

C.P. (CAA)/2077/MB/2018
&
C.P. (CAA)/1861/MB/2018
&
C.P. (CAA)/2076/MB/2018
&
C.P. (CAA)/1906/MB/2018

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. (CAA)/2077/MB/2018

AND

C.P. (CAA)/1861/MB/2018

AND

C.P. (CAA)/2076/MB/2018

AND

C.P. (CAA)/1906/MB/2018

Under Section 230-232 of the Companies
Act, 2013

AND

In the matter of Scheme of Merger by
Absorption of Amulin Hydro Power Private
Limited ("the Transferor Company 1" or
"AHPL") and Emini Hydro Power Private
Limited ("the Transferor Company 2" or
"EHPL") and Mihundon Hydro Power
Private Limited ("the Transferor Company
3" or "MHPL") and Lara Sumta Hydro
Power Private Limited ("the Transferor
Company 4" or "LSHP") and Sumte
Kothang Hydro Power Private Limited
("the Transferor Company 5" or "SKHP")
and Purthi Hydro Power Private Limited
("the Transferor Company 6" or "PHPL")
with Reliance CleanGen Limited ("the
Transferee Company" or "RCGL") and
their respective shareholders.

Amulin Hydro Power Private Limited

..... Petitioner/ Transferor Company 1

Emini Hydro Power Private Limited

..... Petitioner/ Transferor Company 2

Mihundon Hydro Power Private Limited

..... Petitioner/ Transferor Company 3

Reliance CleanGen Limited

..... Petitioner/ Transferee Company

Order delivered on 30th August, 2018

Coram:

Hon'ble Bhaskara Pantula Mohan Member (Judicial)

Hon'ble V. Nallasenapathy Member (Technical)

For the Petitioner(s): Mr. Rajesh Shah, Advocate along with Ahmed M. Chunawala, Advocate i/b Rajesh Shah & Co., Advocates for the Petitioner

Mr. R. S. Meena, from the office of Regional Director

Mr. Santosh Dalvi, from the office of Official Liquidator

Per: V. Nallasenapathy, Hon'ble Member (Technical)

ORDER

1. Heard learned counsel for parties. No objector has come before the National Company Law Tribunal, Mumbai Bench ("Tribunal") to oppose the Scheme of Merger by Absorption of Amulin Hydro Power Private Limited ("the Transferor Company 1" or "AHPL") and Emini Hydro Power Private Limited ("the Transferor Company 2" or "EHPL") and Mihundon Hydro Power Private Limited ("the Transferor Company 3" or "MHPL") and Lara Sumta Hydro Power Private Limited ("the Transferor Company 4" or "LSHP") and Sumte Kothang Hydro Power Private Limited ("the Transferor Company 5" or "SKHP") and Purthi Hydro Power Private Limited ("the Transferor Company 6" or "PHPL") with Reliance CleanGen Limited ("the Transferee Company" or "RCGL") and their shareholders nor has any party controverted any averments made in the Petitions to the Scheme. The Transferor Company 1, Transferor Company 2, Transferor Company 3 and Transferee Company are together referred to as Petitioner Companies. The Transferor Company 1, Transferor Company 2, Transferor Company 3 are together referred to as Transferor Petitioner Companies.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme of merger by Absorption of Amulin Hydro Power Private Limited ("the Transferor

Company 1" or "AHPL") and Emini Hydro Power Private Limited ("the Transferor Company 2" or "EHPL") and Mihundon Hydro Power Private Limited ("the Transferor Company 3" or "MHPL") and Lara Sumta Hydro Power Private Limited ("the Transferor Company 4" or "LSHP") and Sumte Kothang Hydro Power Private Limited ("the Transferor Company 5" or "SKHP") and Purthi Hydro Power Private Limited ("the Transferor Company 6" or "PHPL") with Reliance CleanGen Limited ("the Transferee Company" or "RCGL") and their respective shareholders ("Scheme").

3. The Counsel for the Petitioner Companies submit that the Petitioner Companies have approved the Scheme by passing the Board Resolution which is annexed to the Company Scheme Petition.
4. The Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in Company Scheme Applications and that the Company Scheme Petitions have been filed in consonance with the order passed in Company Scheme Applications.
5. The Counsel appearing on behalf of the Petitioner companies further states that the Petitioner Companies have complied with all requirements as per the direction of Tribunal and has filed necessary affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
6. The Learned Counsel for the Petitioner Companies states that the transferor Petitioner Companies have been set up as a SPV to develop power project. The rationale of the Scheme is simplification of the group structure, optimal utilization of resources and better administration and reduction of cost and achieving operational and management efficiency.
7. The Official Liquidator has filed his report dated June 18, 2018 in the Company Scheme Application No. 86, 88 and 82 of 2018 *inter alia*, stating therein that the affairs of the Transferor Petitioner Companies have been conducted in a proper manner.

8. The Regional Director has filed a Report dated August 07, 2018 ("**Report**") stating therein, save and except as stated in paragraph IV, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the Report, the Regional Director has stated that:-
- a) *In addition to compliance of AS-14 (IND- AS-103) the Transferee Company 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.;*
 - b) *As per Part-A, Clause 1.2 Definitions of the scheme. "Appointed Date" means "Appointed Date" means opening hours of 1st April, 2018 or such other date as the Tribunal may direct/fix;. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April, 2018.*
 - c) *As per Part-A, Clause 1.5 Definitions of the scheme." Effective Date" means last of the dates on which the certified copied of the order/ confirmation order sanctioning this Scheme of Amalgamation, passed by the Tribunal or any other competent authority or any appropriate authority under the applicable provisions of the Act, as may be applicable, are filed with Registrar of Companies, by the respective Transferor companies and the Transferee company. All reference in this Scheme to the date of " coming into effect of this Scheme" or "effectiveness of the scheme" or "Scheme taking effect" shall mean the Effective Date; In this regard it is submitted that the " Effective Date" shall be as per the provisions of section 232(6) of the Companies Act, 2013 and not as specified in the above said clause of the scheme;*
 - d) *As regards Part-B, Clause 13 of the Scheme (Combination of Authorised Share Capital), and fee payable by the Transferee Company shall be in accordance with provisions of Section 232(3) (i) of the Companies Act, 2013.*
 - e) *Lara Sumta Hydro Power Private Limited (LSHP- or The Transferor Company-4), Sumte Kothang Hydro Power Private Limited (SKHP – or The Transferor Company-5) and Purthi Hydro Power Private Limited (PHPL – or The Transferor Company-6) are situated in the state of Himachal Pradesh and falls within the*

jurisdiction of this Hon'ble NCLT. Chandigarh Bench. Accordingly, similar approval be obtained by the Lara Sumta Hydro Power Private Limited (LSHP- or The Transferor Company-4), Sumte Kothang Hydro Power Private Limited (SKHP - or The Transferor Company-5) and Purthi Hydro Power Private Limited (PHPL - or The Transferor Company-6) from Hon'ble NCLT. Chandigarh Bench.

- f) *Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy/ any change/ changes are made, for changes if any, liberty be given to Central Government to file further report if any required;"*
9. So far as the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes that in addition to compliance of AS-14 (corresponding Ind AS-103, if applicable) for accounting treatment, the Transferee / Petitioner Company undertakes to comply with all applicable Accounting standards such as including AS-5 (corresponding Ind AS-8, if applicable).
10. So far as the observation in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies confirm that in terms of provisions of Section 232(6) of the Companies Act, 2013, the Appointed Date for the Scheme of Amalgamation shall be Opening hours of 1st April, 2018.
11. So far as the observation in paragraph IV (c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies confirms and undertakes that 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.
12. So far as the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies

undertakes that setting off of fees paid by the Transferor Petitioner Companies on its Authorised Share Capital will be in accordance with provisions of section 232(3)(i) of the Companies Act, 2013.

13. So far as the observation in paragraph IV (e) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that as the registered office of the Transferor Company -4, Transferor Company -5 and Transferor Company -6 are situated at Shimla, Himachal Pradesh, the Transferor Company -4, Transferor Company -5 and Transferor Company -6 have filed a joint Petition before the Hon'ble National Company Law Tribunal, Chandigarh Bench for the sanction of the Scheme.
14. So far as the observation in paragraph IV (f) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Scheme enclosed to the Company Application and Company Petition are one & same and there is no discrepancy or deviation.
15. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 to 14 above. The clarifications and undertakings given by the Petitioner Companies is hereby accepted.
16. 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.
17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. C.P. (CAA)/2077/MB/2018, C.P. (CAA)/1861/MB/2018, C.P. (CAA)/2076/MB/2018 and C.P. (CAA)/1906/MB/2018 of 2018 are made absolute in terms of prayer clauses (a) to (c).
18. The Petitioner Companies are directed to lodge a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act, 2013.
19. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Director or Assistant

C.P. (CAA)/2077/MB/2018
&
C.P. (CAA)/1861/MB/2018
&
C.P. (CAA)/2076/MB/2018
&
C.P. (CAA)/1906/MB/2018

Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the order.

20. The Petitioner Companies to pay cost of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Transferor Petitioner Companies to pay cost of Rs.25,000/- each to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of receipt of the Order.
21. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.

SD/-

V. NALLASENAPATHY
MEMBER (T)

SD/-

BHASKARA PANTUA MOHAN
MEMBER (J)