

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

CP/159/CAA/2018

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of Composite Scheme of Arrangement
of

M/s.Amirthaa Wind Energy Private Limited
(Applicant/ Transferor Company-1)

And

M/s.Aditya Natural Teck Private Limited
(Applicant/ Transferor Company-2)

And

M/s.Arvind Green Tech Private Limited
(Demerged/ Transferor Company-3)

And

M/s.R.Aswatha Greens Private Limited
(Resultant Company)

With

M/s.Arvind Green Infra Private Limited
(Transferee Company)

and

Their Respective Shareholders

Order delivered on: 27.08.2018

Coram:

K. ANANTHA PADMANABHASWAMY, MEMBER (J)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

*For the Petitioner : Shri.V.Srinivasan, Advocate
Shri.K.Manivannan,
Authorised Representative for OL*

ORDER

Per:S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Under consideration is a Company Application in CP Nos.159/CAA/2018 filed under Section 230 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules 2016. The instant application pertains to

the proposed Scheme of Amalgamation by virtue of which **M/s.Amirthaa Wind Energy Private Limited** (Applicant/ Transferor Company-1), **M/s.Aditya Natural Teck Private Limited** (Applicant/ Transferor Company-2), **M/s.Arvind Green Tech Private Limited** (Demerged/ Transferor Company-3), **M/s.R.Aswatha Greens Private Limited** (Resultant), And **M/s.Arvind Green Infra Private Limited** (Transferee Company).

- 1) The Authorised and issued, subscribed & paid up share capital of the applicant companies (Transferor Companies and resultant company) and the Transferee Company are as under:

Particulars	Authorized Capital	Issued, subscribed & paid-up Capital	Equity Shareholders	Secured Creditors	Unsecured Creditors
Transferor Company 1	Rs.10,00,000/-	Rs.8,63,400/-	5	Nil	10
Transferor Company 2	Rs.10,00,000/-	Rs.6,75,700/-	6	Nil	2
Demerged/Transferor Company 3	Rs.10,00,000/-	Rs.6,75,700/-	7	Nil	4
Resultant Company	Rs.20,00,000/-	Rs.6,90,000/-	8	Nil	3
Transferee Company	Rs.7,15,00,000/-	Rs.3,87,00,000/-	5	Nil	7

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- 2) The Transferor Company 1 is a Private Limited Company, it was incorporated on 26.09.2011 under the provisions of the Companies Act, 1956. The Transferor Company -2 is a Private Limited Company, it was incorporated under the provisions of the Companies Act, 1956 on 20.01.2012. The Demerged/Transferor Company-3 is a Private Limited Company, it was incorporated on 30.01.2012 under the provisions of the Companies Act, 1956. The Resultant Company is a Limited Company, it was incorporated on 03.07.2013 under the provisions of the Companies Act, 1956 having its registered office at No.20, Gandhi Nagar Colony-1, Near Water Tank, Erode- 638009. The Transferee company is a Private Limited Company, it was incorporated on 19.09.2011 under the provisions of the Companies Act, 1956. The Transferor Companies 1, 2 and 3 and the Transferee Company have their registered office at No.52, 5th Cross, Sengunthapuram, Karur-639002.
- 3) This Bench vide its order dated 13.04.2018 in CA No. 31/CAA/2018 has already issued orders regarding meeting of equity shareholders, secured and unsecured creditors, wherein the meetings have been dispensed with. The

Applicant Companies have complied with all the orders passed by the Bench.

4) The Board of Directors of all the petitioner companies anticipate the following benefits pursuant to the amalgamation of 1st and 2nd transferor Companies with 5th petitioner company and demerger of Division -11 of 3rd Transferor Company and transferring/vesting of the same with the resultant Company and amalgamation of demerged 3rd transferor company with the Transferee Company are as follows

a) The scheme will lead to better and more economic control and management and enable the businesses of the said undertaking/division to be carried on more conveniently and advantageously with greater focus and attention etc

b) The present composite scheme of Arrangement will also provide scope for strategic investments, independent collaboration and expansion of all the Companies.

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- 5) In this case as per the provisions of the Companies Act, 2013, notices were issued to the statutory authorities as per the procedure prescribed. However, there were no objections to the scheme under reference. In this case, the applicant companies have filed an affidavit dated 19.04.2018 stating that they are exempted under the Competition Act 2002 and the regulation made thereunder.
- 6) The Regional Director, Southern Region (In short, '**RD**') in their Report Affidavit (for brevity, '**Report**') dated 14.06.2018 submitted that as per records of ROC, the applicant companies (Transferor Companies and resultant company) are regular in filing their statutory returns and no investigation is pending against the companies. It is further submitted that as per Clauses 3.25, 4.25 and 6.25 of the Part-3, 4 and 6 of the scheme of the companies provide for the protection of the interest of the employees/staff of the Transferor Companies and the demerged undertaking.
- 7) In the Report the RD has stated that in clause 7.7.1(e) of Part 7 of the scheme it is stated that the authorized capital of the Transferor Companies (1), (2), and (3) will be

merged with the authorized capital of the transferee company. In the said clause of the scheme there is no mention regarding the payment of registration fees as required u/s 232(3)(i) of the Companies Act, 2013 by the transferee Company to ROC. As per section 232(3)(i) of the Companies Act, 2013 the transferee company has to pay the fees, if any, for the enhanced authorized capital subsequent to the amalgamation after setting off the fees paid by the Transferor Companies. The Transferee Company is directed to comply with the same.

- 8) The Official Liquidator (In short, 'OL') in their report dated 01.08.2018 submitted that **M/s.K.M.Mohandas & Co., Chartered Accountants** appointed by the official liquidator of the Hon'ble High Court, has scrutinized the books and accounts of the applicant companies (Transferor Companies). The Auditor observed that the Transferor Companies have maintained and written up all the statutory books in accordance with normally accepted accounting principles and policies in accordance with the requirements of the Companies Act, 2013 and also the affairs of the companies have not been conducted in a

manner prejudicial to the interest of its members, creditors or to public interest.

9) The OL further submitted that as per Clauses 3.25, 4.25 and 6.25 of the proposed scheme, the interest of all the employees in the service of the Transferor Companies are safeguarded. As per the Clause 3.16, 4.16 and 6.16 of the said Scheme, upon the scheme becoming fully effective, in consideration of the transfer and vesting of the entire undertaking of the Transferor Companies in the Transferee Companies in terms of this Scheme, the Transferee Company shall without any further act or deed, issue and allot;-

“1(one) equity shares of Rs.100/- each credited as fully-paid up of the Transferee Company for every 64.2 (Sixty Four Point Two) equity shares of Rs.100/- each fully paid – up held by the equity shareholders in the 1st Transferor Company, whose names are recorded in the Register of Members, on a date (hereinafter referred to as the “Record Date”) to be fixed by the Board of Directors of the Transferee Company. The equity shares so issued and allotted, shall rank pari passu in all respects with the existing equity shares of the Transferee Company”,

“1 (one) equity shares of Rs.100/- each credited as fully paid up of the Transferee Company for every 64.2 (sixty four point two) equity shares of Rs.100/- each fully paid up held by the equity shareholders in the 2nd Transferor Company, whose names are recorded in the Register of Members, on a date (herein after referred to as the “Record date”) to be fixed by the Board of Directors of the Transferee Company. The equity shares so issued and allotted, shall rank pari passu in all respects with the existing equity shares of the Transferee Company”,

“1 (one) equity shares of Rs.100/- each credited as fully – paid up of the Transferee Company for every 99.3676 (Ninety nine point three six seven six) equity shares of Rs.100/- each fully paid – up held by the equity shareholders in the 3rd Transferor Company, whose names are recorded in the Register of Members, on a date (hereinafter referred to as the “Record Date”) to be fixed by the Board of Directors of the Transferee Company. The Equity Shares so issued and allotted, shall rank pari passu in all respects with the existing equity shares of the Transferee Company.”

The valuation of shares of the applicant companies (Transferor Companies and resultant company) and the Transferee Company has been done by Mrs.A.P.Indumathi, Chartered Accountant, Tirupur vide their report dated 20.11.2017.

- 10) Upon the scheme coming into effect, in consideration of the transfer and vesting of the entire Division II of the 3rd Petitioner Company in the 4th Petitioner Company in terms of this Scheme, the 4th petitioner Company shall without any further act, or deed, issue and allot 1(one) equity shares of Rs.100/- each credited as fully paid-up of the 4th petitioner Company for every 5.238 (Five point two three eight) equity share of Rs.100/- each fully paid-up held by the equity shareholders in 3rd petitioner Company as on the record date to be fixed by the Board of Directors of the 4th Petitioner Company. The equity shares so issued and allotted, shall rank pari passu in all respects with the existing equity shares of the 4th petitioner (resultant Company)

- 11) The valuation of shares of the applicant companies (Transferor Companies and resultant company) and

Transferee Company has been done by **M/s.K.M.Mohandas & Co., Chartered Accountants** vide their report dated 18.07.2018. The OL has submitted that the company applications may be decided on merits.

12) Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any of the creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of Amalgamation will not cast any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed date of the Scheme is 01.04.2017.

13) The Scheme does not require any modification and the said Scheme of Amalgamation appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. All the statutory compliances have been made under the Companies Act, 2013. Taking into consideration all the above, the Company Applications are allowed and the Scheme of Amalgamation annexed with the petition is hereby

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sanctioned which shall be binding on all the members and shareholders.

- 14) While approving the scheme as above, we further clarify that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained and compliances that may have to be made as per the mandate of law.
- 15) Any fractional shares that may arise consequent upon the share exchange ratio will have to be paid by the Transferor Companies/ demerged company as per the valuation report enclosed with the petition. Consequential reduction in paid up share capital also stands approved by this order.
- 16) The Transferee Company is directed to file the amended MoA and AoA with RoC as stated by the RD.
- 17) The applicant companies 1 and 2 and the demerged/transferor-3 company shall be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies.

18) Upon receiving the certified copy of this order, the RoC is directed to place all documents relating to the 1st and 2nd Transferor Companies and the demerged /transferor-3 company with that of the Transferee Company and the files relating to the 1st and 2nd Transferor Companies and the demerged/transferor-3 company shall be consolidated with the files and records of the Transferee Company.

19) The Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme. The Petitioner Companies are directed to file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.

20) The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 as has been notified on 14th December, 2016.

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Accordingly, the Scheme stands sanctioned and the
Company Application Nos.CP/159/CAA/2018 stand disposed
of.

S. Vijayaraghavan.
(S.VIJAYARAGHAVAN)
MEMBER (TECHNICAL)
/sd/

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(K.ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)