



GOVERNMENT OF WEST BENGAL
Public Enterprises & Industrial Reconstruction
Department
4, Abanindranath Tagore Sarani (Camac Street)
Kolkata-700 016.

Notice Inviting Quotation

No. 1783/ PEIR-99/151/2023-ESTT SEC-PEIR

Date: 19.12.2025

Public Enterprises & Industrial Reconstruction Department, Government of West Bengal is inviting **Quotation for providing legal opinion** on issues related to two Joint Venture Companies namely Company-A & Company-B (as Annexed) administered by this Department.

Interested parties are hereby requested to submit their financial quotes (in sealed envelope) within 07 days from the date of issuance of this notice for providing legal opinion on issues related to the said two Joint Venture Companies namely Company-A & Company-B.

Enclo: As stated.

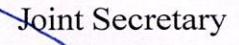

Joint Secretary
to the Government of West Bengal

No. 1783/1(3) PEIR-99/151/2023-ESTT SEC-PEIR

Date: 19.12.2025

Copy forwarded for information to:

1. The O.S.D. to the H'MIC, PE&IR Deptt.
2. The Sr. P.S. to the Secretary, PE &IR Deptt.
3. Office Copy


Joint Secretary
to the Government of West Bengal

COMPANY-A

Scope of work

BACKGROUND

1. The Government formed a Joint Venture (JV) in 15.02.2005 in which the strategic partners held 74% of the shareholding and the balance 26% was held by the Government. The Joint Venture was formed in terms of Joint Venture Transformation Agreement (JVTA) & Share Purchase Agreement (SPA).
2. In 2010, loan of the strategic partner to the joint venture was converted to equity and the shareholding of the Government was reduced from 26% to 9.93% in terms of a supplementary agreement dated 24.08.2010. The supplementary agreement amended various provisions of JVTA.
3. On 3rd March 2017 it was decided in the meeting on restructuring of PSUs & JVs, boards, societies etc. that the Deptt.s would undertake a comprehensive review of JVs and reascertain need for Government to continue with such JVs if it is found that no larger public interest is served in continuing with the JVs, necessary steps to come out of such JVs may be initiated immediately.
4. An exercise was undertaken in 2018 for the following-
 - a. Identification and assessment of Joint Venture companies
 - b. Finalization of market price of the equities held by the Government in the Joint venture companies.
 - c. Obtaining response from private partners & completion of sale of equity to selected partners or in open market
 - d. Framing of documents for legal exit from Joint venture companies

5. On the basis of the earlier exercise in 2018 a valuation price of the shares was obtained but the proposed sale of equities could not be completed owing to the following-
 - a. non-cooperation by the strategic partners
 - b. absence of agreed valuation methodology or freeze price in joint venture agreement

Present Issue/Legal Opinion sought

The Deptt. now seeks to complete the exercise as enumerated in point – 4 (a,b,c & d) above and as such legal opinion is sought on the following in respect of Company A:-

- i) Whether the 2019 valuation (done as a result of the exercise undertaken in 2018) remains tenable or not; in case the same is not tenable the proposed valuation process that can be adopted under the amended JVTA
- ii) Alternatives under the amended JVTA and provisions of the other relevant acts to complete the process as enumerated in point – 4 (a,b,c & d) above.

COMPANY-B

Scope of work

BACKGROUND

1. The Government formed a Joint Venture in 15.02.2005 in which the strategic partners held 74% of the shareholding and the balance 26% was held by the Government.

2. Issue-I : Call Option

In terms of Clause 6.7(a) of JVTA (Joint Venture Transformation Agreement) the Strategic Partners can exercise Call Option upon the expiry of 24 months from the closing date and for a period of 24 months thereafter upon successful accomplishment of parameters of financial performance by the company laid down in schedule 6.7(a) to the satisfaction of the Government.

The strategic partners have the option to issue a call notice to the Government requiring it to sell all the shares within a period of 60 days of receipt of Call Notice.

In the instant case the deptt. was sent a notice on call option & upon examination of the option the following defects were found-

- i. The call option was exercised in May, 2007 whereas the same could be exercised only post August, 2007 as the closing date for the transaction was August 5, 2005.
- ii. The minimum financial performance to be achieved for exercise of call option by Strategic partners states that the net sales & net profit could be assessed based on the audited accounts for the respective financial years. The strategic partners had submitted unaudited accounts for the financial year ended March 31, 2007. It had further not submitted audited accounts for the Financial year ended March 31, 2005 & March 31, 2006.
- iii. The company is now referring to independent valuation report dated 30.06.2007 and stating that it is now entitled to purchase the Government shareholding at 75% of Fair Value treating the non-response of the Government as a default in terms of JVTA. The valuation report is dated 30.06.2007 *before August, 2007* ahead of completion of the statutory period of call option and is **thus null & void**.

3. Issue-II- Issue of Pari Passu Shares

In 2010, the SP raised capital by issuing pari-passu equity shares due to which the shareholding of the Govt. was reduced from 26% to 10.99%.

It may be noted that the company in 2007 exercised call option claiming fulfillment of the conditions of profitability and good financial health and still in 2010 failed to raise capital through borrowing etc. indicating deterioration in financial health. This either contradicts the claim of good financial health made by the strategic partner before exercising before time call option or malafide action of diluting the Government shareholding on issuance of pari passu shares instead of DVR shares ,from 26% to 10.99%

4. Issue-III- Outstanding amount payable to the Government

As a separate and independent obligation each SP, jointly and severally, irrevocably and unconditionally covenants with and guarantees to the Government that each SP shall cause the Company to repay the amount of loans/monies due as on the Closing Date by the Company to the government as per the repayment timelines listed in Schedule 4.1A. for the sake of clarity, each SP shall be the guarantor for such loans/monies due by the Company to the Government.

From the available copy of Audited Financial Statement as at 31.03.2018, it appears that the outstanding Principal Amount of Loan was Rs. 2,93,10,000/- and recognised/disclosed in Accounts Interest due on Government Loan of Rs. 3,81,52,299/- and such the company is bound to repay the amount of Rs 6,74,62,299.00 as per agreement.

5. Issue-IV- Government Nominee Directors in BOD

Following is the Govt's right to nominate Directors in terms of Clause 5.1 (b) of JVTA:

Shareholding = 26% - 2 Nominee Directors.

Shareholding<26%:>15% - 1 Nominee Director

Shareholding <15% - Nil

The company has claimed in writing that the shareholding of the Govt. on issuance of the above pari-passu shares has reduced from 26% to 10.99%. However, Clause 8.2.1(d) states that Provided, however, in calculating **the 15% margin for the applicability of this clause, any additional capital issued by the Company to raise additional funds shall not be considered.**

Hence in terms of Clause 8.2.1(d), even upon issuance of pari-passu shares (which was against the provisions of JVTA, as elucidated in Issue 2), Company B has willfully not complied with the provisions of Clause 5.1 (b) of JVTA mandating nomination of 2 Government Nominee Directors in its BOD. The SP cannot interpret legal provisions to its advantage defying its spirit.

6. Issue-V- Land Acquisition

In terms of Section 3 of the predecessor of Company B (Acquisition and Transfer of Undertakings) Act, 1986 the right, title and interest of the company in relation to its undertakings, shall by virtue of this Act, stand transferred to and vest in the State Government.

In terms of Section 4 of the the predecessor of Company B (Acquisition and Transfer of Undertakings) Act, 1986, the undertakings of the company shall be deemed to include all assets, rights, lease-holds and all property, movable and immovable, including lands, buildings etc.

In terms of Section 7 of the aforementioned Act (the predecessor of Company B (Acquisition and Transfer of Undertakings) Act, 1986 the undertakings of acquired company which have vested in the State Government under Section 3 shall instead of continuing to vest in the State Government vest in the new Government Company either on the date of publication of the notification or on such earlier or later

date (not being a date earlier than the date of registration of new Government Company) as may be specified in the notification. **No notification under Section 7 appears to have been issued.**

Thus the following lands in possession of the predecessor of Company B as on 7thAugust, 1987 i.e. the date of publication of the above-mentioned Act should be recorded in the Name of the Department in respect of Sl 1 & Lesse iro Sl 2

Sl No	Land position	JL No.	Mouza	Area
1	Jessore Road	24	Patipukur	5.625 acres
2	Durgapur	85	Gopinathpur	8.00 acres

Present Issue/Legal Opinion sought

The Deptt. now seeks to complete the exercise as enumerated above and as such legal opinion is sought on the following-

- i. On Issue I ,i.e., Call Option related to purchase of the Government shareholding by the Strategic Partner at valuation corresponding to **30.06.2007**, the stand of the Department to treat the Call Option as Null & Void.
- ii. On Issue II & Issue IV, whether to apply to NCLT under Section 59 of Companies Act 2013 read with Rule 70 of NCLT Rules, 2016 for cancellation of issue/allotment of shares as null & void or go for arbitration. The Government shareholding is thus 26 % and retains the right to nominate 2 Directors in terms of Clause-8.2.1(d) of JVTA.
- iii. On Issue III, recovery of the outstanding loan amount & Interest amounting to Rs. 6,74,62,299.00 whether to apply to NCLT for invoking the provisions of personal guarantee under the provisions of Section 60 of IBC Code, read with Insolvency & Bankruptcy(Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors Rules, 2019.
- iv. On Issue V, the Department has taken up the issue of mutation of ROR of land at Jessore Road and Durgapur in the name of the Department with the L&LR& RR Department.