

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

TP No. 56/NCLT/AHM/2017 (New)
Gujarat High Court CP No. 475/2016 c.w. CA 433/2016 (Old)


Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 31.05.2017**

Name of the Company: Suzlon Structures Ltd.

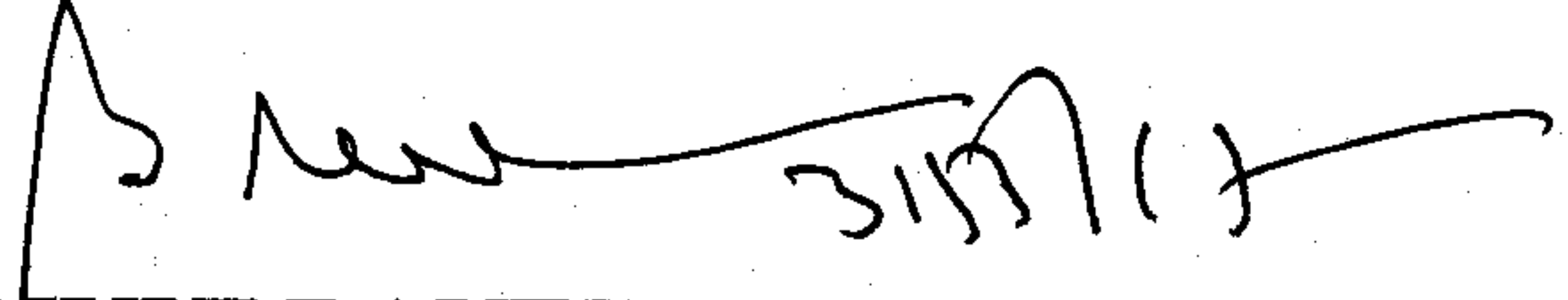
Section of the Companies Act: Sections 391-394 of the Companies Act, 1956;
230-232 of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Jaimin R. Dave	Advocate	Petitioner	
2.				

ORDER

Learned Advocate Mr. Jaimin Dave i/b Learned Advocate Mrs. Swati Soparkar present for Petitioner.

Common order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 31st day of May, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

T.P. No. 53/NCLT/AHM/2017

WITH

T.P. No. 54/NCLT/AHM/2017

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T.P. No. 55/NCLT/AHM/2017

WITH

T.P. No. 56/NCLT/AHM/2017

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 31st Day of May, 2017

In the matter of

1. SE Blades Limited
2. SE Electricals Limited,
3. Suzlon Wind International Limited.
... Petitioner Transferor Companies
4. Suzlon Structures Limited. ... Petitioner Demerged Company
All the companies are incorporated
under the Companies Act, 1956
and having their registered office at
'Suzlon' 5, Shrimali Society,
Near Shri Krishna Complex,
Navrangpura,
Ahmedabad - 380 009,
In the state of Gujarat.

Appearance: -

Mr. Saurabh Soparkar, Learned Senior Advocate, appearing with Mrs. Swati Soparkar, Advocate for the petitioner-companies.

COMMON FINAL ORDER

(Date: 31.05.2017)

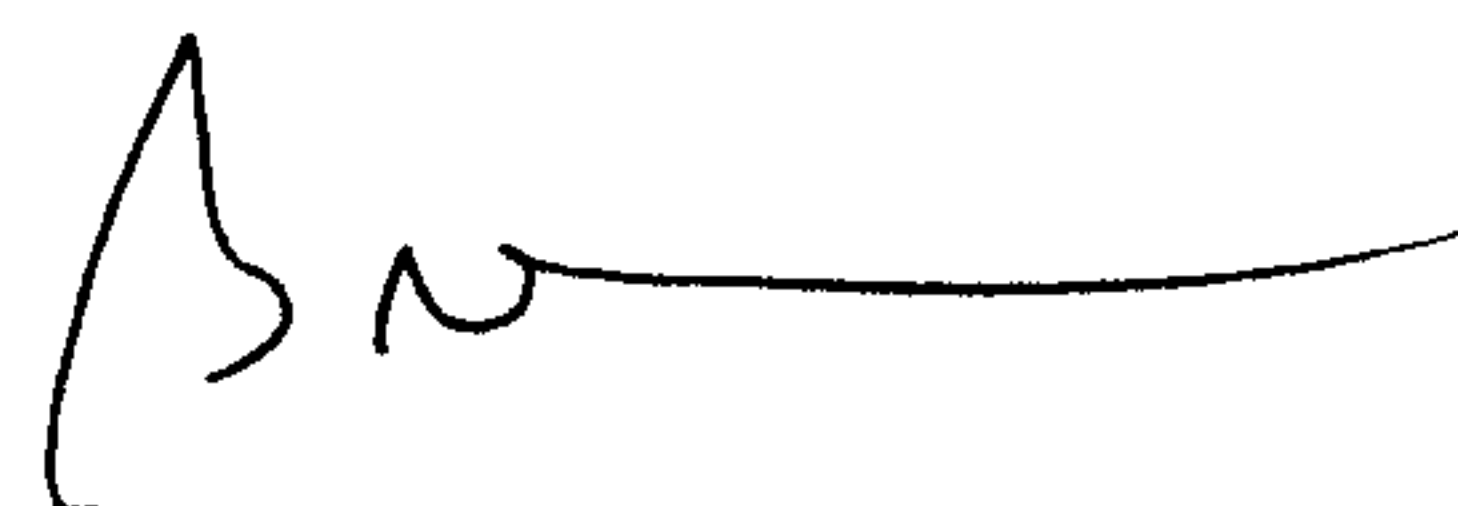
1. These petitions are filed by four companies under Section 391 to 394 of the Companies Act, 1956, originally, seeking sanction of the Hon'ble Gujarat High Court to a Composite Scheme of Arrangement in the nature of amalgamation of three Wholly Owned Subsidiaries, viz. SE Blades Limited, SE Electricals Limited and Suzlon Wind International Limited with the parent Transferee Company, viz. Suzlon Energy Limited and de-merger and transfer of Tower Business Of Suzlon Structures Limited,

the fourth Wholly Owned Subsidiary to Suzlon Energy Limited, the parent Transferee Company.

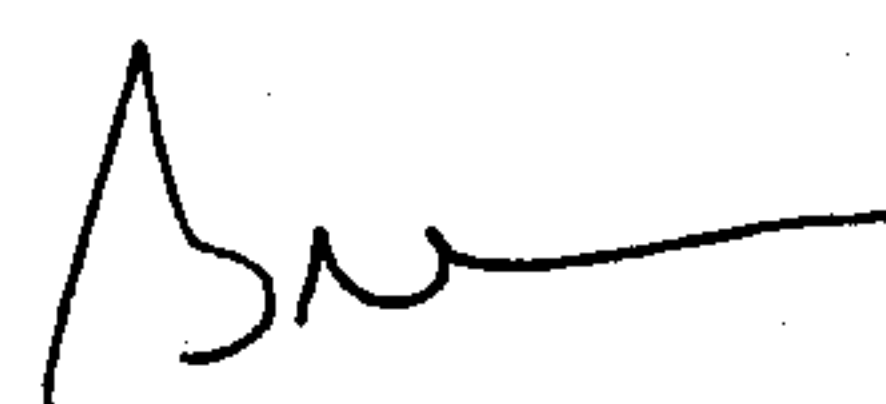
2. The same have been transferred from the Hon'ble High Court of Gujarat vide the order dated 6th March 2017 in light of the Rule 3 of the Companies (Transfer of Pending Proceedings) Rules, 2016.
3. This Tribunal by respective orders passed in TP Nos. 53 , 54, 55 and 56 of 2017 dated 31st March 2017, fixed the date of hearing of the petitions as 3rd May 2017 and directed all the petitioner companies to issue Notice of Hearing of Petition by way of advertisement in English and Gujarati Newspapers in which the earlier publications were made, not less than 10 days before the date fixed for hearing calling for their objections, if any, on or before the date of hearing. The petitioners were also directed to issue individual notices to all its Equity Shareholders and Unsecured Creditors, not less than 10 days before the date fixed for hearing calling for their objections, if any, on or before the date of hearing. This Tribunal also directed issuance of notice to (i) Regional Director, Western Region, Gujarat (ii) Registrar of Companies, Gujarat (iii) Reserve Bank of India (iv) concerned Tax Authorities (v) Bombay Stock Exchange Limited (vi) National Stock Exchange of India (vii) Competition Commission of India and (viii) Official Liquidator; asking them to file their representations if any, within 30 days from the date of receipt of notice with a condition that in case no representation is received by this Tribunal, it shall be presumed that the above said authorities have no representation to make on the proposed Scheme of Arrangement.
4. All the petitioner companies have filed affidavits in respect of service of notices to Shareholders and Publications made in the newspapers as well as Affidavit of Service to Regulatory Authorities dated 21st of April 2017. In response to such

individual notice and the publications made in newspapers, no objection is received either from any shareholder or any creditors. No representation is received from any Regulatory authorities. However, the representations filed by the Official Liquidator as well as the Regional Director in the proceedings filed before the Hon'ble High Court of Gujarat are taken into consideration hereinafter.

5. Heard Mr. Saurabh Soparkar, Learned Senior Advocate, appearing with Mrs. Swati Soparkar, learned advocate for the petitioner companies.
6. The petitioner of TP (CAA) No. 53 of 2017 i.e. SE Blades Limited, had filed an application before the Honorable High Court of Gujarat, being Company Application No. 431 of 2016, under Sections 391 to 394 of the Companies Act, 1956, seeking dispensation of the meetings of the Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors of the said Company. The Hon'ble High Court of Gujarat, vide its order dated 29th September 2016 dispensed with the holding of the meetings of the Equity Shareholders and Preference Shareholders of the said Company in view of the written consents in writing given by all the Equity and Preference Shareholders. The Hon'ble High Court also dispensed with the meetings of the Secured and Unsecured Creditors of the said Company in view of the Net Worth Certificate of the Transferee Company. The said certificate indicated that the Net Worth of the Transferee Company was very high and since the said Company had undertaken that upon scheme being effective all the liabilities of the Petitioner Transferor Company shall be duly fulfilled in the normal course of business and the rights and interests of the creditors of the Petitioner Transferor Company shall not be prejudicially affected.



7. The petitioner of TP (CAA) No. 54 of 2017 i.e. SE Electricals Limited, had filed an application before the Honorable High Court of Gujarat, being Company Application No. 432 of 2016, under Sections 391 to 394 of the Companies Act, 1956 seeking dispensation of the meetings of the Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors of the said Company. The Hon'ble High Court of Gujarat, vide its order dated 29th September 2016 dispensed with the holding of the meetings of the Equity Shareholders and Preference Shareholders of the said Company in view of the written consents in writing given by all the Equity and Preference Shareholders. The Hon'ble High Court also dispensed with the meetings of the Secured and Unsecured Creditors of the said Company in view of the Net Worth Certificate of the Transferee Company. The said certificate indicated that the Net Worth of the Transferee Company was very high and since the said Company had undertaken that upon scheme being effective all the liabilities of the Petitioner Transferor Company shall be duly fulfilled in the normal course of business and the rights and interests of the creditors of the Petitioner Transferor Company shall not be prejudicially affected.
8. The petitioner of TP (CAA) No. 55 of 2017 i.e. Suzlon Wind International Limited, had filed an application before the Honorable High Court of Gujarat, being Company Application No. 434 of 2016, under Sections 391 to 394 of the Companies Act, 1956 seeking dispensation of the meetings of the Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors of the said Company. The Hon'ble High Court of Gujarat, vide its order dated 29th September 2016 dispensed with the holding of the meetings of the Equity Shareholders and Preference Shareholders of the said Company in view of the written consents in writing given by all the Equity and Preference Shareholders. The Hon'ble High Court also dispensed with the meetings of the Secured and Unsecured



Creditors of the said Company in view of the Net Worth Certificate of the Transferee Company. The said certificate indicated that the Net Worth of the Transferee Company was very high and since the said Company had undertaken that upon scheme being effective all the liabilities of the Petitioner Transferor Company shall be duly fulfilled in the normal course of business and the rights and interests of the creditors of the Petitioner Transferor Company shall not be prejudicially affected.

9. The petitioner of TP (CAA) No. 56 of 2017 i.e. Suzlon Structures Limited, had filed an application before the Honorable High Court of Gujarat, being Company Application No. 433 of 2016, under Sections 391 to 394 of the Companies Act, 1956 seeking dispensation of the meetings of the Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors of the said Company. The Hon'ble High Court of Gujarat, vide its order dated 29th September 2016 dispensed with the holding of the meetings of the Equity Shareholders and Preference Shareholders of the said Company in view of the written consents in writing given by all the Equity and Preference Shareholders. The Hon'ble High Court also dispensed with the meetings of the Secured and Unsecured Creditors of the said Company in view of the Net Worth Certificate of the Transferee Company. The said certificate indicated that the Net Worth of the Transferee Company was very high and since the said Company had undertaken that upon scheme being effective all the liabilities of the Petitioner De-merged Company pertaining to Tower Business shall be duly fulfilled in the normal course of business and the rights and interests of the creditors of the said undertaking of the Petitioner De-merged Company shall not be prejudicially affected.
10. It has been further submitted that Suzlon Energy Limited, the Transferee Company is a listed public limited company and all



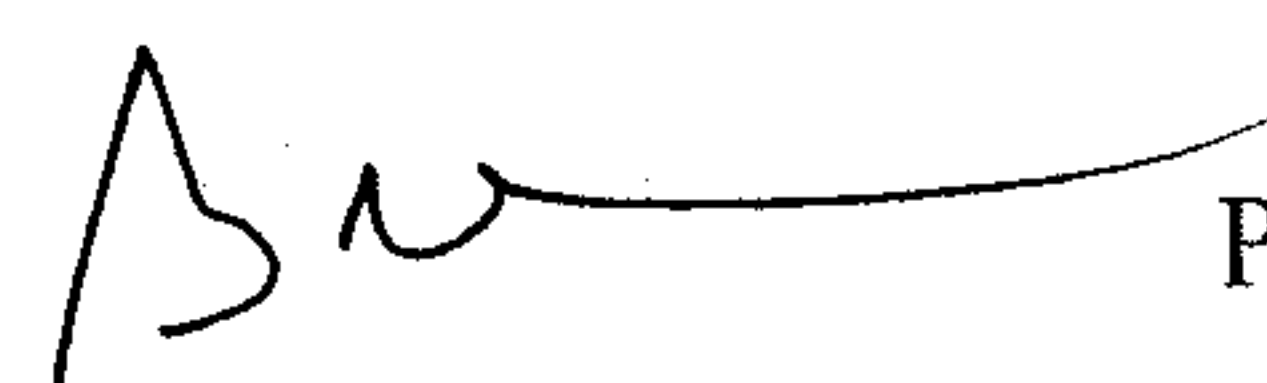
the Equity and Preference Shares of the Petitioner Companies are held by the said Transferee Company and its nominees. The said company had filed an application before the Honorable High Court of Gujarat, being Company Application No. 435 of 2016, under Sections 391 to 394 of the Companies Act, 1956 seeking dispensation of the further proceedings for the said Transferee Company. The Hon'ble High Court of Gujarat, vide its order dated 29th September 2016 observed that since all the three Transferor companies are wholly owned subsidiaries of the parent company, the shares held by the said Transferee Company in the respective Transferor Companies shall automatically stand cancelled and no shares will be issued by the Transferee Company towards consideration for the transfer of the undertakings of the Transferor Companies to the said Transferee Company. Similarly, for the proposed transfer of Tower Business of the fourth De-merged Company, no new shares shall be required to be issued to the shareholders of the De-merged Company as the parent company itself held all such shares. Hence, the rights and interests of the shareholders of the Transferee Company were not likely to be in any way affected as a result of the said scheme. The said contention being supported by judgments of various High Courts, including Sharat Hardware Industries P. Ltd, 48 Company Cases 23 (Del) and Mahaamba Investments Limited v. IDI Limited, 105 Company Cases 16 (Bom), the Hon'ble High Court held in the present case also that separate proceedings for the said Transferee Company were not required to be filed.

11. It has also been pointed out that the said Transferee Company, being a listed company, had obtained the approval from SEBI through the concerned stock exchanges and the same were placed on record. It was also submitted that as directed by SEBI, through the observation letters of the stock exchanges, the attention of the Hon'ble Court was drawn and explanation was given about one of the Directors of the said Company being



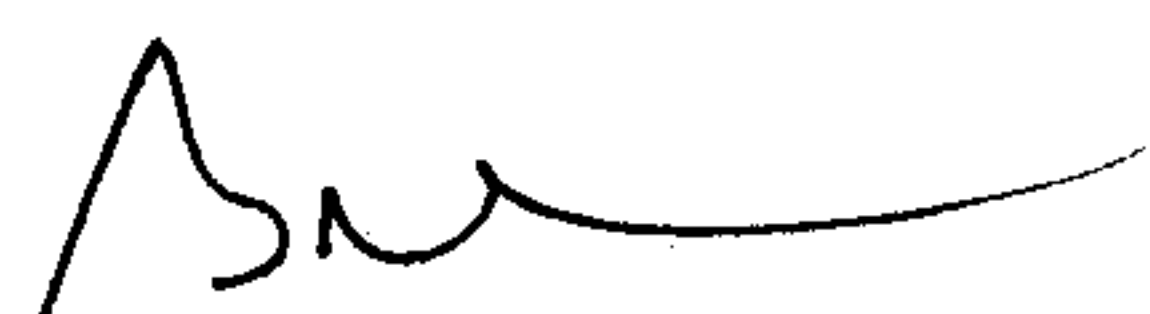
declared to be a wilful Defaulter. The said company had also complied with the direction to give intimation of the said fact to all its shareholders either by letters or by e mail and the proof for the same were placed on record.

12. It has been further pointed out that in spite of the fact that the rights and interests of the creditors of the Transferee Company were not affected in light of the Net Worth of the Transferee Company being very high, in compliance with the contractual terms with the consortium of the Secured Creditors of the Transferee Company, the said Transferee Company had undertaken to place on record of the Hon'ble Court the consent letters in writing from all the Secured Creditors of the said Transferee Company. It was further clarified by an additional order dated 6th April 2017 that such consent letters can be filed in the petitions filed by any of the Transferor Companies. The written consents obtained from secured creditors of the consortium have been obtained and placed on record vide Additional Affidavits dated 7th February 2017, 2nd March 2017. However, during the course of hearing of the petitions, when it was pointed out to the learned counsel for the petitioners that consent letters of all the secured creditors were not placed on record, by way of an additional affidavit dated 25th May, 2017, the petitioners have placed on record consent letters of all the secured creditors.
13. The substantive petitions viz. Co. Petition no. 472 to 475 of 2016 for the sanction of the scheme were filed by the petitioner Transferor companies which were admitted on 20th October 2016. The notice for the hearing of the petitions were duly advertised in the Ahmedabad edition of English daily 'Indian Express', and Gujarati dailies 'Sandesh' dated 4th and 5th November respectively, and the publication in the Government gazette was dispensed with as directed in the said orders. Pursuant to the said publication in the newspapers, no



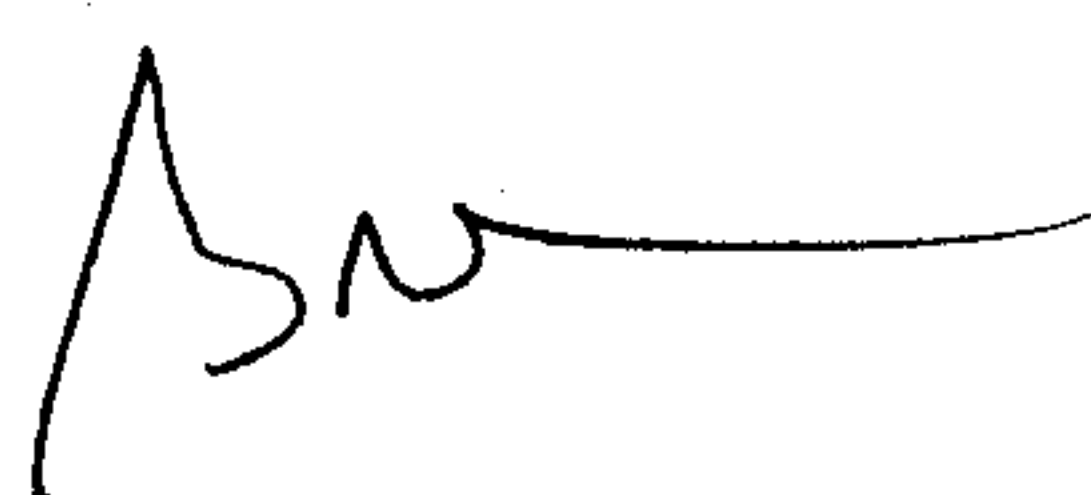
objections were received by the petitioners or their advocate. The said fact has been confirmed vide the common additional affidavit dated 7th February 2017.

14. Notice of the petitions have been served upon the Office of the Official Liquidator for the three Transferor companies. Whereas it was not directed for the Demerged Company. The respective representations dated 9th December 2016 have been filed by the Official Liquidator after taking into account the respective reports of the Chartered Accountant appointed by him out of the panel. It has been observed by the Official Liquidator that the affairs of the respective Transferor Companies have been conducted within their respective object clauses and they have not been conducted in any manner prejudicial to the interest of their members or public interest, hence the petitioner transferor companies may be dissolved without following the process of winding up. However, the Official Liquidator has sought directions to be issued to preserve the books of accounts, papers and records and not to dispose of the same without prior permission of the Central Govt. as per the provisions of Section 396 (A) of the Companies Act, 1956. Accordingly, the Transferee Company is hereby directed to preserve the books of accounts, papers and records of all the Transferor Companies and not to dispose of the same without prior permission of the Central Govt. as required under section 239 of the Companies Act, 2013. It is hereby further directed that even after the scheme is sanctioned, the Transferor companies shall comply with all the applicable provisions of law and shall not be absolved from any of its statutory liability.
15. Notice of the petitions have been served upon the Central Govt. A common affidavit dated 14th December 2016 has been filed by Mr. Jatinder Kumar Jolly, the Regional Director, North-Western Region, Ministry of Corporate Affairs, whereby several



observations are made. A common Additional Affidavit dated 7th February 2017 has been filed by Mr. Hemal Kanuga, Authorised Signatory of the Petitioner companies whereby all the above issues have been dealt with. On perusal of these affidavits, the following issues are noted;

- (i) Vide the observation made vide para 2 (d) of the said affidavit, it has been observed by the Regional Director that the business of the Demerged Company and the Resulting Company relate to Power projects business which is regulated by regulatory authorities and that the deponent was not aware whether the companies have obtained relevant licences, approvals and other permissions from the concerned regulatory authorities or not. On the said issue, the petitioners have pointed out that only one of the petitioners, viz. Suzlon Structures Limited, the Demerged Company is the company which undertakes the business of generation and sale of electricity as one of its businesses. It has obtained the relevant licences and permissions for conducting the said business. However, the scheme envisages Demerger and transfer of only tower business, viz. manufacturing of fabricated structural products of Iron and Steel (Tubular towers for wind turbine generators) of the Demerged Company to the Resulting Company. The activity of generation and sale of electricity is not proposed to be transferred. Hence, the licences and permissions from the regulatory authorities for power generation are not required to be transferred. It has also been submitted that the activities of the other Transferor Companies are restricted to manufacturing of wind turbine generators or parts thereof and not power generation. In view of the said statement on affidavit behalf of the petitioners, this Tribunal is of the view that the observation made by the Regional Director in paragraph 2 (d) stands satisfied.



- (ii) The observation of the Regional Director made vide para 2(e) pertains to complete list of the assets and liabilities, which are proposed to be demerged and transferred to the Transferee Company. The petitioners have submitted that the relevant details are already placed on record in form of the Divisional Balance Sheet of the Demerged Company clearly indicating the assets and liabilities of the Demerged Undertaking viz. Tower Business and residue Undertaking viz. Electricity Division/Corporate Division. It has been further submitted that the actual transfer of the said undertaking shall take place on the sanction of the Scheme and the detailed list of the assets and liabilities as on the date of the order sanctioning the scheme shall be submitted for the stamp duty adjudication along with the certified copy of the order. In view of the said statement on affidavit behalf of the petitioners, this Tribunal is of the view that the observation made by the Regional Director in paragraph 2 (e) stands satisfied.
- (iii) The observation of the Regional Director made vide para 2(f) pertains to the shares of the Transferee Company being held by either Non-resident Indians, Foreign Corporate Bodies and Foreign Nationals. The details are factual and not disputed by the Petitioner Transferee Company. The observation further refers to the requisite compliance of FEMA and RBI guidelines by the Transferee Company. In this regard, the petitioners have submitted that the Transferee Company has so far complied with the applicable provisions of FEMA and RBI guidelines for issuance of shares to foreign shareholders. It is further submitted that the Transferee Company being a listed company, the shares held by the foreign shareholders are held through the secondary market in due compliance of the SEBI guidelines as may be applicable. It is also clarified that since no shares of the Transferee Company are proposed to be issued under the

present scheme of arrangement, it will not be necessary to have specific compliances as a result of the present scheme. It is also to be noted that no representation has been received by the Tribunal from Reserve Bank of India in response to the Notice served upon them for the said purpose. In view of the said statement on affidavit behalf of the petitioners, this Tribunal is of the view that the observation made by the Regional Director in paragraph 2 (f) stands satisfied.

- (iv) The observation of the Regional Director made vide para 2(g) pertains to compliance of SEBI circulars. The petitioners have submitted that the Transferee Company being a listed company, has already made the requisite compliances. Prior approval to the proposed Scheme from SEBI was obtained through the concerned stock exchanges and the same is already placed on record. Upon the sanction of the Scheme, it shall further make the requisite compliances. The Regional Director has also referred to the observation letter of BSE dated 9th August 2016 pertaining to name of one of the Directors appearing in the list of wilful defaulters. In this regard, the petitioners have submitted that in compliance with the directions given vide the said letter, all the relevant facts were placed on record of the Honourable High Court. The Transferee Company also brought it to the notice of all its shareholders, either through e-mail or by post. The copy of such intimation was also placed on record of the Hon'ble court and the same has been confirmed by the order dated 29th September 2016 passed in Company Application No. 435 of 2016. In view of the said statement on affidavit behalf of the petitioners, this Tribunal is of the view that the observation made by the Regional Director in paragraph 2 (g) stands satisfied.

- (v) Vide para 2(h) of the said affidavit, the Regional Director has drawn attention to the Contingent Liabilities in

case of all the Petitioner Companies existing as on 31st March 2016. The same being factual and reflected in the respective balance sheets is not disputed by the Petitioner Companies. In this regard, the petitioners have submitted that all the four Petitioner Transferor Companies and the Transferee Company are under Corporate Debt Restructuring with its lenders and have contingent liability in relation to compensation payable in lieu of bank sacrifice. Further, there are several demands from Income Tax authorities, which are disputed and there are pending proceedings before various Appellate Authorities. There are also some other disputed commercial liabilities for which proceedings are still pending. It has been submitted that in case of all the contingent liabilities, the Transferee Company shall take necessary action to meet with all such liabilities as and when crystallized and ensure that it does not adversely affect the liquidity of the Company, and its continuance and going concern concept. In view of the said statement on affidavit behalf of the petitioners, this Tribunal is of the view that the observation made by the Regional Director in paragraph 2 (h) stands satisfied.

- (vi) Vide para 2 (i) pertains to the letter dated 27th October 2016 sent by the Regional Director to the Income Tax dept. in order to obtain their objections if any. No response was received within the statutory period of 15 days as envisaged by the relevant circular of the Ministry of Corporate Affairs. This Tribunal has also not received any representation from the Income Tax authorities in response to the Notice served in the month of April 2017. Hence, it can be presumed that the Income Tax dept. has no objection to the proposed scheme of arrangement. However, the Petitioner Companies have agreed to comply with applicable provisions of Income Tax Act and Rules. In view of the said statement on affidavit behalf of the petitioners, this Tribunal is of the view that the

observation made by the Regional Director in paragraph 2 (i) stands satisfied.

(vii) It has been further observed by the Regional Director vide para 2 (j) that there are no complaints received by the Registrar of Companies and the Regional Director has vide observation 2 (k) confirmed that he has no other objection to the scheme and that the scheme is not prejudicial to the interest of the shareholders of the petitioner company and public at large.

16. Notice was ordered to be issued to the Competition Commission of India on 31.3.2017 by this Tribunal. Pursuant to the said order, the petitioners sent notice to the Competition Commission of India on 5.4.2017. As per the compliance report filed by the petitioners, the said notice was served on Competition Commission of India on 10.4.2017. The matter was listed for hearing on 3.5.2017. Thereafter, the matter was adjourned to 8.5.2017 and again to 25.5.2017.

17. On 30th May, 2017, this Tribunal received a letter dated 22nd May, 2017 from the Competition Commission of India stating as follows: -

"It is requested that before passing an appropriate order, the NCLT may seek undertaking from the companies involved in the scheme of amalgamation/compromise/arrangement that Competition Commission of India's approval is not required for the amalgamation."

18. Section 230(5) of the Companies Act, 2013 enjoins upon the statutory authorities, including the Competition Commission of India, to file their representations, if any, within 30 days from the date of receipt of the notice. In this case, the notice under Section 230(5) was received by the Competition Commission of India on 10th April, 2017. Therefore, the Competition Commission of India ought to have filed its representation before

this Tribunal on or before 10th May, 2017. However, considering the letter of the Competition Commission of India, the petitioner-companies, including the transferee company-cum-resulting company, Suzlon Energy Limited, shall file an undertaking stating that those companies do not require the approval of the Competition Commission of India for the amalgamation.

19. In compliance with the proviso to sub-section (7) of Section 230, the petitioner companies placed on record, vide affidavit dated 5th May 2017, certificate of Chartered Accountant dated 27th April 2016, confirming that the accounting treatment envisaged under the said scheme of Arrangement is in compliance with the applicable Accounting Standards notified by Central Govt. in section 133 of the Companies Act, 2013. The said certificate was also submitted to SEBI as approval of the said authority was required to be obtained since the Transferee Company is a listed public limited company.
20. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the documents produced on record, it appears that all the requirements of section 230 and 232 of the Companies Act, 2013 are satisfied. The Scheme appears to be genuine and *bona fide* and in the interest of the shareholders and creditors as well as in the public interest and the same deserves to be sanctioned.
21. In the result, these petitions are allowed. The Scheme, which is at Annexure- C to TP Nos. 53, 54, 55 and 56 of 2017, is hereby sanctioned and it is declared that the same shall be binding on the petitioner companies, viz. SE Blades Limited, SE Electricals Limited, Suzlon Structures Limited and Suzlon Wind International Limited and Suzlon Energy Limited (Transferee resulting Company), their shareholders, creditors and all concerned under the scheme. It is also declared that three Transferor Companies viz. SE Blades Limited, SE Electricals

Limited and Suzlon Wind International Limited shall stand dissolved without winding up.

22. In view of the direction in paragraph 18 of this order, the petitioner companies shall implement the scheme only upon filing such undertaking before this Tribunal as well as before the Competition Commission of India.
23. The fees of the Official Liquidator are quantified at Rs. 7,500/- each in respect of T.P. Nos. 53 of 2017, 54 of 2017 and 55 of 2017. The said fees to the Official Liquidator shall be paid by the Transferee Company.
24. Filing and issuance of drawn up orders is hereby dispensed with. All concerned authorities to act on a copy of this order along with the scheme duly authenticated by the Registrar of this Tribunal. The Registrar of this Tribunal shall issue the authenticated copy of this order along with Scheme immediately.
25. These petitions are disposed of accordingly.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court
on this 31st day of May, 2017.

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