

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P.(CA.A.A.)/2102/MB/2018

In the matter of Companies Act, 2013

AND

Under Sections 230 to 232 of
Companies Act, 2013;

AND

In the matter of Scheme of
Amalgamation involving merger by
absorption of Aspen Infrastructures
Limited ("Transferor Company") and
Sarjan Realities Limited ("Transferee
Company") and their respective
Shareholders

ASPEN INFRASTRUCTURES LIMITED, a)
Company Incorporated under the)
provisions of Companies Act 1956 having its)
registered office at Godrej Millennium, 5th)
Floor, 9, Koregaon Park Road, Pune-411001)
CIN:- U45202PN1998PLC016516)

...The Transferor
Company/ First Petitioner
Company

SARJAN REALITIES LIMITED, a Company)
Incorporated under the provisions of)
Companies Act 1956 having its registered)
office at Godrej Millennium, 5th Floor, 9,)
Koregaon Park Road, Pune-411001)
CIN:- U70101PN1997PLC016521)

...The Transferee
Company/ Second
Petitioner Company

Order Delivered On: 31st August, 2018

CORAM:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for
the Petitioner Companies.

For Regional Director: Mr. S Ramakantha, Joint Director, RD

Per: Bhaskara Pantula Mohan, Member (J)

ORDER

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation involving merger by absorption of Aspen Infrastructures Limited ("Transferor Company") and Sarjan Realities Limited ("Transferee Company") and their respective Shareholders.
3. The Transferor Company is one of the leading organizations providing solution in development of infrastructure for wind farms across geography. It primarily focuses on undertaking infrastructure projects across the spectrum of needs of Wind and Solar industries in varied regime. The Transferor Company develops infrastructure facilities for erection, installation and commissioning of wind turbines, development of composite installation of facilities for wind farms and construction of power evacuation facilities at wind farm sites which ultimately connects the power produced in the Wind Farm to the National Grid from where it is sold to the ultimate consumer (as defined in detail in the Scheme). The Transferee Company, is engaged in scientific activity of acquiring suitable parcels of land – which satisfy the criteria mentioned above – sizeable un-divided land, local regulatory permissions required to set-up the wind-power project, connectivity or proximity to the National Grid, Optimum quality of the wind etc.
4. The Learned Counsel for the Petitioners states that the Transferor Company and Transferee Company have proposed the Scheme of Amalgamation for the various benefits and objectives as mentioned below in this Order; it is proposed to merge the Transferor Company (including but not limited to its assets, liabilities, except to the three business undertakings which are being de-merged from Aspen Infrastructures Limited in to AspenPark Infra Coimbatore Private Limited, Aspen Infra Padubidri Private Limited and AspenPark Infra Vadodara Private Limited, respective vide application number CSA NO 988 (MAH) OF 2017 at the Honourable National Company Law Tribunal Mumbai and CA(CAA) No. 161/NCLT/AHM/2017 at the Honourable National Company Law Tribunal, Ahmedabad and other assets and liabilities more particularly described in the Scheme) into the Transferee Company under a Scheme of Amalgamation. The

Learned Counsel further submits that the rationale for the Scheme of Amalgamation is as under –

Rationale for Scheme of Amalgamation.

- i. The Transferor and Transferee Company are both parts of the integral value chain for the execution of renewable energy projects. Both the Companies independently perform significant functions of the value chain, which do not overlap. The renewable energy sector in India is passing through a turbulent phase, especially with respect to the wind-energy projects; pursuant to the change in the regulatory regime of government of India and consequent significant reduction in the price at which the power is purchased by the Government. In these difficult business circumstances which become competitive than ever, it is important for the pieces of the value chain to come together and reduce costs by bringing in operational synergies and optimum utilisation of their resources.
- ii. Combining the capabilities and resources of the two Companies can result in a significant competitive advantage to both the Companies. This is further explained in detail in the ensuing paragraphs.
- iii. The Transferor Company is one of the leading organizations providing solution in development of infrastructure for wind farms across geography. It primarily focuses on undertaking infrastructure projects across the spectrum of needs of Wind and Solar industries in varied regime. The Transferor Company develops infrastructure facilities for erection, installation and commissioning of wind turbines, development of composite installation of facilities for wind farms and construction of power evacuation facilities at wind farm sites which ultimately connects the power produced in the Wind Farm to the National Grid from where it is sold to the ultimate consumer. In case of Wind Power Projects, the land holds a key significance – the optimum supply of wind, proximity of the land parcel to the National Grid, proximity of the civilization near this land parcel, sheer size of the undivided land parcels, etc. Therefore, the land parcels are extremely rare. It is often demanded by the customers, that the Transferor

Company must bring the end-to-end solution on the table including land parcels.

- iv. The Transferee Company, is engaged in scientific activity of acquiring suitable parcels of land – which satisfy the criteria mentioned above – sizeable un-divided land, local regulatory permissions required to set-up the wind-power project, connectivity or proximity to the National Grid, Optimum quality of the wind etc.

Therefore, the Transferor Company and Transferee Company, combined, are majority of the value chain of the renewable energy business and combining the two will result in competitive advantage which is available with a very few competitors. The benefit of the proposed amalgamation is quite significant to both the Companies, given the current business circumstances.

Further, the management believes that there is no likelihood that interests of any shareholder or creditor of either the Transferor Company or the Transferee Company would be prejudiced as a result of the Scheme. The Scheme of Amalgamation will not impose any additional burden on the members of the Transferor Company or the Transferee Company.

5. The Counsel for the Petitioner Companies submit that the Petitioners in their respective Board meetings have approved the said Scheme of Amalgamation which are annexed to the Company Scheme Petition.
6. It is also stated that, 24,75,000 1% Redeemable Cumulative Preference shares of Sarjan Realities Limited is held by Aspen Infrastructures Limited.
7. The Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the orders passed in Company Summons for Application No. 75 of 2018.
8. The Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Tribunal and they have filed necessary affidavits of compliance in the Hon'ble Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes

to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Companies are accepted.

9A. The Regional Director has filed a Report dated 17th May, 2018. In paragraph IV, of the said Report, the Regional Director has stated that:

- a. *The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Compromise or Arrangement. Further, the approval of the Scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the Scheme. The decision of such authorities is binding on the Petitioner Company(s).*
- b. *In addition to compliance of AS-14(IND AS-103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8), etc.*
- c. *It is observed that the Petitioner Companies have not submitted admitted copy of Petition, and Minutes of Order for admission of the Petition. In this regard petitioner companies has to undertake to submit the same for the record of Regional Director and also to undertake that the Scheme as admitted with Hon'ble NCLT through company petition and the Scheme which is served to the Regional Director through company application is one and the same, and in case of deviation, if any, shall be brought to the notice of Regional Director.*
- d. *As per Clause 2.2 of the Scheme, Appointed date means the 1st day of April, 2018 or such other date as may be approved by the NCLT. In this regard it is submitted that Section 232(6) of the Companies Act, 2013 states that the Scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.*

9B. Petitioner Companies' reply and submissions:

- a) In so far as observations made in paragraph IV(a) of the Report of Regional Director are concerned, the Petitioner Companies have

clarified in its affidavit that the notices have been served to the applicable regulatory authorities as required under Section 230(5) of the Companies Act, 2013. Further, it is submitted that approval of the Scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the Scheme and the decision of such authorities would be binding on the Petitioner Company(s).

- b) In so far as observations made in paragraph IV(b) of the Report of Regional Director are concerned, the Transferee Company has undertaken that it will comply with the Accounting Treatment prescribed in the Scheme. Further, the Transferee Company shall pass such accounting entries as may be necessary in connection with other IND AS / Accounting Standards such as Accounting Standard-5, as applicable.
- c) In so far as observations made in paragraph IV(c) of the Report of Regional Director are concerned, the Petitioner Companies have stated that a copy of Joint Petition along with all exhibits thereto have been submitted to the Hon'ble NCLT. Further, the Petitioner Companies have undertaken that the Scheme as admitted with Hon'ble NCLT through company petition and the Scheme which is served to the Regional Director through company application is one and the same, and there is no deviation in the Scheme.

Further, the Petitioner Companies have undertaken to submit the copy of Joint Petition and copy of the minutes of order for admission of petition along with copy of the minutes of the final order.

- d) In so far as observations made in paragraph IV(d) of the Report of Regional Director are concerned, the Petitioner Companies have confirmed that the Appointed Date shall be 1st April, 2018, and the Petitioner Companies have confirmed that there will not be any change in the Appointed Date. It is further confirmed and undertaken by the Petitioner Companies that the upon the Hon'ble NCLT approving the Scheme, the Scheme shall take effect from the Appointed Date in terms of provisions of Section 232(6) of the Companies Act, 2013.
- e) It is further stated that, the Official Liquidator has filed its report dated 4th June, 2018 with the NCLT on 8th June, 2018, inter alia stating herein that, the affairs of the Transferor Company have been conducted in proper manner and the Scheme is not prejudicial to the

interest of public. Further, the Transferor Company may be ordered to be dissolved without winding up.

- f) It is further stated that, no objector has approached, neither to the Petitioner nor before Tribunal, to oppose this Scheme.
10. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9(a) to (d) above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
11. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy or public interest. And hereby this bench, to the Petitioner Companies, **do Order that:**
- (a) All the Transferor Liabilities including taxes and charges, if any, and duties of the Transferor Company, shall pursuant to Section 232 of the Companies Act, 2013, be transferred to the and become the liabilities and duties of the Transferee Company.
 - (b) The pending proceedings against the Transferor Company shall continue against the Transferee Company. The sanctioning of the Scheme shall not dilute the action taken by the Competent Court against the Transferee Company, if any.
 - (c) The clarifications and undertakings given by the Learned Counsel for the Petitioner to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently this Bench hereby directs petitioners to comply with the statements that the Petitioners undertakes herein.
 - (d) The consideration of the Scheme shall be as follows:
 - 1 (One) preference share of face value of Rs 100/- each of Sarjan Realities Limited for every 1 (One) preference share each of Rs 100/- face value held in Aspen Infrastructures Limited.
 - 22 equity shares of face value of Rs.10/- each of Sarjan Realities Limited for every 1 (One) equity share each of Rs 10/- face value held in Aspen Infrastructures Limited.
 - (e) The Transferor Company shall be dissolved without winding-up.
 - (f) Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

- (g) Any concerned Authority (i.e. RD, RoC, OL, Income Tax Authority etc.) is at the liberty to approach this Bench for clarification/directions under this Scheme.
- (h) The Scheme is sanctioned hereby, and the Appointed date of the Scheme is fixed as 1st April, 2018.
12. It is clarified that the implementation of present order shall be subject to the approval of the Scheme of demerger by Hon'ble National Company Law Tribunal Mumbai in the petition filed by Aspen Infrastructures Limited vide petition number CSP 2101 NO OF 2018 and by Hon'ble National Company Law Tribunal Ahmedabad in the petition filed by AspenPark Infra Coimbatore Private Limited and Aspen Infra Padubidri Private Limited and AspenPark Infra Vadodara Private Limited vide petition number CP(CAA) No. 54/NCLT/AHM/2018. It is noted that the NCLT Ahmedabad vide its order dated 21st August, 2018 has approved the Scheme of demerger vide petition number CP(CAA) No. 54/NCLT/AHM/2018 and its implementation, subject to sanction of the scheme by National Company Law Tribunal Bench at Mumbai.
13. It is further clarified that the implementation of the Scheme shall be in entirety of the Scheme of demerger of the SEZ business of Aspen Infrastructures Limited vide petition number CSP 2101 NO OF 2018 followed by Scheme of Amalgamation of the Transferor Company with the Transferee Company vide petition number CSP 2102 NO OF 2018.
14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 2102 of 2018 has been made absolute in terms of prayer of the petition mentioned therein subject to para 11 and 12 mentioned above.
15. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, within 30 days from the date of issuance of the order by the Registry or sanction of the scheme of demerger vide petition number CSP 2101 NO OF 2018 by the NCLT Mumbai, whichever is later.
16. The Petitioner Companies are further instructed to increase their Authorized share capital to the extent required subject to combination of authorized share capital under clause 12 of the Scheme, to facilitate issue and allotment of shares under the Scheme pursuant to sanction of the Scheme by NCLT Mumbai.

17. The Petitioner Company to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order subject to approval of the Scheme or sanction of the scheme of demerger vide petition number CSP 2101 NO OF 2018 by the NCLT Mumbai, whichever is later.
18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of receipt of the order.
19. The Transferor Company to pay costs of Rs. 25000/- to the Official Liquidator, High Court, Bombay. The cost is to be paid within four weeks from the date of the receipt of Order
20. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
21. Ordered accordingly.

SD/-

V. Nallasenapathy
Member (T)

SD/-

Bhaskara Pantula Mohan
Member (J)