

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
NEW DELHI**

**Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)**

**COMPANY PETITION NO. 4 OF 2017**

**CONNECTED WITH**

**COMPANY APPLICATION (MAIN) NO. 151 OF 2016**

**(TRANSFERRED FROM THE FILE OF HON'BLE HIGH COURT OF DELHI)**

**IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT, 2013**

**AND**

**IN THE MATTER OF SCHEME OF AMALGAMATION**

**AMONGST**

**MAHARISHI SOLAR TECHNOLOGY PRIVATE LIMITED**

**Having registered office at:**

**DGL-121, First Floor DLF, The Galleria,**

**Mayur Vihar, Phase-1,**

**New Delhi-110091**

**...TRANSFEROR NO.1/ PETITIONER COMPANY**

**AND**

**MAHARISHI TECHNOLOGY CORPORATION LIMITED**

**Having registered office at:**

**DGL-121, First Floor DLF, The Galleria,**

**Mayur Vihar, Phase-1,**

**New Delhi-110091**

**...TRANSFEROR NO.2/ PETITIONER COMPANY**

**WITH**

**MAHARISHI VEDIC CONSTRUCTION CORPORATION PRIVATE LIMITED**

**Having registered office at:**

**DGL-121, First Floor DLF, The Galleria,**

**Mayur Vihar, Phase-1,**

**New Delhi-110091**

**...TRANSFeree PETITIONER COMPANY**

**AND**

**Their respective Shareholders and Creditors**

**ADVOCATE FOR THE PETITIONERS: Mr. Vipul Ganda, Advocate**

**Mr. Santosh Kumar Giri, Advocate**

**Ms. Mamta Rajput, Company Secretary**

**FOR REGIONAL DIRECTOR, (NR), MCA: Mr. C.Balooni, Company Prosecutor**

**ORDER**

1. This petition filed by the companies above named is coming up finally before us on 20.07.2017 for the purpose of the approval of the scheme of arrangement, as contemplated between the companies and its shareholders by way of amalgamation of the Transferor No.1 / Petitioner Company, Transferor No.2 / Petitioner Company with the Transferee Petitioner Company. A perusal of the petition discloses that initially the application seeking the dispensation of the meetings of equity shareholders, secured and unsecured creditors were filed before the Hon'ble High Court of Delhi in CA (M) 151/2016. The Hon'ble High Court of Delhi vide its order dated 21.10.2016 was pleased to dispense with the requirement of convening the meetings of the equity shareholders and unsecured creditors of all the Petitioner Companies, in view of their consents having been obtained and produced before it. In relation to the Secured Creditors of all the Petitioner Companies, there was none, hence the necessity of convening the meeting did not arise.

2. Under the circumstances, the petitioners have filed their joint petitions for sanction of the Scheme of Amalgamation before the Hon'ble High Court of Delhi under the erstwhile provisions, subsequent to the order of dispensation of the meeting as ordered by the Hon'ble High Court of Delhi on 21.10.2016.





3. While the joint petition in C.P.No. 4 of 2017 was pending disposal since the provisions relating to compromises, arrangements and amalgamation as contemplated under Sections 230-232 had been notified w.e.f. 15.12.2016 wherein the power to consider such schemes have now been vested with the National Company Law Tribunal, the Hon'ble High Court of Delhi pursuant to the notification bearing No. DL.33004/99 dated 7.12.2016 issued by the Ministry of Corporate Affairs has transferred/transmitted the records of the above petition to this Tribunal vide order dated 04.01.2017, for our consideration.
4. On 10.04.2017 this Tribunal ordered Notice in the Second Motion petition in C.P. No.4/2017 moved by the petitioners under Sections 230-232 of the Companies Act, 1956 read with relevant Rules of the Companies (Compromise, Arrangements and Amalgamation) Rules, 2016 in connection with the scheme of amalgamation, to the Registrar of Companies, Regional Director, Income Tax Department and the Official Liquidator. The Petitioners were also directed vide said order to carry out publication in the newspapers "Business Standard" in English edition and "Jansatta" in Hindi Edition.
5. The petitioners, it is seen from the records have filed an affidavit dated 16<sup>th</sup> May, 2017 in relation to the compliance of the orders passed by this Tribunal dated 10.04.2017 and a perusal of the same discloses that the petitioners have effected the paper publication as directed by this Tribunal in one issue of the 'Business Standard' in English edition and 'Jansatta in Hindi edition on 11<sup>th</sup> May, 2017. Further, it has also been stated by the Learned Counsel for the Petitioner Companies that notices have been issued



to the Regional Director, Northern Region, Registrar of Companies as well as to the Official Liquidator in compliance with the order dated 10.04.2017 and in proof of the same acknowledgement made by the respective offices have also been enclosed. From the said affidavit it is seen that the authorities/ regulators have been served on the following dates namely:

Name of the Authority/ Regulator	Date of service
1. Regional Director	13.04.2017
2. Registrar of Companies	17.04.2017
3. Official Liquidator	13.04.2017
4. Income Tax Department	17.04.2017
5. Reserve bank of India	13.04.2017
6. Ministry of New and Renewable Energy	13.04.2017

6. The representative of the Official Liquidator vide affidavit dated 22.06.2017 represents that the office of Official Liquidator does not have any objection to the scheme being approved. However, the Official Liquidator in paragraph 16 has observed that Petitioner Company is having disputed tax liability.

7. In response to Official Liquidator's observation, the Petitioner's Companies have filed an affidavit dated 03.07.2017 stating that *"in respect of Assessment Year 2008-2009, a wrong demand of Income Tax was made of Rs.3,61,220 because TDS credit was not allowed. Therefore, a rectification application for rectifying this error has been filed by the Company which is pending with the Department of Income Tax. If such rectification is allowed by the Department then there will be no demand. The following sales tax demand has been created by the Department of Sales Tax due to non-submission of statutory forms which is in dispute:*

S.No.	Year	Amount
1	2009-2010	Rs.5,26,800/-
2	2010-2011	Rs.21,98,988/-
3	2011-2012	Rs.3,00,812/-
4	2012-2013	Rs.2,90,977/-

The said demand on account of non-submission of statutory forms are not to be borne by the Company but are recoverable from the parties. Though the company has deposited Rs.97,277/- in respect of the year 2009-10 and Rs.2,91,593/- in respect of the year 2010-2011, the Company has filed an appeal and is hopeful of full relief on submission of statutory forms. Without prejudice to the above, as per clause 3.1 (d), 3.1 (i) and 3.1 (k) read with definition clause of the Scheme, *inter-alia*, provides that the Transferee Petitioner Company undertakes to meet, discharge and satisfy all debts, liabilities, contingent liabilities, duties and obligations, present and future, secured or unsecured, which shall be deemed to be the debts, liabilities, contingent liabilities, duties and obligations of the Transferee Petitioner Company. The Scheme further provides it is represented



*by the Learned Counsel that the Transferee Petitioner Company shall bear the burden and the benefits of any legal, tax or other proceedings initiated by or against a Transferor Petitioner Company.*

8. In para 17 of the report as filed by the Official Liquidator it has been submitted that RBI vide letters dated 17.11.1997 and 24.08.1998 has granted approval for issue of equity shares to an overseas corporate body with repatriation benefits subject to certain condition which is evidenced by an affidavit to that effect filed by the Director of the companies.

9. Further, Regional Director, Northern Region has also filed an Affidavit dated 15.06.2017 in which it has been stated that there is no objection to the sanction of the Scheme. However Regional Director has stated that RoC has made some pertinent observation in para 9 of the affidavit which are as follows:

- a) *"It has been mentioned in Clause 4 of Para C of the proposed Scheme of Amalgamation inter-alia that upon the Scheme becoming effective, the name of the Transferee Company shall stand changed to "Maharishi Technology Corporation Private Limited" without any application in this regard by the Transferee Company. In this regard, it is submitted that the Transferee Company may be advised to comply with the provisions of section 13 (2) of the Companies Act, 2013 and rules made thereunder and to pay the requisite fees to the Central Government as may be applicable."*

b) *"It has been mentioned in clause 6 of Part C of the proposed Scheme Inter-alia that in the financial statement of Transferee Company for the year ended March 31, 2016 , a sum of Rs.59,43,78,491/- is lying as Share Application Money received from Maharishi Global Construction Limited. The Applicant has since requested not to allot shares against the said share application money, the Transferee Company had accordingly approached the Reserve Bank of India for seeking approval to refund the said amount to the applicant in accordance with the law. No allotment shall, therefore, be made to the applicant in terms of the scheme. In this regard, it is submitted that the purported share application money is pending for allotment by more than a decade.*

*That further, the transferor company no.1 is a subsidiary of Foreign Company viz. Maharishi Ayurveda Products Europe B.V. Netherlands which is holding 99.99% of the shareholding in the Transferor company no.1 and in relation to the Transferee Company, M/s. Maharishi Global Construction Limited is holding about 99.99% of the total shareholding in the transferee company.*

*The share application money is lying with the transferee company for more than a decade in the nature of current liabilities which is wrongly classified as per schedule III of the Companies Act, 2013. The amount should have been reflected in the balance sheet as long term liability since it is held for more than a decade.*



*The Deponent is to further say that the paid up capital of the Transferee Company is about Rs.29.6 crores and the share application money for refund which is proposed to be refunded is about Rs.59.42 crores. The transferee company is enjoying the equity funds for almost the double amount. The total funds of company deployed in the business including current liabilities and non-current liabilities is about Rs.125.32 crores as per this about 50% of the same is reflected in the nature of share application money.*

*The Deponent is to say that the petitioner companies may be directed to place on record the date on which the share application money was accepted taken by the company and the details of the terms and conditions of approval of RBI as to acceptance of the said application money, repatriation, utilization, since the company appears to be in the business of real estate in which the repatriation of funds is restricted.*

*That the Deponent is to say further, that no objection from RBI may be asked before refunding of such amount to the applicant which is a foreign entity”.*

- c) *“It has been observed that the Transferor Company No.1 was incorporated with the main object to upgrade solar technology and making it available in India. The company has also obtained grant for development of solar grade polysilicon material from the Department of Industrial Policy & Promotion. Ministry of Industry from time to time subject to certain terms and conditions of concerned Regulatory Authority/Department. In*

*this regard, it is submitted that the petitioner companies may be advised to obtain prior approval of the concerned Department for the proposed amalgamation of Transferor Company No.1 with the Transferee Company”.*

10. In reply to the observations made by the Regional Director, the Petitioner companies have filed an affidavit stating that *“in reply to sub-para (a), it is respectfully submitted that as per catena of judgement by various High Courts and the Apex Courts, it has been held that the provisions relating to arrangements/ Compromise and reconstruction are a complete code by itself which includes the approval relating to change in name and change of objects clause etc. and there is no need for the Companies to be entrusted with the additional need to follow a separate procedure prescribed for this purpose. In a recent Judgement of Madras High Court ( in re: Michelin India Private Ltd. & Ors.) it has been held in para 17, reproduced herein below;*

*“The Scheme herein contemplates a change in their name. In the face of such facts, the question is whether the Petitioner is subjected to the procedure under section 21 of the Companies Act, as amended as Section 13 of the 2013 Act. This Section requires Special resolution to be passed on the proposed change of*



names of the company and; approval of the Central government thereupon for changing the company's name. It may be noted that Chapter V is a complete code by itself on the subject of arrangement/ Compromise and reconstruction comprehensive enough to including a change in the name consequent on the amalgamation or arrangement. Similar view was taken by this court in C.P Nos.133 to 135 of 2006 dated 19.08.2006 in the matter of K.P.R Mill private ltd. and also in the decisions cited supra by the learned senior Counsel for the Petitioners. Thus, the objection raised by the Regional Director is satisfactorily explained."

Without prejudice to the aforesaid, however, the Transferee Petitioner Company shall comply with the provisions of section 13 (2) of the Companies Act, 2013 and rules made there under and to pay the requisite fees to the Central Government as may be applicable, if so directed by the Hon'ble Tribunal.

(b) That in reply to sub- para (b), the petitioner's submission are as under:

1. That the Transferee Petitioner Company has a foreign investment by M/s Maharishi Global Construction Ltd. ("MGCL"), (a corporation duly incorporated under the laws of



*United Kingdom) in pursuance of following approvals received  
from the Reserve Bank of India:*

<b>Date of Approval</b>	<b>No. of shares for which approval sought</b>	<b>No. of shares issued in respect of approval</b>
17.11.1997	1,00,00,000	94,07,800
24.08.1998	3,00,00,000	2,01,91,558
<b>Total</b>		<b>2,95,99,358</b>

11. Further, the petitioner companies have also showed the details of the application money in the affidavit dated 03.07.2017 and the disclosure to this effect has been made in clause 6 of the scheme which is reproduced hereunder:

*"According to the Financial Statement of Transferee Company for the year ended March 31, 2016, a sum of Rs." 59,43,78,491 is lying as share application money received from Maharishi Global Construction Limited ("the Applicant").*

*The Applicant has since requested not to allot shares against the said share application money, the Transferee Company had accordingly approached the Reserve Bank of India for seeking approval to refund the said amount to the Applicant in accordance with the Law. No allotment shall, therefore, be made to the Applicant in terms of the scheme".*



The above explanations are taken on record by this Tribunal. In relation to the change of name, however of filing the relevant forms with the ROC, NCT of Delhi & Haryana, the Petitioner/ Transferee Company shall duly comply at the appropriate time.

12. Upon further perusal of the representation of Regional Director it discloses that notice to the Principal Commissioner of Income Tax, Delhi had been duly sent and that no specific comments/ observation have been received raising any objections.

13. That petitioner companies have filed the certificate from the respective Company's auditor in compliance of provisos to sections 230 (7) and 232 (3) of Companies Act, 2013.

14. The counsel for Petitioners has stated that they have not received any objections from the third party and public at large for the purpose of sanction to the present Scheme of Amalgamation. The above statement is taken on record. In view of absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the scheme of amalgamation annexed as **Annexure -P-4** with the Company Petition as well as the prayer made therein.

15. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners. The

approval of the scheme by this Tribunal, it is also made clear will not; if it is so warranted by the ROC, NCT of Delhi & Haryana from taking appropriate action in relation to wrong classification of share application money or other such like amounts under the provisions of 1956/ 2013 Act. Further the petitioner companies will strictly abide by their undertaking in relation to compliance with RBI/ FEMA provisions/ formalities.

16. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

#### **THIS TRIBUNAL DO FURTHER ORDER**

(1) That all the property, rights and powers of the Transferor Companies be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and vest in the Transferee company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same; and

(2) That all the liabilities and duties of the Transferor Companies be transferred without further act or deed to the Transferee company and accordingly the same





shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee company; and

(3) That all proceedings now pending by or against the Transferor Companies be continued by or against the Transferee company; and

(4) That the Transferee Company do without further application allot to such members of the Transferor Company, as have not given such notice of dissent, as is required by clause 5 of the SCHEME OF AMALGAMATION herein the shares in the transferee company to which they are entitled under the said SCHEME OF AMALGAMATION; and

(5) That as per clause 3.1 (j) of the scheme, all the employees of the Transferor Companies in service on date immediately preceding the date on which the scheme finally take effect shall become the employees of the Transferee company without any break or interruption in their service.

(6) All the Companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies and registered with him on the file kept by him in relation to the Transferee company and



the files relating to the said companies shall be consolidated accordingly;

(7) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

(Sd/-) / 28.09.17  
(R. VARADHARAJAN)  
MEMBER (JUDICIAL)

**U.D Mehta**