

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH,  
AT NEW DELHI**

**CAA-333/PB/2017**

**Under Section 230-232 and other applicable provisions of the Companies Act,  
2013 read with Companies (Compromises, Arrangements and Amalgamations)  
Rules, 2016**

In the matter of:

**SCHEME OF AMALGAMATION**

**OF**

**Hero Future Energies Private Limited**

**.....TRANSFEROR COMPANY**

**WITH**

**Clean Solar Power (Hiriyur) Private Limited**

**.....TRANSFeree COMPANY**

**CORAM:**

**CHIEF JUSTICE (Rtd.) M.M. KUMAR, Hon'ble President**  
**Mr. S. K. MOHAPATRA, Hon'ble Member (T)**

**Present:**

For Petitioners:

Mr. Mahesh Agarwal, Advocate

Mr. Rajeev Kumar, Advocate

For Regional Director,(NR), Delhi: Mr. Manish Raj, Company Prosecutor

FOR Official liquidator: Mr. Amish Tondon, Advocate

For Income Tax Department :Ms.Lakshmi Gurung, Standing Counsel

## ORDER

**S. K. MOHAPATRA, MEMBER**

1. This Joint application has been filed by the Petitioner Companies under Sections 230 and 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation of the transferor company into Transferee Company.
2. The “Transferor Company”, Hero Future Energies Private Limited was incorporated on 18.10.2012 under the provisions of companies Act, 1956, having its registered office at Plot No. 202, Third Floor, Okhla Industrial Estate, Phase-III, New Delhi-110020, India
3. The “Transferee Company, Clean Solar Power (Hiriyur) Private Limited was incorporated under the Companies Act, 1956 on 06.06.2013. The registered office of the company is situated at Plot No. 201, First Floor, Okhla Industrial Estate, Phase-III, New Delhi-110020.
4. A perusal of the petition discloses that initially the Transferor Company and transferee Company had filed a joint first motion application bearing C.A. (CAA) No. 77/PB/2017 before this Bench. This Bench vide its order dated 28.09.2017 exempted from convening the meetings of shareholders, Secured and Unsecured Creditors of both the petitioner companies.



5. On 03.11.2017 the Petitioners were directed to carry out publication in the newspapers 'Business Standard' English Delhi edition as well as in 'Jansatta' Hindi Delhi edition. In addition to the public notice, notices were directed to be served on to the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other relevant sectoral regulators.
6. It is seen from the records that the Petitioners have filed an affidavit dated 08.12.2017 affirming compliance of the order passed by the Tribunal dated 03.11.2017. A perusal of the affidavit discloses that the petitioners have affected the newspaper publication as directed in one issue of the 'Business Standard' English edition on 22.11.2017 as well as in 'Jansatta' Hindi edition again on 22.11.2017 in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of petition have been duly served to the Registrar of Companies, Regional Director, Northern Region and Income Tax Department in compliance of the order and in proof of the same acknowledgement made by the respective offices have also been enclosed.
7. The Regional Director has filed its representation in which it has been submitted that the Registrar of Companies have observed that the petitioner companies have not filed their balance sheet for the financial year ending 31.03.2017. However, no other material objection against the Scheme have been raised in the report.



8. In response of the aforementioned observation of the Regional Director additional affidavits have been filed by both the petitioners company stating that the financial statements for the year ending 31.03.2017, has been filed by both the companies on 14<sup>th</sup> December 2017 and same has been accepted by the Ministry on 15.01.2018. Copies of relevant challans showing filing of financial statements for the year ending 31.03.2017 have been placed on record.
9. The Official Liquidator has filed its report wherein no material objection has been raised by them in relation to the Scheme. It is submitted in the report that the official liquidator has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the Petitioner companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.
10. The Department of Income Tax have filed its representation with the following observations:
- *“The Income Tax Department must be permitted to retain its recourse for recovery in respect of any existing or future tax liabilities of the transferor company or the transferee company, in respect of the assets sought to be transferred under the proposed Scheme, and that this protection must be made explicitly by this Court in its final order and has to bind all the parties to the Scheme, particularly the transferor and transferee companies. There*

*should be no limitation on the power of the Income tax Department for recovery, including imposition of penalties etc.*

- *Requisite compliance of provision of section 72A has to be ensured.*
- *That, without prejudice to the above, the approval of the Scheme should in no manner affect the tax treatment of the transaction under the Income Tax Act, 1961 or another applicable taxing statute, nor would sanction of the Scheme or the effect thereof serve as a defense for the companies concerned against tax treatment under the aforementioned statutes.”*

11. In response of the observations made by the Income Tax Department, the petitioner companies have filed affidavits and submitted that in respect of any pending or future tax liabilities of transferor company, provisions has been made in Clause 7.1 to 7.5 and 13.1 to 13.2 of the proposed Scheme. Further the Transferee Company has undertaken to comply with the provisions of Section 72A of the Income Tax Act, 1961, as applicable.
12. It is further clarified that there shall be no limitation on the power of the Income tax Department for recovery, including imposition of penalties etc. as provided in law.
13. It is submitted that upon the scheme becoming effective, as per the clause 2.1 of the Scheme the transferee company shall without any further application, act, instrument or deed, issue and allot to the shareholders of the transferor company whose name appears in the register of members on the record date or their respective heirs, executors, administrators or legal



representatives or the successors in the title as may be recognized by Board of Directors of transferor company, shares in the Share Capital of the Transferee Company, on a proportionate basis, which shall be compulsorily convertible preference shares of Rs. 100 each, credited as fully paid up in lieu of shares held by them in the share capital of the transferor company, up to the extent indicated below, in the following ratio:

- a. For every 1000 equity shares of face value of Rs. 10/- each held in the transferor company as on record date, the equity shareholders of the transferor company shall be issued 165 compulsorily convertible preference shares of face value Rs. 100/- each credited as fully paid-up in the transferee company.
  - b. For every 100 Series A cumulative compulsorily convertible preference shares of face value of RS. 100 each held in the transferor company as on the record date the transferee company shall issue 100 compulsorily convertible preference shares of face value of Rs. 100/- each credited as fully paid-up in the transferee company.
14. It is affirmed that neither any investigation nor prosecution proceedings are pending against the Petitioner Companies and its directors for violation of various laws such as the Companies Act, 1956/2013, FEMA, IPC, SEBI Act, RBI Act etc.
15. Certificates of Statutory auditors of both the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the



Scheme of Amalgamation is in conformity with the Accounting Standard prescribed by the Central Government in this regard.

16. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs, the report of official liquidator and Department of Income Tax, there appears to be no impediment in sanctioning the present Scheme. Consequently, sanction is hereby granted to the Scheme under Section 230 & 232 of the Companies Act, 2013. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.
17. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.
18. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.



19. **THIS TRIBUNAL DO FURTHER ORDER**

1. That the Transferor Company stands dissolved without being wound-up;  
and
2. That all the property, rights and powers of all the transferor company, be transferred without further act or deed, to the transferee company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and vest in the transferee company for all the estate and interests of the transferor company therein but subject nevertheless to all charges now affecting the same; and
3. That all the liabilities and duties of the transferor company, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and
4. That all proceedings now pending by or against all the transferor companies, be continued by or against the transferee company; and
5. That all the employees of the transferor company in service, if any, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date shall become the employees of the transferee company on such date without any break or interruption in service and upon terms and condition not less favorable than those subsisting in concerned transferor company on the said date.

6. That Petitioner companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Company for registration and on such certified copy being so delivered the transferor company shall be dissolved and the Registrar of Company shall place all documents relating to the transferor company registered with him on the file kept by him in relation to the transferee company and the files relating to all the petitioner companies shall be consolidated accordingly; and
7. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

The petition stands disposed of in the above terms.


Let copy of the order be served to the parties.



Sd/-

**(S. K. MOHAPATRA)**

**Member (T)**



Sd/-

**(M.M. KUMAR)**

**President**