

Through Videoconference

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I

*** **

CA No. 1163 of 2020
in
CP No. 3638/MB/2018

In the matter of

Company Application No. 1163 of 2020

Between

Infrastructure Leasing & Financial Services Limited (IL & FS),
The IL&FS Financial Centre, Plot C-22, G Block,
Bandra Kurla Complex, Bandra East,
Mumbai – 400 051

... **Applicant**

Versus

Union of India, Ministry of Corporate Affairs, through
the Office of Regional Director, Western Region,
having its office at 5th Floor, Everest Building,
100, Marine Drive, Mumbai – 400 002

... **Respondent**

In the matter of

A Petition under Sections 241 & 242 of the Companies Act, 2013

Between

Union of India

v.

Infrastructure Leasing & Financial Services Limited &Ors.

Date of Order: 02.02.2021

CORAM:

Hon'ble Janab Mohammed Ajmal, Member Judicial
Hon'ble Shri V. Nallasenapathy, Member Technical

Appearance:

For the Applicant(s) : Mr Ashish Kamat with Mr Aditya Sikka and Ms Drishti Das, Advocates i/b. Cyril Amarchand Mangaldas

For the Respondents: Mr Rakesh Tiwari, Joint Director (Office of Regional Director, MCA(WR), Mumbai

Per: Janab Mohammed Ajmal (Member Judicial)

ORDER

This Application is presented before this Tribunal seeking approval of this Tribunal for the conclusion of the resolution process of IL & FS Environmental & Infrastructure Services Ltd (IEISL) and Specified Environment Entities of the Applicant Group.

2. The factual backdrop that led to the present Application may briefly be stated. The Union of India (UoI) filed CP No. 3638 of 2018 against Infrastructure Leasing and Financial Services Ltd (IL & FS) under Sections 241 and 242 of the Companies Act, 2013 (the Act) *inter alia* alleging mismanagement in the Company.
3. This Tribunal by an order dated 01/10/2018 superseded the Board of Directors of IL & FS and constituted a new Board with six Directors to take over the affairs of the Company. In addition to the six Directors appointed on 01/10/2018, this Tribunal later appointed three more Directors respectively *vide* order dated 03/10/2018 (pursuant to which one more director was appointed) and order dated 21/12/2018 (pursuant to which two more directors were appointed). The new Board was directed to furnish a roadmap for

consideration of the Tribunal. This Tribunal by an order dated 12/10/2018 in MA No. 1173 of 2018 declined to order a moratorium in respect of IL & FS Group. The UoI and IL & FS carried the matter in Appeal before the Hon'ble National Company Law Appellate Tribunal (NCLAT) respectively in Company Appeal No. 346 of 2018 and Company Appeal No. 347 of 2018. The Hon'ble NCLAT by an order dated 15/10/2018 granted interim stay against any coercive action by the creditors against IL & FS and its group entities.

4. The New Board prepared periodical progress reports in terms of the order dt. 01/10/2018 and submitted them to the UoI in the Ministry of Corporate Affairs. In the process the Board of Directors submitted the 3rd Progress Report dated 17/12/2018 and in terms of the order dated 01/10/2018 proposed the Resolution Framework. It made certain recommendations for various Resolution Processes of the IL & FS and its Group Companies and requested the Government of India in the Ministry of Corporate Affairs to approach the relevant forum for approval of the Resolution Process.
5. The said Resolution Framework sets forth that given the position of and challenges in the IL & FS Group, an '*Asset Level Resolution*' i.e., an asset-by-asset resolution 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 IL & FS Group. It would be pertinent to note that the Resolution Framework inter alia sets forth that with regard to companies/entities of the IL & FS Group where: i) there are no operations or the cashflows are insufficient to meet the current operating liabilities and statutory liabilities; and/or ii) No bids/ EoIs are received from any bidder, the New Board may take steps for these companies to be wound up.

6. The Hon'ble NCLAT by an order dated 11/01/2019 observed that the process required to be followed was similar to that of 'Corporate Insolvency Resolution Process' for the purpose of proper Resolution of IL & FS and its Group companies. The Hon'ble Appellate Authority further observed that in such cases the Committee of Creditors (CoC) may be required to be constituted for determining the viability, feasibility and financial matrix of the plan or offer, if any, given by one or other party for acquisition of one or other group companies or its assets and in the absence of any other knowledgeable person such as the 'Resolution Professional', (if) such Committee of Creditors cannot be constituted, in the meantime the IL & FS and its board may be allowed to proceed with the matter.

7. The Hon'ble NCLAT by an order dated 04/02/2019 permitted the UoI and IL & FS to engage Hon'ble Justice Mr. D. K. Jain (Retd.) to supervise the operation of the Resolution Process. The Hon'ble NCLAT vide the same order directed the UoI and IL & FS to file an affidavit inter alia setting out the names of entities in the IL & FS 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 before the Hon'ble NCLAT placing on record, the list of 169 *Indian IL&FS Entities* and 133 *Offshore IL&FS Entities*. Hon'ble NCLAT by order dated 11/02/2019 *inter alia* excluded the *Offshore IL&FS Entities* from the purview of the October 15th (15/10/2018) Order and directed that the resolution of the *Offshore IL&FS Entities* may be taken up by the New Board under the supervision of Hon'ble Justice D. K. Jain (Retd.). Hon'ble NCLAT also directed that the actions taken for resolution of the *Offshore IL&FS Entities* be presented to this Tribunal.

8. Thus, basing on the recommendations of Hon'ble Justice Jain, the resolution was then to be placed before the NCLT (this Tribunal) for approval. The approval by this Tribunal would formalize and finalize the resolution of the individual or collective group entities.
9. By their order dated 12/03/2020 the Hon'ble Appellate Tribunal accepted 15/10/2018 as the 'cut-off date' for distribution of assets and termed it as the date of initiation of Resolution Process of the IL & FS and its group companies. In the 12/03/2020 Order the Hon'ble NCLAT reiterated the 11/02/2019 Order. The Hon'ble Appellate Tribunal further directed that the Union of India, the Board of Directors of IL & FS and the 'Committee of Creditors' already constituted or which may be constituted were to conclude resolution of all the entities preferably within 90 days. The developments thereof were to be brought to the notice of Hon'ble Appellate Tribunal every month. That is how the resolution of IL & FS and its group entities came to be worked out.
10. In the present Application, the Applicant submits that IEISL is a subsidiary of the Applicant with the Applicant holding 97.54% of the equity shares in its shareholding, directly and jointly along with its nominees. The balance 2.46% equity shares in the shareholding of IEISL are held by IL & FS Employee Welfare Trust. The details of the entities comprising the Specified Environment Entities of the Applicant Group are as follows:

1.	Dakshin Dilli Swachh Initiative Ltd (DDSIL)	Wholly Owned Subsidiary of IEISL
2.	Swayam Swachatta Initiative Ltd (SSIL)	Joint venture between IEISL (51%) and Urbaser SA (49%)
3.	RDF Power Projects Ltd (RDF)	IEISL holds 76.98% shareholding
4.	East Delhi Waste Processing Co	IEISL holds 48.99% shareholding

	Ltd (EDWPCL)	
5.	Kanak Resources Management Ltd (KRML)	IEISL holds 94.71% shareholding.

(collectively “Specified Environment Entities”)

11. In addition to the above, IEISL has 2 (two) more wholly owned subsidiaries namely :(i) Tierra Enviro Ltd (TEL); and (ii) Unique Waste Processing Co. Ltd (UWPCL). UWPCL further holds 50% share capital in Indraprastha Energy and Waste Management Co. Pvt Ltd (IECPL) which is a joint venture between UWPCL and Delhi Power Co Ltd. TEL, UWPCL and IECPL are excluded from the resolution process of IEISL and the Specified Environment Entities (Excluded Environment Entities).

12. The salient features of the Resolution Framework are set out below:
 - i. Crystallisation of claims as on “Cut off Date” (i.e. 15.10.2018);
 - ii. Two valuers to be appointed to determine the fair value and liquidation value in respect of “Sale Companies” (i.e. entities being monetized as part of the “Asset Level Resolution”);
 - iii. Categorization of entities (Category I and Category II): Based on the H1 bid value received, a Sale company would either be,
 - a) Category I Company, i.e., where the bidder is willing to assume all liabilities of the Sale Company whether operational or financial without compromise of the debt; or
 - b) Category II Company, i.e., where the financial bid amount offered by the Applicant is less than all the liabilities of the Sale Company.
 - iv. Constitution of a Creditors’ Committee: In respect of the relevant Sale Company, Creditors’ Committee will be constituted, in lieu of individual creditors consent in the manner provided for in the Resolution Framework.

- v. The decision of the Creditors' Committee to either approve or reject the highest bid for a Sale Company will be placed before the New Board for its consideration;
- vi. If the New Board approves a sale proposal, the same will be placed before Justice (Retd.) D. K. Jain for his approval.
- vii. Upon receipt of approval of Justice (Retd.) D. K. Jain, the proposal will be placed with this Tribunal for its approval.
- viii. Upon receipt of approval of this Tribunal and payment of consideration by the successful bidder, the shares/assets of the relevant Sale Company will be transferred free and clear of all encumbrances, liens, third party rights to the successful bidder;
- ix. Distribution of proceeds to creditors: the financial bid value received for a Sale Company would be distributed as follows:
 - a) First, towards all resolution process costs incurred in the resolution process of the relevant Applicant Group entity;
 - b) Second, towards distribution of the net sale proceeds paid by the H1 bidder/ termination amount/ settlement amounts/ foreclosure amounts up to the average 'liquidation value' to the creditors of the relevant Applicant Group company in accordance with Section 53 of the IBC;
 - c) Third, the remaining sale proceeds/ termination amounts/ settlement amounts/ foreclosure amounts to be distributed pro-rata to each class of creditors of the relevant Applicant Group company, adjusted for any recovery made by the relevant creditor on account of distribution under Section 53 of the IBC.

Each such payment shall be made to a creditor in respect of the admitted claim of the relevant creditor existing as of the Cut-Off Date, as admitted by the Claims Management Consultant and shall be adjusted for any amounts which have been set-off or appropriated by the relevant creditor in breach of the interim order passed on 15.10.2018.

13. In line with the mandate granted to the New Board, and in terms of various orders passed by this Tribunal and the Hon'ble NCLAT, indicated supra, the

resolution process of IEISL and the Specified Environment Entities was initiated by the New Board on 25.01.2019 by exploring possible sale of the Applicant's and IL & FS Employee Welfare Trust's shareholding in IEISL and consequently the Specified Environment Entities through a publicly solicited competitive price discovery process.

14. Prior to the launch of resolution process of IEISL and the Specified Environment Entities *inter alia* in terms of the Resolution Framework and orders passed by the Hon'ble NCLAT and this Tribunal, an expression of interest was received from Green Growth Equity Fund (GGEF), acting through its investment manager Ever Source Capital Pvt. Ltd. (ECPL) for acquisition of IEISL and the Specified Environment Entities, terms of which *inter alia* included furnishing of a performance guarantee on behalf of GGEF to secure its bid and to provide certainty to the Applicant *vis a vis* the Potential Transaction.
15. Accordingly, the New Board in exercise of its liberty under paragraph 10.2 of the Initial Resolution Framework resolved to undertake the sale of the Applicant's and IL & FS Employee Welfare Trust's shareholding in IEISL and consequently the Specified Environment Entities, through a process akin to "Swiss Challenge Method". ECPL opted to participate in the process through its wholly owned subsidiary viz. EverEnviro Resource Management Private Limited (ERMPL).
16. Pursuant to the approval by the New Board, the "Terms of the bid for acquiring IL&FS Environmental & Infrastructure Services Limited" dated 03.10.2019 (Process Letter) was issued to ECPL *inter alia* setting forth terms for the proposed acquisition of 100% of the issued, subscribed and paid up share-capital of IEISL and consequently, the Specified Environment Entities

(Potential Transaction). Summarily, the terms of such acquisition, amongst others, are:

- i. ERMPL, as part of the Financial Proposal, was required to submit its quote for:
 - a) the consideration payable for IEISL on a consolidated basis; and
 - b) a break-up of the consideration payable on a consolidated basis in respect of each of the Specified Environment Entities based on the criteria set out in the Process Letter.
 - ii. The bid submitted by ERMPL shall be subject to a counter publicly solicited bid process conducted by the New Board;
 - iii. ERMPL will be given an opportunity to match or better the bid consideration quoted by the bidder in the counter bid process, only if the bid value of the bidder in the counter bid process is up to 120% of that quoted by ERMPL in its bid (“Right to Match”);
 - iv. In the event that the consideration quoted by the bidder in the counter bid process is higher by more than 20% of the consideration quoted by ERMPL in its bid, ERMPL shall not have any Right to Match; and
 - v. In the event that ERMPL is intimated of occurrence of the Material Positive Development (*as defined in the Process Letter*), as per the terms of the Process Letter, ERMPL shall have the right to revise the bid by offering a higher consideration taking into account the Material Positive Development (*as defined in the Process Letter*).
17. As set out above, since the Excluded Environment Entities do not form a part of the Potential Transaction. It was proposed that TEL and UWPCCL (along with its holding in IEPCL) would be excluded from the Potential Transaction and prior to the closing, the Applicant shall acquire the equity stake of TEL and UWPCCL (along with its holding in IEPCL) from IEISL, in the manner set out below.

18. In terms of the Process Letter, the financial bid in respect of IEISL and the Specified Environment Entities was submitted to the Applicant on October 22, 2019 by ERMPL, which is set up by GGEF for undertaking all its waste management businesses. Subsequently, the Applicant made observations on certain technical/non-financial bid documents submitted by ERMPL along with its bid, indicating that such documents did not fully conform to the format set out in the Process Letter, pursuant to which ERMPL submitted revised technical/non-financial bid documents with the Applicant on November 21, 2019 to ensure that such documents conform to the format set out in the Process Letter.

19. The financial proposal submitted by ERMPL was opened on January 3, 2020 in the presence of members of the Asset Sale Committee (ASC) that has been constituted by the New Board to *inter alia* negotiate and finalize terms of the sale/resolution of IEISL and the Specified Environment Entities. The financial proposal of ERMPL contemplated lump sum consideration of INR 150,00,00,000/- (Indian Rupees one hundred and fifty Crores) for IEISL and the Specified Environment Entities (Initial Bid) in the manner provided therein.

20. Thereafter, the Applicant was informed by IEISL that, in respect of a potential tax liability of INR 25,00,00,000/- of its power plant at Ghazipur, no demand was made by the tax authorities concerned in relation to the final tax assessment order for financial year 2017-18. Since this development constituted a Material Positive Development (*as defined in the Process Letter*) in terms of the Process Letter, the Applicant promptly conveyed the same to ERMPL *vide* an email/letter dated January 9, 2020 and also requested ERMPL to submit its revised financial bid at the earliest. In response thereto, ERMPL promptly issued an email dated January 10, 2020 *inter alia* stating that while it had not taken into account such potential tax liability in

submitting the Initial Bid, in exercise of its Right to Revise (*as defined in the Process Letter*), it would increase its bid in respect of IEISL and the Specified Environment Entities to INR 157,50,00,000/- (Indian Rupees One Hundred Fifty Seven Crores Fifty Lakhs Only) (Purchase Consideration). Considering the potential tax liability was a development which occurred subsequent to due diligence conducted by ERMPL, the submission of ERMPL that they had not taken into account the impact of such potential tax liability while submitting their initial bid was considered and their proposal for increase in the bid value was accepted by the ASC.

21. Thereafter, the Applicant sought further clarifications on the allocation of the Purchase Consideration which was submitted by ERMPL on April 20, 2020. Thereafter, a counter bid process akin to a 'Swiss Challenge Method' was initiated by the New Board. To this intent, an advertisement and invitation for expressions of interest (EOI) were published on January 14, 2020, in terms of which 100% of the issued, subscribed and paid-up share-capital of IEISL, including its holdings inter alia in the Specified Environment Entities was offered to prospective bidders. The EOI inter alia stipulated that the Applicant has been approached by an interested party (i.e., ERMPL) and has received a binding offer in respect of IEISL and the Specified Environment Entities and that the bid process will be akin to a 'Swiss Challenge Method'.
22. Pursuant to the advertisements, EOIs for the acquisition of the Applicant's and IL & FS Employee Welfare Trust's shareholding in IEISL and consequently the Specified Environment Entities were received from 7 interested applicants. Based on the eligibility criteria set out in the EOI, 6 (six) such applicants were shortlisted and pursuant to the execution of a non-disclosure undertaking, such shortlisted applicants were issued the request of proposal dated February 14, 2020 (RFP).

23. In terms of the RFP issued to the shortlisted applicants, they were granted a time period of 46 days from the date of issue i.e., February 14, 2020 of the RFP, to complete their due diligence exercise. The shortlisted applicants were to complete their due diligence exercise by March 31, 2020. However, in light of COVID 19, the shortlisted applicants sought extension of the due diligence period by additional 30 days to permit them to undertake a physical inspection of the Specified Environment Entities. Accordingly, on March 31, 2020, the Applicant in terms of the Process Letter, for any variation in the timeline, issued a letter to ERMPL, to accord its consent for extension of time period available to the shortlisted applicants to conduct their due diligence exercise by April 30, 2020. ERMPL took the aforesaid request into consideration, but vide its letters dated April 1, 2020 and April 4, 2020, declined the Applicant's request on the grounds that such extension in timeline would lead to significant delays in selection of the successful bidder. Thereafter, no binding bids were received by the Applicant by the due date of April 9, 2020 (for submission of bids in the counter public bid process).
24. As per the terms of the Process Letter, the bid submitted by ERMPL was valid for a period of 6 months from October 22, 2019 and could be extended for such periods as may be mutually agreed between ERMPL and the Applicant. Accordingly, the Applicant requested ERMPL to extend the validity of the bid till June 30, 2020 or 55 days from the removal of lockdown by the Government of India, whichever is later. ERMPL *vide* letter dated April 20, 2020 extended the validity of the bid till June 30, 2020, subject to certain specified conditions and further confirmed the extension of the validity of the performance bank guarantee submitted by it till June 30, 2020. Pursuant to a request for further extension by the Applicant, ERMPL, *vide* its e-mail dated June 10, 2020 further extended the validity of the bid till July 15, 2020.

25. Parallely, the New Board on June 9, 2020 identified the ERMPL's bid to be the highest bid received in respect of the Potential Transaction. It is submitted that since the Purchase Consideration (and the *inter se* allocation) was less than all the liabilities of IEISL and the Specified Environment Entities (i.e. no positive equity value), IEISL and each of the Specified Environment Entities were categorized by the New Board as a Category II Company (*as defined in the Initial Resolution Framework*). It is submitted that for a Category II Company, the Resolution Framework contemplates, that a Creditors' Committee consisting of all financial creditors of the Sale Company (i.e., in the present case, IEISL and each of the Specified Environment Entities) shall be constituted.
26. Accordingly, the New Board authorized the formation of the Creditors' Committee comprising of all 'financial creditors' (as understood in the context of the IBC) of IEISL (IEISL CoC), DDSIL (DDSIL CoC), SSIL (SSIL CoC), RDF (RDF CoC), EDWPCL (EDWPCL CoC) and KRML (KRML CoC). In accordance with Paragraph 11 of the Initial Resolution Framework a claim verification process was undertaken for IL & FS Group entities in multiple phases. Phase 1 of the claim verification process covered among others, IEISL, DDSIL, SSIL and EDWPCL (collectively "Environment Phase 1 Claims Entities") which has been modified from time to time to reflect companies where the claims verification process has been closed on account of sale completion among other reasons. Phase 2 of the claim verification process covered among others, RDF. Claim verification process for KRML was not undertaken as part of the larger claim verification process since the entity was under Corporate Insolvency Resolution Process (CIRP) under the provisions of IBC until October 21, 2019. The last date of submission of claim for the process for all IL & FS Group entities under Phase 1 of claim verification process including Environment Phase 1 Claims

Entities, after multiple extensions, was February 5, 2020 and for RDF (under Phase 2 of claim verification) was February 14, 2020.

27. On June 10, 2020 it was informed by IEISL management that a certain entity who appears as secured financial creditor (being Tata Motor Finance Limited) in the books of one of the Specified Environment Entities has failed to submit the claims within the deadline. In order to grant such creditor a reasonable opportunity to file their financial claims, the claim submission deadline for all remaining IL & FS Group entities under Phase 1 of claim verification process (55 entities) including Environment Phase 1 Claims Entities was extended on June 15, 2020 for an additional period and all claims submitted until June 18, 2020 were to be considered for COC formation. There was no further extension for any entity under Phase 2 of claim verification including RDF. Additionally, as the claim verification process for KRML had not been undertaken as part of the larger claim verification process on account of KRML being under IBC, a fresh process was launched for KRML on June 15, 2020 with a claim submission deadline of June 20, 2020.
28. The meeting of the IESIL CoC, DDSIL CoC, SSIL CoC, RDF CoC and EDWPCL CoC was convened on June 18, 2020. However, on the morning of June 18, 2020, *vide* an email (the “Bid Clarification Email”), ERMPL informed the Applicant of an inadvertent error in the excel sheet prepared for providing the break-up of consideration on April 20, 2020 (for IEISL and the Specified Environment Entities), so far as it related to IEISL and SSIL and submitted revised allocations. The email clarified that while the Purchase Consideration remains the same at INR 157,50,00,000/- (Indian Rupees one hundred and fifty seven Crores fifty Lakhs):
- i. the lump sum consideration of SSIL was being corrected to INR 9,56,39,135/- (Indian Rupees nine Crores fifty six Lakhs thirty nine thousand one hundred and thirty five) instead of what was

- inadvertently indicated as INR 56,00,000 (Indian Rupees fifty six Lakhs) previously on April 20, 2020; and
- ii. the lump sum consideration of IEISL was being corrected to INR 70,51,08,744 (Indian Rupees seventy crore fifty one Lakhs eight thousand seven hundred and forty four) instead of what was inadvertently, due to a typographical error, indicated INR 79,51,08,744 (Indian Rupees seventy nine Crores fifty one Lakhs eight thousand seven hundred and forty four) on April 20,2020.

A tabular statement of the allocation of the Purchase Consideration is as follows:

S. N.	Entity	Amount Allocated (₹)
1.	IEISL	70,51,08,744
2.	DDSIL	15,10,84,931
3.	SSIL	9,56,39,135
4.	RDF	20,00,00,000
5.	EDWPCL	40,37,79,190
6.	KRML	1,93,88,000
7.	Total	157,50,00,000/-

29. In light of the Bid Clarification Email and given the timing constraints, the decision was made to continue with each of the 5 (five) Creditors' Committee meetings scheduled for June 18, 2020. Given that the clarification related to bid values in respect of IEISL and SSIL were issued pursuant to the Bid Clarification Email, the members of the IEISL CoC and the SSIL CoC were expressly informed of fact that ERMPL had provided the corrected *inter se* allocation of the H1 Bid amount for IEISL and SSIL earlier in the morning of June 18, 2020 on account of error at their end, and that while the members were presented with the revised *inter se* allocation for IEISL and SSIL respectively, such corrected allocation of the Purchase Consideration was subject to approval of the New Board and the board of directors of the relevant entities (*i.e.*, IEISL and SSIL). Accordingly, the members of IEISL

CoC and the SSIL CoC were informed that the voting over the bid value for IEISL and SSIL respectively would be undertaken once the New Board and the respective board of directors of IEISL and SSIL consider the revised *inter se* allocation of the Purchase Consideration.

30. The New Board on June 27, 2020 and board of directors of IEISL *vide* emails dated July 16, 2020 respectively took on record the corrected *inter se* allocation of the Purchase Consideration submitted by ERMPL *vide* the Bid Clarification Email. The Creditors' Committee in respect of KRML was also constituted and a meeting of the KRML Creditors' Committee was scheduled on July 6, 2020. In terms of the Resolution Framework, a bid is considered to be approved if voted for in favour by a majority of 2/3rd of the members (by value) of the relevant Creditor's Committee. It is submitted that after initiation of the voting process of the respective CoCs, each of the IEISL CoC, DDSIL CoC, SSIL CoC, RDF CoC, EDWPCL CoC and KRML CoC approved the *inter se* Purchase Consideration allocated in respect of the relevant entity. Set out below are the approvals of each of the Creditors' Committee in respect of the *inter se* Purchase Consideration allocated in respect of the relevant entity:

<i>S.N.</i>	<i>Entity</i>	<i>CoC Approval Value</i>
1.	IEISL	85.49%
2.	DDSIL	100%
3.	SSIL	79.81%
4.	RDF	75.38%
5.	EDWPCL	86.85%
6.	KRML	100%

Copies of the voting sheet of the IEISL CoC, DDSIL CoC, SSIL CoC, RDF CoC, EDWPCL CoC and KRML CoC are annexed with the Application as Annexures 16 to 21 respectively.

31. As per the Resolution Framework, the approvals of the IEISIL CoC and the Creditors' Committee constituted in respect of each of the Specified Environment Entities approving the H1 Bid was placed before the New Board for its consideration. The New Board has consequent upon the approvals of the said Creditors' Committees, at its meeting on July 11, 2020:
- a. approved the Purchase Consideration offered by ERMPL and the inter se allocation of the same between IEISL and each of the Specified Environment Entities; and
 - b. directed that the same be submitted to Justice (Retd.) D. K. Jain for his consideration and approval.

In the meantime, the Applicant issued a letter of intent dated July 10, 2020 to ERMPL to the effect that the final letter of intent would be conditional upon the approval of the process by Justice (Retd.) D. K. Jain. ERMPL by a letter dated July 16, 2020, communicated its acceptance to the Conditional LOI and extended the validity of the performance bank guarantee till August 15, 2020 and subsequently to September 17, 2020. Separately, pursuant to the recommendations of the members of ASC, the New Board on July 30, 2020 approved the acquisition of 100% (hundred per cent) of the shareholding of each of TEL and UWPCCL held by IEISL by the Applicant for a nominal consideration of INR 1/- (Indian Rupee One only) each. Pursuant to the approval by the New Board, a share purchase agreement to be executed between IL & FS, IEISL, TEL and UWPCCL (IL&FS SPA) for the acquisition of 100% (hundred per cent) of the shares held by IEISL of each of TEL and UWPCCL by the Applicant has been prepared.

32. Pursuant to the approval by the New Board, the board of directors of IEISL, on August 12, 2020, authorized the sale of 100% (hundred per cent) of the issued and outstanding share capital of each of TEL and UWPCCL held by IEISL to the Applicant for a consideration of INR 1/- (Indian Rupee One

only) each. Additionally, ERMPL *vide* its email dated August 01, 2020 also confirmed the above terms of the transfer of TEL and UWPCCL to the Applicant.

33. The Applicant filed an application on July 18, 2020 before the Hon'ble Justice D. K. Jain (Retd.) seeking his approval for the sale of the Applicant's and IL & FS Employee Welfare Trust's shareholding in IEISL and consequently in each of the Specified Environment Entities. Subsequently, the Applicant filed a supplemental application on August 14, 2020 before Hon'ble Justice D. K. Jain (Retd.) seeking his approval for the acquisition of the 100% shares held by IEISL in TEL and UWPCCL by the Applicant.
34. By letter dated August 24, 2020, the Hon'ble (Retd.) Justice D. K. Jain (Retd.) approved:
 - a. the sale of 100% of the shareholding of the Applicant and IL&FS Employee Welfare Trust in IEISL and consequently each of the Specified Environment Entities held by IEISL to ERMPL; and
 - b. the acquisition of the 100% of the shareholding of TEL and UWPSL held by IEISL by the Applicant for a nominal sum of INR 1/-;subject *inter alia* to the approval by this Tribunal.
35. After the receipt of the Hon'ble Justice Jain's approval, the Applicant undertook certain discussion with ERMPL for upward adjustment in the Purchase Consideration. The agreed form of IEISL SPA provided for adjustment in the Purchase Consideration only in case of the actual closing occurring prior to July 31, 2020 ("Deemed Closing Date") on the following two grounds: (a) upward adjustment in the Purchase Consideration for 'Green Category Companies' (shall include Swayam Swachatta Initiative Limited) to account for repayment of the outstanding principal and interest between the actual closing date and Deemed Closing Date; and (b) downward adjustment

in the Purchase Consideration for 'Red Category Companies' (shall include IEISL, Dakshin Dilli Swachh Initiative Limited, RDF Power Projects Limited and East Delhi Waste Processing Company Limited) to account for the shortening of interest and principal moratorium period (which was earlier assumed till Deemed Closing Date). The agreed form of IEISL SPA, however, did not contemplate adjustments in the Purchase Consideration if actual closing for the Potential Transaction extended beyond the Deemed Closing Date. The delay in the timelines contemplated for the completion of the Potential Transaction and closing for the Potential Transaction extending beyond the Deemed Closing Date resulted in the extension of interest moratorium, the benefit of which would have accrued to ERMPL. A request was hence made by the Applicant to ERMPL for upward adjustment in the Purchase Consideration in order to account for the benefit of the extension of moratorium beyond the Deemed Closing Date. However, ERMPL declined the request. As such upward adjustment was not contemplated under the agreed form of IEISL SPA if the actual closing occurred after the Deemed Closing Date and as the same would require a fresh valuation of IEISL and Specified Environment Entities forming part of the Potential Transaction and approval from their investment committee, both of which would result in significant delay. Consequently, the New Board approved the waiver of upward adjustment in the Purchase Consideration.

36. Pursuant to receipt of the Hon'ble Justice Jain's approval, the following steps have been taken to consummate the resolution of IEISL and the Specified Environment Entities:

- i. ERMPL has countersigned and thus accepted the Letter of Intent dated September 17, 2020 (LoI). Prior to signing the LoI, various correspondence was exchanged between ERMPL and the Applicant in relation to the LoI since ERMPL enquired about the possibility of seeking assignment of loans granted to IEISL and Specified Environment Entities and corresponding changes to the agreed form

of IEISL SPA. However, it was subsequently agreed not to pursue the same since the Process Letter did not contemplate or provide for the same.; and

- ii. ERMPL, the Applicant, IEISL and IEWT have executed share purchase agreement on October 08, 2020 (IEISL SPA) setting out the terms on which the sale of the Applicant's stake in IEISL and IEISL's holdings in each of the Specified Environment Entities to ERMPL is to be concluded.

37. The Applicant submits that after the receipt of approval from this Tribunal, the Applicant and IEISL, TEL and UWPCL will execute the IL & FS SPA setting out the terms on which the sale of the IEISL's stake in TEL and UWPCL to the Applicant is to be concluded.

38. The Applicant thus approached the Tribunal for approval and necessary directions to consummate the sale of the Applicant's and IL & FS Employee Welfare Trust's shareholding in IEISL and consequently each of the Specified Environment Entities to ERMPL in line with the Resolution Framework. It is submitted that the sale/resolution process of IEISL and the Specified Environment Entities has been conducted keeping in mind the rights and interests of all stakeholders of IEISL and the Specified Environment Entities and the Applicant Group, and with a view to maximize value for all. The details of the steps taken to implement the sale process in respect of IEISL and the Specified Environment Entities as per the Resolution Framework, along with details of compliance/deviations against each such step such as the computation of average "Fair Market Value" (FMV) and the average "Liquidation Value" (LV) of IEISL and each of the Specified Environment Entities (which was also submitted to Justice D. K. Jain (Retd.) as part of the application made to him) is annexed to the Application.

39. At the time of submission of bid, ERMPL had shared some observations it had identified during the due diligence process. After obtaining clarifications

on the same from IEISL, they were shared with the ASC. In order to ensure fair comparison of the bid received from ERPML with the Fair Market Value received from the Valuers, approval of the ASC was sought to permit submission of the revised business plan to the Valuers after taking into account the observations received from ERMPL on the business plan. The ASC while according its approval also suggested to have the revised business model vetted by the Resolution Consultant (Alvarez and Marsal) prior to submitting the same to the valuers. The New Board provided its approval for the above approach of submitting a revised Business Plan, vetted by Alvarez and Marsal, to the valuers, in its meeting held on November 7, 2019.

40. In view of the facts and circumstances set out above, it is submitted that the resolution of IEISL and the Specified Environment Entities has been conducted to ensure a fair resolution upholding the key principles of value maximization for all stakeholders, commercial viability and financial stability. The Resolution Framework *inter alia* accords liberty to the New Board to undertake such modification in the process of resolution of Applicant Group entities as it deemed fit, guided by principles such as commercial feasibility, ensuring a fair resolution in a timely manner, good governance and financial stability and having regard to considerations such as nature of business and existing contractual arrangement in place with counter parties. Accordingly, it is submitted that given that ECPL had approached the Applicant and submitted the Purchase Consideration for purchase of the Applicant's stake in IEISL and IEISL's holdings in each of the Specified Environment Entities through ERMPL, the New Board, in exercise of such liberty under the Resolution Framework, conducted the resolution of these entities by a process akin to a 'Swiss Challenge Method'.
41. It is submitted that the sale/resolution process for IEISL and the Specified Environment Entities which is akin to 'Swiss Challenge Method' has been

contemplated pursuant to the Resolution Framework which was approved by the Hon'ble NCLAT vide the March 12 Order. Summarily, the resolution process for these entities contemplated:

- a. an initial bid by ECPL acting as the investment manager for the GGEF through ERMPL who had expressed their willingness to purchase the shareholding of the Applicant and IL & FS Employee Welfare Trust in IEISL and consequently each of the Specified Environment Entities;
- b. a publicly solicited price discovery counter bid process (as detailed above);

However, pursuant to such publicly spirited price discovery counter bid process, no bid was received in respect of IEISL and the Specified Environment Entities, making ERMPL's financial proposal as the highest and only bid in respect of these entities. Hon'ble Justice (Retd.) D. K. Jain has considered this resolution/sale process conducted for IEISL and Specified Environment Entities to ERMPL and accorded his approval thereto. Under the circumstances, it is thus prayed to approve the resolution/sale process of IEISL and Specified Environment Entities.

42. It is submitted that while ERMPL has not attributed a positive equity value for the shares of IEISL and Specified Environment Entities, the proposed sale of the Applicant's and IL & FS Employee Welfare Trust entire shareholding in IEISL and consequently the Specified Environment Entities and the Purchase Consideration has been approved by the relevant Creditors' Committees by a majority (each approval greater than 2/3rd of the members of the relevant Creditors' Committee) by voting share as stated supra. Under the circumstances, given that the creditors of IEISL and each of the Specified Environment Entities has approved the resolution process for IEISL and each of the Specified Environment Entities, it is in the interests of justice that this Tribunal approves the sale of the Applicant's and IL & FS Employee Welfare

Trust shareholding in IEISL and consequently Specified Environment Entities to ERMPL.

43. The resolution process for IEISL and the Specified Environment Entities has been undertaken in accordance with the Initial Resolution Framework, First Addendum and the Second Addendum which has subsequently been approved by the Hon'ble NCLAT vide the March 12 Order. According to the Second Addendum (the Revised Distribution Framework), the financial bid/consideration received for IEISL and the Specified Environment Entities is to be distributed in the following manner:

- a) *first*, towards all resolution process costs incurred in the resolution process of IEISL and the Specified Environment Entities, whether incurred by IEISL or on behalf of IEISL (including but not limited to fees payable to the financial and transaction advisors, legal counsels, resolution consultant, claims management consultant, independent valuers, costs for issuing advertisements, conducting audits, and conducting meetings of Creditors' Committee etc. (collectively the "Resolution Process Costs")) in full;
- b) *second*, towards distribution of the net sale proceeds paid by the H1 bidder up to the average liquidation value to the creditors of IEISL and creditor of each of the Specified Environment Entities in accordance with Section 53 of the Insolvency and Bankruptcy Code, 2016 ("IBC") (which will include all components of Section 53 of the IBC such as unpaid workmen's dues and unpaid employees' dues etc., as applicable); and
- c) *third*, the remaining sale proceeds to be distributed pro-rata to each class of creditors of IEISL and each class of creditors of the Specified Environment Entities, adjusted for any recovery made by the relevant creditor on account of distribution under Section 53 (of the IBC), as contemplated above.

Each such payment to a creditor of IEISL and the Specified Environment Entities shall be made to the relevant creditor of IEISL and the Specified Environment Entities in respect of the admitted claim of that creditor existing as of the Cut-Off Date, as admitted by the Claims Management Consultant

and shall be adjusted for any amounts which have been set-off or appropriated by the relevant creditor in breach of the order passed by the Hon'ble NCLAT on October 15, 2018.

44. The Revised Distribution Framework, as set out above first contemplates application of the financial bid/consideration received for IEISL and the Specified Environment Entities towards Resolution Process Costs. Resolution Process Costs are costs such as valuation exercise costs etc. which were/have been incurred towards the fees of professionals, being the Valuers, legal advisors, financial and transaction advisors, Claims Management Consultant, Resolution Consultant etc. (Professionals), who were appointed by the New Board. In lieu of providing their services, as on date these Professionals are to receive an amount of up to INR 2,92,59,468/- (inclusive of GST) from the sale proceeds of the Potential Transaction. In addition to this, certain further amounts may be incurred as Resolution Process Costs till the conclusion of the sale of IEISL and each of the Specified Environment Entities in terms of the Share Purchase Agreement dated October 08, 2020. The amounts that are payable to these Professionals are akin to 'insolvency resolution process costs' as described under the IBC and are mandated to be paid ahead of any payments to any other stakeholders.
45. It is submitted that similar services are also being availed from Professionals by the Applicant Group Companies for the other sale/resolution process which are currently underway for the Applicant Group and are a key ingredient for and to enable an orderly resolution of the Applicant Group. Under the circumstances, it is in the interests of justice that this Hon'ble Tribunal direct that the Resolution Process Costs be permitted to be paid in the manner set out in Annexure 36 attached to this Application and any further amounts that may be incurred as Resolution Process Costs till the conclusion of the sale of

IEISL and each of the Specified Environment Entities in terms of the Share Purchase Agreement dated October 08, 2020.

46. As set out above, after payment of Resolution Process Costs, the Revised Distribution Framework contemplates distribution of the net sale proceeds paid by the H1 bidder up to the average liquidation value to the creditors of IEISL in accordance with the IBC.
47. In this regard, it is submitted that the Purchase Consideration that has been offered by the H1 Bidder for IEISL and the Specified Environment Entities on a lump sum basis is INR 157,50,00,000/- (Indian Rupees One Hundred Fifty Seven Crores Fifty Lakhs Only) and the allocation of the Purchase Consideration as per the H1 Bid is as follows:

<i>S No.</i>	<i>Name of Entity</i>	<i>Amount (approx.) (₹)</i>
1)	IEISL	70.5 Crores
2)	RDFPPL	20 Crores
3)	DDSIL	15.1 Crores
4)	SSIL	9.56 Crores
5)	EDWPCL	40.4 Crores
6)	KRML	1.94 Crores

48. As against this the average of the liquidation value of each of IEISL and the Specified Environment Entities is as follows:

<i>S No.</i>	<i>Name of Entity</i>	<i>Amount (₹)</i>
1)	IEISL	125.10 Crores
2)	RDFPPL	55.3 Crores
3)	DDSIL	43.6 Crores
4)	SSIL	38.6 Crores

5)	EDWPCL	87.5 Crores
6)	KRML	32.3 Crores

49. The break-down of the debt and the creditors of each of IEISL and the Specified Environment Entities (on the basis of claims admitted by the Claims Management Consultant as of October 15, 2018) is briefly set out below:

<i>S No.</i>	<i>Name of Entity</i>	<i>Claims admitted as of Cut-off Date (₹)</i>
1.	IEISL	579.62 Crores
2.	EDWPCL	434.12 Crores
3.	DDSIL	65.42 Crores
4.	SSIL	21.67 Crores
5.	RDFPPL	299.41 Crores
6.	KRML	17.07 Crores

50. Therefore, as set out above upon applying the Purchase Consideration as allocated by the H1 Bid up to the average liquidation value for the creditors of each of IEISL and the Specified Environment Entities, the distribution of the Purchase Consideration to the creditors of IEISL and the Specified Environment entities is proposed be done. The amounts set out in Annexure 38 of the Application are illustrative and have been determined on the basis of the formula approved by the Hon'ble NCLAT vide the March 12 Order which will be subject to adjustments required under the IEISL SPA and payment of Resolution Process Costs.

51. Therefore, in order to conclude the resolution process of IEISL and the Specified Environment Entities, the Applicant prays to this Tribunal to direct/permit the Applicant to distribute the Purchase Consideration received from the sale of IEISL and the Specified Environment Entities as per the

values and/or amounts illustratively as set out in Annexure 38 to this Application (after making adjustments required under the IEISL SPA and payment of Resolution Process Costs) as discharge of all obligations as of Cut-Off Date of each of IEISL and Specified Environment Entities.

52. It is further submitted by the Applicant that the Purchase Consideration (after effecting adjustments contemplated under the IEISL SPA) shall be received and distributed in the following manner, on the closing date:
- a. ERMPL shall transfer:
 - i. INR 1/- to the bank accounts of shareholders of IEISL *viz.* IL&FS and IEWT as there is no positive equity value as mentioned above;
 - ii. Resolution Process Cost into the bank account of the Applicant.
 - iii. the balance Purchase Consideration (Purchase Consideration less the Resolution Process Costs) proportionately into the designated bank accounts of IEISL and each of the Specified Environment Entities.
 - b. Upon receipt of the Resolution Process Costs and the balance Purchase Consideration (Purchase Consideration less the Resolution Process Costs):
 - i. the Applicant shall pay the Professionals in a manner set out in Annexure 36; and
 - ii. the balance Purchase Consideration shall be distributed to the relevant lenders illustratively in accordance with Annexure 38 hereto (making due adjustment on account of IEISL SPA provisions and deduction of Resolution Process Cost).
53. It is submitted that the approval of the resolution process of IEISL and the Specified Environment Entities will lead to resolution of six more entities in the Applicant Group and will be in larger public interest.
54. It is submitted that despite the constraints arising due to the outbreak of the COVID-19, the endeavor of the New Board has been to keep the momentum

going so that the resolution process can be concluded in an expeditious and efficacious manner. Approval by this Tribunal will give confidence to the stakeholders.

55. Thus, under these circumstances, the Applicant seeks the following reliefs:

- A) Approve the sale of the shares and assets of Infrastructure Leasing & Financial Services Limited and IL&FS Employee Welfare Trust in IL&FS Environmental & Infrastructure Services Limited and consequently IL&FS Environmental & Infrastructure Services Limited's shareholding in Dakshin Dilli Swachh Initiative Limited; Swayam Swachatta Initiative Limited; RDF Power Projects Limited; East Delhi Waste Processing Company Limited; and Kanak Resources Management Limited to EverEnviro Resource Management Private Limited, free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) upon completion of the conditions (to the extent not waived) contemplated in terms of the Share Purchase Agreement dated October 08, 2020 and receipt of the Purchase Consideration from Ever Enviro Resource Management Private Limited as contemplated under the Share Purchase Agreement dated October 08, 2020.
- B) Approve the sale of shares of Tierra Enviro Limited and Unique Waste Processing Company Limited held by IL&FS Environmental & Infrastructure Services Limited to Infrastructure Leasing & Financial Services Limited in terms of the IL&FS SPA free and clear from all encumbrances, liens, security interest and third party claims (including any statutory or tax claims) for a consideration of INR 1/-;
- C) Allow the Applicant, IL&FS Environmental & Infrastructure Services Limited and Ever Enviro Resource Management Private Limited to implement and give effect to the terms of the Share Purchase Agreement dated October 08, 2020;
- D) Allow the Applicant, IL&FS Environmental & Infrastructure Services Limited, Tierra Enviro Limited and Unique Waste Processing Company Limited to implement and give effect to the terms of the IL&FS SPA;

- E) Permit and Direct that the Purchase Consideration payable under the Share Purchase Agreement dated October 08, 2020 be paid by Ever Enviro Resource Management Private Limited in the following manner:
- i) INR 1/- be transferred to the bank accounts of shareholders of IEISL viz. IL&FS and IEWT;
 - ii) Resolution Process Costs of upto INR 2,92,59,468/-and any further amounts that may be incurred as Resolution Process Costs till the conclusion of the sale of IEISL and each of the Specified Environment Entities in terms of the Share Purchase Agreement dated October 08, 2020 be transferred into the bank account of the Applicant.
 - iii) the balance Purchase Consideration (being the Purchase Consideration less the Resolution Process Costs) be transferred proportionately into the designated bank/escrow accounts of IEISL and each of the Specified Environment Entities.
- F) Permit/Direct that upon receipt of the Purchase Consideration from Ever Enviro Resource Management Private Limited:
- i) the Applicant be permitted to utilize and pay an amount of up to INR 2,92,59,468/- (as per Annexure 36 hereto) and any further amounts that may be incurred as Resolution Process Costs till the conclusion of the sale of IEISL and each of the Specified Environment Entities in terms of the Share Purchase Agreement dated October 08, 2020 towards Resolution Process Costs that have accrued or been incurred in connection with the resolution of IEISL and the Specified Environment Entities; and
 - ii) the Balance Purchase Consideration (being the Purchase Consideration less Resolution Process Costs computed in terms of prayer (i) above) be transferred/distributed to the creditors of IL&FS Environmental & Infrastructure Services Limited, Dakshin Dilli Swachh Initiative Limited; Swayam Swachatta Initiative Limited; RDF Power Projects Limited; East Delhi Waste Processing Company Limited; and Kanak Resources Management Limited illustratively as per Annexure 38 to the present Application after making the necessary adjustments required to reflect the terms of the Share Purchase Agreement dated October 08, 2020and payment of Resolution Process Costs.

- G) Direct that upon receipt of the Purchase Consideration from Ever Enviro Resource Management Private Limited, any and /or all encumbrances, liens, third party rights and similar covenants in, to or in respect of IL&FS Environmental & Infrastructure Services Limited, Dakshin Dilli Swachh Initiative Limited; Swayam Swachatta Initiative Limited; RDF Power Projects Limited; East Delhi Waste Processing Company Limited; and Kanak Resources Management Limited shall stand transferred to the Purchase Consideration paid by Ever Enviro Resource Management Private Limited.
- H) Declare and direct that upon payment of the Purchase Consideration all:
- i) claims (disclosed or undisclosed, and whether existing at or relating to a period prior to October 15, 2018) of all the creditors (including, the Central Government, any State Government, statutory, local, tax or regulatory authorities to whom such claim is owed under any Law (including any claim arising out of regulatory or enforcement action which pertains to a period prior to October 15, 2018)); and
 - ii) all liabilities whether actual or contingent and whether existing at or relating to a period prior to October 15, 2018 including such claims in respect of which arbitration proceedings have been initiated or any awards, decrees or judgments have been passed,
of or in respect of IL&FS Environmental & Infrastructure Services Limited, Dakshin Dilli Swachh Initiative Limited; Swayam Swachatta Initiative Limited; RDF Power Projects Limited; East Delhi Waste Processing Company Limited; and Kanak Resources Management Limited shall stand unconditionally and fully extinguished;
- I) Direct that any amounts received from Ever Enviro Resource Management Private Limited which have been deposited into the relevant bank/ escrow accounts shall not be adjusted or set off against any other dues pertaining to any bank/financial institution and shall be applied as per the orders of this Hon'ble Tribunal;
- J) For any further reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances.

56. The UoI (Respondent) represented by the Regional Director, MCA (WR), Mumbai has concurred with the recommendations of Hon'ble Justice D. K. Jain (Retd.). The Respondent has no objection to the prayers.
57. Hon'ble Justice D. K. Jain (Retd.) has approved:
- a. sale of 100% of the shareholding of the Applicant and IL&FS Employee Welfare Trust in IEISL and consequently each of the Specified Environment Entities held by IEISL to ERMPL; and
 - b. the acquisition of the 100% of the shareholding of TEL and UWPSL held by IEISL by the Applicant for a nominal sum of INR 1/-.
58. We have heard the Ld. counsel for the Applicant as well as the Representative of the Regional Director and have perused the pleadings and documents attached thereto including the approval of Hon'ble Justice D. K. Jain (Retd.). We are satisfied and are of the considered view that the sale of the Applicant's stake and other entities as well as the acquisition by the Applicant as approved by Hon'ble Justice D. K. Jain (Retd.) needs to be ratified and recorded. Hence ordered.

ORDER

CA No. 1163 of 2020 be and the same is allowed without contest in terms of the observations made supra. There would however be no order as to costs.

Sd/-
V. NALLASENAPATHY
MEMBER TECHNICAL

Sd/-
JANAB MOHAMMED AJMAL
MEMBER JUDICIAL