

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT - I

CA No. 345/2021, CA No. 294/2021, CA No. 2/2022, CA No. 137/2022 and CA No. 224/2022.

In

C.P (IB) No. 3638/MB/2018

Under section 241 and 242 of the of the Companies Act, 2013.

In the matter of

**Infrastructure Leasing & Financial }
Services Limited, IL& FS Financial }
Centre, C-22, G Block, BKC, Bandra } ...Applicant
East, Mumbai.**

Versus

**Union of India, MCA, (through the }
RD), having its office at 5th Floor, }
Everest Building, 100 Marine Lines, } ...Respondent
Mumbai - 400001.**

Order Pronounced on: 07.10.2022

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Applicant : Mr. Ashish Kamat a/w Mr.
Animesh Bisht, Ms. Drishti Das,
Ms. Roma Bhojani and Ms. Rima
Jain i/b Cyril Amarchand

For the Respondent : Mr. Aditya Sikka, Mr. Sanjay Shorey
– RD (North) and Mr. Parvez
Naikwadi for the Union of India

ORDER

Per Coram:

1. The five (05) Company Applications have been filed seeking approval this Tribunal for closure of the certain group entities forming a part of the Infrastructure Leasing & Financial Services Limited (hereinafter referred to as “**Applicant/IL&FS**”). Since the facts and circumstances leading to the present five (05) Company Applications are similar, accordingly, all these five (05) Company Applications are being disposed of *vide* this common order.

2. The details of the said Company Applications are as follows:
 - (I) Company Application No. 345 of 2021 for closure of Damodar Valley Tourism Development Private Limited (“**DVTDPL**”) and Odisha e-Governance Services Limited (“**OeSL**”);
 - (II) Company Application No. 294 of 2021 for closure of Futerage Infrastructure India Limited (“**FIIIL**”), IL&FS Infrastructure Equity Fund (“**IIEF**”) and IL&FS Infrastructure Equity Fund – I (“**IIEF-I**”)
 - (III) Company Application No. 2 of 2022 for closure/

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winding up of Mahidad Wind Energy Private
Limited (“**MWEPL**”), Jogihalli Wind Energy
Private Limited (“**JWEPL**”) and Sipla Wind
Energy Limited (“**SWEL**”)

- (IV) Company Application No. 137 of 2022 seeking approval for for closure/winding up of Patiala Bio-Power Company Limited (“**PBPCL**”), winding up of Vansh Nimay Infraprojects Limited (“**VNIL**”), winding up on IL&FS Solar Power Limited (“**ISPL**”) and winding up of Assam Power Project Development Company Limited (“**APPDCL**”); and
- (V) Company Application No. 224 of 2022 for the closure of Sealand Warehousing Private Limited (“**SWPL**”).

(collectively the “**Closure Applications**”)

3. The Closure Applications are filed seeking approval of this Tribunal for the following reliefs:

(i) Company Application No. 345 of 2021:

- A. Approve the proposal for winding up of Damodar Valley Tourism Development Private

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limited under Section 271(e) of the Companies
Act, 2013;

B. Approve the proposal for voluntary liquidation
of Odisha e-Governance Services Limited
under Section 59 of the Insolvency and
Bankruptcy Code, 2016

(ii) Company Application No. 294 of 2021

A. Approve the proposal for winding-up of
Futureage Infrastructure India Limited under
Section 271(e) of the Companies Act, 2013;

B. Approve the proposal for winding-up of IL&FS
Infrastructure Equity Fund and IL&FS
Infrastructure Equity Fund – I under their
respective private placement memorandums
and contribution agreements in accordance
with the Indian Trusts Act, 1882 and the
applicable Indenture of Trust.

(iii) Company Application No. 2 of 2022:

A. Allow the Applicant to initiate the process and
file necessary applications for winding up of

Jogihali Wind Energy Private Limited under

Section 271(a) of the Companies Act, 2013;

B. Allow the Applicant to initiate the process and file necessary applications for winding up of Sipla Wind Energy Limited under Section 271(a) of the Companies Act, 2013;

C. Allow the Applicant to initiate the process and file necessary applications for initiating corporate insolvency resolution process of Mahidad Wind Energy Private Limited under Section 10 of the Insolvency and Bankruptcy Code, 2016;

(iv) Company Application No. 137 of 2022:

A. Allow the Applicant to initiate the process and file necessary applications for winding up of PBPCL under Section 271(a) of the Companies Act, 2013;

B. Allow the Applicant to initiate the process and file necessary applications for winding up of VNIL under Section 271(a) of the Companies Act, 2013;

- C. Allow the Applicant to initiate the process and file necessary applications for winding up of ISPL under Section 271(a) of the Companies Act, 2013;
- D. Allow the Applicant to initiate the process and file necessary applications for winding up of APPDCL under Section 361 of the Companies Act, 2013.

(v) **Company Application No. 224 of 2022:**

- A. Allow Sealand Warehousing Private Limited to sell Preference Shares held by it in Gujarat Integrated Maritime Complex Private Limited to IL&FS Maritime Infrastructure Company Limited for a consideration of INR 1, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) in terms of the share purchase agreement to be entered into between Sealand Warehousing Private Limited, IL&FS Maritime Infrastructure Company Limited and Gujarat Integrated Maritime Complex Private

Limited and permit the implementation of such

share purchase agreement;

B. Allow the Applicant to initiate the process and file necessary applications for winding up of Sealand Warehousing Private Limited under Section 271(a) of the Companies Act, 2013

4. The background of all these Closure Applications is common and is set out as under.
5. The Union of India (hereinafter referred to as UoI) filed CP No. 3638 of 2018 against the Applicant under Section 241 and 242 of the Companies Act, 2013 *inter alia* alleging mismanagement in the Applicant Company.
6. This Tribunal *vide* an Order dated October 1, 2018 (“**October 1 Order**”) superseded the Board of Directors of the Applicant Company and appointed a new Board (“**New Board**”) to take over the affairs of the Company. Subsequently, more directors were appointed by this Tribunal on the New Board. The Hon’ble NCLAT *vide* an Order dated October 15, 2018 granted interim stay against any coercive action by the creditors against the Applicant and its group companies.

7. Pursuant to the October 1 Order, the New Board submitted the Applicant submitted the Initial Resolution Framework and the First Addendum thereto to the Petitioner, which was further filed by the Petitioner before this Hon'ble Tribunal (vide an affidavit dated January 15, 2019) and before the Hon'ble NCLAT. Thereafter, the Applicant has also submitted the Second Addendum to the Petitioner. The Initial Resolution Framework, the First Addendum and Second Addendum are collectively referred to as the "Resolution Framework". The said Resolution framework sets forth different resolutions for different entities.

8. The Resolution Framework *inter alia* sets forth that given the position of and challenges in the Applicant Group, an 'Asset Level Resolution' i.e., an asset by asset solution explored through various methods (as set out in the Resolution Framework) and in some cases, the sale of a business vertical comprising of a basket of companies and other entities is the most feasible option for resolution of the Applicant Group. The Resolution Framework in particular also *inter alia* sets forth that with regard to companies/entities of the Applicant Group where there are no

current operating liabilities and statutory liabilities, the New Board may take steps for these companies to be wound up [*Para 8.3 of the Resolution Framework*].

9. In the meanwhile, in terms of various orders the Hon'ble NCLAT has directed that the resolution of all entities of the Applicant Group shall be in accordance with the Resolution Framework, subject to the supervision of Hon'ble Justice (Retd.) D.K. Jain, the retired judge of the Hon'ble Supreme Court who was appointed by the Hon'ble NCLAT vide orders dated February 4, 2019 (“**February 4 Order**”) and February 11, 2019 (“**February 11 Order**”) to oversee the resolution process of the Applicant Group. *Vide* February 4 Order the Hon'ble NCLAT directed the UoI and IL&FS to file an affidavit *inter alia* setting out the names of entities in the Applicant Group which are incorporated within the territorial jurisdiction of India (“**Indian IL&FS Entities**”) and entities that are incorporated in other countries (“**Offshore IL&FS Entities**”). In compliance, the UoI filed an affidavit dated February 11, 2019 placing on record before the Hon'ble NCLAT, the list of 169 Indian IL&FS

10. Based upon the recommendations of Hon’ble Justice Mr. D. K. Jain (Retd.), the resolution was then to be placed before this Tribunal for approval. The approval by this Tribunal would formalize and finalize the resolution of the individual or collective group entities.
11. By an order dated September 19, 2019 (“**September 19 Order**”) the Hon’ble NCLAT directed the Petitioner and the Applicant to determine the way forward for entities where there is no chance of resolution. Pursuant to the directions in the September 19 Order, the New Board and its advisors evaluated the list of domestic entities in the Applicant Group which can be released from the ambit of the October 15 Order *inter alia* on the basis that the resolution for the entity is ongoing under processes initiated by the New Board (such as voluntary liquidation) and entities that have limited or no business operations including the entities forming a subject matter of the Five (05) Closure Applications. A list of 55 such entities was communicated to the Petitioner and was in turn filed by the Petitioner with the Hon’ble NCLAT along with affidavit

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dated January 9, 2020 (“**January 2020 Affidavit**”) praying
for the exclusion of these Applicant Group entities from the
scope and operation of the October 15 Order (reiterated in
Affidavit dated February 7, 2020 (“**February 2020
Affidavit**”).

12. The Hon’ble NCLAT *vide* the March 12 Order approved the resolution of the Applicant Group to continue as per the procedure suggested by the Petitioner which inter alia includes the Resolution Framework and the procedures suggested in the February 2020 Affidavit where, amongst others, the resolution procedures such as closure/ termination/ liquidation under relevant laws for the 55 Applicant Group entities.
13. The following are the brief facts relating to the seven entities for which the reliefs have been sought:

I. Company Application No. 345 of 2021

- (i) This Company Application has been filed seeking approval for closure of Damodar Valley Tourism Development Private Limited (“**DVTDPL**”) under Section 271(e) of the Companies Act, 2013

liquidation of Odisha e-Governance Services Limited
 (“**OeSL**”) under Section 59 of the Insolvency and
Bankruptcy Code, 2016.

DVTDPL

- (ii) DVTDPL was incorporated in 2007 as a 50:50 joint venture between Damodar Valley Corporation (“**DVC**”) and IL&FS Infrastructure Development Corporation Limited (“**IIDC**”) to facilitate the development of tourism-related infrastructure projects on DVC land parcels in West Bengal. Pursuant to internal restructuring within the Applicant Group, the equity shares of DVTDPL held by IIDC were transferred to the IL&FS IIDC Fund (the “**Fund**”). Presently, 50% of shareholding in DVTDPL is held by DVC, while the other 50% is held by the Fund.
- (iii) While DVTDPL submitted proposals from time to time for taking up different project development activities, due to restrictions and other regulatory impediments, these projects could not be

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implemented. In light of which DVTDPL remained
non-operational since inception.

(iv) As on March 31, 2022, the assets and liabilities of
DVTDPL are as follows:

a) Assets: INR 45.07 lacs

b) Liabilities: INR 41.67 lacs

*[Annexure 14 (Audited Financials for FY 19-20 @ Pgs.
461-484, Vol. III of the Application and [Annexure 15
(Unaudited financials for FY 2020-2021) @ Pgs. 485-502,
Vol. III of the Application].*

(v) Under the terms of the Resolution Framework,
Alvarez & Marsal, the Resolution Consultant
appointed by the New Board *vide* email dated June 23,
2021 recommended the closure of DVTDPL under
Section 271(e) of the Companies Act.

(vi) Thereafter, the following approvals/ authorisations
were also obtained:

a) ITUAL Recommendation dated June 25, 2021

*[Annexure 18 @Pgs. 512-513, Vol. III of the
Application]*

- b) Management Committee Approval dated June 25, 2021 [*Annexure 19 @Pgs.514-517, Vol. III of the Application*]
- c) Fund Approval dated June 29, 2021 [*Annexure 20 @Pg.518, Vol. III of the Application*]
- d) IIML Recommendation dated June 29, 2021 [*Annexure 21 @Pg.519, Vol. III of the Application*]
- e) Trustee's letter dated July 6, 2021 [*Annexure 22 @Pg.520, Vol. III of the Application*]
- f) IFIN Board Approval dated July 23, 2021 [*Annexure 23 @Pg.521, Vol. III of the Application*]
- g) New Board Approval dated July 29, 2021 [*Annexure 24 @Pg.522, Vol. III of the Application*].
- (vii) Thereafter, by a letter dated August 5, 2021, Justice (Retd.) D.K. Jain accorded his approval to initiate winding up of DVTDPL under Section 271(e) of the Companies Act.
- (viii) Subsequent to the filing of the Application, the Applicant has received a notice of strike off and dissolution dated February 10, 2022 (“**Notice**”) from the office of the Registrar of Companies, Kolkata after filing the captioned application, stating that

Further Affidavit]. The Applicant placed the notice on record through a further affidavit dated April 18, 2022 (**“Further Affidavit”**).

(ix) As submitted in the Further Affidavit, despite the Notice, the Applicant would require the approval of Hon’ble Tribunal to initiate winding up of the company for the following reasons:

a) Under the provisions of the Companies Act, the assets of DVTDPL, if any, notwithstanding its striking-off under Section 248, are to be applied towards settling its liabilities.

b) Moreover, while DVTDPL stands dissolved under Section 248 of the Companies Act and its certificate of incorporation is deemed to be cancelled, there is an exception carved out for the purpose of realising any amounts due to DVTDPL and for the payment or discharge of the liabilities or obligations of DVTDPL [*Paras 3(C)–(E) @Pg. 4 of the Further Affidavit*];

c) Section 248(8) of the Companies Act sets out that the striking off under Section 248(5) does not

affect the power of this Hon'ble Tribunal to wind

up a company, the name of which has been struck

off from the register of companies; and

- d) the issuance of the Notice clearly demonstrates that DVTDPL is a fit case for winding up, having had no operations, cashflows or revenues since its incorporation.
- (x) Applicant submits that once this Tribunal has approved the closure of DVTDPL, the Applicant will file an application for winding up of DVTDPL to its jurisdictional bench of the Tribunal.

OeSL

- (xi) OeSL was incorporated as a 50:50 joint venture special purpose vehicle between the Applicant and Orrisa Computer Application Centre (**OCAC**) for development of various e-governance initiatives in Orissa.
- (xii) OeSL had received a demand-cum-show cause notice dated August 30, 2017 from Joint Commissioner, GST & Customs, Bhubaneshwar
- (xiii) OeSL paid an amount of INR 94,03,044/- under the said scheme; pursuant to which a discharge certificate

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for full and final settlement of tax dues under Section
127 of the Finance (No. 2) Act, 2019 on March 17,
2020.

- (xiv) Since OeSL has had no operations or revenue since April 2018, the Resolution Consultant *vide* a note dated June 7, 2021 has recommended closure of OeSL by voluntary liquidation under Section 59 of the IBC.
- (xv) By a letter dated August 11, 2021, Justice (Retd.) D.K. Jain has accorded his approval to initiate voluntary liquidation of OeSL under Section 59 of the IBC.
- (xvi) Further, two board resolutions dated June 18, 2021 and June 29, 2021 in favour of the liquidation have also been passed.

Submissions:

- (i) It is submitted that DVTDPL has remained a non-operational entity since its inception. DVTDPL has no revenue stream, cash flows or business operations. There is no likelihood of execution/ implementation of any projects in the near future. Keeping this entity

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alive, without any business operations would incur
additional liabilities and administrative costs.

- (ii) Further, it is stated that since April 2019, DVTDPL's Board of Directors (**DVTDPL Board**) does not have any representatives of DVC. Repeated requests to DVC apprising it of the dormancy of DVTDPL and requesting it to nominate directors for the DVTDPL Board have yielded no avail as no response has been received from DVC. Given the prevailing circumstances, where a Board resolution or special resolution cannot be passed as per Section 271(a) or Section 361 of the Companies Act due to the absence of nominee directors of DVC on the DVTDPL Board or specific NOC and waiver for the same, it would be deemed fair and equitable to wind up DVTDPL under Section 271(e) of the Companies Act.
- (iii) Section 248(8) of the Companies Act sets out that the striking off under Section 248(5) does not affect the power of this Hon'ble Tribunal to wind up a company, the name of which has been struck off from the register of companies and the issuance of the Notice clearly demonstrates that DVTDPL is a fit

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case for winding up, having had no operations,
cashflows or revenues since its incorporation.

- (iv) It is submitted that OeSL has ceased all its operations since April 1, 2018. All statutory dues in terms of taxation have been cleared by the said company. Since OeSL has no financial/ operational liabilities, it would only be fitting that the voluntary liquidation of OeSL be allowed.
- (v) Only once this Hon'ble Tribunal accords its approval for the closure of DVTDPL and OeSL, the Applicant will be able to file an application for winding up of DVTDPL and voluntary liquidation of OeSL to its jurisdictional bench of the National Company Law Tribunal.
- (vi) The resolution of DVTDPL and OeSL by the aforesaid modes will directly result in reduction of liabilities, which would enable an effective resolution of the larger Applicant Group.

II. Company Application No. 294 of 2021

- (i) This Company Application is filed seeking approval for initiating winding up proceedings

2013 for Futera Infrastructure India Limited (“FIIL”); (ii) initiating winding up of IL&FS Infrastructure Equity Fund (“IEF”) and IL&FS Infrastructure Equity Fund – I (“IEF-I”) under their respective private placement memorandums and contribution agreements in accordance with Indian Trusts Act, 1882 and the applicable Indenture of Trust.

- (ii) FIILFIIL is an entity in the Applicant Group, where 58.48% of the shareholding is held by IL&FS Transportation Networks Limited (“ITNL”) jointly with 4 other shareholders. It was incorporated to develop urban service infrastructures for SEZ’s and commercial complex, tourism project and parking.
- (iii) FIIL was part of a consortium selected for development of a parking complex in Hyderabad. However due to failure of the Government in allotting land, the project did not achieve financial closure. The concession

terminated. The Special Purpose Vehicle incorporated for the project, i.e, Charminar RoboPark Limited (**CRL**) has already been permitted to be wound up.

(iv) As on March 31, 2020 the financials of FIIL are as follows:

a) *Liabilities*: INR 0.112 Crores

b) *Net worth*: INR 0.764 Crores

[Audited Financials, Annexure 22 @ Pgs. 583-610 Vol. IV of the Application]

(v) Under the terms of the Resolution Framework, Alvarez & Marsal, the Resolution Consultant appointed by the New Board *vide* email dated March 11, 2021 recommended the closure of FIIL under Section 271(e) of the Companies Act.

(vi) Thereafter, the following approvals and authorisations were also obtained:

a) ITNL Board Resolution dated March 16,

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2021 [*Annexure 24@ Pg. 612, Vol. IV of the
Application*]

b) New Board Resolution dated March 20,
2021 [*Annexure 25 @ Pg. 613, Vol. IV of the
Application*]

(vii) It is submitted that due effort was made for approval from other shareholders however no consent/communication from other shareholders was received despite repeated follow-ups by ITNL [*Annexure 19 Colly (Letters and Reminders) @ Pgs. 548- 558, Vol. IV; Annexure 20 (Delivery Receipts)@Pgs. 559-570, Vol. IV of the Application*]

(viii) Thereafter, by a letter dated May 24, 2021 Justice (Retd.) D.K. Jain has accorded his approval by a letter winding up of FIIL under Section 271(e) of the Companies Act.

IIEF

(ix) IIEF is an entity in the Applicant Group, incorporated under the Indian Trusts Act, 1882

was structured as unit scheme of IL&FS Equity Trust to undertake equity or equity related/mezzanine capital investments in India. IL&FS is the sole beneficiary of IIEF

- (x) Over time IL&FS bought and sold investments of 400 to 981 crores during FY 2002-03 to FY 2012-13. All investments have now been divested and there have been no operations since.
- (xi) As on March 31, 2020, the assets and liabilities of IIEF are as follows:
 - a) Liabilities: INR 17.700 lakhs of current liabilities and INR 22.47 lakhs of unitholder funds
 - b) Assets: INR 22.65 lakhs
- (xii) As per the official portal of the income tax authorities, IIEF is eligible to receive an income tax refund of INR 17,26,510/-for the assessment year 2008-2009. In relation thereof,

IIEF sought its auditor's opinion. However, the

auditor has opined that such a refund at this

stage is unlikely [*Auditor Opinion [Annexure 34 @*

Pg. 722-724 Vol. V of the Application]

(xiii) Under the terms of the Resolution Framework,

Alvarez & Marsal, the Resolution Consultant

appointed by the New Board *vide* email dated

November 26, 2020 recommended the closure

of IIEF under placement memorandums and

contribution agreements in accordance with

Indian Trusts Act, 1882 and the applicable

Indenture of Trust.

(xiv) Thereafter, the following approvals and

authorisations have been obtained in

furtherance of the intended closure:

a) IL&FS Consent Letter for Winding Up

dated December 28, 2020. [*Annexure 35 @*

Pgs. 725-728, Vol. V of the Application]

b) ITCL (Trustee) Consent for Winding Up

dated December 29, 2020 [*Annexure 36 @ Pg.*

729, Vol. V of the Application]

c) New Board resolution dated December 19,

2020 [*Annexure 46 @ Pg. 838-839, Vol. VI of the Application*]

- (xv) By a letter dated May 28, 2021, Justice (Retd.) D.K. Jain accorded his approval for the closure of IIEF under its private placement memorandum and contribution agreement under the Indian Trusts Act, 1882 and the Indenture of Trust.

IIEF-I

- (xvi) IIEF-I was structured as unit scheme of IL&FS Equity Trust to undertake equity or equity related/mezzanine capital investments in India. **IFIN** is the sole beneficiary of the Fund.
- (xvii) Over the course of its operations IIEF-I made investments aggregating to INR 154.84 crores. All investments have been divested (except liquid funds of INR 8.9 lakhs).
- (xviii) As on March 31, 2020 the assets and liabilities of IIEF-I are as follows:

a) Liabilities: INR 2.47 lakhs of current

liabilities and INR of 98.36 lakhs of unitholder funds.

b) Assets: INR 1 Crores

(xix) Under the terms of the Resolution Framework, Alvarez & Marsal, the Resolution Consultant appointed by the New Board *vide* email dated November 26, 2020 recommended the closure of IIEF-I under placement memorandums and contribution agreements in accordance with Indian Trusts Act, 1882 and the applicable Indenture of Trust.

(xx) Thereafter, the following approvals and authorisations have been obtained:

a) IFIN Consent Letter for Winding Up dated December 28, 2020 [*Annexure 43 @ Pg. 833, Vol. VI of the Application*]

b) ITCL (Trustee) Consent for Winding Up dated December 29, 2020 [*Annexure 44 @ Pg. 834, Vol. VI of the Application*]

c) IFIN Board Resolution dated December 16,

2020 [*Annexure 47 @ Pgs. 840-841 Vol. VI of the Application*]

d) New Board resolution dated December 19,

2020 [*Annexure 46 @ Pg. 838-839 Vol. VI of the Application*]

(xxi) By a letter dated May 28, 2021, Justice (Retd.)

D.K. Jain accorded his approval for the closure of IIEF-I under its private placement memorandum and contribution agreement under the Indian Trusts Act, 1882 and the Indenture of Trust.

Submissions:

(i) It is submitted that FIIL has not carried out any business activity for the last few years and no immediate or revenue generating business is proposed for it. Furthermore, the only project invested in by FIIL, i.e., the Project to be implemented by CRL, has also been terminated, and moreover, pursuant to the

proceedings are being initiated even with respect to CRL. It is submitted that therefore, no revenue is likely to be generated through any business operations of FIIL.

- (ii) It is submitted that with respect to IIEF, the entire investment has been sold, and all proceeds have been distributed to the beneficiaries. No investments have been made since January 2013 and as such there have been no operations in IIEF since then.
- (iii) Similarly, in the case of IIEF-I, the fund has been making divestments since September 2018. All liabilities towards its investors have been extinguished, leaving only certain liquid funds of INR 8,90,200 lakhs which are to be divested and the proceeds there of are to be distributed imminently. Subsequent to this, there is no further activity proposed in the scheme.
- (iv) It is submitted that in light of the dormancy of

the above entities, its failure to undertake any

business operations or generate revenue, these

entities will continue to add to the liabilities of

the Applicant Group, if not wound up.

- (v) Only once this Hon'ble Tribunal accords its approval for the closure of FIIL, IIEF, IIEF-I then the Applicant will be able to file an application for winding up of voluntary liquidation of these entities to its jurisdictional bench of the National Company Law Tribunal and/or before other authorities.
- (vi) The resolution of FIIL, IIEF and IIEF-I by the aforesaid modes will directly result in reduction of liabilities, which would enable an effective resolution of the larger Applicant Group.

III. Company Application No. 2 of 2022

- (i) This Company Application seeks approval of this Hon'ble Tribunal to: (i) initiate winding up of Jogihali Wind Energy Private Limited (“JWEPL”) under Section 271(a) of the

Companies Act (ii) initiate winding up of Sipla

Wind Energy Limited (“**SWEL**”) under

Section 271(a) of the Companies Act, and (iii)

initiate corporate insolvency resolution process

(“**CIRP**”) of Mahidad Wind Energy Private

Limited (“**MWEPL**”) under Section 10 of the

Insolvency and Bankruptcy Code, 2016

(“**IBC**”).

(ii) IL&FS Energy Development Limited

(“**IEDCL**”) entered into an MOU with

Enercon (India) Limited (“**EIL**”) on June 28,

2010 for execution of 1,008MW of wind power

projects. EIL was later changed to Wind World

(India) Limited (“**WWIL**”) and eventually,

IEDCL and WWIL decided to implement only

1004 MW out of the total capacity of 1008 MW

whereas 775.2 MW of wind power projects

were to be implemented by a set 5 other

companies of IEDCL and the remaining 228.8

MW were to be executed by 3 special purpose

vehicle companies, namely MWEPL, JWEPL

implementation of the wind power projects by WWIL, it along with, IEDCL, MWEPL, JWEPL, SWEL and IL&FS Renewable Energy Limited (“IREL”) and Wind World Wind Resources Development Private Limited executed an agreement dated October 1, 2016, whereby the order for capacity was reduced. In February 2018, CIRP has been initiated against WWIL and MWEPL and JWEPL and SWEL have submitted claims as financial creditors of WWIL.

MWEPL:

- (iii) MWEPL was incorporated in 2014 as a wholly owned subsidiary of IEDCL for the purpose of developing 84.8 MW of wind farm projects in Gujarat and Maharashtra.
- (iv) The requisite capacity could not be commissioned by WWIL to MWEPL primarily due to huge outstanding payments to subcontractors of WWIL and expiry of Revised

List of Manufacturers and Machines

(“**RLMM**”) certification. The certification is essential for connecting wind energy generators to the grid. Further, on account of non-payment of their dues, the local yard landowners in their respective states started denying access to the yards where materials owned by MWEPL were being kept. Attempts to resolve these right of way (“**RoW**”) issues have failed. Despite taking adequate efforts, the matter is pending almost for the past two years.

- (v) Although two attempts have been made to initiate a transparent bidding process for MWEPL, no binding bids were received during both attempts. Various other operational difficulties with regards to supply of critical components like control cabinet, power cabinet, steel ropes and transformers etc are also being faced by MWEPL.
- (vi) As on March 31, 2021, the assets and liabilities of MWEPL are as follows:

a) Assets: INR 71.15 crores.

b) Liabilities: INR 71.15 crores [*Annexure 13*

(Audited Financials for FY 2020-2021) @ Pgs.

495-543, Vol-III of the Application]

(vii) The Resolution Consultant appointed under the Resolution Framework *vide* email dated October 20, 2021 has also recommended the CIRP of MWEPL under section 10 of the IBC.

(viii) Thereafter, the following approvals and authorisations have been obtained in furtherance of the intended closure:

a) MWEPL Board Approval dated October 21, 2021 [*Annexure 17 @ Pg. 672, Vol. IV of the Application]*

b) IEDCL Board Approval dated October 26, 2021 [*Annexure 18 @ Pg. 673, Vol. IV of the Application]*

c) New Board Approval dated October 30, 2021 [*Annexure 19 @ Pg. 674, Vol. IV of the Application]*

(ix) By a letter dated March 24, 2022 Justice (Retd.)

D.K. Jain accorded his approval for the closure of MWEPL under section 10 of the IBC.

SWEL

(x) Nakhatrana Biomass Energy Limited was incorporated in 2011 and its name was changed to SWEL in 2014 for the purpose of developing 66.4 MW of wind farm projects in Rajasthan and Karnataka. SWEL is also a wholly owned subsidiary of IEDCL.

(xi) The requisite capacity could not be commissioned by WWIL to SWEL primarily due to huge outstanding payments to subcontractors of WWIL and expiry of RLMM certification. The certification is essential for connecting wind energy generators to the grid. Further, on account of non-payment of their dues, the local yard landowners in their respective states started denying access to the yards where materials owned by SWEL were being kept. Attempts to resolve these RoW

- (xii) Various other operational difficulties with regards to supply of critical components like control cabinet, power cabinet, steel ropes and transformers etc are also being faced by SWEL.
- (xiii) As on March 31, 2021, the assets and liabilities of SWEL are as follows:
- d) Assets: INR 39.87 crores.
- a) Liabilities: INR 39.87 crores
- [Annexure 29 (Audited Financials for FY 2020-21) @ Pgs. 838-885, Vol. VI of the Application]*
- (xiv) The Resolution Consultant appointed under the Resolution Framework *vide* email dated October 20, 2021 has also recommended the winding up of SWEL under section 271 (a) of the Companies Act.
- (xv) Thereafter, the following approvals and authorisations have been obtained in furtherance of the intended closure:

a) SWEL Board Approval dated October 21,

2021 [*Annexure 32 @ Pg. 904, Vol. VI of the Application*]

b) IEDCL Board Approval dated October 26,

2021 [*Annexure 33 @ Pg. 905, Vol. VI of the Application*]

c) New Board Approval dated October 30,

2021 [*Annexure 34 @ Pg. 906, Vol. VI of the Application*]

(xvi) By a letter dated March 24, 2022 Justice (Retd.)

D.K. Jain accorded his approval for the closure of SWEL under section 271 (a) of the Companies Act.

JWEPL:

(xvii) JWEPL was incorporated in 2014 as a wholly owned subsidiary of IEDCL for the purpose of developing 77.6 MW of wind farm projects in Rajasthan and Karnataka. No capacity was allocated to JWEPL and its assets were sold to MWEPL and SWEL.

(xviii) As on March 31, 2021, the assets and liabilities

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of JWEPL are as follows:

a) Assets: INR 2.76 crores.

b) Liabilities: INR 2.76 crores

*[Annexure 22 (Audited Financials for FY 2020-
21) @ Pgs. 707-747, Vol. IV of the Application]*

(xix) The Resolution Consultant appointed under the Resolution Framework *vide* email dated October 20, 2021 has also recommended the winding up of JWEPL under section 271(a) of the Companies Act.

(xx) Thereafter, the following approvals and authorisations have been obtained in furtherance of the intended closure:

a) JWEPL Board Approval dated October 21, 2021 *[Annexure 24 @ Pg. 751, Vol. V of the Application]*

b) IEDCL Board Approval dated October 26, 2021 *[Annexure 25 @ Pg. 752, Vol. V of the Application]*

c) New Board Approval dated October 30,

2021 [*Annexure 26 @ Pg. 753, Vol. V of the Application*]

(xxi) By a letter dated March 24, 2022 Justice (Retd.)

D.K. Jain accorded his approval for the closure of JWEPL under section 271(a) of the Companies Act.

Submissions:

- (i) It is submitted that resolution of JWEPL is contingent upon the resolution of WWIL. JWEPL is expected to receive INR 1.8 crores as against its admitted claim of INR 58.6 crores. However, the resolution of WWIL has been entangled in legal process and there is no visibility on completion of the resolution of WWIL.
- (ii) Further, Recovery of JWEPL's dues from SWEL and MWEPL is contingent upon the resolution of SWEL and MWEPL. However, access to the assets of these companies is a

major challenge due to severe RoW issues and

their recovery from WWIL is also pending.

Since there is a secured financial creditor in case of MWEPL, it is likely that the recovery for JWEPL from MWEPL may be negligible.

- (iii) Since MWEPL, SWEL and JWEPL are non-operational entities with no foreseeable solutions to their dormancy, it would be in the larger public interest that these entities be allowed to be closed through the means of CIRP and winding up, respectively.
- (iv) Only once this Hon'ble Tribunal accords its approval for the closure of these entities, the Applicant will be able to file an application for the same to its jurisdictional bench of the National Company Law Tribunal.
- (v) The resolution of MWEPL, SWEL and JWEPL by the aforesaid modes will directly result in reduction of liabilities, which would enable an effective resolution of the larger Applicant Group.

IV. Company Application No. 137 of 2022

(vi) This Company Application has been filed seeking approval from this Hon'ble Tribunal to initiate winding up of Patiala Bio-Power Company Limited (“**PBPCL**”) under Section 271(a) of the Companies Act; (ii) initiate winding up of Vansh Nimay Infraprojects Limited (“**VNIL**”) under Section 271(a) of the Companies Act; (iii) initiate winding up on IL&FS Solar Power Limited (“**ISPL**”) under Section 271(a) of the Companies Act and (iv) initiate winding up of Assam Power Project Development Company Limited (“**APPDCL**”) under Section 361 of the Companies Act.

PBPCL

(vii) PBPCL was incorporated in 2011 as a wholly owned subsidiary of ILFS Energy Development Company Limited (“**IEDCL**”) for the purpose of development, construction and operation of renewable energy projects.

(viii) PBPCL intended to implement a 12MW

biomass power plant in the state of Punjab and

had acquired land for setting up of power plant.

However, nothing substantial has materialized

thereafter and the management of PBPCL also

did not undertake any activities to develop the

project at that time. There has been no activity

in PBPCL since then and it has remained non-

operational.

(ix) As on March 31, 2021, the assets and liabilities

of PBPCL are as follows:

d) Assets: INR 80.08 mn.

e) Liabilities: INR 80.08 mn.

[Annexure 8 (Audited Financials for FY 20-21 @

Pgs. 443-485 Vol. III of the Application]

(x) The Resolution Consultant appointed under

the Resolution Framework vide email dated

January 20, 2022 has also recommended the

closure of PBPCL under section 271 (a) of the

Companies Act.

(xi) Thereafter, the following approvals and

authorisations have been obtained in furtherance of the intended closure:

a) PBPCL Board Approval dated January 27, 2022 [*Annexure 10 @ Pg. 489, Vol. III of the Application*]

b) IEDCL Board Approval dated February 1, 2022 [*Annexure 11 @ Pg. 490, Vol. III of the Application*]

c) IL&FS New Board Approval dated February 9, 2022 [*Annexure 12 @ Pg. 491, Vol. III of the Application*]

(xii) By a letter dated March 24, 2022 Justice (Retd.) D.K. Jain accorded his approval for the closure of PBPCL under section 271 (a) of the Companies Act.

VNIL

(xiii) VNIL is a subsidiary of ITNL. VNIL was set up with the main object of running, operating and maintaining public transport service within the municipal limits of Nagpur.

(xiv) VNIL entered into agreements with Nagpur

Municipal Corporation (“NMC”) for operation of buses per the fare structure as agreed several factors such as students’ concession, infrequent and inadequate fare revision by MSRTC and increase in fuel prices led to VNIL being always in cash deficit. As a result, VNIL was availing short term loans from ITNL for its operations and debt servicing. VNIL has been filing claims for reimbursement of the concessional fare from the NMC since 2008.

(xv) In March 2017, VNIL filed consolidated and updated claims with NMC on account of loss in concessional fares, non-revision of fares, loss due to illegal competing transport, non-utilization of the bus advertisement potential. NMC eventually terminated the agreement vide letter dated November 20, 2016. Consequently, VNIL enforced the arbitration clause under the Agreement. The arbitration

the Arbitral Tribunal. VNIL also moved and application for interim reliefs before the Nagpur Bench of the Bombay High Court in relation to the dispute concerning ownership of buses.

(xvi) As per the direction of the Hon'ble Court, NMC is dealing with the disposal of the buses and is required to transfer the sale proceeds to an escrow account for which it has initiated auction process.

(xvii) As on March 31, 2021, the assets and liabilities of VNIL are as follows:

a) Assets: INR 912.81 mn.

b) Liabilities: INR 1797.31 mn.

[Annexure 17 (Audited Financials for FY 20-21

@ Pgs. 524-566, Vol. IV of the Application]

(xviii) The Resolution Consultant appointed under the Resolution Framework vide email dated January 20, 2022 has also recommended the closure of VNIL under section 271 (a) of the

(xix) Thereafter, the following approvals and authorisations have been obtained in furtherance of the intended closure:

a) VNIL Board Approval dated February 8, 2022 [*Annexure 19 @ Pgs. 570-571, Vol. IV of the Application*]

b) ITNL Board Approval dated February 9, 2022 [*Annexure 20 @ Pg. 572, Vol. IV of the Application*]

c) New Board Approval dated February 12, 2022 [*Annexure 21 @ Pg. 573, Vol. IV of the Application*]

(xx) By a letter dated March 24, 2022 Justice (Retd.) D.K. Jain accorded his approval for the closure of VNIL under section 271 (a) of the Companies Act.

ISPL

(xxi) ISPL is a wholly owned subsidiary of IEDCL. IEDCL has developed a unique model for implementation of solar/wind projects for third

parties (i.e., industrial and commercial

consumers) in states having conducive

renewable energy policies on ‘deferred

payment’ basis. Under this model, IEDCL

through its subsidiary ISPL, had set up a 100

MW photovoltaic solar project in Karnataka for

Embassy Group, Bangalore.

(xxii) ISPL (as contractor) and Embassy Energy

Private Limited (“**EEPL**”) (as owner) executed

an Erection, Testing and Commissioning

Agreement on November 7, 2017 for the

purpose of setting up of a solar photovoltaic

electricity generation facility in Karnataka with

a minimum capacity of 100MW (“**Project**”).

The parties also executed an Agreement for

Operation and Maintenance dated February

10, 2017 for the operation and maintenance of

the Project (“**O&M Agreement**”) and a

Deferred Payment Agreement dated March 3,

2017 (“**DPA**”). The Project was commissioned

on February 28, 2018. As per the terms of the

DPA, ISPL funded the Project and EEPL was

to repay to ISPL on equated monthly

instalments basis. EEPL also provided some

security as per the terms of the DPA.

Thereafter, EEPL terminated the DPA on

November 18, 2020 and made the upfront

payment of approximately INR 777.53 crores

on December 11, 2020. With the payment

received from EEPL, ISPL paid off all its

creditors. EEPL terminated the O&M

Agreement on August 11, 2021. After the

termination of the O&M Agreement by EEPL,

ISPL presently does not have any business

activity related to the Project or any other active

operations.

(xxiii) As on March 31, 2021, the assets and liabilities

of ISPL are as follows:

a) Assets: INR 243.16 mn.

b) Liabilities: INR 243.16 mn.

[Annexure 27 (Audited Financials for FY 20-21

@ Pgs. 789-836, Vol. V of the Application]

(xxiv) The Resolution Consultant appointed under

December 24, 2021 has also recommended the closure of ISPL under section 271 (a) of the Companies Act.

(xxv) Thereafter, the following approvals and authorisations have been obtained in furtherance of the intended closure:

a) ISPL Board Approval dated February 4, 2022 [Annexure 29 @ Pg. 840, Vol. V of the Application]

b) IEDCL Board Approval dated February 5, 2022 [Annexure 30 @ Pg. 841, Vol. V of the Application]

c) New Board Approval dated February 10, 2022 [*Annexure 31 @ Pg. 842, Vol. V of the Application*]

(xxvi) By a letter dated March 24, 2022 Justice (Retd.) D.K. Jain accorded his approval for the closure of ISPL under section 271 (a) of the Companies Act.

APPDCL

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137/2022 and CA No. 224/2022 In C.P (IB) No. 3638/MB/2018
(xxvii) APPDCL was set up as a 50:50 joint venture

of Government of Assam and IEDCL.

APPDCL signed a memorandum of agreement with Assam Power Generation Corporation Limited on September 24, 2010 to develop small hydro projects on Borpani river and its tributaries in Karbi Anglong district of Assam.

(xxviii) APPDCL has no operational activity since the past 3 years and is being considered for either sale of its stake or closure by the Government of Assam, post necessary decisions on settlement of its outstanding receivables/ payables.

(xxix) As on March 31, 2021, the assets and liabilities of APPDCL are as follows:

- a) Assets: INR 76,95,197.
- b) Liabilities: INR 76,95,197.

[*Annexure 37 (Audited Financials for FY 20-21*
@ Pgs. 908-948, Vol. VI of the Application]

(xxx) The Resolution Consultant appointed under the Resolution Framework vide email dated October 6, 2021 has also recommended the closure of APPDCL under section 361 of the Companies Act.

(xxxii) Thereafter, the following approvals and authorisations have been obtained in furtherance of the intended closure:

- a) APPDCL Board Approval dated November 8, 2021 [*Annexure 39 @ Pg. 952, Vol. VI of the Application*]
- b) APPDCL Shareholders Approval dated November 16, 2021 [*Annexure 40 @ Pg. 953, Vol. VI of the Application*]
- c) IEDCL Board Approval dated December 24, 2021 [*Annexure 41 @ Pg. 954, Vol. VI of the Application*]
- d) New Board Approval dated January 3, 2022 [*Annexure 42 @ Pg. 955, Vol. VI of the Application*]

(xxxiii) By a letter dated March 15, 2022 Justice

closure of APPDCL under section 361 of the
Companies Act.

Submissions:

- (i) There is no immediate business being proposed for PBPCL, and accordingly, it has no cashflows, revenue or operations. Receivables from various entities have been provisioned by the PBPCL management as no recovery is expected. Accordingly, keeping PBPCL alive will only incur additional liabilities and administrative costs.

- (ii) It is submitted that VNIL has no current business operations. There has been limited progress on the arbitration proceedings that were initiated in 2017. This entity is in no position to sustain these arbitration proceedings and support subsequent litigation given that it has a cash balance of INR 0.02 Cr. Keeping ISPL alive will incur additional liabilities.

(iii) It is submitted that post termination of O&M

contract there are no further business operations being conducted by ISPL and keeping the entity alive will incur additional liabilities and administrative costs.

(iv) It is submitted that the book value of the assets

of APPDCL is less than INR 1 Crore, and the turnover for is less than INR 50 Crores therefore, APPDCL is eligible for summary liquidation under section 361 of Companies Act.

(v) Since all of these four entities are non-operational entities with no foreseeable solutions to their dormancy, it would be in the larger public interest that these entities be allowed to be closed through the means of winding up.

(vi) Only once this Hon'ble Tribunal accords its approval for the closure of these entities, the Applicant will be able to file an application for the same to its jurisdictional bench of the

- (vii) The resolution of these entities by the aforesaid modes will directly result in reduction of liabilities, which would enable an effective resolution of the larger Applicant Group.

V. Company Application No. 224 of 2022.

- (i) This Company Application seeks approval to initiate winding up of Sealand Warehousing Private Limited (“SWPL”) under Section 271(a) of the Companies Act.
- (ii) SWPL was incorporated in 2007. As on February 2022, IL&FS Maritime Infrastructure Company Limited (“IMICL”) holds 100% of the equity of SWPL along its nominee. It should be noted that in 2012, SWPL was allotted 8392 non-cumulative redeemable and non-convertible preference shares of Gujarat Integrated Maritime Complex Private Limited (“GIMCO”) with a face value of INR 100 (**Preference Shares**).

- (iii) Vide a letter of intent (“**LOI**”) dated January 20, 2016, Gujarat Maritime Board (“**GMB**”) conveyed its approval to **GIMCO** to develop shipbuilding /repair yard at Nana Layja for a lease period of 30 years. However, vide letter dated October 4, 2019, GMB cancelled the said LOI issued for development of shipbuilding /repair yard as the requisite environment clearances could not be obtained within the prescribed timelines. In the period between July 2019 and July 2020, efforts were being made by IMICL to monetize the said land parcels held by GIMCO.
- (iv) In October 2020, an expression of interest was floated for sale of 90% of equity holding and 100% of preference capital holding in GIMCO, however, no binding bid was received.
- (v) As on March 31, 2022, the assets and liabilities of SWPL are as follows:
- a) Assets: INR 1.4 crores
 - b) Liabilities: INR 0.03 crores

[Annexure 21 (Audited Financials for FY 2020-2021) @ Pgs. 567-604, Vol. IV of the Application]

- (vi) Accordingly, the Resolution Consultant vide its recommendation dated January 20, 2022 has recommended the closure of SWPL under Section 271(a) of the Companies Act.
- (vii) Thereafter, the following approvals and authorisations were also obtained in respect of closure:
- a) SWPL Board Approval dated February 3, 2022 *[Annexure 23 @ Pg. 608 Vol. IV of the Application]*
- b) IMICL Board Approval dated February 11, 2021 *[Annexure 24 @ Pg. 609, Vol. IV of the Application]*
- c) New Board Approval dated February 12, 2022 *[Annexure 25 @ Pg. 610, Vol. IV of the Application]*
- (viii) By a letter dated April 9, 2022, Justice (Retd.) D.K. Jain accorded his approval to initiate

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137/2022 and CA No. 224/2022 In C.P (IB) No. 3638/MB/2018
winding up of SWPL under Section 271(a) of
the Companies Act.

Submissions:

- (i) Since the cancellation of the LOI by GMB, SWPL has no business operations and currently has no assets other than the Preference Shares held in GIMCO.
- (ii) Prior to initiating winding-up and to ensure a more streamlined and efficient closure process, SWPL intends on transferring the Preference Shares, being its only asset in favour of IMICL, its parent entity, for a consideration of INR 1, basis independent valuations.
- (viii) Since SWPL is a completely dormant entity with no business operations underway it would be in the larger public interest that these entities be allowed to be closed through the means of winding up and the resolution of SWPL will aid in the reduction of liabilities, which would enable an effective resolution of the larger

- (ix) Only once this Hon'ble Tribunal accords its approval for the closure of these entities, the Applicant will be able to file an application for the same to its jurisdictional bench of the National Company Law Tribunal.

FINDINGS

We have considered the Closure Applications at hand in the background of facts and circumstances stated above. All the proposed resolutions by way of closure through various modes has also been approved by Justice (Retd.) D.K. Jain former judge of the Hon'ble Supreme Court appointed by the Hon'ble NCLAT to oversee the resolution process of the Applicant Group and to enable a resolution of the Applicant Group in line with the Resolution Framework; and the mandate given by this Tribunal to the New Board. Moreover, we note that there (i) are no and/ or limited operations of; and (ii) no scope for monetisation of, the entities forming the subject matter of the Closure Applications. Keeping these entities alive in the aforesaid facts and circumstances would only result in adding to the number of Applicant Group entities, and accumulation of liabilities to keep the entities alive, which would not be just or equitable. In respect of DVTDPL, in exercise of Section 248 of

the Companies Act, we approve the proposal for closure under Section 271(e) of the Companies Act, 2013 notwithstanding the Strike-Off Notice in order to enable the assets of DVTDPL, if any, to be applied towards settling its liabilities. Thus, we approve the closures as prayed for in the interest of justice without prejudice ofcourse to any proceedings that any investigative or any other authorities may take against the erstwhile directors of the companies that are subject matter of this application.

We allow prayer clauses:

- (i) (A) to (B) of Company Application No. 345 of 2021;
- (ii) (A) to (B) of Company Application No. 294 of 2021;
- (iii) (A) to (C) of Company Application No. 2 of 2022;
- (iv) (A) to (D) of Company Application No. 137 of 2022
and
- (v) (A) to (B) of Company Application No. 224 of 2022.

With the aforesaid observation present **CA Nos. 345 of 2021, 294 of 2021, 137 of 2022, 137 of 2022, 224 of 2022** in **CP (IB) No. 3638/MB/2018** stands disposed of as allowed in above terms.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

07.10.2022
SAM

Sd/-

JUSTICE P. N. DESHMUKH
Member (Judicial)