

No. 371/XXXVI(3)/2023/51(1)/2023
Dated Dehradun, October 17, 2023

NOTIFICATION

Miscellaneous

In pursuance of the provisions of Clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of 'The Uttarakhand Investment and Infrastructure (Development and Regulation) Act, 2023' (Act No. 26 of 2023).

As passed by the Uttarakhand Legislative Assembly and assented to by the Governor on 13th October, 2023.

The Uttarakhand Investment and Infrastructure (Development and Regulation) Act, 2023

(Uttarakhand Act No. 26 Year, 2023)

An

Act

to provide for an enabling and facilitative environment in state of financing, design, construction, maintenance and operation of infrastructure projects also through private sector participation and for matters connected therewith and incidental thereto,

Be it enacted by the legislative assembly of the state of Uttarakhand in the Seventy Fourth year of republic of India as follows:-

Chapter 1

Preliminary

- | | | |
|---|---|--|
| SHORT TITLE, EXTENT AND COMMENCEMENT | 1 | (1) This Act may be called the Uttarakhand Investment and Infrastructure (Development and Regulation) Act, 2023. (2) It shall be applicable to whole state of Uttarakhand. (3) It shall come into force at once. |
| DEFINITIONS | 2 | In this Act, unless the context otherwise requires: (1) "Authority" means the Uttarakhand Investment and Infrastructure Regulatory Authority (UIIRA) under Section 14. |

- (2) "Board" means the Uttarakhand Investment and Infrastructure Development Board under Section 4;
- (3) "Bye-laws" means the bye-laws made by the Board under Section 10;
- (4) "CCIE" shall mean Conciliation Committee of Independent Experts formed by the Government of Uttarakhand.
- (5) "Chairperson" means the chairperson of the Authority;
- (6) "Command Area" for a project means an area influenced by a project directly and where the economic Activity generated is significantly based on the aforementioned project. Such an area is to be notified by the relevant Government body / planning authority, upon UIIDB's request, specifically for any project.
- (7) "Committee" means a committee and includes Sectoral Sub-Committee, Project Implementation Sub-Committee or any other Committee called by any other name, constituted by the Board under this Act for the purposes assigned to them;
- (8) "Concession" includes any right or interest granted to a concessionaire in relation to any aspect of a project, as well as any subsidy, subvention, grant or other similar financial Incentive granted by the State Government to secure the viability and commercial efficacy of a project;
- (9) "Concession agreement" means any of the contracts executed for the purposes of private participation in a project between a concessionaire and a public agency in terms of this Act, or the rules made there under as per the model specified in Schedule II;
- (10) "Concession Fee" means the sum of money required to be paid by the concessionaire to the Board and / or another government department / agency in consideration of grant of a concession for undertaking a project pursuant to the provisions of this Act and rules made thereunder;
- (11) "Concessionaire" means a person, or Company, Trust, LLP (Body Corporates) who is selected and awarded a concession in terms of this Act or rules made thereunder;
- (12) "Development" includes creation of new facilities, new concepts, projects and / or rehabilitation, improvement, expansion, alteration and replacement of existing facilities;

- (13) "Development Fund" means the Uttarakhand Investment and Infrastructure Development Fund constituted under Section 11;
- (14) "Disinvestment" means a sale of equity or shares held by the State Government or a public body to any person;
- (15) "Feasibility Report" shall mean a report prepared by the board by itself or through its sub-consultants as described in section 29.
- (16) "Fee" means a consideration levied and collected by the Board for provision of services, development of assets, etc. under this Act;
- (17) "Government Department" in the context of this Act shall also mean any Government Company, Government-owned or controlled Corporation, Government Directorate, Local Authority, Public Body, or any other Government-owned or controlled body;
- (18) "Infrastructure sector" means an infrastructure sector specified in Schedule I and shall include such other sectors as may be notified by the State Government from time to time;
- (19) "IRR" means the calculated annual Internal Rate of Return of a project. IRR takes into account all the costs and revenues of the project;
- (20) "Milestone" means a schedule or chart indicating the specified time within which a work is to be completed;
- (21) "Notification" means a notification published in the Official Gazette of the State of Uttarakhand;
- (22) "Prescribed" means prescribed by the rules made under this Act;
- (23) "Private participation" means the participation in development or maintenance or operation of projects by any person other than the State Government or State government department or State government agency or State government body as may be permitted by the Board from time to time;
- (24) "Project" means a project in any sectors, which may involve development or maintenance or operation of assets / facilities / service provision through private participation or financial sources other than those provided by State Government;

- (25) "Project Proceeds" means all income to the State Government Department or any State Government Agency by a project facilitated by the Board by way of Concession Fee, etc.;
- (26) "Public body" means a body either established by State Government or working under the control of the State Government;
- (27) "Public Agency" or "Government Agency" means a Government Department, Government Company, Government-owned or controlled Corporation, Local Authority or a Public Body, which own, govern or control projects in infrastructure sectors;
- (28) "PPP Policy 2019" means to the Uttarakhand Public Private Partnership Policy adopted by the State Government in 2019;
- (29) "Rules" means the rules made by the State Government under Section 43;
- (30) "Schedule" means a schedule appended to this Act;
- (31) "Section" means a section of this Act;
- (32) "Sectoral policy" means a policy of the State government pertaining to a sector;
- (33) "Service provider" means any agency or body other than those constituted under the Act, which provides services to the Board;
- (34) "Special Purpose Vehicle" or "SPV" means a Company, which is created by a Concessionaire to execute a project;
- (35) "State Government" means the Government of the State of Uttarakhand;
- (36) "Tariff" means a toll or charge or any other sum payable by the users of a project to the project developer;
- (37) "UIIDB" shall mean Uttarakhand Investment and Infrastructure Development Board;
- (38) "UIIDF" shall mean Uttarakhand Investment and Infrastructure Development Fund;
- (39) "UIIRA" shall mean Uttarakhand Investment and Infrastructure Regulatory Authority;
- (40) "VGF" means viability gap funding and is expressed as a percentage of the overall project cost. It refers to the share of the project cost to be borne by the State government / board to make the project financially viable for the concessionaire.

Chapter-2

PRIVATE PARTICIPATION IN PROJECTS

PRIVATE PARTICIPATION

- 3 (1) This Act would apply to all projects including investment and infrastructure projects undertaken by UIIDB. Additionally, this Act would apply for disinvestment and monetization projects of the State government:

Provided that UIIDB shall take up projects with a minimum capital cost of INR 25 (Twenty-Five) Crores. The threshold may be revised by the cabinet from time to time:

Provided also that projects executed via the Board and funded through the Fund would provide a minimum IRR to State Government of [RBI repo rate + 4%] after factoring any VGF or other support as provided under this Act. The threshold may be revised by the cabinet from time to time:

Provided further also that in case of projects that require VGF support, a maximum of 40% of the project cost may be paid as VGF from the Fund. A project requiring higher than 40% VGF may be taken up only if the additional VGF required (above 40% of the project cost) is provided through budgetary support / other means by the State Government. The threshold may be revised by the cabinet from time to time.

Chapter-3

UTTARAKHAND INVESTMENT AND INFRASTRUCTURE DEVELOPMENT BOARD
(UIIDB)

ESTABLISHMENT OF THE BOARD 4 (1) With effect from such date, as the State Government may by notification appoint, there shall be established a Board for the purposes of this Act to be called the Uttarakhand Investment and Infrastructure Development Board.

(2) The Board established under sub-section (1), shall consist of a Chairman and other members as outlined in the table below

Composition of the Board

| | |
|---|--------------------|
| Chief Minister | Chairman |
| Finance Minister | Member |
| Planning Minister | Member |
| Ministers of the concerned Administrative Department(s) | Special Invitee(s) |
| Chief Secretary | Member |
| Infrastructure Development Commissioner | Member |
| ACS / PS / Secretary, Planning | Member |
| ACS / PS / Secretary, Finance | Member |
| ACS / PS / Secretary, Industries | Member |
| ACS / PS / Secretary, Urban Development | Member |
| Principal Secretary / Secretary to the Chief Minister (Nominated by the CM) | Member |
| Managing Director of the Board | Member Secretary |
| Administrative Secretaries of the concerned Administrative Department(s) | Special Invitee(s) |
| Any other person as desired | Special Invitee(s) |

by the board

- (3) The Board shall be housed under the Planning department of the Government of Uttarakhand.
- (4) The Board shall have a minimum quorum of one-third from among the Chairman and the members.
- (5) The Chairman may appoint a Vice Chairman from among the members of the Board. The Vice Chairman shall chair the Board meetings in the absence of the Chairman.
- (6) The Board would constitute an Executive Committee (EC) that would aid and assist the Board in the discharge of its functions.

The Executive Committee shall consist of the following, namely:

Composition of the Executive Committee (EC)

| | |
|--|--------------------|
| Chief Secretary | Chairman |
| Infrastructure Development Commissioner | Member |
| ACS / PS / Secretary, Planning | Member |
| ACS / PS / Secretary, Finance | Member |
| ACS / PS / Secretary, Industries | Member |
| ACS / PS / Secretary, Urban Development | Member |
| Principal Secretary / Secretary to the Chief Minister (Nominated by the CM) | Member |
| Managing Director of the Board | Member Secretary |
| Administrative Secretaries of the concerned Administrative Department(s) | Special Invitee(s) |

Any other person as desired
by the board and / or EC

Special Invitee(s)

- (7) The Executive Committee shall oversee the day-to-day management of the board and its projects.
- (8) The EC shall have a minimum quorum of one-third from among the Chairman and the members.
- (9) In addition to the above, the Board may from time to time appoint committees including Sectoral Sub-Committees and Project Implementation Sub-Committees under Section 7, as may be considered necessary for carrying out the purposes of this Act.
- (10) The Board / EC shall meet at such time, place and frequency and shall observe such procedure to transact its business in the meetings as may be specified by the bye-laws.

**VACANCIES NOT
TO INVALIDATE
PROCEEDINGS OF
THE BOARD**

5 No Act or proceeding of the Board shall be invalid merely by reason of:

- (1) any vacancy in, or any defect in the constitution of the Board; or
- (2) any defect in the appointment of a person Acting as a Chairman, or member of the Board.

**FUNCTIONS AND
POWERS OF THE
BOARD**

6 (1) The Board shall be the apex body in the State for promotion and development of PPP in infrastructure sectors and projects, and for promotion and development of private sector investments.

(2) The Board shall: -

- a) Act as a nodal agency to co-ordinate all efforts of the State Government regarding the development of infrastructure projects involving PPP / private participation and funding from sources other than those provided by State budget and shall:
- i. Identify / originate / evaluate previously identified and / or delegated projects (infrastructure and other sectors) and new concepts for private participation;
- ii. For identified projects, manage and execute the entire process, internally or with the help of external advisor(s), of creating the project, ascertaining viability, determining transaction structure including any viability

- gap funding (VGF), engaging relevant Administrative Department of the State Government for advice, inputs and approval wherever required, marketing the project to ensure Active participation, bringing on board private investor(s), monitoring project execution, etc.;
- iii. Identify bottlenecks in the infrastructure sectors and recommend to the State Government, policy and project initiatives to rectify the same;
 - iv. Select, prioritise and determine sequencing of PPP projects in infrastructure;
 - v. Promote competitiveness and private participation through PPP while developing projects while ensuring adherence to best public policy principles;
 - vi. Formulate (and help other departments in formulating) clear and transparent policies related to PPP in the infrastructure sectors so as to ensure that project risks are clearly identified and allocated between stakeholders;
 - vii. Identification of best end use of State Government land assets; and
 - viii. Assist the State Government in disinvestment/ monetization / redevelopment of existing State Government assets including land.
- b) Prepare internally or through external consultants or service providers engaged for the purpose, all necessary documents including the bid or tender documents, draft contracts including the various contractual arrangements and incentives to be offered by the State Government for PPP and investment projects;
 - c) Create a fund, to be known as Uttarakhand Investment and Infrastructure Development Fund (the "Fund" or "UIIDF"), as provided under section 11, which shall vest in the Board;
 - d) Manage and administer the Fund;
 - e) Assist concessionaires and other departments (and seek assistance) in obtaining statutory and other approvals for PPP and investment projects;
 - f) Recommend the grant of concessions to concessionaires in accordance with the provisions of this Act, and the rules

made there under.

- g) Determine / Assist in determining the level and structuring of investments of State Government and other departments / Government agencies into infrastructure projects with private participation including holding equity / sweat equity investments, etc;
- h) Act as a think-tank / advisor to the State Government on key policy matters related to investment and infrastructure promotion;
- i) Create special purpose vehicles for implementing infrastructure projects / projects in terms of Section 35 in co-ordination with the State Government or other Government departments;
- j) Undertake investment promotion Activities for the State Government in designated sectors; and
- k) Structure and oversee legal framework required to promote private investments and Public Private Participation ("PPP") projects in the State;

(3) In order to carry out its functions, consistent with the provisions of this Act, the Board shall have the powers to do all or any of the following, namely:

- a) Acquire, hold, develop or construct such land and property, both movable and immovable, as the Board may deem necessary for the performance of any of its Activities related to the development of PPP projects in infrastructure / private investment projects;
- b) Advise or recommend to the State Government acquisition of land under the Land Acquisition Act, 1894 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, whichever is relevant, for the performance of any of its Activities;
- c) Lease, exchange, or otherwise make allotments of the property referred to in section 6(3)(a) to concessionaire and to modify or rescind allotments, including the right and power to evict the allottees concerned on breach of any of the terms or conditions of such allotment;

- d) Borrow and raise money in such manner as the Board may think fit and to repay any money borrowed or raised;
- e) Constitute a one or more Sectoral Sub-Committee(s) or Project Implementation Sub-Committee(s);
- f) Engage suitable service providers or advisors or consultants to advise the Board for the efficient discharge of its functions;
- g) Enter into and perform all such contracts as it may think necessary or expedient for performing any of its functions; and
- h) Do such other things and perform such other acts as it may think necessary or expedient for the proper conduct of its functions and for carrying into effect the purposes of this Act.

(4) The Board and / or projects facilitated by the Board shall not be covered under the Uttarakhand Public Private Partnership Policy 2019 (or any future revisions or amendments to the same) and nor shall they be covered under the rules / procedures of the Public Investment Board (PIB).

SECTORAL SUB-COMMITTEE AND PROJECT IMPLEMENTATION SUB-COMMITTEE

- 7 (1) The board may constitute Sectoral Sub-Committee(s) or Project Implementation Sub-Committee(s) from time to time to assist the Board in carrying out its functions, as may be considered necessary for the purposes of the Act.
- (2) For the effective association, consultation, and participation of other Government departments in the decision making of the Board, the Sectoral Sub-Committee(s) or Project Implementation Sub-Committee(s) shall comprise of members of representatives from relevant Government departments and / or relevant Government agencies along with duly on boarded service providers or advisors or consultants.
- (3) The constitution, functioning and powers of the Sectoral Sub-Committee or Project Implementation Sub-Committee shall be as per the bye-laws made by the Board.
- (4) The Sectoral Sub-Committee(s), the Project Implementation Committee(s) or any other Committee(s) called by any other name, constituted by the Board / EC under this Act, and shall carry the functions delegated to them by the Board and / or the EC.

(5) Each Sectoral Sub-Committee shall be concerned, in particular, with:

- a) Formulation, review, change and implementation of the sectoral policies for private participation
- b) Conduct of feasibility stud(ies) and preparation of feasibility report(s); and
- c) Formulating the sectoral packages of financial incentives and concessions.

(6) Each Project Implementation Sub-Committee shall be concerned, in particular, with:

- a) Providing proposals to the Board or any other Committee as may be specified in this behalf by the Board for taking decision on project identification and priority;
- b) Finalising the scope and structuring of projects;
- c) Finalising the pre-bidding and bidding procedures;
- d) Finalising the selection of concessionaire and recommending grant of concession; and
- e) Implementing, supervising and monitoring of projects.

**FINANCE,
ACCOUNTS AND
AUDIT OF THE
BOARD**

- 8 (1) Estimates of annual income and expenditure of the Board for the ensuing financial year shall be prepared by the Member Secretary of the Board, as per the rules, and shall be submitted to the Board for its approval.
- (2) An annual Statement of accrued income and expenditure of the Board shall be prepared by the Member Secretary and after obtaining approval of the Board, the same shall be sent to the State Government for information, within a period of three months from the date of closure of the concerned financial year.
- (3) The custody, application and operation of the UIID Fund, including borrowing and investment shall be carried out by the Board in accordance with the bye-laws.
- (4) The accounts of the Board shall be audited as per the rules and procedures laid by the Government of Uttarakhand.

**OFFICERS AND
EMPLOYEES OF
THE BOARD**

- 9 (1) The Board shall have a Managing Director to be appointed by the State Government to lead the Board in its day-to-day functioning.
- (2) The Board may, with the approval of the State Government,

create such other posts and appoint such officers and other employees thereon, as it may consider necessary for the efficient discharge of its functions.

- (3) The Board may take on deputation officers from other departments of the State government.
- (4) The conditions of service of officers and other employees referred to in sub-sections (1) and (2) and their functions and duties shall be such, as may be specified in the bye-laws.
- (5) The Managing Director shall exercise the powers of supervision over all the officers and other employees of the Board.
- (6) A contract, after it is sanctioned by the competent authority, shall be signed by the Managing Director, on behalf of the Board provided that where the sanctioning authority of any contract or class of contracts is the Managing Director, such contracts may be signed on behalf of the Board by the Managing Director himself or by any other officer duly authorized by him in this behalf.

**POWERS OF THE
BOARD TO MAKE
BYE-LAWS**

- 10 (1) The Board may make bye-laws for the proper performance of its functions under this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such bye-laws may provide for the following matters, namely:
 - a) The constitution, functioning and powers of the Sectoral Sub-Committee(s), Project Implementation Sub-Committee(s) under sub-sections (1) and (3) of Section 7;
 - b) The custody, application and operation of the UIIDF including, borrowing and investment under sub-section (3) of section 8;
 - c) The duties of the Managing Director, officers and employees of the Board and their conditions of service under section 9;
 - d) Conduct of the meetings of the Board and Executive Committee, the time and place at which such meetings shall be held, the procedure to be followed in the transaction of business under sub-section (9) of section 4; and
 - e) Any other matters in relation to which bye-laws are required to be or may be made.

Chapter 4

UTTARAKHAND INVESTMENT AND INFRASTRUCTURE DEVELOPMENT FUND (UIIDF)
AND CORPUS, LEVY OF FEE, DISBURSALS, ETC.

- CONSTITUTION OF THE FUND** 11 (1) The State Government shall constitute a fund with an initial corpus of INR [100] Cr. to be known as the Uttarakhand Investment and Infrastructure Development Fund (the "Fund" or "Development Fund") which shall vest in the Board.
- (2) The Fee levied and collected under this Act, shall be credited to the Fund. Any other grant from the Central / State Government, local authorities and any of the authorities to UIIDB shall also be credited to the Fund
- SOURCES OF THE FUND** 12 (1) With effect from the date of coming into force of this Act and the formation of the Fund, and subject to the provisions of this Chapter, UIIDB shall levy and receive Fee in UIIDF as outlined in Schedule III.
- (2) The Fee due to UIIDB under this Act, shall be collected by the respective administrative department collecting the Project Proceeds and deposited by the respective administrative department in the Fund, within a period of one month from the date of its collection.
- (3) The Fee levied by UIIDB shall include any penalties levied on the Project Proceeds as though the Project Proceeds is directly payable to UIIDB.
- (4) Apart from the Fee levied by the Board, the Fund may have other income sources as approved by the State Cabinet from time to time and added to Schedule III or this Section 12, as the case may be.
- (5) In case of assets owned by UIIDB, all proceeds from such assets including from development or monetization of such assets shall be credited to the Fund.
- (6) All proceeds from cash management operations in the UIIDF shall be credited to the Fund.
- DEVELOPMENT FUND UTILIZATION AND DISTRIBUTION** 13 (1) The Development Fund shall be utilized for the following Activities:
- a) To provide equity, viability gap funding support to projects as approved by the Board;
- b) To provide concessional debt to projects as approved by the Board;
- c) To purchase assets / land for development of projects

Identified from time to time;

- d) For project development costs such as cost of consultants / advisors and other experts, creation of collateral, promotional Activities etc. for UIIDB, for furthering projects facilitated by the Board and carrying out its functions under the provisions of this Act;
- e) For all operational expenditures of the Board including but not limited to payment salaries, expenditure of supplies etc;

Provided that non-project related administrative costs of the Board including salaries of employees, cost of office and supplies etc. shall not exceed INR 10 Cr (inflation adjustment every year with CPI rate from the date of notification of the Ordinance) in the first three years of formation of Board and subsequently should not exceed INR 10 Cr (Inflation adjustment every year with CPI rate from the date of notification of the Ordinance) or 50% of the income of the Board in a year, whichever is lower.

- f) To undertake infrastructure projects on EPC as approved by the Board; and
- g) And undertake any other / additional Activities as outlined in section 6 and as approved by the State Cabinet from time to time.

- (2) On the direction of State Cabinet UIIDF, shall distribute dividends to the State Government if the corpus of the Fund exceeds INR [500] (Five Hundred) crores. (Dividends in any particular year shall be equal to [Repo rate + 4%] multiplied by [Corpus of the fund in excess of INR 500 Cr]).
- (3) Further, in case the corpus of the Fund reaches a value of more than 0.5% of the State's GDP in the previous financial year, the Fund would transfer the additional amount (over and above 0.5% of State's GDP in the previous financial year) to the State treasury.

Chapter 5

UTTARAKHAND INVESTMENT AND INFRASTRUCTURE REGULATORY AUTHORITY
(UIIRA)ESTABLISHMENT OF THE
AUTHORITY

- 14 (1) The State Government may, by notification, establish for the purpose of this Act, an authority to be called the Uttarakhand Investment and Infrastructure Regulatory Authority ("UIIRA" or the "Authority").
- (2) The Authority shall be a body Corporate known by the aforesaid name having perpetual succession and a common seal with power, subject to the provisions of this Act.
- (3) The Head Office of the Authority shall be at Dehradun or at such place, as the State Government may notify from time to time.
- (4) Prior to its formation of the authority, any disputes and or appeals that are to be referred to the Authority as per this Act shall be referred to the Conciliation Committee of Independent Experts (CCIE), Uttarakhand, which for that period, in the manner prescribed under the Act, shall perform the same functions, roles of authority.

COMPOSITION OF THE
AUTHORITY

- 15 (1) The Authority shall consist of a Chairperson and two other Members.
- (2) The Chairperson shall be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court or a retired Judge of a High Court.
- (3) The members shall possess the qualifications specified in sub-section (5).
- (4) The Chairperson or members shall be appointed by the State Government by notification in the Official Gazette.
- (5) The members appointed under sub-section (1) above, shall have the following qualifications and experience in the fields of Management of Infrastructure Sectors or Infrastructure Projects, Law, Finance, Economics or Commerce:
- a) Member (Infrastructure) - Qualifications and

experience in the field of infrastructure: Relevant professional qualifications and a minimum experience of twenty years of working after acquiring the said qualifications, in a Government department or public sector organisation or in a private sector organisation, having annual turnover of five hundred crore rupees or more in any infrastructure sector in respect of conceptualizing, appraisal, development, financing or implementation of infrastructure projects;

b) Member (Finance) - Qualifications and experience in the field of Finance, Economics or Commerce:

i. Qualifications-Membership of the Institute of Chartered Accountants of India; or Post Graduation In Economics, Commerce, Management or Engineering.

ii. Experience: Twenty years' experience of working after acquiring the said qualifications in a Government department or public sector organisation or in a private sector organisation having annual turnover of five hundred crore rupees or more; or Twenty years' teaching experience in a university or a college, recognised by the University Grants Commission or an institute recognised by the All India Council of Technical Education.

(6) Before appointing any person to the Authority as a Chairperson or member, as the case may be, the State Government shall satisfy itself that the person does not have any financial or other interest, which may affect prejudicially his functioning as a Chairperson or member of the Authority.

**FUNCTIONS OF THE
AUTHORITY**

16 (1) The Authority shall discharge the following functions, namely: -

a) To modify or vary the Tariff during the term of the concessions granted by the Board for reasons unforeseeable during the award of the concession; and based on mutual agreement between the Board and the Concessionaire.

b) To adjudicate upon appeal referred to it against an order passed by the Board or the State Government related to the approval of a project or the award of a concession; and

c) To adjudicate upon disputes between Concessionaires / Developers / Operators of projects and the State Government and / or its departments and / or the Board;

**AUTHORITY TO HAVE
POWERS OF A CIVIL
COURT**

- 17 (1) The Authority, in conduct of all proceedings before it and in exercise of its powers under this Act, shall be guided by the principles of natural justice.
- (2) The Authority may adjudicate upon disputes that arise between any two parties involved in PPP / private investment projects (private player(s), contractor(s), Government entities / SPVs / departments / agencies / board / PSU / corporation / society, etc.)
- (3) The Authority shall have, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of:
- a) summoning and enforcing the attendance of any person and examining him under oath;
 - b) requiring the discovery and production of documents;
 - c) receiving evidence on affidavits;
 - d) issuing commissions for the examination of witnesses or documents;
 - e) reviewing its decisions;
 - f) dismissing an application for default or deciding it ex-parte, setting aside any order of dismissal or any application for default or any order passed by it ex-parte; and
 - g) any other matters as the Authority may specify by regulations.

**PROCEEDINGS BEFORE
THE AUTHORITY SHALL
BE DEEMED TO BE
JUDICIAL PROCEEDINGS**

- 18 (1) All proceedings before the Authority shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code, 1860, and the Authority shall be deemed to be a 'Civil Court' for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.
- (2) Every proceeding before the Authority shall be completed within a period of ninety days of its commencement, except where the time-period is extended by the Authority for reasons to be recorded in writing.

**POWER OF AUTHORITY
TO MAKE REGULATIONS**

- 19 (1) The Authority may make regulations for the proper performance of its functions under this Act.
- (2) In particular and without prejudice to the generality of the foregoing power and of matters specifically provided for in this Act, such regulations may provide for all or any of the following matters, namely:
- a) Specifying procedure to transact business in the meetings under section 23.
 - b) Determining of salaries, allowances and other conditions of service of the officers and other employees of the Authority under section 25; and
 - c) Fixing of sums received by the Authority under clause (c) of sub-section (1) of section 26.

**POWERS OF
CHAIRPERSON**

- 20 The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of the Authority. The Chairperson shall, preside over the meetings of the Authority as well as exercise and discharge the powers and functions of the Authority vested in him in accordance with regulations.

**TERM OF OFFICE AND
CONDITIONS OF SERVICE
OF THE CHAIRPERSON
AND OTHER MEMBERS**

- 21 (1) The Chairperson shall hold office for a term of five years from the date of appointment, or until he attains the age of seventy years, whichever is earlier.
- (2) A member shall hold office for a term of five years from the date of appointment or the date on which he attains the age of sixty-eight years, whichever is earlier.
- (3) If a person holding an office is appointed as a Chairperson or a member, as the case may be, he shall have to resign from that office before joining the Authority.
- (4) The salary and allowances payable to, and the other terms and conditions of the Chairperson and other members shall be such, as may be prescribed and the same shall not be varied to their disadvantage during their tenure.
- (5) Notwithstanding anything contained in sub-sections (1), (2) and (3), the Chairperson or a member, as the case may be, may:
- a) relinquish his office by giving a written notice of at

**REMOVAL AND
SUSPENSION OF THE
CHAIRPERSON AND
MEMBER FROM OFFICE
IN CERTAIN
CIRCUMSTANCES**

- least three calendar months to the State Government; or
- b) be removed from his office in accordance with the provisions of Section 22.
- 22 (1) The State Government may remove the Chairperson or any member from office after complying with the provisions of sub-section (2), if he has:
- a) been adjudged insolvent; or
 - b) been convicted of an contravention which, in the opinion of the State Government, involves moral turpitude; or
 - c) become physically or mentally incapable; or
 - d) acquired such financial or other interest as is likely to affect prejudicially his functions in any of the said capacities; or
 - e) so abused his position as to render his continuance in office prejudicial to the public interest
- (2) Notwithstanding anything contained in sub-section (1), the Chairperson or member, as the case may be, shall not be removed from his office unless:
- a) a reference is made by the State Government to the Chief Justice of the High Court of Uttarakhand seeking an enquiry and recommendation on the proposed removal of the Chairperson or member along with the grounds for the removal and material supporting such proposal;
 - b) the reference is duly enquired into by an inquiry committee headed by a sitting or retired High Court Judge or any other person appointed by the Chief Justice of the High Court of Uttarakhand; and
 - c) the enquiry committee makes recommendation that the Chairperson or member ought to be removed on such ground or grounds.
- (3) The State Government may suspend the Chairperson or any member(s) of the Authority in respect of whom a reference has been made to the Chief Justice under sub-section (2), until any recommendation is made by the inquiry committee appointed by the Chief Justice.

MEETINGS

- 23 (1) The Authority shall meet at such times and places and shall follow such procedure to transact its business in the meetings, as may be specified by regulations.
- (2) The Chairperson or, if for any reason he is unable to attend a meeting of the Authority, any other member chosen by the members present from amongst themselves at the meeting, shall preside over the meeting.
- (3) All questions which come up before any meeting shall be decided by a majority vote of the members present and voting, and in the event of an equality of votes, the person presiding, shall have a second or casting vote.

VACANCIES NOT TO INVALIDATE PROCEEDINGS OF THE AUTHORITY

- 24 No Action or proceeding of the Authority shall be invalid merely by reason of:
- (1) any vacancy in, or any defect in the constitution of the Authority; or
- (2) any defect in the appointment of a person Acting as a member of the Authority; or

OFFICERS AND OTHER EMPLOYEES OF AUTHORITY

- 25 (1) The Authority may appoint officers and such other employees, as it considers necessary for the efficient discharge of its functions under this Act.
- (2) The salary and allowances payable to and the other conditions of service of the officers and employees of the Authority appointed under sub-section (1), shall be such as may be determined by regulations

FINANCE, ACCOUNTS AND AUDIT

- 26 (1) After the Authority is established by the State Government, the Authority shall open an account in any nationalized bank, or a bank authorized by the Reserve Bank of India to carry out the banking business. The following may be credited to the Account, namely –
- a) Contribution received from the State Government
- b) Grants received by the Authority; and
- c) Any other sum received by the Authority from any sources including fees fixed by the Authority under the regulations for proceedings before the Authority.
- (2) The Account shall vest in and be administered by the Authority, which shall apply the same to meet the various expenses of the Authority, including the salaries, allowances and administrative expenses defrayed for

purposes authorised by this Act.

(3) The Authority shall cause its books and accounts to be maintained, and its annual accounts to be prepared in the form prescribed by the State Government in consultation with the Accountant General, Uttarakhand.

(4) The annual accounts of the Authority shall be audited by the Accountant General, Uttarakhand and any expenditure incurred in connection with such audit, shall be payable by the Authority.

(5) The Accountant General, Uttarakhand and any other person appointed by him in connection with the audit of the Accounts of the Authority, shall have the same rights and privileges as the Accountant General, Uttarakhand generally has in connection with the audit of the State Government accounts and, in particular, the rights to demand production of the relevant books, accounts, supporting vouchers and other documents and papers of the Authority, for inspection.

(6) The accounts of Authority as certified by the Accountant General, Uttarakhand or any other person appointed by him in this behalf along with the audit report with respect thereto, shall be forwarded annually to the State Government, which shall cause the same to be laid before the State Legislative Assembly

**FURNISHING OF
RETURNS TO THE
LEGISLATIVE ASSEMBLY**

27 (1) The Authority shall prepare an annual report every year giving a summary of its Activities done during the previous year in such form and at such place, as may be prescribed and copies of the report shall be forwarded to the State Government for laying them before the Legislative Assembly.

(2) The Authority shall furnish to the State Legislative Assembly, at such time and in such form and manner as may be prescribed or required by the State Legislative Assembly, the returns, Statements and particulars in regard to any proposed or existing program for the promotion and development of the Infrastructure sector.

Chapter – 6

PROJECT IDENTIFICATION & CONCESSIONAIRE SELECTION

PROJECT IDENTIFICATION AND PRIORITIZATION

28 (1) The Board shall be the nodal agency to coordinate all efforts of the State Government in the identification and prioritization of PPP and other investment projects.

(2) The Board shall identify, itself, or as directed or delegated by the State Government, projects that are to be developed and / or managed and / or operated in the State through PPP and / or private participation.

(3) Upon receipt of the projects referred to in sub-section (2), the Board shall decide as to whether a public private partnership (PPP) project, is to be executed completely on private participation basis and / or partly / fully out of the Fund. Thereafter the Board shall:

- a) appoint consultant / advisor / transaction advisor for feasibility and other studies / reports / assistance required to take the project forward;
- b) assess project viability through formal reports and industry interactions;
- c) finalize the structure and other parameters for the projects;
- d) seek appropriate Government and respective department approvals;
- e) notify project inviting bids or placement of request for proposal;
- f) conduct pre-bid processes;
- g) conduct evaluation of bids;
- h) conduct negotiations and recommend the grant of Concession by the Board; and
- i) Conduct post-award oversight on behalf of the respective department.

(4) Upon directions of the State Government, the Board may take up monetization and divestment projects.

FEASIBILITY REPORT

- 29 Upon identification of the project to be developed under section 28, the Board shall direct the concerned Sectoral Sub-Committee(s) to carry out themselves or through external service providers or consultants, a feasibility study and to prepare and submit the feasibility report within a reasonable period as decided by the Board.

The feasibility report shall ascertain the viability of the project, after undertaking a cost and revenue analysis, for the board / State Government / Government bodies and also for the private sector developer / investor / operator in the context of the proposed development model / PPP structure. The feasibility report shall confirm that the project complies with the boundary conditions defined generally in this Act and in section 3. specifically. The feasibility report shall also ascertain the VGF requirements of the project, if any, based upon the gap between financial and economic viability of the project.

PUBLIC BIDDING FOR THE PROJECT

- 30 (1) Upon finalisation of the scope and structure of the project, the Board shall forthwith cause to be published for wide publicity, in at least two national level newspapers out of which, one shall be a financial or business newspaper; and in one local newspaper, a notice inviting all interested parties to participate in a competitive public bidding.

(2) The Board shall be responsible for all aspects of pre-bidding and bidding processes, including:

- a) fixing pre-qualification criteria on the basis of the clearly identifiable parameters known to Potential bidders, Investors, Contractors and the General Public;
- b) Arranging pre-bid conferences and bid evaluation conferences with the prospective bidders incl. contractors or investors.
- c) Issuing clear, comprehensive and fair instructions to bidders, which establish the rules of bidding and shall include all relevant information.
- d) preparing (or getting prepared) the bid or tender documents, which shall include the following, namely:
 - i. instructions to bidders;

- ii. pre-qualification or qualification parameters, both technical (indicating experience, specific norms, design and performance standards) and financial;
- iii. draft Concession Agreement or any other appropriate Agreement, clearly defining the basic relationship between the parties with their inter-se rights and responsibilities;
- iv. bid form; and
- v. Any other documents, deemed necessary.

(3) The instructions to the bidders relating to the bidding shall be clear, comprehensive and fair and shall, as far as necessary and practicable, include the following information, namely:

- a) general description and objectives of the project;
- b) basic contractual arrangement under which the implementation of the project shall be undertaken;
- c) bid submission, procedures and requirements;
- d) bid and bid security validity period;
- e) binding milestones;
- f) method and criteria for the technical and financial evaluation of the Bids;
- g) Tariff policy, formula and factors to be used for the charge, recovery and appropriation of tolls or rentals by the concessionaire;
- h) key performance indicators;
- i) types of defaults and resolution of the same;
- j) events of termination and associated termination payments;
- k) requirements of concerned regulatory bodies, if any;
- l) monetary rules and regulations governing foreign exchange remittances, if relevant;
- m) revenue sharing arrangements, if any; and
- n) Expected commissioning date.

(4) Minimum design and performance standards or specifications shall be clearly defined and non-conformity with any of these minimum requirements shall render the bids as non-responsive.

(5) Financial parameters shall also be described, which amongst others, shall include, as far as necessary and practicable:

- a) maximum period of project construction;
- b) fixed term for project operation and collection of tolls or tariffs or rentals or charges in respect of models of contracts specified in Schedule II;
- c) The draft Concession Agreement shall clearly define the basic and legal relationship between the parties as well as the rights and responsibilities of the parties involved. Where applicable, the following matters, among others, shall be included:
 - d) bonds, guarantees, insurance, damages;
 - e) warranties, indemnities, limitation of liability;
 - f) schedule and amount of milestone bonding;
 - g) relevant price index to be used;
 - h) force majeure and its consequences;
 - i) effect of changes in circumstances, which may be brought about by, among others, the enactment of new laws or regulations or the change in existing government policies which shall materially affect the financial viability of the project;
 - j) contract termination and combination;
 - k) the governing laws, manner and procedure for the resolution of disputes including partnering, conciliation, arbitration;
 - l) project monitoring mechanisms including provisions for independent quality control consultants and dispute review experts on a standing basis; and
 - m) Taxes and duties.

PRE-BID OR PRE-
QUALIFICATION STAGE

31 (1) Any person, who fulfils the qualification criteria, may respond to the notice inviting tenders or proposals, subject to the prevalent laws and policies laid down by the Board. The expression 'person' shall include natural and juristic persons, as permissible by policies of the Board, whether of Indian or foreign origin.

(2) If the Board chooses to have a two-stage process, then the prospective bidders shall be required to prepare and submit their respective pre-qualification documents within the specified period.

(3) Amongst others, the following may be specified by the Board, as the pre-qualification requirements, namely:

- a) Legal requirements.
- b) technical qualifications i.e., the applicant must possess adequate relevant experience in terms of specified requirements for the project or sector in question, the applicant should not have committed a material breach in any previous Concession Agreement, and other qualifications as the Board may deem fit for a particular project; and
- c) Financial qualification i.e., the applicant must show the capability to sustain the financing requirements of the project, which may be measured in terms of proof of the ability of the applicant to provide a minimum amount of equity to the project and letter of good standing from the bank.

(4) On the basis of the pre-qualification proposal received, the Board shall mark the pre-qualification documents of each prospective applicant / proposer as either pre-qualified or pre-disqualified, as the case may be, within a specified period.

BIDDING STAGE

32 (1) The Board shall make available the related bid documents to all pre-qualified bidders within the specified period to prepare and submit their respective bids.

(2) The bids may be submitted, as determine by UIIDB including online and/or offline in two envelopes i.e., one containing technical proposal and the other containing financial proposal.

(3) The required bid security, if any, shall be valid for the specified period, but in no case shall it exceed one hundred and twenty days following the opening of the bids, unless specifically decided by the Board for a particular project.

(4) The evaluation of bids shall be undertaken in two stages in terms of the specified procedure and period.

(5) The first stage of evaluation shall involve the assessment of the technical proposal regarding technical, operational and environmental viability of the proposal as

contained in the bidder's first envelopes vis-à-vis the specified requirements and criteria or minimum standards and the basic parameters specified in the bidding documents.

(6) Only those bidders, who have not been disqualified at the first stage of evaluation, shall be eligible to participate in the second stage of evaluation. The second stage of evaluation shall involve assessment in comparison of the financial proposals of the qualified bidders based on the criteria and parameters specified by the Board in this behalf. Such criteria and parameters, in the case of projects without private participation, may provide for clubbing of technical and financial scores for the purposes of determining the bidder eligible for award of work.

(7) Bidding process adopted by the Board may include: Least / lowest Cost, highest bid, QCBS (Quality cum Cost Based Selection), auction, reverse auction, any other permissible mechanism set up by the Central Government or the State Government.

(8) The different types of contracts to be adopted by the Board, in terms of structuring a project, have been outlined in Schedule II. Apart from these, the Board may consider other contract types adopted by Central or State Government.

GRANT OF A CONCESSION

33 (1) The concession shall be granted by the board or any other Government department / body or jointly to a bidder who:

- a) satisfies the stipulated financial, technical, organizational and legal standards; and
- b) Whose bid is the lowest / is in most favourable terms for the project, based on the present value of its proposed tolls, rentals, charges and period of concession over a fixed term for the project to be constructed, rehabilitated, operated and maintained as per the stipulated minimum design and performance standards, plans and specifications.

(2) The purpose of the financial package governing any sector or the concessions to be granted for any project shall be to ensure that the same is financially viable and bankable to attract maximum private investment. The board may have to make substantial investments or grant substantial concessions to make a project viable – the same shall however be governed by appropriate directions of Central and State Government.

(3) Immediately after the completion of the second stage evaluation, a decision on whether or not to award the contract shall be taken by the Board.

(4) If the Board takes a decision to award the contract, the Board shall issue to the proposed awardee, the notice of award immediately after such decision.

(5) The notice of award shall indicate, amongst others, the time within which the proposed awardee shall submit the specified performance security, proof of equity contribution, financing resources, and any other requirements specified in tender. In the case of a joint venture or consortium, the agreement indicating that the members are jointly and severally responsible for the obligations of the Concessionaire under the contract.

(6) The successful bidder shall be granted the concession for the development and / or operation and / or maintenance of the project, including the right to collect the specified tolls, tariffs, rentals and charges, etc.

(7) Withdrawal of any member of a joint venture bidder prior to the Actual award or implementation of the project, can be a ground for cancellation of the contract and forfeiture of that bidder's bid security. The Board may, however, proceed with the award of the contract for the implementation of the project, if it is of the opinion that the other members of the joint venture or consortium are still capable of carrying out the project or that they have provided a suitable and acceptable substitute with equal or better qualifications.

(8) The bid and the bid securities shall be kept valid till the process of selection of bidders and the grant of concession is completed. Once the concession is granted, the bid securities shall be returned to the unsuccessful bidders.

(9) In the event of refusal, inability, or failure of the successful bidder with the lowest complying evaluated bid to make good his bid by entering into Concession Agreement with the board within the specified period, the board shall forfeit the bid security of such bidder. In such an event, the Board shall consider the next complying and qualified lowest evaluated bid for the award. If the same too fails to execute the Concession Agreement, its bid security shall likewise be forfeited, and the Board shall consider the next complying and qualified lowest evaluated bid, and so on until a contract has been entered into. In case, the Board is unable to execute the contract with any of the complying and qualified bidders due to the refusal of the latter, the project shall be subjected to re-bidding.

(10) When no bids are received, the bidding shall be declared a failure. In such a case, Fresh bidding shall be called for the concerned project.

NEGOTIATIONS OF CONTRACTS

34 Negotiation may be resorted to when there is only one bidder complying with the stipulated pre-qualification conditions (hereinafter referred to as the "Complying Bidder") as defined hereunder:

(1) if after advertisement, only one concessionaire applied for pre-qualification, and it meets the pre-qualification requirements;

(2) if after advertisement, more than one concessionaire applied for pre-qualification, but only one meets the pre-qualification requirements;

(3) if after pre-qualification of more than one concessionaires, only one submits a bid; and

(4) if after pre-qualification, more than one concessionaires submit bids, but only one is found by the Board to be Complying Bidder.

Provided that, any of the aggrieved disqualified bidders may, within a period of fifteen days from the date of decision of the Board, file appeal to the Authority and the same shall be decided by the Authority within a period of twenty-one days from the date of filing of the appeal.

**DEVELOPMENT
THROUGH SPECIAL
PURPOSE VEHICLES**

35 (1) If at any time after the pre-feasibility stage, the Board is of the prima-facie opinion that a proposed project is unlikely to succeed through private participation, the Board may refer that project to the State Government to get the same executed through special purpose vehicle or vehicles by leveraging the funds available with the Board or other State agencies.

(2) In case of private participation in the special purpose vehicles, which are granted Concessions to implement the projects referred to in sub-section (1), those special purpose vehicles shall be governed by the relevant provisions of this Act and rules framed thereunder.

**EXECUTION OF
CONCESSION
AGREEMENT**

36 (1) Immediately after the issuance of the notice of award under sub-section (4) of section 33, the Board shall execute a Concession Agreement with the awardee, or successful bidder. For PPP projects, the concession agreement may be signed by the respective departments or tri-partite agreement with both the board and the respective departments.

(2) Where the Board, having regard to the nature of a project is satisfied that, it is necessary to do so, it may permit combination of two or more model contracts of the nature specified in Schedule II into one agreement for the purpose of private participation in the development, operation and management of the projects.

(3) Where the Board, having regard to the nature of a project is satisfied that, it is necessary to do so, it may permit new model contracts other than those specified in Schedule II for the purpose of private participation in the development, operation and management of the projects.

Chapter-7

PROJECT IMPLEMENTATION

TARIFF

37 (1) Notwithstanding anything contained in any other law enacted by the State Legislature, the concessionaire(s) may, charge, recover and appropriate the tariff in accordance with the terms and conditions of the Concession Agreement in respect of use of any facility or product or service related to or arising out of an project, where the development and / or operation and / or maintenance of such project has been done by the concessionaire at its own expense.

(2) The right of concessionaire to collect retain and appropriate tariff shall be assignable to its lenders for the funding of the development, operation and maintenance of the project.

(3) Any variation of tariff shall be varied as per provisions of the Concession Agreement. Notwithstanding the provision of concession agreement the authority under exceptional circumstance may also vary the tariff. Provided, the Authority shall not vary the rate of tariff without the consent the concessionaire and the Board. Provided further in cases, where tariff is not specified in the Concession Agreement, the Authority shall determine the tariff by accounting the concessionaire's financials.

ASSIGNMENT

38 The concessions awarded by the Board shall stipulate assignment and step-in clauses in the event of concessionaire default.

The concessionaire may offer its rights and interest in the Concession Agreement or the project assets as collateral to any of its financier for any financing availed of by the concessionaire, in accordance with assignment clause enabling the concessionaire to assign his rights and interest as aforesaid, subject to the guidelines and regulations issued or made in this behalf.

FEASIBILITY
AND
VIABILITY OF
FINALISED
PROJECTS
AND
GRANTED
CONCESSIONS

39 1. Once any project has been finalised or a concession granted, the board, State Government and other government departments, etc shall ensure that they do not act in any manner, which results in a material adverse impact on the technical and commercial feasibility or viability of the project or the Concession Agreement.

- TERMINATION OF THE CONCESSION AGREEMENT** 40 (1) In case the board considers that it is necessary to terminate any concession, it may terminate the same strictly in accordance with the provisions of the Concession Agreement signed between the parties by passing a speaking order in this behalf, after affording reasonable opportunity of being heard, to such concessionaire. If such concessionaire is aggrieved of any such termination order, he may file an appeal before the Authority or CCIE (in absence of the authority), in this behalf stating the reasons, for setting aside of such order.
- (2) Where a Concession Agreement is terminated by the board with or without the consent of the concessionaire, the concessionaire shall be entitled to such amount of compensation for such termination, if and as is specified in the Concession Agreement.

Chapter-8

APPEAL AND OTHER MISCELLANEOUS PROVISIONS

- APPEALS FROM THE ORDERS OF AUTHORITY** 41 Any person aggrieved by any decision or order of the Authority or CCIE, may file an appeal to the High Court of Uttarakhand within a period of sixty days from the date of communication of the decision or order of the Authority to him/her.
- PENALTIES FOR CONTRAVENTION OF DIRECTIONS OF AUTHORITY** 42 (1) If a person violates the directions of the Authority, such person shall be punishable to fine, which may extend to fifty thousand rupees and in case of second or subsequent contravention, to fine, which may extend to INR One Lakh only. In case of continuing contravention, with an additional fine, which may extend to five thousand rupees for each day during which such contravention continues after the first contravention?
- (2) Notwithstanding anything contained in sub-section (1), where an contravention under this Act has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, or other officer of the company, such director, manager, or other officer, as the case may be, shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render

any such person liable to any punishment specified in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

POWERS OF STATE GOVERNMENT TO MAKE RULES 43

(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power and the matters specifically provided for in this Act, such rules may provide for all or any of the following matters, but not limited to the same, namely:

- a) prescribing the salary and allowances payable to, and the other terms and conditions of service of the Chairman, and other members;
- b) prescribing the form and place for preparing the annual report;
- c) prescribing the form and manner of furnishing returns, Statements and particulars;
- d) prescribing the manner for maintaining the accounts and submitting the returns;
- e) prescribing the salary and allowances payable to, and the other terms and conditions of service of the consultants and other advisors to the board; and
- f) prescribing the processes and workflows to be followed by the board for execution of its duties.

(3) Every rule made under this Act shall be laid, as soon as may be, after it is made, before the House of the State Legislature, while it is in session, for a total period of fourteen days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive sessions as aforesaid, the House agrees in making any modification in the rules, or the House agrees, that the rules should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be, so provided that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

- POWER TO ISSUE DIRECTIONS** 44 The State Government shall have the power to issue policy directions to the Board and Authority on matters concerning investment, PPP and infrastructure sectors and the infrastructure projects in the State. All policy directions issued shall be consistent with the provisions of this Act and the rules made there under and the objects sought to be achieved by this Act.
- SUBSIDY** 45 The State Government may issue guidelines to the board, on a case-by-case basis, concerning the subsidies to be allowed to a class of consumers for providing services or for utilizing facilities of an infrastructure project or infrastructure sector.
- CHAIRMAN, VICE CHAIRMAN, MEMBERS, OFFICIALS AND EMPLOYEES OF THE AUTHORITY AND THE BOARD DEEMED TO BE PUBLIC SERVANTS** 46 The Chairman, Vice Chairman, members, officers and other employees of the Authority and the Board, when Acting or purporting to act in pursuance of any of the provisions of this Act, the rules and regulations made there under, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, (Act No. 45 of 1860).
- PROTECTION FOR ACTION TAKEN IN GOOD FAITH** 47 No suit, prosecution or other legal proceedings shall lie against the State Government or the Board or the Authority or any officer of the State Government or the Chairperson, any member, officer or other employee of the Authority or the Board for anything, which is done or intended to be done in good faith under this Act and rules or regulations made there under.
- POWER TO REMOVE DIFFICULTIES** 48 (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty provided that no order shall be made under this section after the expiry of a period of three years from the date of commencement of this Act.
(2) Every order made under this section, shall be laid, as soon as may be, after it is made, before the Legislative Assembly.
- POWER TO AMEND THE SCHEDULE** 49 The State Government may, by notification in the Official Gazette amend any Schedule to this Act.

- OVER-RIDING
EFFECT ON OTHER
LAWS** 50 Save as otherwise provided in this Act, the provisions of this Act, or rules or regulations or bye-laws made there under, shall have effect notwithstanding anything inconsistent therewith contained in other law, enacted by the State Legislature and for the time being in force in the State of Uttarakhand.
- BAR OF
JURISDICTION OF
CIVIL COURTS** 51 1. No order passed or Action taken under this Act, rules or regulations made there under, shall be appealable except as provided in this Act and no civil court shall have jurisdiction in respect of any matter, which the Authority or the Board is empowered to decide and adjudicate upon.
- Repeal and
Savings** 52 (1) The Uttarakhand Investment and Infrastructure (Development and Regulation) Ordinance, 2023 here by repealed.
- (2) Notwithstanding such repeal anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

(R.Meenakshi Sundaram)
Secretary.

SCHEDULE I

INFRASTRUCTURE SECTORS

Infrastructure sectors shall include:

1. Information Technology related infrastructure
2. Transportation – Roads, bridges, road transport and related areas, metros and other modes of transportation, etc.
3. Urban/Rural Infrastructure including:
 - a. water supply and sewerage;
 - b. sewerage and waste water drainage, disposal and treatment;
 - c. internal roads, streets and street lightning;
 - d. solid waste management;
 - e. parks and grounds;
 - f. urban mass transit system;
 - g. public parking related facilities/ multilevel parking; and
 - h. sports and recreational infrastructure
4. Industrial estates, Industrial parks, Modern Industrial Townships and Special Economic Zones, etc.
5. Irrigation drainage and flood control infrastructure
6. Other agricultural infrastructure, including post-harvest facilities like warehousing facilities, cold chains, grading processing and marketing, etc.
7. Medical and health care facilities and Medical Education cum Research facilities.
8. Tourism related facilities and infrastructure including cultural, historic, heritage and museum facilities.
9. Energy including generation, transmission and distribution infrastructure, fuels, renewable energy infrastructure, etc.
10. Education infrastructure including technical education, higher education, etc.
11. Environment and pollution control infrastructure including WTP, STP, ETP, etc.
12. Civil Aviation including airports; flying clubs, aviation training Institutes, airport city side development, airport aviation, helipads and related infrastructure, etc.
13. Social infrastructure including:
 - a) Reform Infrastructure including prisons, Juvenile Homes, etc.
 - b) Service infrastructure including IT enabled administration and other public services; and

- c) Social Infrastructure on Public Private Partnership mode including, slum rehabilitation, economically weaker Sections housing facilities, old age homes, orphanages, and day care facilities, etc.
14. Governance infrastructure including administrative buildings and housing facilities
15. Any other project as determined by the State Government.

SCHEDULE II

MODEL CONTRACTS

The various model contract to be adopted have been outlined below. The Board may take up:

1. Build Lease and Transfer (BLT)
2. Build Own and Operate (BOO)
3. Build-Own-Operate-and-Transfer (BOOT)
4. Build Operate and Transfer (BOT)
5. Build Operate and Transfer (Annuity)
6. Build Transfer and Operate (BTO)
7. Design Build Finance Operate and Transfer (DBFOT)
8. Hybrid Annuity Model (HAM)
9. Management Agreement
10. Operate, Maintain and Transfer (OMT)
11. Operate Maintain and Develop (OMD)
12. Rehabilitate Operate, Maintain and Transfer (ROMT)
13. Rehabilitate Own, Maintain and Operate (ROMO)
14. Service Contract Agreement
15. Supply, Operate and Transfer Agreement
16. Any other PPP contract structure approved by the State or central governments
(PPP Cell, Department of Economic Affairs)

SCHEDULE III
FEE LEVIED BY UIIDB

The Fee levied by UIIDB shall include the following:

1. UIIDB shall receive the 8% of total income received from successful project, from Regional Administration Authority/Department when process are due to the administration department for project.
2. 8% of proceeds received from disinvestment/monetization project shall be payable to UIIDB remaining 92% shall be deposited in ESCROW Account. This 92% amount shall be used as following:
 - a. As per direction of State Government for investment in CAPEX/ Infrastructure Project.
 - b. Payments to Administrative Departments for respective disinvestment / monetization projects as per directions of the State government
3. [5%] of external development charges and infrastructure development charges or any other developmental charges levied by the development authorities, if any, collected by the State Government in designated Command Areas around projects undertaken by the board and as notified by the State government; and
4. [5%] of stamp duty collections in designated Command Areas around projects undertaken by the board and as notified by the State government.

By Order,

SHAHANSHAH MUHAMMAD DILBER DANISH,
Secretary.

Statement of Objectives and Reasons

The development of infrastructure sector projects like expansion of airports, telecom infrastructure, medical colleges, new townships-housing, industrial logistic corridors, tourism related construction requires huge capital investment. At present the Government of India has given special emphasis on developing assets in Public Private Partnership (PPP) mode. The Government of India's policy of increasing private sector participation through PPP has resulted in positive changes in the infrastructure sector with the entry of large number of private sector entrepreneurs.

In view of the limited financial resources in the state of Uttarakhand, it is necessary to attract domestic and international capital investment in the region to meet the capital requirements for the development of basic infrastructure of the state. For this, special focus will be required on promotion of Public Private Partnership (PPP) projects.

Therefore, due to the ever-changing scenario in the field of infrastructural development of the state and due to emergence of new requirements for speeding up development of infrastructure in Uttarakhand State and for development of PPP project it is necessary to constitute Uttarakhand Investment & Infrastructure Development Board (UIIDB) in the interest of state. For establishment of UIIDB Uttarakhand the Uttarakhand Investment & Infrastructure (Development & Regulation) Bill, 2023 is proposed.

- 2- The proposed Bill fulfills the aforesaid objectives.

Pushkar Singh Dhami
Chief Minister