

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/105/2023; WITH CA/4/2021; CP/206/2012; IA NO:ACO/2/2024
INDIA POWER CORPORATION LIMITED
FORMERLY KNOWN AS DPSC LIMITED
-VS-
SECURITIES AND EXCHANGE BOARD OF INDIA

BEFORE:
The Hon'ble JUSTICE RAJASEKHAR MANTHA
And
The Hon'ble JUSTICE AJAY KUMAR GUPTA
Date: April 10, 2025.

Mr. R. Banerji, Sr. Adv.; Mr. D.N. Sharma, Sr. Adv.; Mr. S. Mandal, Adv., appear.
Mr. T.K. Bose, Sr. Adv.; Mr. P.K. Dutt, Adv.; Mr. S.K. Dutt, Adv.; Mr. S. Banerjee, Adv.,
appear.
Mr. A. Singh, Sr. Adv.; Mr. S. Ganguli, Adv., appear.
Mr. S. Dasgupta, Adv.; Mr. A. Chaudhury, Adv., appear.

1. The Court: The instant appeal is directed against the judgment and order dated February 7, 2023, passed by a Single Bench of this Court. The said order was passed on an application filed by the Securities and Exchange Board of India (SEBI) being CA/4/2021 under CP/206/2012.

2. By the said order, inter alia, the SEBI was granted leave to take necessary action against the company and its promoter group and directors as per the provisions and methods available under the Security Laws for inability of the company to meet the MPS requirements.
3. The facts relevant to the case are that on June 4, 2010, rule 19A of the Security Contract Requirement Rules, 1957 was brought into force, requiring all public listed companies to ensure and maintain at least 25% of its shareholding amongst the general public (MPS) at large.
4. The SEBI, by communications to various stock exchanges, required compliance of rule 19A(supra). Specific communications were addressed to one Dishergarh Power Supply Co. Ltd. on February 1, 2012, February 30, 2012 and April 15, 2013.
5. In the meantime, the majority shareholders and/or holding company of M/s. DPSC Ltd., one IPCL and the DPSC Ltd. filed an application under sections 391/392 of the Companies Act, 1956 (C.P. No.206 of 2012) for the sanction of a scheme for demerger and/or amalgamation. By and in terms of the said scheme, the investment division of M/s. IPCL was to be transferred to a trust, proposed by the applicant named Power Trust. The residual shareholding of IPCL was to merge with M/s. DPSC Ltd. The name of DPSC was thereafter changed to the name of the former holding company M/s. IPCL.
6. Clause 3.3.3 (under the heading "Transfer of the Investment Division to the Investment Trust) of the scheme for amalgamation, inter alia, prescribed that the MPS requirement of DPSC, now known as IPCL, in terms of rule 19A(supra) should be deemed to be satisfied by reason of a transfer of shareholding of M/s. DPSC to a

trust settled under the scheme. The said clause 3.3.3 of the said scheme is set out hereinbelow:

“As the Trustees will hold the Investment Division in an irrevocable trust and shall be managing the Investment Trust in an independent manner, the Trustees shall constitute members of ‘public’ as defined under the Securities Contracts (Regulation) Rules, 1957, in relation to any and all investments held by the Investment Trust.”

7. The scheme was sanctioned by orders of the Company Court dated April 17, 2013. Pursuant to such sanction, about 40% of the shares of M/s. DPSC came to be held by the trust by reason of the scheme.
8. Upon SEBI realizing that the scheme, particularly clause 3.3.3 thereof was an attempt to bypass the provision of rule 19A(supra), and the Trust could not constitute members of the public, applied before the Single Bench for recall and/or modification of the scheme in question.
9. The Company Court, having in essence, realized that it was misled into sanctioning the scheme to the extent that it violated rule 19A(supra), from time to time allowed the trust to disinvest and make available to the public at large 25% of the shareholding in the erstwhile DPSC (now IPCL). The SEBI was admittedly not notified of C.P. No.206 of 2012.
10. Despite several extensions granted from January 27, 2017 till the year 2023, the trust could only sell about 6% of the shareholding in M/s. IPCL.
11. There were two intervening proceedings in the meantime. Four independent directors of M/s. DPSC (now IPCL) applied before the Securities Appellate Tribunal

challenging the order of the SEBI dated June 4, 2013. By the said order, the SEBI had imposed several restraints on the said four directors.

12. The Securities Appellate Tribunal disposed of the said appeal on April 3, 2019, inter alia, stating that since the High Court at Calcutta had approved the scheme in question, the SEBI was required to approach the High Court for any coercive measures that it wishes to launch against the directors of DPSC (now IPCL).
13. The other development indicated to Court is that the Power Trust for some unexplained reasons is stated to have borrowed sums of money from Non-Banking Financial Companies namely SREI Equipment Finance Ltd. and pledged 32,37,45,165 shares. The purpose for which the loan was availed by the trust against the pledge of shares has not been explained to this Court.
14. The said M/s. SREI Equipment Finance came under corporate insolvency. On an application filed under section 9 of the Arbitration and Conciliation Act, 1996, the said shares pledged to M/s. Srei Equipment Finance Ltd. were directed to be sold under a Receiver appointed by this Court. The bonafides and legality of the invocation of the Arbitration Clause by SREI and the concurrence of the trust in this regard leave many questions unanswered.
15. The SEBI having realized that M/s. IPCL, in its new form and the Power Trust were attempting by hook or crook to frustrate and/or bypass the compliance of the MPS under rule 19A(supra), finally applied before the Single Judge seeking the following reliefs:
 - (a) Leave of the Court may be granted that apart from the divestment process being adopted by the Trust and in case the Trust is unable to meet the MPS

compliance, the Company/its Promoter(s)/Promoters Group/Directors may also be directed to meet the MPS requirements.

(b) To allow SEBI to take necessary action against the Company/its Promoter(s)/Promoters Group/Directors as per the provisions/methods available under Securities Laws in order to meet the MPS requirements.

(c) Ad-interim order in terms of prayers above.

(d) Pass such other order or orders and/or direction/directions as Your Lordship may deem fit and proper.

16. The Single Bench having realized and noted the conduct of the company, permitted prayers (a) and (b) of the said application.

17. This Court has carefully considered the arguments advanced by the appellant and M/s. SEBI as also the learned counsel for M/s. Power Trust.

18. The object and purpose of rule 19A of the SCRR is primarily to ensure transparency in corporate management and shareholding. The MPS requirement is aimed at ensuring that the listed companies have a minimum amount of shares among the public at large to prevent any attempt at improprieties in the management and administration of public companies.

19. It appears from the records that SEBI had notified the requirement of compliance of MPS to at least 105 companies including the DPSC Ltd. some of which have applied and several are being dealt with in accordance with law. The appellant company is no exception.

20. This Court has noted that the Single Bench which sanctioned the scheme on April 17, 2013 later on realized that it might have been misled in so far as compliance of the MPS requirement in the scheme proposed by the appellant in its former avatar.

21. It is essentially for this purpose and to ensure compliance of the terms and conditions of sanction of the scheme that sufficient leverage over a period of nearly six years was given to the appellant and/or Power Trust to ensure 25% of the shareholding of the former M/s. DPSC Ltd. to be disinvested to the public at large.
22. This Court having carefully considered the orders passed by the Single Bench, is of the view that the attempts at compliance with such disinvestment to satisfy the MPS requirement under rule 19A (supra) have not been bona fide. The Court's mind is not free from doubt that the appellant and the Power Trust may have tried to frustrate the process of compliance of rule 19A(supra) by presenting repeated fait accompli to this Court.
23. For the reasons stated hereinabove, this Court is of the view that the impugned judgment and order dated February 7, 2023 calls for no interference.
24. Accordingly, APO/105/2023 stands dismissed. Consequently, ACO/2/2024 also accordingly stands dismissed. There will be no order as to costs.
25. The interim order already passed shall stand vacated forthwith.

(RAJASEKHAR MANTHA, J.)

(AJAY KUMAR GUPTA, J.)

tk