

**NATIONAL COMPANY LAW TRIBUNAL**

**COURT ROOM NO. 1,**

**MUMBAI BENCH**

**Item No. 39**

**CA 209/2021 CA 25/2024 IN CP/3638(MB)2018**

CORAM:

**SH. PRABHAT KUMAR**

**JUSTICE V.G. BISHT (Retd.)**

**HON'BLE MEMBER (TECHNICAL)**

**HON'BLE MEMBER (JUDICIAL)**

**ORDER SHEET OF THE HEARING ON 22.02.2024**

**NAME OF THE PARTIES: UNION OF INDIA V/s INFRASTRUCTURE  
LEASING AND FINANCIAL SERVICES LTD. &  
ORS.**

Section 241- 242 of the Companies Act and Rule 11 of the NCLT

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**ORDER**

Adv. Kuber Dewan, Adv., Ms. Neeharika Aggarwal, Adv., Mr. Kaustubh Srivastava,  
Adv for Applicant in CA 25/2024 present through VC.

**CA 25/2024**

1. This is an application filed by the Applicant and seeking following reliefs –
  - a. Conclude / consummate the sale of the Sale Shares held by IEDCL in favour of the JV Partners and permit IEDCL to receive an amount aggregating to INR 48,94,12,478.25 (Indian Rupees Forty-Eight Crores Ninety-Four Lakhs Twelve Thousand Four Hundred Seventy Eight and Twenty Five Paise only) (subject to a reduction of any dividend payable by the CPTC to IEDCL for the financial year 2021-2022 and any subsequent dividend payable by CPTC to IEDCL for the period after March 31, 2022, and prior :t to the closing of the Proposed Transaction) from the JV Partners as Sale Proceeds for the sale of the Sale Shares;
  - b. Direct that the Applicant be permitted to utilize and pay an amount of INR 1,27,19,502 excluding taxes from the total Sale Proceeds received from the Proposed Transaction towards Resolution Process Costs that

have accrued and/ or been incurred and/ or are likely to accrue in connection with the resolution of IEDCL;

- c. Direct that after paying Resolution Process Costs, the balance funds remaining from the Sale Proceeds be permitted to be deposited into the relevant bank/ escrow account, as per the details to be provided by the Applicant/ IEDCL (as the case may be) and be utilized in accordance with the provisions of and / or for the purposes permitted under the Resolution Framework, and further that such balance funds so deposited in the relevant bank / escrow account shall not be adjusted or set off against any other dues pertaining to any bank/ financial institution;
2. The present application has been filed by the applicant to inter alia seek approval from this Hon'ble Tribunal for sale of 38% (thirty eight percent) of the issued, subscribed, and paid-up equity share capital of Cross Border Power Transmission Company Limited ("CPTC") held by IL&FS Energy Development Company Limited ("IEDCL").
3. CPTC is a joint venture between IEDCL and 3 (three) other entities, namely Power grid Corporation of India Limited ("PGCIL"), SJVN Limited ("SJVN") and Nepal Electricity Authority ("NEA") (collectively referred to as "JV Partners"). IEDCL holds 1,84,33,615 (one crore eighty-four lakhs thirty-three thousand six hundred and fifteen) shares of CPTC ("Sale Shares") constituting 38% (thirty-eight percent) of the entire issued, subscribed and paid-up share capital of CPTC along with 5 (five) joint shareholders. 98.12% of the total issued and paid upon equity share capital of IEDCL is held by IL&FS and the IL&FS Group, Applicant herein.
4. IEDCL, CPTC and the JV Partners, entered into a Shareholders Agreement

dated 9 July 2012 ("SHA"), in terms of which, the parties therein have recorded their understanding with respect to the incorporation of CPTC and their respective rights and obligations thereto.

5. Clause 8.3 of the SHA included ROFR requiring any selling shareholder in CPTC to first offer such shares to the non-divesting shareholders of CPTC and that any sale to a third party will be subject to such sale not being at a price lower than what was offered to the non-divesting shareholders and the incoming shareholder executing a deed of adherence to SHA, and Clause 13.3 of SHA requires any selling shareholder to obtain prior written consent from the non-divesting shareholders and CPTC prior to transferring any shareholding in CPTC.
6. In line with the mandate granted to the New Board in terms of various orders passed by the NCLT and NCLAT and pursuant to the recommendation of the ASC, the New Board in its meeting dated 10 July 2021, authorised the sale of the Sale Shares to the JV Partners.
7. The applicant engaged LSI Financial Services Private Limited as the financial and transaction advisor ("LSI") for advising and undertaking transactions involving the sale of or investment in assets, portfolios, etc. CPTC was included in the 'List of Identified Assets' in the Mandate Letter awarded to LSI.
8. The applicant engaged two independent valuers, viz RBSA Valuation Advisors LLP ("RBSA") and Adroit Valuation Services Private Limited ("Adroit") (collectively "Valuers"), for the purpose of determining the fair market value of the Sale Shares.
9. On 03 January 2019 SJVN vide an unsolicited letter, expressed its interest in purchasing the entire stake of IEDCL in CPTC. The ASC approving the sale of IEDCL's stake in CPTC directly to the JV Partners ("Proposed Transaction"). In line with the mandate granted to the New Board in terms of various orders passed by the

10. NCLT and NCLAT and pursuant to the recommendation of the ASC, the New Board in its meeting, authorised the sale of the Sale Shares to the JV Partners on the basis of a valuation to be conducted by independent valuers. The Board of Directors of IEDCL ("IEDCL Board") vide board resolution, authorised the sale of the Sale Shares to the JV Partners on the basis of a valuation to be conducted by independent valuers informed the JV Partners and CPTC of its interest in divesting the Sale Shares; (b) proposed a process for conducting the Proposed Transaction ("IEDCL Process"); (c) sought approval of the JV Partners for the IEDCL Process; and (d) requested CPTC for a waiver of its Pre-Emptive Rights.
11. IEDCL informed the JV Partners vide letter of the request by 1 (one) of the JV Partners (i.e., SJVN) and IEDCL's willingness to share the Valuation Reports (as defined hereinbelow) with the JV Partners. The average FMV of the Sale Shares basis the FMVs per Sale Shares in the Valuation Reports is INR 26.55 imputing a total valuation of INR 48,94,12,478.25 for the Sale Shares held by IEDCL in CPTC ("Purchase Price").
12. IEDCL offered the Sale Shares to the JV Partners in proportion to their respective shareholding in CPTC, requested the JV Partners to indicate their confirmation on the number of Sale Shares that they sought to purchase, requested the JV Partners and CPIC to provide a waiver of their Pre-Emptive Rights in relation to the Proposed Transaction for sale to the JV Partners in the requested format, reiterated that any Sale Shares not accepted for sale would be allocated to the remaining JV Partners in proportion to their shareholding in CPTC.
13. IEDCL communicated its acquiescence to SJVN's and PGCIL's request in relation to the adjustment of the Purchase Price against dividend payments made by CPTC and agreed to adjustment of the Purchase Price for the Sale Shares against any dividend payable by CPTC for the financial year 2021-2022 to IEDCL and any further

dividend payable by CPTC to IEDCL prior to the transfer of shares pursuant to the Proposed Transaction.

14. PGCIL, SJVN and NEA provided a waiver of their Pre-Emptive Rights in relation to the Proposed Transaction in the requested format and an acceptance on the number of Sale Shares that it sought to purchase. 12 September 2022, The ASC approved the draft share purchase agreement ("SPA")
15. IEDCL communicated the following proportion in which the Sale Shares would be sold to the JV Partners after accounting for the change on account of the aforesaid solitary Sale Share by way of its letter (the number of shares to be purchased by each JV Partner being their "Proportionate Allotment"):
16. The New Board vide resolution, identified and approved the proposal for the sale of the Sale Shares held by IEDCL to the JV Partners at the Purchase Price (subject to such adjustments as may occur on account of payment of dividend by CPTC to IEDCL for the financial year 2021-2022 and for the period after 31 March 2022 prior to the transfer of shares to the JV Partners) and approved the submission of the said proposal to creditor's committee of IEDCL, comprising the financial creditors of IEDCL ("COC").
17. The New Board in its meeting took note of the CoC approval and authorized and approved the submission of the H1 bid for the approval of Justice (Retd.) D.K. Jain. Pursuant to the approval of the New Board and in terms of the Resolution Framework, the Applicant filed an application before Justice (Retd.) D.K. Jain seeking his approval for consummation of the Proposed Transaction, in compliance with the terms of the Resolution Framework, on terms approved by the New Board.
18. Pursuant to the approval of the New Board and in terms of the Resolution Framework, the Applicant filed an application dated 29 May 2023 before Justice (Retd.) D.K. Jain seeking his approval for consummation of the Proposed Transaction.

19. Justice (Retd.) D.K. Jain granted his approval to the proposed transaction subject to the approval of this Hon'ble Tribunal vide letter dated 5<sup>th</sup> June, 2023.
20. Pursuant to the receipt of the Justice Jain Approval, the Final Form SPA has been initialed with minor modifications on 07.11.2023.
21. The Union has filed its comments and conveyed their no objection if the sale of shares held by IEDCL is allowed.
22. We have perused the case records and find that all necessary approvals in terms of approved resolution frame work are on record in relation to sale of the Sale Shares held by IEDCL in favour of the JV Partners. Accordingly, we allow the Applicant to Conclude / consummate the sale of the Sale Shares held by IEDCL in favour of the JV Partners and permit IEDCL to receive an amount aggregating to INR 48,94,12,478.25 (Indian Rupees Forty-Eight Crores Ninety-Four Lakhs Twelve Thousand Four Hundred Seventy Eight and Twenty Five Paise only) (subject to a reduction of any dividend payable by the CPTC to IEDCL for the financial year 2021-2022 and any subsequent dividend payable by CPTC to IEDCL for the period after March 31, 2022, and prior to the closing of the Proposed Transaction from the JV Partners as Sale Proceeds for the sale of the Sale Shares. The Applicant is further permitted to utilize and pay an amount of INR 1,27,19,502 excluding taxes from the total Sale Proceeds received from the Proposed Transaction towards Resolution Process Costs that have accrued and/ or been incurred and/ or are likely to accrue in connection with the resolution of IEDCL; and the balance funds remaining from the Sale Proceeds shall be deposited into the relevant bank/ escrow account, as per the details to be provided by the Applicant/ IEDCL (as

the case may be) and be utilized in accordance with the provisions of and / or for the purposes permitted under the Resolution Framework. It is clarified that such balance funds so deposited in the relevant bank / escrow account shall not be adjusted or set off against any other dues pertaining to any bank/ financial institution.

23. In view of the aforesaid CA 25/2024 is **allowed** and **disposed of**.

**CA 209/2021**

List this matter on Board on **18.03.2024**.

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**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

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**JUSTICE V.G. BISHT**  
**MEMBER (JUDICIAL)**

Rehan Shaikh