

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, CHENNAI**

CA (CAA)/01 & 04/CHE/2021

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of *Scheme of Amalgamation and Arrangement*

Between

M/s. SHERISHA TECHNOLOGIES PRIVATE LIMITED

... Transferor Company

With

M/s. SUNEDISON ENERGY INDIA PRIVATE LIMITED

... Transferee Company

And

Their Respective Shareholders and Creditors

Order Pronounced on 15th July 2021

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R. SUCHARITHA, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant(s): Pawan Jhabakh, Advocate

COMMON ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

1. This Application has been filed by the Companies, namely M/s. Sherisha Technologies Private Limited (*for brevity "Transferor Company"*) and M/s. Sunedison Energy India Private Limited (*for brevity "Transferee Company"*) under section 230-

232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation and Arrangement (hereinafter referred to as the "SCHEME") proposed by the applicant. The said Scheme is also annexed as "Annexure 4" to the typed set filed along with the Applications.

2. The Applicant Companies in this Company Application have sought for the following reliefs:

| | Equity Shareholders | Compulsorily Convertible Preference | Optionally Convertible Preference | Secured Creditors | Unsecured Creditors |
|---------------------------|------------------------------|--|--|------------------------------|----------------------------|
| TRANSFEROR COMPANY | To dispense with the meeting | <i>To hold the meeting</i> | <i>To hold the meeting</i> | To dispense with the meeting | <i>To hold the meeting</i> |
| TRANSFeree COMPANY | To dispense with the meeting | NIL | NIL | NIL | <i>To hold the meeting</i> |

3. An affidavit in support of the above application is sworn for and behalf of the Transferor Company and filed by one Mr. Shailesh Rajagopalan, in the capacity as Authorized Representative of the Transferor Company and on behalf of the Transferee Company by one Mr. Dinesh Kumar Agarwal, in the capacity as Authorized Representative of the Transferee Company, along with the application. It is also represented that the registered office of both the Applicant Companies are situated within the territorial jurisdiction of the Bench of this

Tribunal and falling within the purview of Registrar of Companies, Chennai.

4. The Scheme involves three steps as follows:

- a) Reduction of Scheme Equity Shares and cancellation of Scheme Compulsorily Convertible Debentures of Sunedison Energy India Private Limited beneficially held by Sherisha Industries Pte. Limited.
- b) Amalgamation of Sherisha Technologies Private Limited into and with Sunedison Energy India Private Limited.
- c) Adjustment of the debit balance in Profit and Loss account of Sunedison Energy India Private Limited against balance in capital reserve arising on the Amalgamation referred to in (b) above.

5. In relation to the Transferor Company, it is evident from the list of Equity Shareholders placed at Page 145 to 146 of the typed set filed along with the application that it is having 2 (Two) Equity Shareholders, 3 (Three) Compulsorily Convertible Preference Shareholders and 10 (Ten) Optionally Convertible Preference Shareholder and the Transferor Company has sought for the dispensation of the meeting in relation to the Equity Shareholders based on the Consent Affidavits obtained from both of them and placed at pages 146A to 151 and sought for holding of the meeting in relation to Compulsorily Convertible Preference Shareholders and Optionally Convertible Preference Shareholder

are concerned. It is further represented by the Learned Counsel for Applicants submitted that the Transferor Company has 1 Secured Creditor which has given its consent in the form of an Affidavit and has sought for the dispensation of the meeting. Further, the Learned Counsel for the Applicant submitted that there are 36 (thirty six) Unsecured Creditors in relation to the Transferor Company and the certificate issued by the Chartered Accountants to this effect is placed at page 141 to 144 of the typed set filed with the application and sought direction for holding of the meeting of the Unsecured Creditors of the Transferor Company.

6. In relation to the Transferee Company, it is evident from the list of Equity Shareholders placed at Page 125 of the typed set filed with the application that it is having 4 (Four) Equity Shareholders and sought direction dispensation of the meeting. It is further represented by the Learned Counsel for Applicants that the Transferee Company has only 'NIL' Secured Creditor and 21 (Twenty One) Unsecured Creditors and the certificate issued by the Chartered Accountants to this effect is placed at pages 122 to 124 of the typed set filed with the application and sought direction for holding of the meeting of the Unsecured Creditors of the Transferee Company.



7. We have perused the applications and the connected documents / papers filed therewith including the Scheme contemplated between the Applicant companies.

8. From the certificate of incorporation filed, it is evident that Transferor Company is a Private limited company incorporated under the provisions of Companies Act, 1956 on 01.10.2002, with Registrar of Companies, Tamil Nadu. The Authorized Share Capital of the Transferor Company is ₹15,30,00,000/- (Rupees Fifteen Crore and Thirty Lakh Only) consisting of 3,00,000 Equity Shares of Rs.10/- each and 1,50,000 Preference Shares of Rs.1000/- each. The Issued, Subscribed and Paid-up Capital of the Transferor Company is ₹8,14,90,400/- (Rupees Eight Crore Fourteen Lakhs Ninety Thousand and Four hundred Only) consisting of 2,99,740 Equity Shares (Fully paid-up) of Rs.10/- each, 23,867 Compulsorily Convertible Preference Shares (Fully paid-up) of Rs.1000/- each, 29,452 Optionally Convertible Preference Shares (Fully paid-up) of Rs.1000/- each and 62,935 Optionally Convertible Preference Share (Paid-up) of Rs.1000/- each.

9. From the Certificate of Incorporation filed, it is evident that Transferee Company is a Private limited company incorporated under the provisions of Companies Act, 1956 on 22.01.2010,

with Registrar of Companies, Tamil Nadu. The Authorized Share Capital of the Transferee Company is ₹130,00,00,000/- (Rupees One Hundred and Thirty Crore Only) consisting of 13,00,00,000 Equity Shares of Rs.10/- each. The Issued, Subscribed and Paid-up Capital of the Transferee Company is ₹111,45,28,700/- (Rupees One Hundred and Eleven Crores Forty Five Lakh Twenty Eight Thousand and Seven Hundred Only) consisting of 11,14,52,870 Equity Shares of Rs.10/- each.

10. The Applicant companies have filed their respective Memorandum and Articles of Association inter alia delineating their object clauses as well as their last available Audited Annual Accounts for the year ended 31.03.2019 and Management Certified Financial position as on 31.08.2020.

11. The Board of Directors of the Applicant companies vide meeting held on 5th October 2020, respectively, have unanimously approved the proposed Scheme as contemplated above and copies of resolutions passed thereon have been placed on record by the companies.

12. The Appointed date as specified in the Scheme is 1st April, 2020, subject to the directions of this Tribunal.



13. The Statutory Auditors of the Applicant Companies have examined the Scheme in terms of provisions of Sec. 232 of Companies Act, 2013 and the rules made thereunder and certified that the method of Accounting is in compliance with Accounting Standards read with Section 133 of the Companies Act, 2013.

14. Taking into consideration the application filed by the Applicant Companies and the documents filed therewith as well as the position of law, this Tribunal propose to issue the following directions and issue of notices including by way of paper publication as follows: -

A) IN RELATION TO THE TRANSFEROR COMPANY:

(i) With respect to Equity shareholders:

Since it is represented by the Transferor Company that there are 2 Equity Shareholder in the Company and the consent of both the Equity Shareholders has been obtained and placed on record, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is *dispensed with*.

(ii) With respect to Compulsory Convertible Preference shareholders:

Meeting of the Compulsory Convertible Preference shareholders of the Transferor Company is directed to be



held at **10:00 AM** on **23rd August 2021** at 11th Floor, Bascon Futura SV IT Park, New #10/2, Old #56L, Venkatanarayana Road, T. Nagar, Chennai – 600 017 or if not convenient at any other suitable place for which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of notices.

(iii) With respect to Optionally Convertible Preference shareholders:

Meeting of the Optionally Convertible Preference shareholders of the Transferor Company is directed to be held at **11:00 AM** on **23rd August 2021** at 11th Floor, Bascon Futura SV IT Park, New #10/2, Old #56L, Venkatanarayana Road, T. Nagar, Chennai – 600 017 or if not convenient at any other suitable place for which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of notices.

(iv) With respect to Secured Creditors:

Since it is represented by the Transferor Company that there is only 1 (one) Secured Creditor in the Company and the consent Affidavit of sole Secured Creditor has been obtained and placed on record, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is *dispensed with*.

(v) With respect to Unsecured Creditors:

Meeting of the Unsecured Creditors of the Transferor Company is directed to be held at **2:00 PM** on **23rd**



August 2021 at 11th Floor, Bascon Futura SV IT Park, New #10/2, Old #56L, Venkatanarayana Road, T. Nagar, Chennai – 600 017 or if not convenient at any other suitable place for which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of notices.

B) IN RELATION TO TRANSFEREE COMPANY:

(i) With respect to Equity shareholders:

Since it is represented by the Transferee Company that there are 4 Equity Shareholder in the Company and the consent Affidavits of all the four Equity Shareholders have been obtained and placed on record, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is *dispensed with*.

(ii) With respect to Secured Creditors:

It is represented by the Transferee Company that there are NIL Secured and hence the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Meeting of the Unsecured Creditors of the Transferee Company is directed to be held at **4:00 PM** on **23rd August 2021** at 11th Floor, Bascon Futura SV IT Park, New #10/2, Old #56L, Venkatanarayana Road, T. Nagar, Chennai – 600 017 or if not convenient at any other suitable place for which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of notices.

14. The quorum for the aforesaid meeting of the Transferor and Transferee Companies shall be as follows;

| | Equity Shareholders | Compulsorily Convertible Preference | Optionally Convertible Preference | Secured Creditors | Unsecured Creditors |
|--------------------|---------------------|-------------------------------------|-----------------------------------|-------------------|---------------------|
| TRANSFEROR COMPANY | ---- | 2 | 3 | --- | 10 |
| TRANSFEEEE COMPANY | ---- | --- | --- | --- | 10 |

- i) The Chairperson appointed for the above said meeting shall be **Mr. N.P. Vijaykumar, Advocate** (Mob. No. 97909 11370) and the alternate chairperson appointed for the above said meeting shall be the Managing Director of the respective Company. The fee of the Chairperson for the aforesaid meeting shall be ₹50,000/- (Rupees Fifty Thousand Only) in addition to meeting his incidental expenses.
- ii) **B. Chandra, PCS** (Mob. No. 98402 76313) is appointed as a Scrutinizer and would be entitled to fee of ₹25,000/- (Rupees Twenty Five Thousand Only) for services in addition to meeting incidental expenses. The Chairperson(s) will file the reports of the meeting within a week from the date of holding of the above said meetings.
- iii) In case the quorum as noted above, for the above meeting of the Applicant Companies is not present at the meeting, then the meeting shall be adjourned by half an hour, and thereafter the person(s) present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies

shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the applicant companies at least 48 hours before the meeting. The Chairperson and Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained. However, every endeavour should be made by the applicant companies to attain at least the quorum fixed, if not more in relation to approval of the scheme.

- iv) That individual notices of the above said meetings shall be sent by the Applicant Company through registered post or speed post or through courier or e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, the place and the time as aforesaid, together with a copy of Scheme, copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall also be sent along and in addition to the above any other documents as may be prescribed under the Act or rules may also be duly sent with the notice.
- v) That the Applicant Company shall publish advertisement with a gap of atleast 30 clear days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in the English Daily "*Business Standard*" (All India Edition), and "*Dina Mani*" (Chennai Edition) in Vernacular stating the copies of Scheme, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be

provided free of charge at the registered office of the respective Applicant Companies.

- vi) Voting shall be allowed on the proposed Scheme by voting in person. The Chairperson shall as aforesaid be responsible to report the result of the meeting within a period of 3 days of the conclusion of the meeting with details of voting on the proposed scheme.
- vii) The companies shall individually send notice to concerned Regional Director, MCA, the Income Tax Authorities, Registrar of Companies Chennai, Official Liquidator, as well as other Sectoral regulators who may have significant bearing on the operation of the applicant companies or the Scheme *per se* along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.
- viii) The Applicant companies shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every creditor or member of the applicant companies entitled to attend the meetings as aforesaid.
- ix) The Authorized Representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.



- x) All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

15. The Applications stand **allowed** on the aforesaid terms.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

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