, the due process as prescribed under the Resolution Framework was followed and the LoI dt. 21.03.2022 was executed and the Applicant was declared as H1 Bidder of the Property. However, the recent Valuation Reports reveal a substantial increase in the market value of the property since the execution of LoI, the current average fair market value being

INR 1722 Crores. By complying with LoI in its current form and terms to execute Definitive Agreement with the Applicant, the Respondent will fall foul of the mandate prescribed by the Hon'ble NCLAT i.e. maximization of value of each asset.

- g. It is for such eventuality that clause 3.6(h) of the LoI provides for the Respondent to unilaterally amend, modify or supplement the LoI in writing in order to align with the objective set out in the Report and the Order from the Hon'ble NCLAT as well as this Tribunal.
- h. It is further contended that clause 3.6(h) gives unilateral right to the Respondents to amend, modify and supplement the LoI. It is further contended that clause 5.1 (6) of the LoI grants the Applicant right to terminate the LoI within Seven days, if unilateral amendment introduces new financial obligations or modify existing financial obligations in a manner deemed unacceptable by it. In the event of termination, the Respondents agreed to refund the entire performance guarantee without interest within 15 days of receiving the

termination notice. However, the Applicant has not terminated that contract.

- i. It is further contended that LoI is a conditional contract, it is mere agreement to agree and therefore, cannot be enforced. The Applicant is seeking the relief of specific performance. Even the conditions of LoI, of maintaining the performance guarantee is not fulfilled, therefore, the Applicant is not entitled for any relief as sought for in the present Application.

- 4) In the meanwhile, the performance Bank Guarantee furnished by Chronos finally expired on 16.04.2025. Further, the demand drafts tendered by Chronos to supplement the Bank Guarantee also expired on 17.04.2025.
- 5) Consequent to expiry of Bank Guarantee IL&FS filed a Company Application No. 194 of 2025 on 26.06.2025, seeking dismissal of said Application CA 262 of 2024 contending that CA 262 of 2024, is rendered infructuous as Chronos stands disqualified under the terms of Request for Proposal dated 19.03.2021, for its failure to renew the Performance Guarantee as mandatorily required under the terms of RFP and LoI.

- 6) Chronos filed another Application CA No. 208 of 2025 on 16.07.2025, seeking exemption from providing any further Performance Guarantee until the final determination of its CA 262 of 2024 with alternate prayer to place the Performance Guarantee (aggregating to INR 108 crores) with this Tribunal - and not directly to ILFS - until the final determination of CA 262 of 2024.
- 7) Considering the rival contentions of both the Parties, following points arise for determination and the findings thereon are recorded for the reasons to follow:

POINTS FOR DETERMINATION:

1. Whether the LoI dt 21.03.2022 is a concluded contract between the Parties?
2. Whether the Respondents have unilateral right to amend the LoI and whether it is binding on the Applicants?
3. Whether Chronos has suffered disqualification on its failure to renew the Performance Guarantee as mandatorily required under the terms of RFP and LoI.

ANALYSIS AND FINDINGS:

Point No. 1

8) It is submitted by the Ld. Counsel for the Applicant that LoI is a concluded and enforceable contract as against the submissions of the Ld. Counsel for the Respondents who contended that the LoI is an agreement to agree. It is submitted that the LoI in an express terms records that *"It is the expression of understanding between the proposed assignee and the said proposed assignor subject to and on the terms stated herein"*.

9) Ld. Counsel for the Applicant relied upon the judgment of the Hon'ble Supreme Court in the case *Kollipara Sriramulu (dead) by his Legal Representatives... vs... Ashwatha Narayana (dead) by his Legal Representatives and others*, reported in 1968 SCC Online SC 87, wherein it is held as under:

"it is well established that a mere reference to a future formal contract will not prevent binding bargain between the Parties. The mere omission to settle the mode of payment does not affect the completeness of the contract because the vital terms of the contract like the price and the area of the land and time of completion of the same were all fixed".

- 10) Ld. Counsel for the Applicant further relied upon the judgment in the case of *Shelton Infrastructure Pvt. Ltd. v. Ghatkopar Kanchan Ganga CHS Ltd.*, in I.A. No. 4279 of 2022, Bombay High Court, wherein it is held as under:

“22...In my view, the said Letter of Intent is a concluded contract between the parties as it contains all the terms of a binding contract between the parties. Clause 3 of the said Letter of Intent clearly identifies the property that is to be developed. Clause 4 of the said Letter of Intent provides for the consideration to be offered to the Defendant, for allowing the Plaintiff to redevelop the said property, in terms of the carpet area offered, the car parking offered and the hardship compensation. Clause 5 of the said Letter of Intent also provides for the rent to be paid to members for alternate accommodation. Further, Clause 10 provides for the time period of completion of the project. Hence, all the essential terms of a binding contract are contained in the said Letter of Intent, and therefore, the said Letter of Intent is a concluded contract between the Parties”.

- 11) It is therefore submitted that LoI contains all the essential terms including property identification, consideration, timelines as well as agreed forms of the definitive agreement; the LoI therefore is a concluded and an enforceable contract.

- 12) Ld. Counsel for the Applicant also submitted that the LoI cannot be considered to be a contingent contract. Contract cannot

be termed contingent when the contingency is within the promissor's control and thus, relied upon the judgment in the case of *Balwant Singh... vs... Rajaram Reported in AIR 1957 Rajasthan 73*, wherein it was held:

“merely because in the said agreement, the vendor took it upon himself the responsibility of depositing the dues due to the Government it will not make the contract contingent one. Section 31 of the contract says that the contingent contract is a contract to do or not to do something if some events collateral to such contract does or does not happen. Here on the terms of Agreement dt. 17.10.1966, there is nothing to suggest that the execution of the sale deed depended upon any event in the sense that happening of the event was beyond the control of the vendor. As pointed out above, it was within the powers of Defendant to deposit the dues outstanding against him in such a case, it cannot be said that the agreement between the Parties was a contingent one within the meaning of Section 31 of the Contract Act and not a concluded contract”.

- 13) As against these submissions, the Ld. Counsel for the Respondents submitted that the Letter of Intent dt. 21.03.2022 does not constitute a concluded contract of sale of land. The LoI merely indicates the intension of the Parties to enter into definitive Agreement for the transfer of right, title, and interest in TIFC Building owned by IL&FS in favour of the Applicant. The LoI is

therefore in the nature of the Agreement to Agree in the future subject to compliance with the conditions of the LoI and finalization of terms and conditions in the future.

- 14) Ld. Counsel for the Respondent relied upon the judgment in the case of *Kollipara Sriramulu (dead) by his Legal Representatives... vs... Ashwatha Narayana (dead) by his Legal Representatives and others, 1968 SCC OnLine*, wherein their Lordships held as under:

3. *"We proceed to consider the next question raised in these appeals, namely, whether the oral agreement was ineffective because the parties contemplated the execution of a formal document or because the mode of payment of the purchase money was not actually agreed upon. It was submitted on behalf of the appellant that there was no contract because the sale was conditional upon a regular agreement being executed and no such agreement was executed. We do not accept this argument as correct. It is well established that a mere reference to a future formal contract will not prevent a binding bargain between the parties. The fact that the parties refer to the preparation of an agreement by which the terms agreed upon are to be put in a more formal shape does not prevent the existence of a binding contract. There are, however, cases where the reference to a future contract is made in such terms as to show that the parties did not intend to be bound until a formal contract is signed. The question depends upon the intention of the parties and the special*

*circumstances of each particular case. As observed by the Lord Chancellor (Lord Cranworth) in *Ridgway v. Wharton*, the fact of a subsequent agreement being prepared may be evidence that the previous negotiations did not amount to a concluded agreement, but the mere fact that persons wish to have a formal agreement drawn up does not establish the proposition that they cannot be bound by a previous agreement. In *Von Hatzfeldt Wildenburg v. Alexander* - it was stated by Parker, J. as follows:*

"It appears to be well settled by the authorities that if the documents or letters relied on as constituting a contract contemplate the execution of a further contract between the parties, it is a question of construction whether the execution of the further contract is a condition or term of the bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through. In the former case there is no enforceable contract either because the condition is unfulfilled or because the law does not recognize a contract to enter into a contract. In the latter case there is a binding contract and the reference to the more formal document may be ignored."

*4. In other words, there may be a case where the signing of a further formal agreement is made a condition or term of the bargain, and if the formal agreement is not approved and signed there is no concluded contract. In *Rossiter v. Miller*' Lord Cairns said: "If you find not an unqualified acceptance subject to the condition that an agreement is to be prepared and agreed upon between the parties,*

and until that condition is fulfilled no contract is to arise then you cannot find a concluded contract."

*In **Currimbhoy and Company Ltd. v. Creet the Judicial Committee** expressed the view that the principle of the English law which is summarised in the judgment of **Parker, J. In Von Hatzfeldt-Wildenburg v. Alexander** was applicable in India. The question in the present appeals is whether the execution of a formal agreement was intended to be a condition of the bargain dated July 6, 1952 or whether it was a mere expression of the desire of the parties for a formal agreement which can be ignored. The evidence adduced on behalf of Respondent 1 does not show that the drawing up of a written agreement was a prerequisite to the coming into effect of the oral agreement. It is therefore not possible to accept the contention of the appellant that the oral agreement was ineffective in law because there is no execution of any formal written document. As regards the other point, it is true that there is no specific agreement with regard to the mode of payment but this does not necessarily make the agreement ineffective. The mere omission to settle the mode of payment does not affect the completeness of the contract because the vital terms of the contract like the price and area of the land and the time for completion of the sale were all fixed. We accordingly hold that Mr. Gokhale is unable to make good his argument on this aspect of the case.*

- 15) Ld. Counsel for the Respondent further relied upon the judgment in the case of *South Eastern Coalfields Limited and*

Others... vs... S. Kumar's Associates AKM (JV) (2021) 9 SCC 166

wherein their Lordships are held as under:

25. On having discussed the non-compliance by the Respondent of the terms of the LoI we turn to the NIT. Clause 29.2 clearly stipulates that the notification of award will constitute the formation of the contract "subject only" to furnishing of the performance security/security deposit. Thus, it was clearly put as a precondition and that too to be done within 28 days following notification of the award. The failure of the successful bidder to comply with the requirement "shall constitute sufficient ground for cancellation of the award work and forfeiture of the bid security" as per Clause 30.2. If we analyse Clause 34 dealing with the integrity pact the failure to submit the same would make the tender bid "as not substantially responsive and may be rejected".

- 16)** It is further submitted that the LoI was subject to contingency and IL&FS may be required to take steps not expressly stated in LoI to satisfy the objectives of the Resolution Framework. In such event as per clause 3.6 (h) IL&FS was entitled at any time to amend, modify or supplement the LoI by an amendment in the writing with or without assigning any reason. Transaction was always subject to and contingent upon the happening of such event. The reliance is placed on the **Authority reported in 2015 SCC OnLine Bom 5010,**

in the case of *Om Builders (P) Ltd... vs... Anil Chinubhai Kilachand & Ors.*, wherein it is held as under:

“Contingency is defined in the Concise Oxford English Dictionary, Indian Edition Revised Eleventh Edition at page 308, as a future event or circumstance which is possible but cannot be predicted with certainty”.

- 17) Considering the rival contentions of both the Parties before analyzing the submissions it would be useful to refer to the characteristic of a valid Contract. (i) It's a legally binding agreement between Two or More Parties that is enforceable by law. (ii) It is essentially an agreement that creates mutual obligations, meaning that one party failed to fulfil their part of the bargain, the other party is entitled to legal redress. (iii) To be valid, an agreement must contain specific elements, such as (a) an Offer, an acceptance and consideration (b) considered legally enforceable by a Court.
- 18) In the present case, as per the Resolution Framework's objectives i.e. value maximization of all Stakeholders, the Property in question was offered for sale by IL&FS. The Applicant was the only Bidder found and after negotiations between the Parties, the LoI was executed between the Parties. This LoI was subject to the

approvals by the ILFS's Committee of Creditors, which was granted on 17.12.2021. ILFS's New Board granted approval on 27.01.2022. The Hon'ble (Retired) Justice D.K. Jain granted his approval on 08.03.2022 and the NCLT *vide* its Order dt. 23.09.2022 granted approval to the LoI.

19) It was only after these approvals that the permission from the MMRDA was required to be obtained by IL&FS. In the meantime, the Applicant also furnished requisite performance guarantee equivalent to 10% of the Consideration, amounting to INR 1080 Crores as stipulated under the contract. Thus, there was an Acceptance of Offer and Parties after negotiations have executed the LoI intending the sale of property in favour of Chronos. Therefore, it is an agreement between the Parties. Although, this document is styled as LoI, the IL&FS has accepted the Bid and the terms of contract have been reduced into writing. The necessary approvals from various authorities have also been obtained and the Applicant has also acted upon the agreement by executing the performance guarantee in terms of clause 4.4 of the LoI.

20) LoI also mentions that the LoI is expression of understanding between the proposed assignee and the said proposed assignor

subject to and on the terms stated herein, and is a summary of basic terms of transaction envisaged which has been discussed and agreed in principal. Although, this LoI deals with material issues, nonetheless, by approving this LoI each party indicates its belief that this LoI can form basis of the proposed transactions and the willingness to execute the definitive agreement as defined hereinbelow. We acknowledge that this LoI does not create, transfer or assign right, title or interest of any nature whatsoever in respect of the said property. Therefore, the LoI in question is in fact the transaction between the Parties or an agreement between the Parties for the sale of the property and therefore, all the essentials of valid contract between the parties are fulfilled by execution of LoI between the Parties. Thus, it cannot be said that the LoI is merely an agreement to agree. It has a binding nature of expression of understanding between the Parties. Pursuant to execution of LoI, both the Parties have acted upon the terms of LoI and what was remaining was the execution of the definitive agreement or contract for transfer of lands. It is fortified by the decision in case of *Kollipara Sriramulu (Supra)*. Perhaps, approval was required from MMRDA for execution of a definitive agreement between the

Parties, thus, the LoI was executed. It is in this background that the parties have entered into LoI which is of binding nature which is evident from the very terms of the LoI. The intentions of the Parties are evident that the property in question was agreed to be sold to Chronos on terms and conditions mentioned therein. It does not stipulate that the contract would be complete only on execution of a definitive contract of sale. Thus, the parties have binding terms in the LoI. Therefore, it cannot be contended that it is a contingent contract based on the happening of the events. The permissions were required which were obtained. The performance bank guarantee was executed by Chronos pursuant to the LoI. It is only after MMRDA granted its approval on 18.07.2024, Chronos has obtained stamp adjudication of the Deed of Assignment. It also undertook to inspect the Original Documents available with IL&FS on 27.06.2024 and thereafter repeatedly requested IL&FS to take steps to execute the definitive agreement, however, there was no response from IL&FS, hence, this Application was filed and by way of interim measures, this Tribunal has restrained the IL&FS from creating third party interests.

21) Therefore, the submissions made by the Ld. Counsel for the IL&FS are not made good and the Authorities relied upon by the Ld. Counsel for the Respondents would not come to the rescue to support that the LoI in the present Case is a contingent contract on the happening of the event or it is a mere an agreement to agree in future.

22) Therefore, the LoI in question is a contract and what remains was an execution of the definitive contract of sale after obtaining necessary permissions from the various authorities as contemplated under the LoI, which were obtained as enumerated above.

Point No. 2

23) IL&FS heavily relied upon clause 3.6(h) of the LoI to contend that it had unilateral right to amend, modify or supplement the LoI. Clause 3.6 (h) reads as under:

“(h) Subject to the terms agreed by the parties under Clause 5.1(6) below, the Proposed Assignor may, at any time, to meet the objectives set out in the Reports submitted to the Ministry of Corporate Affairs, Government of India as mentioned in the RFP and any further reports that will be submitted by the Proposed Assignor to the Ministry of Corporate Affairs, Government of India

and/or to NCLT and/or the National Company Law Appellate Tribunal, whether or not by their own initiative, or for any other reason similar to the reasons mentioned above, without assigning any reason therefore, amend, modify or supplement this LoI by an amendment in writing. Any other amendments, modifications or supplements to this LoI shall be by mutual agreement between the Parties in writing”.

- 24)** It is submitted by the Ld. Counsel for Chronos that clause 3.6(h) of the LoI cannot be said to have given powers in favour of IL&FS to revise the consideration due to the lapse of time and the value prevailing at the later stage dehors any further reports, which undisputedly has not been submitted to any of Authority specified in the said clause. They are not absolute or unqualified. It is confined and subject to achieving the object of Seven conditions i.e. (a) Reports submitted to Ministry of Corporate Affairs; (b) Reports submitted to Government of India as mentioned in RFP and any further Report that will be submitted by ILFS; (c) Any Further Report that will be submitted by ILFS to Government of India (d) Any Further Report that will be submitted by ILFS to Government

of India; (e) Any Further Report that will be submitted by ILFS to NCLT; (f) Any Further Report that will be submitted by ILFS to the Hon'ble NCLAT or (g) For any other reasons similar to those reasons mentioned above.

25) It is further submitted that the Phrase “for any other similar reasons” mentioned in clause 3.6 (h) must be read *Ejusdem generis*. It cannot be read as words of expansions. These words have to be read to mean that the phrase must be limited by words preceding it i.e. with conditions 1 to 6 referred above. It is settled law that the principal of *Ejusdem generis* applies to contract. The extent of aforesaid phrase in clause 3.6 (h) circumscribed by the overreaching goal of meeting the objects contained in the report either submitted and/or any further report to be submitted to the Authorities contemplated therein. Clause 3.6 (h) cannot be invoked to increase the consideration or impose fresh obligations unrelated to the stated objectives. Therefore, the phrase “for any other reasons similar to the reasons” mentioned above cannot be read expansively and ought to be read *Ejusdem generis*.

26) Ld. Counsel for IL&FS on the other hand submitted that the true and correct interpretation and the purpose of any other reasons

similar to reasons mentioned above in clause 3.6 (h) of LoI is to enlarge the scope of actions which may be taken to meet the objective of the Resolution Framework and is to be understood in the context alone. It is not limited to the actions only to such matters *Ejusdem generis* with those specially enumerated as is contended by Chronos. Chronos's contentions that additional objectives were required to be stated by way of subsequent report for the purpose of considering any revision in price is a gross mis-interpretation of the terms of contract and the object of the Resolution Framework itself. The Principal of *Ejusdem generis* is a cannon of constructions which gives way to the clear intention of the Parties and the narrow construction on the basis of *Ejusdem generis* is impermissible where broader construction is required to give effect to the intention of parties by adopting purposive construction. It is further stated by Ld. Counsel for IL&FS that Rule of *ejusdem generis* has to be applied with care and caution. It is not an inviolable rule of law but is only permissible inference in the absence of an indication to the contrary, where context and the object do not require restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning.

27) It is further submitted by the Ld. Counsel for Chronos that the Order of the Hon'ble National Company Law Appellate Tribunal recognizes the goal of "value maximization", the manner in which the same is to be achieved is expressly provided under paragraph 61 of the Order of the Hon'ble National Company Law Appellate Tribunal. Paragraph 61 contemplates four steps approval procedure including approval from CoC, ILFS's New Board. Hon'ble (Retd.) Justice D.K. Jain and the NCLT. All the approvals were obtained, additionally, the approval from MMRDA was also obtained. All these approvals would take some amount of time for evaluation and compliance and this does not mean that the value maximization will be regarded as shifting goal post. It cannot be that after each aforesaid stage is complied, the value of the properties found to be higher, the evaluation would be re-determined afresh before each next stage or otherwise. In any case, logical reading of Para 60 of the Order of the Hon'ble National Company Law Appellate Tribunal would imply that the value maximization ought to be achieved as on a particular date i.e. the last date on which the final bids are to be submitted. Any increase

in value after all approvals are in place should incur to the benefit of Chronos.

28) It is further submitted by the Ld. Counsel for Chronos that accepting IL&FS's interpretation would undermine finality in auction or Resolution Process as higher bids could perpetually be invited post approval. Ld. Counsel for Chronos relied upon the case of *Valji Khimji and Company v. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited And Others (2008) 9 SCC 299*, wherein it is held as under:

"28. If it is held that every confirmed sale can be set aside the result would be that no auction sale will ever be complete because always somebody can come after the auction or its confirmation offering a higher amount.

.....

30. where the auction is subject to subsequent confirmation by some authority, (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud".

29) Ld. Counsel for Chronos further relied upon the decision of the Hon'ble Supreme Court in the case of *Eva Agro Feeds Private*

Limited v. Punjab National Bank and Another, wherein it is held as under:

“79. Thus, mere expectation of the Liquidator that a still higher price may be obtained can be no good ground to cancel an otherwise valid auction and go for another round of auction. Such a cause of action would not only lead to incurring of avoidable expenses but also erode credibility of the auction process itself. That apart, post auction it is not open to the Liquidator to act on third-party communication and cancel an auction, unless it is found that fraud or collusion had vitiated the auction. The necessary corollary that follows therefrom is that there can be no absolute or unfettered discretion on the part of the Liquidator to cancel an auction which is otherwise valid. As it is in an administrative framework governed by the rule of law there can be no absolute or unfettered discretion of the Liquidator. Further, upon a thorough analysis of all the provisions concerning the Liquidator it is evident that the Liquidator is vested with a host of duties, functions and powers to oversee the Liquidation process in which he is not to act in any adversarial manner while ensuring that the auction process is carried out in accordance with law and to the benefit of all the stakeholders. Merely because the Liquidator has the discretion of carrying out multiple auction it does not necessarily imply that he would abandon or cancel a valid auction fetching a reasonable price and opt for another round of auction process with the expectation of a better price. Tribunal had rightly held that there were no objective materials before the Liquidator to cancel the auction process and to opt for another round of auction”.

30) It is further contended by Chronos that in *Kalinga Allied Industries India Private Limited. v. Committee of Creditors (Bindals Sponnge Industries Limited) through PNB and Another* 2022 scc onLine NCLAT 1618, wherein it is held as under:

“the objective of value maximization under the Insolvency and Bankruptcy Code, 2016 ought to be a timebound process lest the very objective of the resolution process stands frustrated by speculative expectations of higher value”.

31) It is therefore submitted that clause 3.6(h) does not confer upon IL&FS an unfettered, arbitrary and unilateral right to increase the consideration after all the aforesaid approvals are in place. Once the proposed transaction and the successful bid which is akin to a Resolution Plan is approved by this Tribunal, it is binding on all Stakeholders. IL&FS thereafter cannot undertake fresh valuations to unilaterally amend the consideration. IL&FS has demonstrated nothing in any Report whatsoever which allows IL&FS to unilaterally amend the consideration for the purpose of ‘value maximization’ nor does the Resolution Framework provide for fresh valuations post this Tribunal’s approval.

32) It is therefore contended by the Ld. Counsel for Chronos that unilateral amendment of LoI to increase the consideration upon fresh valuation of the property after lapse of time in obtaining approvals from various authorities is illegal act and it has right to enforce the contract.

33) Ld. Counsel for IL&FS on the other hand submitted that the Applicant failed to bring to the Notice clause 5.1(6) of LoI, which grants the Applicant right to terminate the LoI within Seven days, if unilateral amendment introduces new financial obligations or modifies existing financial obligations in a manner deemed acceptable by it. In the event of such termination, IL&FS has agreed to refund the entire performance guarantee without interest within 15 days of receiving termination notice. The existence of the termination clause of such kind in LoI only substantiates IL&FS case that the LoI has envisaged, from the very beginning, that in order to meet the objective of the Resolution Framework, IL&FS was entitled at any time to amend, modify or supplement the LoI by an amendment in writing with or without assigning the reasons and the transactions was always subject to and contingent upon happening of such event.

34) It is further contended by IL&FS that it is not bound by the law of commercial contract that mere expectation of fetching higher price cannot be a ground of cancelling a bid. IL&FS's entitlement to escalate the prices is expressly provided in the terms of LoI. Chronos's reliance in *Valji Khimji and Company v. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited And Others (2008) 9 SCC 299; Eva Agro Feeds Private Limited v. Punjab National Bank and Another; Kalinga Allied Industries India Private Limited. v. Committee of Creditors (Bindals Sponnge Industries Limited) through PNB and Another 2022 scc onLine NCLAT 1618*, is completely misplaced as facts of the judgments are completely different from the facts of the present case, therefore, are clearly distinguishable. The above judgments deal with the auctions, which are part of the Liquidation Process involving private interest of the Company, as the proceedings in the above mentioned judgments are borne out of Insolvency and Bankruptcy Code, 2016, whereas the proceedings in the present matter arise under Section 241-242 of the Companies Act, 2013 and the facts clearly shows the involvement of public interest.

35) It is further contended by IL&FS that the decision in the case of *M.P. Mathur and Ors... vs... DTC and Ors. 2006 13 SCC 706*, when the government is contracting with private parties, this common law of freedom is circumscribed by the principals of administrative law which require larger public interest to be taken into account. Additionally, in case of *Vice-chairman and Managing Director, city and Industrial Development Corporation of Maharashtra Limited and Another... vs... Shishir Realty Private Limited and Others* the facts of the judgment are completely different from the facts of the present case. The judgment *inter alia* deals with issues of challenges raised by other bidders on the eligibility of H1 Bidders. Therefore, the reliance on the above stated decisions are completely incorrect and misplaced.

36) Ld. Counsel for Chronos distinguished the decision in the case of *M.P. Mathur (supra)*, to claim that in exceptional cases, freedom of contract is circumscribed by larger public interest. stating that, apart from the fact that M.P. Mathur does not apply on facts, IL&FS ignores the findings in *Vice-chairman and Managing Director, city and Industrial Development Corporation of Maharashtra Limited*

and Another... vs... Shishir Realty Private Limited and Others,

wherein the Hon'ble Supreme Court categorically held as under:

“When a contract is being evaluated, the mere possibility of more money in the public coffers, does not in itself serve public interest. A blanket claim by the State regarding loss of public money cannot be used to forgo contractual obligations, especially when it is not based on any evidence or examination. The larger public interest of upholding contracts and the fairness of public authorities is also in play. Courts need to have a broader understanding of public interest, while reviewing such contracts”.

37) It is noted that The Resolution Framework aims at the value maximization. It was pursuant to this object the property was put to sale and the bids were invited. The bid with Chronos was finalized after negotiations and the LoI was executed although this LoI is found to be a binding expression of interest and a contract; the parties would be bound by the terms of the contract or the LoI.

38) Clause 5.1 (6) of the LoI reads as under:

It is agreed between the parties that in the event of any unilateral amendment, modification or supplement, to this LOI pursuant to the terms of Clause 3.6 (h) above, then in such case:

- i. *In relation to the Proposed Assignor: If such unilateral amendment, modification or supplement, affects any existing obligations (monetary or otherwise) or puts forth any new obligation (monetary or otherwise), in each case, on the Proposed Assignor, the Proposed Assignor shall have an independent right to terminate this LOI by giving 7 (seven) days notice in writing to the Proposed Assignee, and/or*
 - or
- ii. *In relation to the Proposed Assignee: If such unilateral amendment, modification or supplement:*
 - a. *Affects any existing financial obligations, or puts forth any new financial obligation, in each case, by way of enhancement of the consideration on the Proposed Assignee, and/or*
 - b. *extends the timelines for consummation of the Proposed Transaction as agreed herein and/or as contemplated under the Definitive Agreement(s) by more than 90 (ninety) days, and/or*
 - c. *imposes any additional obligation(s) that make performing such obligations ultra Vires in terms of the Proposed Assignee's main and/or ancillary objects, and/or*

makes such performance unreasonably onerous in terms of being entirely beyond what is prevalent and customarily expected (as on the date of imposition of such obligation) of an assignee/purchaser to consummate a similarly placed transaction and/or obligations that may adversely affect any right and/or entitlements agreed to be provided to the Proposed Assignee in respect of the assignment/transfer of the Property under the Definitive Agreements, it being understood that the following (whether expressly stated in this LOI and/or in the Definitive Agreement(s) or not) shall not qualify within the afore-stated: (I) obligations that are customarily undertaken and/or expected to be undertaken by an assignee/purchaser to consummate a transaction similar to the Proposed Transaction (such obligations covering, but not being limited to obtaining any other/further corporate approval(s) and/or other approvals as may be applicable or become applicable to the Proposed Assignee to consummate the Proposed Transaction, obligations that are

customarily incidental to and/or may become incidental due to the then applicable laws to consummate the Proposed Transaction); and/or (11) obligation that may arise. to ensure compliance with the Proposed Assignor's eligibility under the RFP to bid and/or to consummate the Proposed Transaction, then the Proposed Assignee will have a right to terminate this LOI by giving 7 (seven) days notice in writing to the Proposed Assignor. In the event of such termination, the Proposed Assignor agrees to refund the entire Performance Guarantee (without interest), as the case may be, to the Proposed Assignee within a period of 15 (fifteen) days from the date of receipt of such notice towards termination and upon such refund, and Proposed Assignor shall be entitled to deal with the Property at its sole discretion and as it deems fit and proper.

- 39) Chronos, under the LOI, has agreed upon this Term wherein, the consequences of unilateral amendment, modification or supplement affecting any existing obligations monetary or otherwise or put forth any obligations monetary or otherwise in each case, the proposed assignor shall have independent right to

terminate this LoI by giving 7 days Notice in writing to the proposed assignor. The Parties have agreed expressly under this contract or LoI that if there is modification or unilateral amendment in the LoI in the existing obligations, monetary or otherwise, under the LoI, Chronos has right to terminate the agreement and the bank guarantee would be refunded without interest. This term gives unilateral power to amend, modify or supplement the existing obligations under the contract. The contention of the Ld. Counsel for the Chronos that the interpretation of the Respondent/IL&FS would undermine the finality in auction for Resolution Process as higher bids perpetually be invited post approval, by relying on the judgment in the case of *Valji Khimji and Company (supra)*, would not be appropriate in the present case as a term in the contract gives right to IL&FS to unilaterally amend the terms of the contract including the financial implications of sale of the Property and therefore, clause 5.1(6) finds place in the contract. Therefore, authorities relied upon by the Chronos on this aspect would not be applicable in the present case. Therefore to contend that IL&FS did not have authority to unilaterally amend the contract, the LoI on the fresh valuation of the property or that the words "for any other

purpose” are required to be read as *Ejusdem Generis* to the Reports loses importance as there is agreed term between the Parties that the Respondent/ILFS has unilateral power to amend, modify or supplement the LoI in terms of clause 3.6(h) and the consequences of the same are given in clause 5.1(6) of said LoI.

40) It is trite law that the terms of Contract, LoI are binding on the Parties. They cannot be modified or interpreted in such a way that it amounts to re-writing of the contract between the Parties. To accept the contention of the Ld. Counsel for Chronos that the IL&FS does not have unilateral power to amend or re-assess the property afresh after the bid was accepted and the parties have acted upon the terms of the contract, would amount to interpreting clause 3.6 (h) and 5.1(6) contrary to the agreement between the parties. Therefore, the authority relied upon by the Ld. Counsel for Chronos in the case of *Valji Khimji and Company v. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited And Others (2008) 9 SCC 299* is distinguishable on the facts in the present case. The Parties have consciously agreed that in spite of there being contract between the parties about the sale of the property in question, the

unilateral power to amend and re-assess the property was retained by the IL&FS.

41) Therefore, the contention that IL&FS does not have unilateral power to modify the contract does not hold any substantial ground. The plain and simple meaning to the terms of the contract between the parties is required to be extended. In spite of the fact that the approvals from the relevant authorities have been obtained in the third report as submitted by IL&FS, the escalation of the prices are reported and therefore, to achieve the purpose of value maximization in terms of the Resolution Framework is required to be achieved and as such considering the terms of the contract between the parties, IL&FS well within their powers to escalate the prices and if Chronos was aggrieved by the same, they had the power to terminate the contract, which they have not exercised.

42) Therefore, the submissions of the Ld. Counsel for Chronos cannot hold grounds and as such until the new financial implications are met and agreed by the Parties, the sale cannot be completed as contemplated under the LoI. Moreover, granting the directions to execute a definitive agreement between the parties, would amount to directing specific performance of the contract in

spite of IL&FS having the unilateral power to amend, modify or supplement the LoI, keeping in view the object of the Resolution Framework as such.

Issue No. iii

43) It is noted that the Performance Guarantee and the Demand Draft furnished by Chronos pursuant to its obligation under RFP and LoI to provide 10% of the Bid Money as Performance Guarantee expired on 16.04.2025 and 17.04.2025, respectively and an Application for seeking execution of Definitive Agreement in terms of 262 OF 2024 was filed on 06.08.2024, which was pending before this Tribunal for determination.

44) It is further noted that IL&FS filed an Application on 30.08.2024, before this Tribunal for seeking impleadment of Union of India in CA 262 of 2024, which came to be allowed by this Tribunal on 06.03.2025 and thereafter, Union of India was asked to place its Reply which was filed *vide* Affidavit dt. 24.04.2025, stating that the caption matter is a commercial matter and this Tribunal may decide this Application on its own merits.

45) On perusal of the prayer in CA 208 of 2025, it is noted that Chronos had sought exemption from this Tribunal from renewing

the Performance Bank Guarantee any further or alternatively, to deposit such guarantee with this Tribunal instead of IL&FS. This Application came to be filed on 16.07.2025, immediately, after an Application CA 194 of 2025, moved by IL&FS seeking disqualification of Chronos on its failure to renew Performance Bank Guarantee in contravention of specific obligation under RFP as well as LoI.

46) We note that Clause 4.4 of LoI requires a Performance Guarantee to remain valid initially for 90 days (in case of a Demand Draft) or 180 days (in case of a Bank Guarantee), as the case may be, from the date of signing of LoI and was to be extended/renewed by Chronos for such additional period (as may be decided by IL&FS and in its sole discretion). It is relevant to note clause 2.8.6 (b) which also requires furnishing of Performance Guarantee for Three Months (in case of a Demand Draft) or Six Months (in case of a Bank Guarantee) and to be renewed/extended for such further period as required by IL&FS.

47) Indubitably, IL&FS never decided or communicated any further period for extension or renewal of the Performance Bank Guarantee and the Performance Bank Guarantee as well as Demand

Draft provided by Chronos remained valid for more than a Year. Further, the alternate prayer in CA 208 of 2025 expressing Chronos's willingness to furnish the Bank Guarantee/Demand Draft in custody of this Tribunal clearly indicate their willingness and bonafide conduct to perform their obligations in terms of by LoI. Accordingly, we are of the considered view that no disqualification can be ascribed to the Chronos in terms of clause 2.8.6 (e) of the RFP.

- 48) Having said so, we consider it appropriate to require Chronos to tender the Demand Draft/Bank Guarantee with the Registrar of this Tribunal within 30 days of communication of this Order so as not to incur any disqualification, failing which, the disqualification in terms of clause 2.8.6 (e) of the RFP shall arise.

ORDER

- 49) In view of the findings arrived as above, the following order is passed:

1. The LoI dt 21.03.2022 is a concluded contract between the Parties.
2. IL&FS has unilateral right to amend the LoI & is binding on the Applicants, accordingly, the letter dt. 16.08.2024 cannot be quashed and set aside.

3. Chronos has not suffered disqualification on its failure to renew the Performance Guarantee as mandatorily required under the terms of RFP and LoI. Further, Chronos shall be at liberty to tender the Demand Draft/Bank Guarantee with the Registrar of this Tribunal within 30 days of communication of this Order so as not to incur any disqualification, failing which, the disqualification in terms of clause 2.8.6 (e) of the RFP shall arise.

50) In terms of above, CA 262 of 2024, CA 194 of 2025, and CA 208 of 2025 are disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

Vedant Kedare
(Stenographer)

Sd/-

Sushil Mahadeorao Kochey
Member (Judicial)