

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

C.A. 417 OF 2021

Under Rule 32 of the NCLT Rules, 2016

Ravi Ramaswamy Parthasarathy

...**Applicant**

V/s

Union of India & Others

... **Respondents**

In the matter of

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

Union of India, Ministry of Corporate
Affairs,

...Petitioner

V/s.

Infrastructure Leasing and Financial
Service Limited

... Respondent

Order delivered on: 04/12/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Mr. Aditya Bapat Advocate

For the Respondent : None present

ORDER

Per: V.G.Bisht, Member (Judicial)

1. This Application CA 417/2021 is filed by Sh. Ravi Ramaswamy Parthasarathy (“Applicant”) under Rule 32 of the National Company Law Tribunal Rules, 2016 in Company Petition No. 3638/2018, which was filed by Union of India (“Respondent No. 1”) in terms of Section 241 & 242 of Companies Act, 2013 in the matter of Infrastructure Leasing & Financial Services Limited. The Applicant has sought permission to withdraw a sum of Rs. 34,49,440/- for payment of Income Tax Dues for A.Y. 2021-22 from his Bank Account No. 0080766009 maintained with CITI Bank (“Respondent No. 2”).
2. This Tribunal by its Order dated 3rd December 2018 had frozen all movable and immovable properties and assets, including bank accounts of the Applicant. The said Order dated 3rd December 2018 of this Tribunal was subsequently modified by the Tribunal's Order passed on 16th January 2019 in Miscellaneous Application No.126 of 2019. Resultantly, the Applicant's properties and assets including bank account with Citibank (Respondent No. 2 herein) was frozen. By virtue of the Order dated 16th January 2019 passed by this Tribunal, the Applicant was permitted to withdraw and has been withdrawing upto the sum of Rs.2,00,000/- per month from his account with Citibank.
3. It is the case of the Applicant that he is required to pay self assessment income tax for the financial year ended 2020-21 (assessment year 2021-22) of an amount of Rs.34,49,440/-, and he has adequate credit balance in his account with Citibank having its branch at Fort, Mumbai for discharging the said income tax liability of Rs 34.49.440/-

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

C.A. 417 OF 2021

-
- 3.1. The Applicant is approaching this Hon'ble Tribunal for release of funds from his account with Citibank as his account is presently frozen with only permissible withdrawal of upto Rs.2,00,000/- per month for household funds.
- 3.2. The present Company Application is filed for the limited purpose of seeking Orders from this Hon'ble Tribunal for payment of income tax from the Applicant's account with Citibank
4. Respondent No.2 has filed reply stating that Mr. Ravi Parthasarathy (since deceased), held savings bank account bearing No. 0080766009 at its Mumbai Branch. Mr. Ravi Parthasarathy (since deceased) together with his wife, jointly held another savings bank account bearing No. 5603960116 with Respondent No. 2 at its Mumbai Branch ("Said Accounts"). With effect from March 1, 2023, the Respondent No. 2 has reached an agreement with Axis Bank on March 30, 2022 for sale of Respondent No. 2's consumer business in India which includes credit cards, retail banking (including current and savings accounts maintained by retail banking customers with Respondent No. 2), wealth management & consumer loans. This proposed sale excludes Respondent No. 2 institutional client business in India. With regard to the said accounts from which the present Applicant seeks to make withdrawals is currently placed under restriction pursuant to the directions of statutory authorities and hence is not intended to be transferred to Axis Bank.
- 4.1. Pursuant to the aforesaid sale, Respondent No. 2 does not have the ability to maintain and provide any services in relation to the account thereto. Since the said Accounts were under restriction, the same continue to remain with Respondent No 2 in its systems, however, Respondent No. 2 only has the ability to close the Said Accounts and transfer the entire balance contained therein to another bank or individual, as may be directed by this Tribunal.

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

C.A. 417 OF 2021

-
- 4.2. In light of the above circumstances, Respondent No. 2 humbly prays that this Tribunal pass appropriate directions to close the Said Accounts and transfer the entire balance therein to another bank individual, to facilitate effective and efficient compliance of any directions that may be issued by this Hon'ble Tribunal or any other competent court or authority in the present Application.
5. Respondent No. 1 has filed reply stating that the applicant has sought permission to pay income tax of Rs. 34,49,440/- for the previous year 2020-21 (Assessment year 2021-22) out of his account with the Citibank which was frozen pursuant to NCLT Order dated 3.12.2018. For evidence, the applicant has filed his ITR-s for the assessment year 2021-22 as Annexure C of the Application, from which it is found that certain transactions in the nature of transfer of unquoted shares were executed by the applicant in violation of the NCLT order dated 3.12.2018. Accordingly, no further modification of this Tribunal's order dated 3.12.2018 is required at this stage, considering that the investigations by SFIO into the affairs of IL&FS group of companies, including holding company IL&FS Ltd. where the applicant was part of the coterie, are still going. Further, the applicant has prima facie violated the orders of this Tribunal.
6. The Applicant has filed affidavit in rejoinder stating that the units owned solely by my wife Mrs. Vishpala Parthasarthy were disposed of, and in terms of provisions of section 64 of the Income Tax Act, 1961, capital gains/losses of sale of such units incurred by my wife are required to be declared in the return of income of the spouse i.e. myself. Further, the entry at Sl. No. 2 of the table at Para 17 of the reply represents sale proceeds on redemption of units held by me in various mutual funds of Franklin Templeton which were mandatorily redeemed under the directions of Securities and Exchange Board of India (SEBI), and the amounts payable to me at redemption have not been paid to me but remain withheld by Franklin Templeton in compliance with the Order dated 3.12.2018 passed by this Tribunal.
7. We have heard learned Counsel and perused the material available on record.

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

C.A. 417 OF 2021

-
- 7.1. We find that the Respondent No. 1 has opposed this application on the ground of alleged violation of order dated 3.12.2018, whereby transfer of moveable assets by the Applicant was prohibited. However, on the basis of reply, it is seen that capital gain has arisen on account of mandatory redemption of units of Franklin Templeton mutual funds and the funds thereof are not released as yet. This Bench had directed the Franklin Templeton to credit the amounts, representing proceeds on redemption of such units in the account of the Applicant. Further, the similar directions were given in relation to proceeds of sale of units belonging to Applicant's wife Smt. Vipshala Parthasarathy.
- 7.2. This Bench is of considered view that the capital gain tax arising on sale of units owned by applicant's wife ought to be paid out of the funds belonging to her. Accordingly, this Bench directs the Respondent No. 2 to pay the amount of tax attributable to the capital gain arising to Applicant's wife, which is taxed in hands of applicant under clubbing of income provisions of Income Tax Act, 1961 and the Respondent No. 2 shall allow the remaining amounts to be paid out of the Applicant's account maintained with them. It is clarified that the amount of interest payable on tax demand of Rs. 34,49,440/- accrued thereafter shall also be allowed to be paid to the Income Tax Department in addition to the tax amount of Rs. 34,49,440/- as reduced by the tax amount to be paid out of bank account of Applicant's wife.
- 7.3. As regards the prayer of the Respondent No. 2, we direct the Respondent No. 2 to remit the balance proceeds of the account maintained by the Applicant either singly or jointly with his wife to Applicant's State Bank of India Account and close the accounts with them thereafter.
8. In view of the foregoing, the CA 417/2021 is disposed of as allowed in terms of aforesaid directions.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

V.G. Bisht
Member (Judicial)

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

M.A. 2556 OF 2019

Under Section 241 and 242 of the
Companies Act.

Saurya Urja Company of Rajasthan
Limited

...Applicant

In the matter of

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

Union of India, Ministry of Corporate
Affairs

...Petitioner

V/s.

Infrastructure Leasing & Financial
Services Limited and Others.

... Respondents

Order delivered on: 04/12/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Mr. Animesh Bisht, Advocate

For the Respondent : None

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application MA 2556/2019 has been filed under the Company Petition CP/3638(MB)2018, filed under Section 241 and 242 of the Companies Act 2013, by Shaurya Urja Company of Rajasthan Limited (“Applicant”) in the matter of M/s Infrastructure Leasing & Financial Services Limited (“Company” or “IL&FS”). The Union of India (“Petitioner”) had sought suspension of the then existing Board of Directors of IL&FS Energy Limited (“Respondent No.1”), comprising of Respondent Nos. 2 to 8 with immediate effect and for appointment of 10 persons to be appointed as directors in accordance with the provisions of Section 242 (2) (k) of the Companies Act 2013, to manage the affairs of the Respondent No. 1 company and its group companies through their nominees. In the said Petition, the Petitioner further sought for a direction from this Tribunal under Section 242 (2) (k) of the Companies Act 2013 for authorising the Board of Directors appointed by the Tribunal to replace such number of the directors of subsidiaries, joint ventures and associate companies, in the manner required to make the Respondent No. 1 company and its group companies as a going concern.
2. The Applicant has filed the present Miscellaneous Application for the purpose of seeking clarification/modification of the Order dated 1st October 2018 and 9th October (“said Order”), whereby the reliefs as mentioned in the said Petition were granted by this Tribunal. It is stated that the present application is being filed by the Applicant, pursuant to a Resolution passed by the Board of Directors in the meeting held on 12th July 2019, and following reliefs are sought –
 - 2.1. That this Tribunal be pleased to clarify/ modify the Orders dated 1 October 2018 and 9th October 2018 and it may be clarified that the said

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

M.A. 2556 OF 2019

Orders passed by this Hon'ble Tribunal do not have the effect of substituting/ replacement of the Board of Directors of the Applicant company;

2.2. In alternative to prayer clause (a), this Tribunal may be pleased to clarify/ modify the Orders dated 1st October 2018 and 9th October 2018 and direct that the nominates of the GOR in the Board of Directors of the Applicant company shall not be affected by the Orders dated 1st October 2018 and 9th October 2018;

2.3. That this Tribunal be pleased to pass orders to the effect that the right of the GOR to nominate directors under the JV Agreement shall remain intact and shall not be affected adversely by the Orders dated 1st October 2018 and 9th October 2018;

2.4. That pending the hearing and final disposal of this Application, this Hon'ble Tribunal be pleased to stay the effect and operation of the Orders dated 1st October 2018 and 9th October 2018 qua the directors nominated by the GOR in the Board of Directors of the Applicant company;

3. The facts of the present case are stated as under –

3.1. The State of Rajasthan and the GOR (Government of Rajasthan), in order to enhance the solar generation capacity in to meet its commitment to achieve 25 GW of solar generation in the State, decided to set up Solar Parks in Rajasthan. As a part of its policy and in order Solar Parks and Solar Power Projects, GOR entered into 50:50 joint venture arrangement with IL&FS Energy Limited, which resulted into the formation of the Applicant company, primarily for creating infrastructure to generate electricity for its customers and power transmission e distribution companies who in turn would distribute the same to public at large, more

so in the rural areas of Rajasthan and Uttar Pradesh. The terms and conditions in respect of the joint venture arrangement and the rights and obligations of the GOR and IL&FS Energy have been laid down in the IV Agreement.

- 3.2. The Applicant provides facilitation for generation of electricity with the utilization of the solar power plants situated in its solar park to the entities desirous of producing electricity. As agreed under the terms of the said IV Agreement, the said JV Agreement is to remain in force until terminated by mutual written agreement by both the parties thereto.
- 3.3. The Applicant company was formed with the initial paid up capital of Rs. 5,00,000/- (Rupees Five Lakh Only) divided into 50,000 shares of Rs.10/- each, offered by the GOR and IL&FS Energy in equal proportion (e. 50% of the shareholding of the Applicant company). Further, as per Clause 7 of the JV Agreement, the initial number of members on the Board of Directors of the Applicant Company was stipulated to be six (6) with both parties nominating three (3) directors each. It was also stipulated that the Chief Secretary of GOR shall be the Chairman of the Board of Directors and shall enjoy a casting vote.
- 3.4. In pursuance of the JV Agreement, the GOR and IL&FS Energy executed a Shereholders Agreement dated 24th March 2015 to lay down the terms and conditions respective investments in the Applicant company.
- 3.5. The Applicant has till date, invested an amount of Rs.2.5 Crores in local development activities which are directed towards causes in the larger interest of people around Bhadla Village, Tehsil Bap, District Jodhpur (Rajasthan). Based on the successful development of 1000 MW of solar park, Soft Bank Energy, which is a leading solar power developer in

India, has issued a Letter of Intent in favour of the Applicant to develop Solar Parks of about 5000 MW capacity over the next 3 to 5 years. In fact, to give effect to the Letter of Intent issued by Soft Bank Energy, the Applicant has also undertaken and completed preliminary work including identification of land, preliminary technical, legal and commercial due diligence, verification of sub-station capacity, solar resource study, access to land etc., for the pipeline projects for implementation in the years 2019- 2022.

- 3.6. The Petitioner filed the captioned Company Petition, on the basis of the enquiry report given by the Registrar of Companies, as stipulated under Section 206 of the Companies Act 2013 and prima facie, concluded that there were several instances of mismanagement and compromise in the corporate governance of the Respondent No.1 company and its group companies while indiscriminately raising long term and short term loans/ borrowings through public sector banks and financial institutions. At the time of filing the captioned Company Petition, only the officers of the Respondent No.1 company including the then directors, Chief Financial Officer and Company Secretary were arraigned as the parties to the said Petition. This Tribunal, on 1st October 2018, came to a preliminary finding that it was a fit case for oppression and mismanagement under the provisions of the Companies Act 2013 and directed for suspension of the then Board of Directors of Respondent No.1 with immediate effect and reconstitution of the new Board of Directors("New BOD"), which was suggested by the Petitioner by filing an additional affidavit. Thereafter, more directors were appointed by the Hon'ble Tribunal to the new BOD, as suggested by the Petitioner to take over the control and management of the Respondent No.1 company. It is pertinent to note that the Hon'ble Tribunal, vide its Order dated 9th October 2018, permitted the New BOD to replace such number of directors of subsidiaries joint ventures and associate companies of the

Respondent No. 1 company in accordance with the existing provisions of the Memorandum and Articles of Association of the Respondent No. 1 company.

3.7. Thereafter, in or around October 2018, the Petitioner filed a Miscellaneous Application bearing Miscellaneous Application No. 1173 of 2018 ("said MA") wherein the Petitioner sought moratorium qua the Respondent No. 1 company and its group companies for a period of three months. However, this Tribunal vide its Order dated 12 October 2018 dismissed the said MA and refused to grant any prayers for moratorium qua the Respondent No. 1 and its group companies. Aggrieved by the Order dated 12th October 2018, the Petitioner herein preferred an Appeal to the Hon'ble National Company Law Appellate Tribunal ("NCLAT") bearing Company Appeal (AT) No. 346 of 2018, wherein Hon'ble NCLAT vide its Order dated 15th October 2018 declared moratorium qua the Respondent No.1 company and its 348 group companies.

3.8. On 31st October 2018, this Tribunal directed the Petitioner to implead all the 348 group companies of the Respondent No. 1 company as respondents in the captioned Company Petition. By virtue of the orders dated 31st October 2018 and 3rd December 2018 passed by this Tribunal and the Affidavit filed by the Petitioner, the Applicant has been impleaded Respondent (ie. Respondent No. 209) in the captioned Company Petition.

3.9. Subsequently, the Applicant has been identified as a "Green Entity" by the Petitioner in its Affidavit dated 12th March 2019 which clearly implies that the Applicant is a financially sound company and that it is able to take care of its financial obligations.

4. It is the case of the Applicant that from the plain reading of the Orders dated 1st October 2018 and 9th October 2018, it appears that the New BOD

appointed by this Tribunal shall have the power to replace the Board of Directors of any group company of Respondent No. 1, which may include the Applicant also treating it to be a Group Company. At the outset, the Applicant states that the Applicant cannot be said to be group company of Respondent No.1 as the Applicant is controlled by GOR. The Applicant has 3 nominee directors on its Board including the Chairman who is the nominee of GOR having the right of casting vote. Since the Applicant company also has directors nominated by the GOR and is controlled by the GOR, there is no question of the Applicant having any role in the mismanagement of the Respondent No.1 or being mismanaged itself. As stated above, the Applicant is an entity set up for public welfare and is controlled by GOR. The Applicant is moving a separate application for deletion of its name from the array of respondents, inter alia, on the ground that it cannot be said to be a Group Company of respondent No.1 company. However, without prejudice to the said application, the Applicant stands advised to move this application for modification of the orders dated 1.10.2018 and 9.10.2018 to the extent that the new Board of Directors of respondent No.1 shall not replace the management of the Applicant company or in the alternative, the new Board of Directors appointed by the Tribunal is empowered only to place/ nominate the directors of IL&FS Energy in the Applicant company and not the directors of GOR.

4.1. At this juncture, it may not be out of place to mention that the Applicant is a profit making entity and has been paying dividends to its shareholders from time to time. The Applicant states that for financial year 2017-18, the Applicant had revenue earnings of Rs. 235 crores and a net profit (profit before tax) of Rs. 80 crores. Further, for financial year 2018-19, as per the unaudited Balance Sheet of the Applicant, the Applicant has made revenue earnings of Rs. 240 Crores and net profit (profit before tax) of Rs. 45 87 Crores. The Applicant also declared and

distributed dividends to the tune of Rs. 18.30 Crores in total to its shareholders for the Financial Year 2017-18.

4.2. The Applicant states that the Applicant has not only made profits in the past years but has extremely promising future financial projections as well. In addition to the development of the solar park the Applicant also has a mandate to operate and maintain (O&M) the 1000 MW Solar Park and the estimated profit before tax for such O&M is nearly Rs. 152 crores over a period of 24 years. Further, based on the projects in pipeline, the total revenue earnings for next five years is estimated at Rs. 2500 Crores and the total profit before tax for next five years is estimated Rs. 557 crores. It would not be out of place to mention that having established 1000 MW solar park facility, the Applicant has expertise and is capable of managing its own affairs even without the support of IL&FS energy.

5. We have heard learned Counsel and perused the material on record.
- 5.1. We find that the entire purpose of the captioned Petition and bringing the group companies of Respondent No.1 under the umbrella of this Tribunal and to replace the Board of Directors is to bring in order the management and functioning of certain erring companies which definitely cannot include Applicant which is under the strict control of the GOR. It is submitted that the financial position of the Applicant is sound and does not contravene any provisions of the Companies Act. Further, the Applicant company has been identified as “Green Entity” and under the Approved Resolution Framework, the green entity is allowed to function independently, without intervention of this Tribunal in terms of the Company Petition.
- 5.2. The GOR is a 50% shareholder in the JV and is entitled to appoint three (3) directors in the Board of the Applicant and the Applicant company is governed under control and management of its Board of Directors.

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

M.A. 2556 OF 2019

The Chairman of the Applicant is also the nominee of GOR and the Chairman is entitled to cast vote as well, accordingly, the GOR has a majority vote in the management of affairs of the Applicant Company.

5.3. Accordingly, upon consideration of facts & circumstances of present case, we are of considered opinion that there exists a need for clarification to the effect that the said Orders passed by this Tribunal do not have the effect of substituting/ replacement of the Board of Directors of the Applicant company and the right of the GOR to nominate directors under the JV Agreement shall remain intact and shall not be affected adversely by the Orders dated 1st October 2018 and 9th October 2018. However, such clarification can be issued by Hon'ble NCLAT only in terms of approved Resolution Framework, because such Framework applies to green entities as well. After the approval of Hon'ble NCLAT, the Applicant file appropriate application for the confirmation.

6. In view of the aforesaid, this MA 2556/2019 is disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

V.G. Bisht
Member (Judicial)

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

M.A. 2557 OF 2019

Under Section 241 and 242 of the
Companies Act, 2013

Saurya Urjaj Company of Rajasthan
Limited

...Applicant

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

Union of India, Ministry of Corporate
Affairs

... Petitioner

V/s.

Infrastructure Leasing & Financial
Services Limited and Others.

... Respondents

Order delivered on: 04/12/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Mr. Animesh Bisht, Advocate

For the Respondent : None

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application MA 2557/2019 has been filed by Shaurya Urja Company of Rajasthan Limited (“Applicant”) in the matter of M/s Infrastructure Leasing & Financial Services Limited (“Company” or “IL&FS” or “Respondent NO. 1”) under the Company Petition CP/3638(MB)2018, filed under Section 241 and 242 of the Companies Act 2013 owing to the fact that the affairs of the Respondent No. 1 company being conducted in a manner prejudicial to public interest and therefore, the Union of India (“Petitioner”) sought necessary orders, inter alia, immediate suspension of the Board of Directors of the Respondent No. 1 Company and appointment of new members to the Board of Directors of the Respondent No. 1 company be passed against Respondent No.1.
2. The is a public limited company, incorporated under the provisions of the Companies Act, 2013 and having its Registered Office at the address more particularly mentioned in the cause title herein above. The Applicant company is a 50:50 joint venture between the GOR & IL&FS Energy IL&FS Energy. The purpose of the formation of the Applicant company and the terms and conditions of the same have been more particularly set out in the JV Agreement dated 28 October 2014.
3. The Applicant has filed present Miscellaneous Application for the limited purpose of seeking deletion of its name from the array of Respondents to the captioned Company Petition. It is submitted that the present application is being filed by the Applicant, pursuant to a Resolution passed by the Board of Directors in the meeting held on 12th July 2019.
4. It is the case of the Applicant that its name has been wrongly added as a party Respondent to the captioned Company Petition and that the Applicant is joint

venture enterprise set up, primarily for creating infrastructure to generate electricity for its customers and power transmission & distribution companies who in turn would distribute the same to public at large, more so in the rural areas of Rajasthan and Uttar Pradesh. The Applicant has 50% shareholding Government of Rajasthan and the management of the Applicant is under direct control and supervision of the Government of Rajasthan who has the right to appoint 3 out of six directors on the Board of the each, offered by the GOR and IL&PS Energy in equal proportion (i.e. 50% of the shareholding of the Applicant company). Further, as per Clause 7 of the JV Agreement, the initial number of members on the Board of Directors of the Applicant Company was stipulated to be six (6) with both parties nominating three (3) directors each. It was also stipulated that the Chief Secretary of GOR shall be the Chairman of the Board of Directors and shall enjoy a casting vote. The same arrangement is being followed until date

4.1. In pursuance of the JV Agreement, the GOR and IL&FS Energy executed a Shareholders Agreement dated 24th March 2015 to lay down the terms and conditions governing the respective investments in the Applicant (hereinafter referred to as "Shareholders' Agreement"). It is pertinent to mention that as per Clause 8.4 of the Shareholders Agreement, ILFS Energy and GOR had mutually agreed that Chairman of the Board shall be a nominee of GOR, who shall enjoy a casting vote.

4.2. As a background to the work done and undertaken by the Applicant, it is pertinent to state that the Applicant has successfully completed construction of its first Solar Park having the capacity of generation of 1000 MW electricity at Bhadia village, Jodhpur and it provides for an interface for successful generation and dispatch of solar power for 25 years. The project of the Applicant at Bhadia village has attracted an investment of around Rs.4000 Crores in the Rajasthan. In furtherance thereto, the Applicant has a mandate and commitment towards its customers to operate the said Solar Park at Bhadia and provide a smooth

and uninterrupted usage of the Solar Park to its customers for generation of electricity and dispatch of solar power for a period of at least 25 years. The objective of the Applicant is for the welfare of the general public and more particularly towards the augmentation and development of the backward areas in Rajasthan. Additionally, the Applicant has also generated a lot of job opportunities in Rajasthan. The Applicant has been running successfully especially under the supervision of high ranking officials of the Govt. Of Rajasthan.

- 4.3. The Applicant intends to achieve its target of setting up the solar parks having the capacity of generation of 5000 mw of electricity. The Applicant has till date, invested an amount of Rs. 2.5 Crores in local area development activities which are directed towards causes in the larger interest of people around Bhadla village, Tehsil Bap, District jodhpur (Rajasthan).
- 4.4. Based on the successful development of 1000 MW of solar park, Soft Bank Energy, which is a leading solar power developer in India, has issued a Letter of Intent in favour of the Applicant to develop Solar Parks of about 5000 MW capacity over the next 3 to 5 years. In fact, to give effect to the Letter of Intent issued by Soft Bank Energy, the Applicant has also undertaken and completed preliminary work including identification of land, preliminary technical, legal and commercial due diligence, verification of sub-station capacity, solar resource study, access to land etc., for the pipeline projects for implementation in the years 2019-2022.
- 4.5. The Petitioner herein filed the captioned Company Petition, on the basis of the enquiry report given by the Registrar of Companies, as stipulated under Section 206 of the Companies Act, 2013 and prima facie, concluded that there were several instances of mismanagement and compromise in the corporate governance of the Respondent No.1

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

M.A. 2557 OF 2019

company and its group companies while indiscriminately raising long term and short-term loans/ borrowings through public sector banks and financial institutions. At the time of filing the captioned Company Petition, only the officers of the Respondent No.1 company including the then directors, Chief Financial Officer and Company Secretary were arraigned as the parties to the said Petition.

4.6. This Tribunal, on 1st October 2018, came to a preliminary finding that it was a fit case for mismanagement under the provisions of the Companies Act, 2013 and directed for suspension of the then Board of Directors of Respondent No.1 with immediate effect and reconstitution of the new Board of Directors ("New BOD"), which was suggested by the Petitioner by filing an additional affidavit.

4.7. Thereafter, in or around October 2018, the Petitioner filed a Miscellaneous Application bearing Miscellaneous Application No. 1173 of 2018 ("said MA"), wherein the Petitioner sought moratorium qua the Respondent No. 1 and its group companies for a period of three months for the following acts:

- a. The institution or continuation of suits or any other proceedings by any party against Respondent No. 1 and any of the group companies in any Court of Law/Tribunal/ Arbitration Panel or Arbitration Authority; and
- b. Any action by any party to foreclose, recover or enforce any security interest created over the assets of Respondent No. 1 Company and/or any of the group companies including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- c. The acceleration, premature withdrawal or other withdrawal, invocation of any term loan, corporate loan, bridge loan, commercial

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

M.A. 2557 OF 2019

paper, debentures, fixed deposits, guarantees, letter of support, commitment or comfort and other financial facilities or obligations availed by Respondent No. 1 Company and/ or the group companies whether in respect of the principal or interest or hedge liability or any other amount contained therein.

- 4.8. However, this Tribunal vide its Order dated 12th October 2018 dismissed the said Miscellaneous Application and refused to grant any prayers for moratorium qua the Respondent No. 1 and its group companies. Aggrieved by the Order dated 12th October 2018, the Petitioner herein preferred an Appeal to the Hon'ble National Company Law Appellate Tribunal ("NCLAT") bearing Company Appeal (AT) No. 346 of 2018, wherein Hon'ble NCLAT vide its Order dated 15th October 2018 held that, for larger public interest and economy it is necessary to grant the interim moratorium
- 4.9. Thereafter, during the course of hearing of the captioned Company Petition on 31 October 2018, this Tribunal was apprised of the aforesaid Order dated 15th October 2018 passed by the Hon'ble NCLAT. Pursuant to which, this Tribunal was of the view that since the relief for moratorium was sought and granted qua Respondent No. 1 and its group companies, it is necessary that the said group companies of Respondent No. 1 be also impleaded as a party Respondents to the captioned Company. The relevant part of the Order reads as under -

"Moratorium order has been passed against R1 company and 348 group companies. Petitioner has made the R1, and the then directors of R1 company, as party to the Petition. Since relief inns been sought in relation to R1 and its 348 group companies therefore group companies of R1's impleadment as respondent is necessary. Since group companies of R1 have not been imploded as party in the case, though the petitioner has sought relief against the R1 and its group companies, the group companies of

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

M.A. 2557 OF 2019

R1 are else necessary party in the case. Moratorium order is effective about R1 and its group companies, therefore, impleadment of group companies of R1 as respondent is necessary. In the circumstances we hereby direct the petitioner to implead all the 348 group companies of R1 company, as respondents in this case, within 15 days from today"

4.10. Thereafter, based on the Affidavit filed by the Petitioner, this Tribunal allowed the impleadment of the group companies of Respondent No.1 including the Applicant, vide order dated 3rd December 2018. It is stated that by virtue of the Order dated 31 October 2018 and the Affidavits filed before this Tribunal, the Applicant company stood impleaded as Respondent in the captioned Company Petition.

4.11. Subsequently, the Applicant has been identified as a "Green Entity" by the Petitioner in its Affidavit dated 12th March 2019 which clearly implies that the Applicant is a financially sound company and that it is able to take care of its financial obligations.

5. We have heard learned Counsel and perused the material on record.

5.1. We find that the Applicant was impleaded in the Company Petition CP/3638(MB)2018 as sequitur to grant of relief in form of Moratorium to the Applicant, which was sought as a general relief in case of all IL&FS group company on a prima-facie finding. Later on, the Applicant was identified as "Green Entity", which means that the applicant company was found financially viable and no case of mismanagement in its affairs could be made out. Accordingly, we are of the considered view that the name of the Applicant deserves to be deleted as a Party Respondent to Company Petition No. 3638 of 2018 and from any incidental application.

5.2. We direct the Petitioner to file suitable application or an affidavit seeking deletion of the name of the Applicant from the Company

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

M.A. 2557 OF 2019

Petition No. 3638 of 2018 all applications incidental to such company petition before Hon'ble NCLAT in terms of approved Resolution Framework, because such Framework applies to green entities as well. After the approval of Hon'ble NCLAT, the Applicant file appropriate application for the confirmation.

6. In view of the aforesaid, this MA 2557/2019 is disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

V.G. Bisht
Member (Judicial)