

The Hon'ble National Company Law Tribunal, Mumbai ("NCLT") by its order dated 28-Aug-19 has approved the proposed sale of shares in the below listed entities to ORIX Corporation on the terms set out in share purchase agreement dated 7 August 2019 submitted before the NCLT. Accordingly, there will no further claim process for these entities, and any and all future enquiries with respect to any claims or liabilities of these entities should be directed to the respective entity. The Claims Management Advisors will not be able respond on any further communication on these entities.

1. Etesian Urja Limited
2. Kaze Energy Limited
3. Khandke Wind Energy Private Limited
4. Lalpur Wind Energy Private Limited
5. Ratedi Wind Energy Private Limited
6. Tadas Wind Energy Private Limited
7. Wind Urja India Private Limited

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

MA 2756/2019 in CP 3638/241-242/2018

Under Section 241-242 of the Companies Act, 2013

Infrastructure Leasing & Financial Services Ltd ... Applicant

In the matter of

Union of India

... Petitioner

vs

Infrastructure Leasing & Financial Services Ltd & Ors ... Respondents

Order delivered on 28th August 2019

Coram: Hon'ble Shri V. P. Singh, Member (J)

Hon'ble Shri Rajesh Sharma, Member (T)

For the Applicant: Sr. Counsel Mr. Ravi Kadam

Per Member (Judicial) Shri V. P. Singh

ORDER

MA 2756/2019 has been filed by Infrastructure Leasing and Financial Services Ltd., seeking to approve the sale of the shares of Specified Wind SPVs held by IWEL to ORIX, free and clear from all encumbrances, liens, security interest and third party claims upon receipt of the ORIX Revised Bid amount for ORIX, in compliance of the terms of the SPA.

The applicant contends that by order dated 1.10.2018 passed by this Tribunal in CP 3638/2018, erstwhile Board of R1 was superseded by the new Board of those directors who were nominated by the Petitioner and appointed by this Tribunal. In the Company Petition, the Petitioner is Union of India, Ministry of Corporate Affairs, the Respondent Nos. 2 to 8 are the erstwhile Directors of the Applicant company, and the Respondent No.9 was the Company Secretary of the applicant company, and Respondent No.10 is currently the Chief Financial Officer of the applicant company.

The present application has been filed in accordance with the third progress report on the proposed resolution framework with ILFS Group dated 17.12.2018 (initial resolution framework) and the addendum to the

initial resolution framework dated 15.1.2019, seeking approval from this Tribunal to conclude the resolution process for the following seven subsidiaries (subsidiaries of IL&FS); i.e. Lalpur Wind Energy Pvt Ltd., Etesian Urja Ltd, Khandke Wind Energy Pvt Ltd, Ratedi Wind Power Pvt Ltd, Wind Urja India Pvt Ltd, Tadas Wind Energy Pvt Ltd and Kaze Energy Ltd.

It is further stated that the Specified Wind SPV are the subsidiaries of IL&FS Wind Energy Ltd (IWEL) which holds 51% shareholding in each of the said seven entities. IWEL is a wholly-owned subsidiary of IL&FS Energy Development Co Ltd (IEDCL) which in turn is a subsidiary of the Applicant (91.42% shareholding of the applicant). The balance 49% in each of the Specified SPV's are held by ORIX Corporation (ORIX), a company incorporated under the Laws of Japan.

It is further stated ORIX purchased 49% shareholding in 5 of the 7 Specified Wind SPVs in March 2016. Consequent to and simultaneously upon acquiring 49% shareholding in these 5 Specified Wind SPVs, shareholders agreements dated March 7, 2016 were executed to govern the inter-se rights and obligations between the shareholders of the Specified Wind SPVs. As regards the remaining 2 of 7 Specified Wind SPVs, ORIX purchased 49% of their shareholder in March 2018. Similarly, shareholders agreements were executed in respect of these 2 Specified Wind SPVs as well on March 30, 2018 (all the shareholder's agreements are collectively referred to as "the SHAs).

It is further contended by the applicant that each of these SHAs were similar and contemplated certain pre-emptive rights in favour of the other shareholder in the event that a sale of shares is contemplated. Illustratively, Clause 5.1.4 in the case of Khandke Wind Energy Pvt Ltd sets forth as follows:

"Right of First Offer

- (a) *If any of the Shareholders ("Transferring Shareholder") proposes to Transfer any of the shares to any third party, then the other Party (Other Shareholder") will have a right of the first offer (ROFO) to such Transfer. The process to be followed for the exercise is set out below:*

(.....)

(d) The Other Shareholder shall be entitled to respond to the ROFO Notice by serving a written notice ("Response Notice) on the Transferring Shareholder prior to the expiry of thirty days from the date of receipt of the ROFO Notice (Response Period) offering to acquire all (but not less than all) the Sale Shares. The Response Notice shall state the proposed price per Sale Share at which the Other Shareholder is willing to acquire all the Sale Shares and the terms of such sale (collectively the "Offer Terms").
(....)

It is further stated that before the New Board was appointed by this Tribunal, ORIX, IWEL, IEDCL executed a Memorandum of Understanding dated 30.3.2018 (First MOU) in respect of the Specified Wind SPVs under which the parties thereto agreed to explore/consider exit strategies from the Specified Wind SPVs and superseded any contrary terms in the SHAs. The relevant clause of MOU is given below below:

"i. ORIX, IWEL and IEDCL (Parties) will jointly consider the exit strategies for their: (a) existing investments in the Existing SPVs; and (b) potential investments in the New SPVs to achieve complete divestments within 2 years from the date of the first MOU, which will supersede any contrary terms in the transaction documents executed for the Existing SPVs and to be executed for the New SPVs respectively by the Parties, including without limitation, shareholders' agreements; and ..."

The applicant further contends that on 15.10.2018, Hon'ble NCLAT was pleased to stay, amongst others, coercive creditor and other action against the applicant group in larger public interest. Pursuant to and in compliance with the 1st October, 2018 order, the new Board submitted a Progress Report titled as Report on progress and the Way Forward (First Progress Report) to the Petitioner. The Petitioner in turn filed the First Progress Report with this Tribunal on 31.10.2018. The first progress report sets out as under:

- a. That the objective of the New Board is to achieve the resolution through Resolution Plan(s) of the Applicant Group through measures which may include asset divestment;
- b. The key considerations taken into account by the New Board about such resolution includes interalia; (a) wider public interest; (b) interest of different stakeholders and sacrifices, as may be

required; (c) financial stability; and (d) compliance with the legal framework; and

- c. That the new board expects that the Resolution Plan(s) may involve one or a combination of the following options: (a) Group Level Resolution; (b) Vertical Level Resolution; and (c) Asset Level Resolution; as set out in the First Progress Report.

Further, as per the first Progress Report, as “Asset Level Resolution” would entail an asset by asset solution explored through various methods and would weigh well on asset level value maximisation and stakeholder engagement as majority of the loan liabilities exist at the operating asset level.

Given that the Resolution Process being contemplated by the New Board was a publicly solicited price discovery mechanism (in light of the key considerations and factors set out in the First Progress Report), a meeting was held on 6.11.2018 between the Applicant and ORIX, wherein ORIX was requested to consider altering the process of monetizing the investments made by the applicant group and ORIX in the Specified Wind SPVs from a private bilateral process as per the First MoU and SHAs to a public one.

Accordingly, a memorandum of undertaking dated 28.11.2018 (second MOU) was executed by and between ORIX, IEDCL and IWEL in terms of which it was agreed that the process of monetizing the applicant group and ORIX’s investments in the Specified Wind SPVs would be modified (from the private bilateral process contemplated in the SHAs read with the First MoU) as follows:

- i. The Applicant will issue a public advertisement for soliciting Expressions of Interests (EoI) for purchase of its interests in the Specified Wind SPVs.

“The parties will proceed to monetize the investments made in each of (i) Wind Urja India Private Limited. (ii) Ratedi Wind Power Private Limited. (iii) Tadas Wind Energy Pvt Ltd. (iv) Lalpur Wind Energy Pvt Ltd. (v) Khandke Wind Energy Pvt Ltd. (vi) Etesian Urja Ltd. and (vii) and Kaze Energy Limited (Collectively referred to “Wind SPVs”) in terms of the following process:

- (a) Infrastructure Leasing and Financial Services Ltd will issue a public Advertisement for soliciting Expressions of

- Interest for purchase of its interests in the Wind SPVs.
Teaser will capture information on the business;
- (b) Parties who qualify in their Expressions of Interest and sign the non-disclosure agreement will be provided the Information Memorandum (“IM”);
- (c) The IM will state:
- (i) That 100% of the shares (IWEL’s 51% and ORIX’s 49%) is on sale, subject to terms and conditions being acceptable respectively to the approving authorities for IWEL and ORIX;
 - (ii) The carrying value of the investment made by ORIX based on an aggregated equity value of INR 23,162 million for the Wind SPVs;
 - (iii) That ORIX has the option whereby it will purchase IWEL’s stake at the highest price binding bid, should such price be less than its carrying value and ORIX choose not to accept and sell at such price;
- (d) ORIX will, within 15 Business Days of receipt of the last binding offer, either communicate:
- (i) Its acceptance of the offer along with IWEL; or
 - (ii) Its decision to acquire 50% of the share capital of the Wind SPVs held by IWEL at the highest bid price;
- (e) If ORIX decides to acquire the 51% of the share capital of the Wind SPVs held by IWEL under paragraph 1(d)(ii) above, then IWEL and ORIX shall take all actions to transfer IWEL’s shareholding to ORIX”
- ii. The Information Memorandum that will be issue to applicants who qualify the EoI would interalia prescribe that 100% of the shareholding held by IWEL and ORIX in the Specified Wind SPVs would be offered to prospective bidders; and
- iii. ORIX, upon receipt of the last binding offer, would have an option to:
- a. Accept the offer for sake of 100% shareholding (including 49% owned by ORIX) alongwith IWEL; or
 - b. Purchase IWEL’s stake in each of the Specified Wind SPVs at the highest binding bid price (received pursuant to the

publicly solicited bid process), should the bid price for the Specified Wind SPVs be lesser than the carrying value of the Investment made by ORIX based on an aggregated equity value of INR 2316.2 crores.

In line with the objectives and mandate of the New Board and the Second MOU, the applicant issued an advertisement and invitation for expressions of interest (EOI), in terms of which interalia a potential controlling stake held by the Applicant Group in the Specified Wind SPVs was offered to prospective bidders.

Subsequently, further to the objectives and broad options for Resolution of the Applicant Group set out in the First Progress Report, the applicant submitted the Initial Resolution Framework and the addendum Framework to the petitioner (collectively referred to as the “Resolution Framework”, which was filed by the Petitioner before this Tribunal (vide affidavit dated 15.1.2019).

The Resolution Framework sets forth that given the position of and challenges in the applicant Group, as set out in the initial Resolution Framework, an “Asset level Resolution”(as defined in the first Progress Report and the Initial 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 applicant group.

The initial Resolution Framework and the Addendum Framework Resolution contemplate a step by step approach to achieve and “Asset Level Resolution” resolution of the Applicant Group. Summarily, these steps include:

- (a) Inviting EoIs on the basis of suitable eligibility criteria as may be applicable for the investors of a particular business/class of companies of the Applicant Group with regard to the nature of businesses for which such EoI are being invited;
- (b) Following the receipt of EOIs from potential investors, a request for proposal (an RFP) will be issued to the eligible applicants (who meet the criteria set out in the EoI) pursuant to which binding financial bids will be sought from the eligible applicants. Separately, the eligible applicants will also be provided: (A) access to an Information Memorandum and a data room containing material information relating to the Sale

company for which offers are being sought from the eligible applicants and the eligible applicants will be invited to undertake a time-bound, legal and financial due diligence exercise through access to information in a data room to be populated by the company.

- (c) The eligible applicants to submit their binding financial offers in the form and manner and within the timelines prescribed in the relevant RFP.
- (d) The New Board to evaluate such bids for the highest financial bid amount submitted by the bidder, which would contemplate categorisation of the Sale Company on the basis of the bid received into Category I Company or Category II Company. It is pertinent to note that a Category I company is a company where the Bidder is willing to assume all liabilities of the Sale Company without any compromise of the debt of such company. It is also pertinent to note that the Specified Wind SPVs are all Category I companies since both the bids of GAIL, which matches by ORIX proposed no haircut or impairment to the debt of the Specified Wind SPVs.
- (e) Depending on the categorisation of a company as a Category I company or a Category II company, a Creditors' Committee will be formed at the appropriate level.

It is pertinent to note that for a Category I company – one Creditors' Committee consisting of all financial creditors of the selling Applicant Group shareholder(s) of the Sale Company will be required to be constituted. This is so since the debt of that Category I Company (whether financial or operational) will be assumed by the Highest Bidder (without any impairment). Therefore, the financial creditors of the Selling Shareholder(s) will be consulted as positive equity value will be received by the Selling Shareholder(s), which will, in turn, be utilised to settle dues of the creditors of the Selling Shareholders.

- (f) Placing the decision of the Creditors' Committee (approval/rejection) before the New Board for consideration and after their approval and if the New Board approves the sale proposal, the same to be placed before Mr Justice D. K. Jain

(Retd) appointed by the Hon'ble NCLAT vide order dated 4.2.2019 and 11.2.2019 to supervise the resolution process.

- (g) After the approval of Justice D.K. Jain (Retd) is received, an application to be filed before this Tribunal to consummate the transaction/resolution framework.

The applicant has further stated that the resolution process for Specified Wind SPVs is given below:

Sr No.	Step as per Resolution Framework	Date	Details
1.	A request for proposal ("RFP") will be issued to the eligible applicants (who meet the criteria set out in the EOI)	February 3, 2019	(a) EOIs were received from 26 parties. (b) Twenty-two applicants qualified as per the eligibility criteria. (c) RFP circulated to the Eligible Applicants.
2.	Eligible Applicants to be provided with: (i) Access to an information memorandum and a data room (populated by IWEL and the Specified Wind SPVs) containing material information relating to the Specified Wind SPVs and the eligible applicants will undertake a time-bound, legal and financial due diligence exercise; and (ii) Draft (s) of the transaction documents to be entered into, subject to receipt of requisite approvals.	December 25, 2019	(a) Due Diligence was conducted by the eligible applicants, including site visits. (b) Share Purchase Agreement was marked up and uploaded.
3.	Appointment of 2 (two) registered Valuers to undertake a valuation exercise for the determination of " fair	-	Two valuers, i.e. (i) Rakesh Narula & Co. (having registration number IBBI/RV/02/2019/10679) ("RNC"); and (ii) Adroit

	value” and “liquidation Value” in respect of each sale Company.		Technical Services (having registration numbers – IBBI/RV/01/2018/10087; IBBI/RV/02/2019/11177; and IBBI/RV/05/2018/10020) (“Adroit”) were appointed who determined “fair value” and “liquidation value” in respect of the Specified Wind SPVs in accordance with Regulation 35 (1) of the IBBI (Insolvency) Resolution for Corporate Persons) Regulation, 2016.
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The valuation of fair market value and liquidation value as conducted by the valuers referred to above in respect of each Specified Wind SPV is as follows:

(amount in INR Million)

Sr No.	Name of Specified Wind SPV	RNC		Adroit	
		FMV	LV	FMV	LV
1.	Wind Urja India Private Limited	1,627	1,194	1,917	1,416
2.	Ratedi Wind Power Private Limited	5,140	3,882	5,985	4,520
3.	Tadas Wind Energy Private Limited	10,189	7,413	11,472	8,435
4.	Lalpur Wind Energy Private Limited	8,236	6,306	10,465	7,935
5	Khandke Wind Energy Private Limited	5,899	4,514	6,350	4,749
6	Etesian Urja Limited	4,081	3,209	4,459	3,442
7	Kaze Energy Limited	2,916	2,130	3,220	2,355
Total		38,088	28,649	43,868	32,853

It is further stated that a single bidding process was followed in the case of Specified Wind SPVs and Eligible Applicants were required to submit their non-financial bid documents and financial bid documents. Of the Eligible Applicants, the only bid received was from GAIL (India) Limited (“GAIL”) on the bid due date (i.e., March18, 2019). As per GAIL’s bid, GAIL assumed all the debt of each of the Specified Wind SPVs and additionally attributed a positive equity value for the shares of each of the Specified Wind SPVs. It is pertinent to note that since GAIL’s bid attributed a positive equity value for the shares of each of the Specified Wind SPVs without proposing

any haircut to the debt of any of the Specified wind SPVs (which is approx.. INR 3700 Crores), each of the Specified wind SPVs were categorized as Category I companies (as contemplated under the Resolution Framework Reports). GAIL's bid of approximately INR 4,800 crores for 100% of Enterprise Value contemplated; (i) approximately INR 1064 crores as purchase price for 100% shares of the SPVs; and (ii) approximately INR 3,700 crores towards the aggregate debt of the SPVs, without any hair, cut. Therefore, as per Gail's bid, the value of IWEL's 51% would be INR 542.64 crores (approx).

GAIL's bid was placed before the IWEL Board for its consideration and was identified as the Highest Bid. Further, IWEL Board authorised the formation of a "Creditors Committee of IWEL" and submission of the Gail Bid to IWEL's Creditors Committee.

Since GAIL's bid attributed a positive equity value for the shares of each of the Specified Wind SPVs without proposing any haircut to the debt of any of the Specified Wind SPVs, each of the Specified wind SPVs are Category I Companies (as contemplated under the Resolution Framework Reports). Accordingly, as per the Resolution Framework, a Creditors' committee was constituted comprising of all the "financial Creditors" of IWEL, i.e. the selling Applicant Group Shareholder of the Specified Wind SPVs Viz. IWEL. At the third meeting held on April 17, 2019, the Creditors' Committee of IWEL unanimously approved GAIL's bid and passed a resolution authorising the sale of the Specified Wind SPVs to ORIX, if ORIX agrees to match GAIL's Bid.

After approval of GAIL's bid from the Creditors' Committee of IWEL in terms of the Second MoU, GAIL's bid was disclosed to ORIX vide intimation letter dated April 18, 2019.

Subsequently, ORIX, by way of its letter dated May 13, 2019, issued to IWEL and IEDCL, confirmed its intention to exercise its right under the Second MoU to acquire 51% of the share capital in each of the Specified Wind SPVs based on the highest bid price (i.e. GAIL's bid amount of INR 1,064 Crores for 100% of the share capital of each of the specified Wind SPVs) .

After that on June 7, 2019, IWEL issued a letter to ORIX informing ORIX of the :

- i. Procedural requirements prescribed under India exchange controls laws (including the regulations issued under the Foreign

Exchange Management Act, 1999) such as the floor price for the sale of shares of Indian Companies (such as the Specified Wind SPVs): and

- ii. Computation of the amounts that would accordingly be required to be paid by ORIX for the purchase of the shares held by IWEL in the Specified Wind SPVs.

In response, on June 17, 2019, ORIX issued a letter to IWEL, among other things setting forth:

- i. a revision of its offer for the purchase of IWEL's shareholding in the Specified Wind SPVs to INR 592,87,50,000 ("ORIX Revised Bid");
- ii. Confirmation that INR 211,57,85,329 as the total outstanding principal and unpaid interest amount (net of withholding tax) of promoter debt up to May 31, 2019, which is due to IEDCL from the relevant Specified Wind SPVs: and
- iii. an acknowledge that the said amount will be updated to account for the accrued interest on the closing date, and will be payable by ORIX in accordance with the provisions of the share purchase agreement.

After that ORIX, vide its letter dated June 28, 2019 and July 5, 2019 confirmed the agreed form of the Share Purchase Agreement (Final SPA), which ORIX would execute with IWEL and the specified wind SPVs to conclude the acquisition of 51 % shareholding in each Specified Wind SPVs by paying the ORIX Revised Bid to IWEL.

On July 1,2019 the Applicant issued a letter to Justice (Retd.) D.K. Jain for seeking approval of the sale of 51% (fifty-one per cent) shareholding in each Specified Winds SPV held by IWEL to ORIX and the Resolution of the Specified Winds SPVs.

After that, by a letter dated July 15, 2019 Justice (Retd.) D.K. Jain approved sale of the Specified Wind SPVs to ORIX (subject to conditions prescribed therein). The operative part of Justice (Retd.) D.K. Jain's letter dated July 15, 2019 is as follows:

“ Having regard to the above factual scenario, and ***bearing in mind the object and spirit behind the Order dated February 11,2019, passed by the Hon’ble Company Law Appellate Tribunal in Company Appeal (AT) No. 346 of 2018, viz. maximization of the value of the assets of IL &FS, I grant approval to the subject proposal in respect of the Specified Wind SPVs, on the terms approved by the Board of Directors of IL & FS, subject, however , to the following conditions;***

- a) *The proposal shall be placed before the Hon’ble National Company Law Tribunal for its approval for the consummation of the transaction by signing the Share Purchase Agreement and other related documents in respect of the shares of Specified Wind SPVs with ORIX: and*
- b) *The bid amount, so realised, shall be kept in an Escrow Account to be disbursed by the directions in the proceedings pending before the NCLT/NCLAT, as the case may be, at the relevant time.”*

The applicant further contends that under receipt of Hon’ble Mr Justice (Retd) D. K. Jain’s approval, the following steps have been taken to consummate the resolution of the Specified Wind SPVs;

- a. The applicant has issued a letter of intent dated August 1, 2019 (“Letter of Intent”) confirming ORIX as the purchaser of the IWEL’s interest in the Specified Wind SPVs.
- b. ORIX has submitted on August 5, 2019, assigned acceptance of the Letter of intent.
- c. ORIX, IWEL and the Specified Wind SPVs have also executed share purchase agreement on 7.8.2019 (SPA) setting out the terms on which the sale of the Specified Wind SPVs is to be concluded.

Finally, in terms of the Resolution Framework, the present application was filed by the Applicant to seek approval of this Tribunal to consummate the sale of the Specified Wind SPVs.

The Applicant further contended that the October 15 order passed by the Hon’ble NCLAT has permitted the New Board to preserve value across the Applicant Group and work towards a resolution free from the threat of coercive creditor and other action in a fair and transparent manner. It is submitted that by the February 11 Order, the Hon’ble NCLAT recorded that

the Specified Wind SPVs are inter alia classified as “Green” Entities and that the resolution of the “Green” entities will be conducted by the Resolution Framework. Accordingly, the New board has in line with the objectives in the First Report and the Resolution Framework conducted the resolution process of the Specified Wind SPVs with the intent of maximising value for all stakeholders involved.

It is further contended by the applicant that the Applicant Group comprises 302 Group Companies (169 Domestic Companies and 133 Offshore Group Companies). The aggregate fund based debt outstanding of the Applicant Group as of October 8, 2018, is approx. INR 94,246 Crores. Of this aggregate fund-based outstanding debt, the outstanding fund based debt of the Specified Wind SPVs is INR 3,700 Crores Given that ORIX has agreed to assume the debt of the Specified Wind SPVs and attributed a positive equity value to the specified wind SPVs, a resolution of the Specified Wind SPVs would be a step towards the resolution of the aggregate outstanding debt of the Applicant Group.

While the sale process of the Specified Wind SPVs is at its penultimate lap, whereas the asset sale process for education, funds, domestic road, thermal power, water infrastructure, technology and key international assets is underway. The asset sale process for the Specified Wind SPVs is the First asset sale process which has been placed for this Tribunal’s approval as per the Resolution Framework. It is essential that this Tribunal grants approval / judicial sanction to the assets sale process for the 7 specified Wind SPVs since it would:

- a. give certainty to the applicants/ bidders engaged in other on going IL& FS Group asset sale processes that upon approval / acceptance of their binding offers, they will acquire title to the shareholding of the Sale Company and its assets (free from encumbrances);
- b. Boost investor confidence: and
- c. Be an important milestone in the final resolution (s) of the IL & FS Group as a whole.

The Resolution Framework is based on the principles underlying the Insolvency & Bankruptcy Code, 2016 and is in line with the mandate of the New board (In terms of the October 1 Order). Under the circumstances, it is in larger public interest and in the interests of justice that this Tribunal

approves the sale of 51% of the shareholding of each Specified Wind SPVs to ORIX and passes necessary directions to facilitate/consummate the said resolution on the terms as contemplated under the SPA. It is submitted that the approval of the resolution process of the Specified Wind SPVs will enable the New Board to take steps to finalise a resolution plan/ plans for the overall resolution of the Applicant Group.

As per the report of Justice (Retd.) D. K. Jain vide his letter dated July 15, 2019, this application has been filed for approval of the sale of shares held by IL & FS Wind Energy Limited in Lalpur Wind Energy Private Limited, Etesian Urja Limited, Khandke Wind Energy Private Limited, Ratedi, Wind Power Private Limited, Wind Urja India Private Limited, Tadas energy Private Limited and Kaze Energy Limited, to ORIX Corporation ("ORIX") and direct transfer of such shares by IWEL to ORIX free and clear from all encumbrances, liens, security interest and third party claims upon:

- a. ORIX Corporation making the payment of INR 5,928,750,000 (Rupees Five Billion Nine Hundred Twenty Eight Million Seven Hundred Fifty Thousand only) in the manner as set out in the Share Purchase Agreement dated August 7, 2019 entered into between IWEL and ORIX ("SPA") and
- b. ORIX is making a payment of INR 2,11,57,85,329 (along with interest accruing till the date of repayment) to IL & FS Energy Development Corporation Limited in the manner as contemplated in the SPA.

It is pertinent to mention that after approval of GAIL's bid from the Creditors' committee of IWEL, in terms of the Second MOU, GAIL's bid was disclosed to ORIX vide intimation letter dated 18.4.2019.

Subsequently, ORIX, by way of its letter dated May 13, 2019, issued to IWEL and IEDCL, confirmed its intention to exercise its right under the Second MoU to acquire 51% of the share capital in each of the Specified Wind SPVs based on the highest bid price (i.e. GAIL's bid amount of INR 1,064 Crores for 100% of the share capital of each of the specified Wind SPVs) .

It is also clear that on June 17, 2019, ORIX issued a letter to IWEL, inter alia setting forth:

- i. a revision of its offer for the purchase of IWEL's shareholding in the Specified Wind SPVs to INR 592,87,50,000 ("ORIX Revised Bid");
- ii. Confirmation that INR 211,57,85,329 as the total outstanding principal and unpaid interest amount (net of withholding tax) of promoter debt up to May 31, 2019, which is due to IEDCL from the relevant Specified Wind SPVs: and
- iii. an acknowledge that the said amount will be updated to account for the accrued interest on the closing date, and will be payable by ORIX in accordance with the provisions of the share purchase agreement.

After that ORIX, vide its letter dated June 28, 2019, and July 5, 2019, confirmed the agreed form of the Share Purchase Agreement (Final SPA), which ORIX would execute with IWEL and the specified wind SPVs to conclude the acquisition of 51 % shareholding in each Specified Wind SPVs by paying the ORIX Revised Bid to IWEL.

As per the directions of Hon'ble NCLAT, the said process of the sale was required to be approved by Justice D. K. Jain (Retd), thereafter, the entire details were submitted to Justice D. K. Jain (Retd) ,who approved the sale of the Specified Wind SPVs to ORIX and passed an order that ***bearing in mind the object and spirit behind the Order dated February 11,2019, passed by the Hon'ble Company Law Appellate Tribunal in Company Appeal (AT) No. 346 of 2018, viz. maximization of the value of the assets of IL &FS, I grant approval to the subject proposal in respect of the Specified Wind SPVs, on the terms approved by the Board of Directors of IL & FS, subject, however, to the following conditions;***

- a) *The proposal shall be placed before the Hon'ble National Company Law Tribunal for its approval for the consummation of the transaction by signing the Share Purchase Agreement and other related documents in respect of the shares of Specified Wind SPVs with ORIX: and*
- b) *The bid amount, so realized , shall be kept in an Escrow Account to be disbursed in accordance with the directions in the proceedings pending before the NCLT/NCLAT, as the case may be , at the relevant time."*

Therefore, it is clear that the entire process as per the directions of Hon'ble NCLAT was done in compliance of the order dated 11.2.2019 of

Hon'ble NCLAT in Company Appeal No.346/2018 and in accordance with the same, the entire process was approved by Justice D. K. Jain (Retd).

In the circumstances, we allow MA 2756/2019 and approved the sale of shares held by IL&FS Wind Energy Ltd in Lalpur Wind Energy Pvt Ltd., Etesian Urja Ltd, Khandke Wind Energy Pvt Ltd, Ratedi Wind Power Pvt Ltd, Wind Urja India Pvt Ltd, Tadas Wind Energy Pvt Ltd and Kaze Energy Ltd. to ORIX corporation and direct transfer of such shares by IWEL to ORIX free and clear from all encumbrances, liens, security interest and third party claims upon:

- a. ORIX Corporation making the payment of Rs.5,928,750,000 in the manner as set out in the Share Purchase Agreement (SPA) dated 7.8.2019 entered into between IWEL and ORIX; and
- b. ORIX making a payment of Rs.2,11,57,85,329 (alongwith interest accruing till the date of repayment) to IL&FS Energy development Corporation Ltd in the matter as contemplated in the SPA.

We also hereby grant IWEL and ORIX the liberty to implement and give effect to the terms of the SPA. We also direct that payment due to IWEL and IEDCL under the SPA be credited into a designated escrow account to be intimated by IWEL and IEDCL (as the case may be) such funds to be maintained as interest-bearing fixed deposit; and clarify that such funds, when deposited into the relevant bank accounts or maintained as fixed deposits should not be adjusted or set off against any other dues and the distribution of such amounts paid to IWEL and IEDCL and will be subject to further orders of this Tribunal.

MA 2756 of 2019 in CP 3638/2018 is disposed of accordingly.

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
V. P. SINGH
Member (Judicial)