

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-I)  
KOLKATA**

**CP No. 363/KB/2021  
IA No. 131/KB/2022**

*A Petition under 2013-Section 271(e) read with Section 273 along with  
the Companies (Winding Up) Rules, 2020.*

*In the Matter of:*

IL & FS Energy Development Company Limited (IEDCL), a private company,  
incorporated under the provisions of the Companies Act 1956, having its  
registered office at Unit No. 101, First Floor, ABW Rectangle-1, Saket District  
.... Petitioner

Versus

1. Bihar Power Infrastructure Company Private Limited (BPICPL), a  
company incorporated under the provisions of the Companies Act, 1956  
and having its registered office at 4B, First Floor, Shree Krishna Puri,  
Patna, Bihar-800001.  
....Company
2. Pratyaya Amrit, residing at Qtr. No.-4, Polo Road, Near Patna Airport,  
Patna, Bihar, Pin-800001.
3. Hira Lal Tayal, residing at Flat No.1410, Sector-C, Pocket-1, Vasant  
Kunj, New Delhi-110070.
4. Hirendra Nath Jha, residing at Flat No. 304, Vidyalankar Bhawan,  
Nageshwar Colony, Boring Road, Patna-800001.
5. Baskaran Subramanian, residing at Flat No. 301, DDA Flats, Pocket-A,  
Sector-13, Dawarka Phase-II, New Delhi-110075.  
....Impleaded Respondents

**Date of Pronouncement: 14/09/2023**

**Coram:**

**Shri Rohit Kapoor, Member (Judicial)**

**Shri Balraj Joshi, Member (Technical)**

**Appearances (via Hybrid Mode):**

Mr. V. Sinha, Advocate ] For the petitioner

Ms. M. Manot, Advocate ] For the respondent  
Mr. A. Sinha

**ORDER**

**Per: Balraj Joshi, Member (Technical)**

1. The instant petition has been filed by **IL & FS Energy Development Company Limited (for brevity 'IEDCL')** ("petitioner") to initiate winding up proceedings under sections 271 and 272 of the Companies Act 2013 against **Bihar Power Infrastructure Company (for brevity 'BPICPL')**, an existing company within the meaning of the Companies Act, 1996. The petition has been filed on the grounds that the affairs of the company have been conducted for fraudulent and unlawful purpose under section 271(e) of the Companies Act, 2013.
2. It is submitted that the Respondent Company was incorporated on 4<sup>th</sup> January 2008 as a 50:50 joint venture between Government of Bihar acting through Bihar State Power (Holding) Company Limited (erstwhile Bihar State Electricity Board) (**for brevity "BSPHCL"**) and IL & FS IIDC Fund, following a MoA dated 14.12.2007.
3. Subsequent to the MoA, IIDC executed an Investment Transfer Agreement dated 29.03.2008 with ITCL, which is a trustee of the IIDC Fund and devolved (i) IIDC's equity capital holding in the issued and paid up capital in the Respondent Company; and (ii) contributions made to the project development fund that was set up as per terms of MoA to take care of various expenses related to the projects. Thereafter, the Fund transferred its investments, including its current share holdings in the Respondent Company to the Petitioner. Accordingly, the Petitioner and the Fund executed an Agreement dated 30.03.2012 to effect the said transaction.

4. It is submitted that a meeting was held on 26<sup>th</sup> April, 2019 wherein it was conveyed by the Energy Department, Government of Bihar that they would like to close the Respondent Company as the objectives for which the SPV company was founded no longer existed. It was further suggested that a no objection certificate could be issued by the shareholders of the Respondent Company after all receivables and liabilities of the Respondent Company are closed. Accordingly, the Respondent Company *vide* a letter dated 8<sup>th</sup> August, 2019 brought to the attention of the Secretary and CMD of BSPHCL (other shareholder of the Respondent Company), the decisions taken in the meeting dated 26<sup>th</sup> April, 2019 and requested that necessary steps be taken so that a NOC could be issued by the shareholders of the Respondent Company. Since November 2019 till March 2021, in spite of several requests made by the Petitioner to request and followup with BSPHCL to hold a meeting in order to satisfy the in-principle agreement as agreed between the shareholders of the Respondent Company and further inform BSPHCL that since no board meeting was held in the Financial Year 2018-2019, it would result in non-compliance and statutory default under the Companies Act, 2013. However, BSPHCL has neither responded nor attended any meeting.
5. It is submitted that the Respondent Company has no revenue, no cash flow and no business operations, therefore keeping the entity alive without any business operations would incur additional liabilities and costs. It was further submitted that where a Board Resolution or a special resolution cannot be passed under Section 271(a) of the Companies Act, 2013 due to the absence of nominee Directors of BSPHCL on the Board of the Respondent Company or specific NOC and waiver for the same; it would be deemed fair and equitable to close the company under Section 271 (e) of the Companies Act, 2013.
6. It is submitted that the proposal for winding up of the Respondent Company has been approved by the Resolution Consultant to the Board of IL & FS-Alvarez and Marsal India Private Limited on 25<sup>th</sup> May 2021<sup>1</sup>, by the Board of

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<sup>1</sup> Exhibit N at Page 232 of the Petition

Directors of the Petitioner on 10<sup>th</sup> June 2021<sup>2</sup>, by the Board of IL & FS on 26<sup>th</sup> June 2021<sup>3</sup>, by Hon'ble Justice (Retd.) D.K. Jain on 7<sup>th</sup> July 2021<sup>4</sup> and by the NCLT, Mumbai Bench on 15<sup>th</sup> September, 2021 as well as rectification order dated 22<sup>nd</sup> October 2021.<sup>5</sup>

7. It is submitted by the Petitioner that a copy of this Petition along with all exhibits is being simultaneously filed with the Registrar of Companies, Kolkata in terms of Section 272(5) of the Companies Act, 2013. It is further submitted that the Petitioner is entitled to file the instant petition under Section 272(1)(b) of the Act.

**Reply filed by the Respondent No. 3 namely Hira Lal Tayal**

8. A Reply Affidavit has been filed by the Respondent No. 3 wherein it is admitted in **para 5** therein that there have been no operations in the Respondent Company since Financial Year 2018-2019 and that the Respondent Company has continued without business operations and suffered financial losses. It is also stated in **para 6** that the Respondent Company does not have a properly constituted Board of Directors since the Financial Year 2018-2019.
9. It is also stated that as per the records maintained by the Ministry of Corporate Affairs, Respondent Nos. 2 to 5 are shown as Directors of the Respondent Company whereas Respondent Nos. 2 and 5 have resigned from the Board with effect from 27.07.2020 and 16.09.2019 and the Respondent No.4 has also resigned.
10. It is stated in **para 9** that Respondent No.3 is the sole Director of the Respondent Company and the Company does not have a properly constituted Board of Directors.

**I.A. (Companies Act) No. 131/KB/2022**

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<sup>2</sup> Exhibit O at Page 233 of the Petition

<sup>3</sup> Exhibit P at Page 234 of the Petition

<sup>4</sup> Exhibit Q at Pages 235-245 of the Petition

<sup>5</sup> Exhibit R at Pages 246-408 of the Petition

11. The present application has been filed by the Petitioner under Rule 11 of the National Company Law Tribunal Rules, 2016 seeking the following reliefs:-

*a. To pass an order and direction for deletion of Respondents No. 2, 4 and 5 from the memo of parties as amended by the petitioner in terms of the order dated 5<sup>th</sup> April, 2022 ;*

*b. To pass such further and other reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstance of the present case.*

12. **I.A. (Companies Act) No. 131/KB/2022** was filed by the applicant for deletion of names of Respondent Nos. 2, 4 and 5 from the memo of parties. The submission made by the Respondent No.3 in its Reply Affidavit that the Respondent Nos. 2, 4 and 5 who were Directors of the Respondent No.1 had resigned from their posts, we find it appropriate to grant the said relief as prayed by the applicant. In view of the above observation, **I.A. (Companies Act) No. 131/KB/2022** stands **disposed of**.

*Analysis & findings*

13. Heard the Ld. Counsel appearing for the parties and perused the records.
14. We are satisfied with the explanations given by both the parties in the foregoing paragraphs and thus feel that it would be just and equitable that the Company should be wound-up.
15. In view of the above we, therefore, hereby order as follows:-
- (a) The present company petition stands admitted. The respondent company being **Bihar Power Infrastructure Company Private Limited** is to be wound up by this Tribunal under the provisions of Companies Act, 2013.
- (b) The **official liquidator** attached with the High Court of Patna is appointed as a **company liquidator** of the respondent company as provided under section 275(1) of the Companies Act, 2013

- (c) In terms of section 277 (1) and 277 (2) of the Act, the registry is directed to cause intimation to the company liquidator and the Registrar of Companies, West Bengal. On receipt of the copy of such Order, the Registrar shall make an endorsement to that effect and notify in the Official Gazette that such an order has been made.
- (d) The company liquidator is directed to file a declaration in Form WIN 10, disclosing conflict of interest or lack of independence in respect of his appointment, if any, with this Tribunal within seven days from the pronouncement of this order.
- (e) In accordance with section 277 (3) of the Act, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the company, except when the business of the company is continued.
- (f) The company liquidator shall initiate liquidation process in accordance with section 277 (4), 277 (5), 277 (6), 277 (7), 277 (8), 293 and 294 of the Act. The company liquidator shall fulfil the following functions, namely:—
- (i) taking into custody, all properties, actions and actionable claims to which the respondent company appears to be entitled to;
  - (ii) preservation and protection of the properties of the respondent company
  - (iii) examination of the statement of affairs;
  - (iv) recovery of property, cash or any other assets of the company including benefits derived there from;
  - (v) review of audit reports and accounts of the company;
  - (vi) sale of assets;
  - (vii) finalization of list of creditors and contributories;

- (viii) compromise, abandonment and settlement of claims;
  - (ix) payment of dividends, if any; and
  - (x) any other function, as the Tribunal may direct from time to time.
- (g) As envisaged under section 279 (1) of the Act, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose.
- (h) In accordance with section 281, the Company Liquidator shall submit to the tribunal, a report in Form 16 within sixty days of passing this order. Further the company Liquidator shall file periodical reports to the Tribunal as envisaged under section 288.
- (i) The company liquidator shall prepare and file in the Tribunal a provisional list of contributories of the company in terms of rule 28 of the Companies (Winding Up) Rules, 2020 within twenty-one days after the date of the instant order.
- (j) There shall be an advisory committee, having powers and functions in terms of section 287. The meetings of the said advisory committee will commence in accordance with the provisions of section 287(3). The company liquidator shall report the result of such meeting to the Tribunal within 7 days from the holding of the said meeting.
- (k) All powers and duties of the company liquidator will be exercised in accordance with section 290 and section 292.
- (l) The company liquidator shall also file its report with the Tribunal as per section 281 of the Act.
- (m) List the **CP No. 363/KB/2021** on **06-11-2023** for filing periodical reports.

- (n) Copy of the order be sent to the parties, the company liquidator, Registrar of Companies, Patna and the Authorised Representative for the Petitioner , within seven days through email and registered post.
- (o) Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**(Balraj Joshi)**  
**Member (Technical)**

**(Rohit Kapoor)**  
**Member (Judicial)**

Order signed on the 14<sup>th</sup> day of September, 2023

*FA\_LRA*