



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

CP/98(KB)2022

*An application under Sections 271 (e) and 272, Chapter XX and other
applicable provisions of The Companies Act, 2013 and Companies
(Winding Up) Rules, 2020*

In the matter of:

IL&FS IIDC Fund, acting through Mr. Yash Goswami, appointed by
Power of Attorney dated 21 December, 2021 of Vistra ITCL, trustees of
the IL&FS IIDC Fund, having registered office at The IL&FS Financial
Centre, Plot No. C-22, G Block, 7th Floor, Bandra Kurla Complex,
Bandra (E), Mumbai- 400051.

... .. Petitioner

Versus

1. Bengal Urban Infrastructure Development Limited (BUIDL), a
public limited company incorporated under the provisions of the
Companies Act, 1956, having its registered office at 11, Dr. U.N.
Brahmachari Street, Kolkata- 700017.

... .. Company

2. Challa Manoj Dora, Housing Board Colony, Pallahat, Khordia,
Orissa- 752056;

3. Saurav Kumar Jain, Flat No.243, Kaveri Apartment, D6, Vasant
Kunj, New Delhi- 110070.

4. Yashwant Singh Chauhan, H No.402/1, Sector 44-A,
Chandigarh- 160047.

5. Ravi Laxman Valecha, 303, Dimple Hieghts, Asha Nagar Thakur
Complex, Kandivali East, Mumbai- 400101.

... .. Respondents

Date of pronouncement: 4th October, 2024

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CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearance (via video conferencing/physically)

Mr. G. Khaitan, Adv.

] For the Petitioner

O R D E R

Per: Bidisha Banerjee (Judicial)

1. This court convened through Hybrid mode.
2. The instant petition has been filed by IL&FS IIDC Fund (in short 'IIDC Fund') to initiate winding up proceeding under Sections 271 and 272 of the Companies Act, 2013 against Bengal Urban Infrastructure Development Limited (in short 'BUIDL'), an existing Company within the meaning of the Companies Act, 2013.
3. **Learned Counsel for the Petitioner:**
 - 3.1. IIDC Fund is a registered private trust under the provisions of the Indian Trusts Act, 1882, established by Infrastructure Leasing & Financial Services Limited ("IL&FS") for the purpose of carrying on business of project development for infrastructure projects and make investments in Portfolio Companies. By way of an Indenture of Trust dated 28th March, 2008, IL&FS appointed IL&FS Trust Company Limited [now known as Vistra ITCL (India) Limited] as the 'Trustee' of IIDC Fund.
 - 3.2. IIDC Fund is a shareholder of BUIDL and holds 50 per cent of the share thereof. IIDC Fund falls under the meaning of 'contributories' and, therefore, is entitled to file the instant petition by virtue of Section 272 (1) (b) of the Companies Act, 2013.
 - 3.3. BUIDL is a private company originally incorporated on 9th August, 2007 under the Companies Act, 1956 and

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subsequently, it is converted to a Public Limited Company on 29th April, 2009 under the provisions of the Companies Act, 1956. It was incorporated as 50:50 joint venture between the Government of West Bengal ('GoWB') acting through Principal Secretary, Urban Development Department (in short 'UDD') and IL&FS Infrastructure Development Limited (in short 'IIDC'), following a MOA dated 10th July, 2007, in order to facilitate development of urban projects under the JNNURM scheme and other infrastructure projects in the State of West Bengal. BUIDL was engaged in the promotion, development and strengthening of infrastructure projects and facilities in West Bengal.

- 3.4.** For the last six years, BUIDL has stopped undertaking all business operations.
- 3.5.** BUIDL has no revenue, no cash flow and no business operations since Financial Year 2018-19. Further, BUIDL does not have a properly constituted Board of Directors and due to the absence of nominee Directors of GoWB on the Board of the Respondent Company or specific NOC and waiver for the same, it was deemed fair and equitable to close the Company under Section 271 (e) of the Companies Act, 2013. Subsequently, BUIDL has only continued without business operations and suffered further financial losses.
- 3.6.** The petitioner is eligible to apply for winding up of the respondent company under Section 271 (1) (e) of the Companies Act, 2013.
- 3.7.** The petitioner wrote a letter to UDD, GoWB, on 30th June, 2020 apprising them of the dormancy of the respondent company and suggested options for its resolution.
- 3.8.** Thereafter, the petitioner continuously followed up with UDD, GoWB on 4th January, 2021 and 22nd January, 2021, requesting

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them to nominate Directors on the Board and convene a Board Meeting, however, no response was received from UDD, GoWB to the repeated requests made by IIDC Fund.

- 3.9.** As a last resort, the IL&FS Management vide letter dated 16th March, 2021 reached out to the Secretary, GoWB seeking their support for resolution of the respondent company under the MCA initiated and NCLAT approved resolution framework.
- 3.10.** Under the resolution framework, IL&FS Group's Resolution Consultant i.e., Alvarez & Marsal India Private Limited ("A&M") appointed by the New Board of IL&FS, recommended vide their letter dated 26th May, 2021, the closure of BUIDL vide filing an application for winding up under Section 271 (e) of the Companies Act, 2013 to the NCLT.
- 3.11.** Following the above recommendation, on 4th June, 2021, resolution was passed by the Board of IL&FS Township & Urban Assets Limited (ITUAL) approving the proposal for filing of an application for winding up of the petitioner company under Section 271 of the Companies Act, 2013. ITUAL in the capacity of the Project Developer and Advisor to the petitioner issued a letter dated 4th June, 2021 endorsing winding up of BUIDL **(pages 185-186).**
- 3.12.** As per the recommendation made by ITUAL, the members of the Management Committee of IIDC Fund have approved the closure of BUIDL on 7th June, 2021. Further, based on the recommendation from ITUAL for the closure of BUIDL, followed by the approval of the Management Committee Members, the petitioner accorded its approval vide its letter dated 7th June, 2021 for the closure of BUIDL under Section 271 (e) of the Companies Act, 2013. On 7th June, 2021, resolution was passed by the Board of IL&FS Investment Managers Limited ("IIML")

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approving the proposal for filing of an application for winding up of the petitioner company under Section 271 of the Companies Act, 2013. Thereafter, IL&FS Investment Managers Limited (IIML) in the capacity of the Investment Manager of the petitioner also approved the closure of the respondent company vide letter dated 7th June, 2021 addressed to the Trustee. The Trustee, based on the recommendations received from ITUAL and IIML, vide its letter dated 10th June, 2021, has taken the recommendations on record and has agreed to execute the necessary documentation that will be required for winding up of the respondent company. Thereafter, the Board of IL&FS Financial Services Limited (IFIN) in the capacity of the unit holder IIDC Fund, in its meeting held on 22nd June, 2021 approved the closure of BUIDL based on the recommendations made by ITUAL, IIML and Vistra. The Board of IL&FS, vide circular resolution dated 25th June, 2021, accorded its consent to the decision of the Board of Directors of IFIN for filing applications before this Tribunal for the proposed initiation of winding up process with respect to the respondent company.

- 3.13.** The petitioner company has, in the present petition, enclosed all compliances in relation to winding up permissions/directions, inter alia, by the Hon'ble National Company Law Tribunal (Mumbai Bench), Hon'ble Justice (Retd.) Mr. D.K. Jain and the Board of IL&FS as required for winding up of all IL&FS entitles in terms of the order dated 4th February, 2019 of the Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT) No.347 of 20185. Hon'ble Justice (Retd.) Mr. D.K. Jain granted approval for initiation of the winding up proceedings vide letter dated 7th July, 2021. The proposal for initiation of winding up of BUIDL under Section 271 (e) has been approved

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by the Hon'ble National Company Law Tribunal (Mumbai Bench) vide order dated 15th September, 2021, rectified on 22nd October, 2021 in the matter titled Infrastructure Leasing & Financial Services Limited v. Union of India (CA No.228 of 2021 in Company Petition No.3638/MB/2018).

3.14. Accordingly, with all the approvals required under the IL&FS resolution framework 9as stands approved by the order dated 12th March, 2020 passed by the Hon'ble National Company Law Appellate Tribunal in relation to initiating winding up of BUIDL (an IL&FS Group entity) under Section 271 (e) and 272 of the Companies Act, 2013 having been accorded, including the authorization as are necessary under the Companies Act, 2013 (as amended) to authorize filing of this petition having been obtained and in view of the circumstances narrated in the petition, and particularly where a Board Resolution or a Special Resolution cannot be passed as per the provisions of the Companies Act, 2013 due to the absence of the nominee of Directors on the Board of BUIDL or non-grant of a specific NOC waiver for the same, this Tribunal, therefore, considers it just expedient to wind up BUIDL under Section 271 (e) and 272 of the Companies Act, 2013.

4. Reply filed by the Respondent No.2, namely, Challa Manoj Dora:

4.1. A reply affidavit has been filed by the Respondent No.2 wherein it is admitted in paragraphs 4 and 6 therein that there have been no since Financial Year 2018-19 and that the respondent company has continued without business operations and suffered financial losses. It is also stated in paragraph 7 that the Respondent Company does not have a properly constituted Board of Directors since the financial year 2018-19.

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4.2. It is also stated that as per the records maintained by the Ministry of Corporate Affairs, Respondent No.5 is shown as the Director of the Respondent Company whereas Respondent No.5 has resigned from the Board.

5. Analysis and Findings:

5.1. Heard the learned Counsel for the petitioner and perused records.

5.2. This Tribunal satisfied with the explanations given by the foregoing paragraphs and are of the opinion that it would be just and equitable that the company be wound up.

6. In view of the above, this Tribunal hereby order as follows:

- (a)** The present company petition stands admitted. The respondent company being Bengal Urban Infrastructure Development Limited is to be wound up by this Tribunal under the provisions of the Companies Act, 2013.
- (b)** The Official Liquidator attached with the Hon'ble High Court at Calcutta 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 Companies Act, 2013, the Registry is directed to cause intimation of 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 office 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

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this Tribunal within seven days from the date of pronouncement of this order.

- (e)** In accordance with Section 277 (3) of the Companies Act, 2013, this liquidation order shall be deemed to be a notice of discharge of the officers, employees and workmen of the Company except when the business of the company is continued.

The Company Liquidator shall initiate liquidation process in accordance with Sections 277 (4), 277 (6), 277 (7), 277 (8), 293 and 294 of the Companies Act, 2013. The Company Liquidator shall fulfil the following functions, namely:

- (i)** Taking into custody, all properties, action 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 respondent company including benefits derived therefrom;
- (v)** Review of audit reports and accounts of the respondent 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.

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- (f)** As envisaged under Section 279 (1) of the Companies Act, 2013, no suit or other legal proceeding shall be commenced or if pending at the date of the winding up order, shall be proceeded with, the leave of the Tribunal and subject to such terms as the Tribunal may impose.
- (g)** In accordance with Section 281 of the Companies Act, 2013, the company Liquidator shall submit to the Tribunal, a report in Form 16 within sixty days from the date of passing of this order. Further, the Company Liquidator shall file periodical reports to the tribunal as envisaged under Section 288 of the Companies Act, 2013. The company Liquidator shall prepare and file in the Tribunal a provisional list of contributories of the respondent company in terms of Rule 28 of the Companies (Winding Up) Rules, 2020 within twenty-ne days after the date of the instant order.
- (h)** There shall be an advisory committee, having powers and functions in terms of Section 287 of the Companies Act, 2013. The meetings of the said advisory committee will commence in accordance with the provisions of Section 287 (3) of the Companies Act, 2013. The Company Liquidator shall report the result of such meeting to the Tribunal within seven days from holding of the said meeting.
- (i)** All powers and duties of the company Liquidator will be exercised in accordance with Section 290 and Section 292 of the Companies Act, 2013.
- (j)** The Company Liquidator shall also file its report with this Tribunal as per Section 218 of the Companies Act, 2013.

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- (k)** List CP/98(KB)2022 on **28th November, 2024** for filing periodical report.
- (l)** Copy of the order be sent to the parties, the Company Liquidator, Registrar of Companies, West Bengal and the Authorized Representative for the petitioner within seven days through e-mail and registered post.
- (m)** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order signed on this, the 4th day of October, 2024.

Sayon (Steno)