

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**CA(CAA) No. 4/NCLT/AHM/2017**

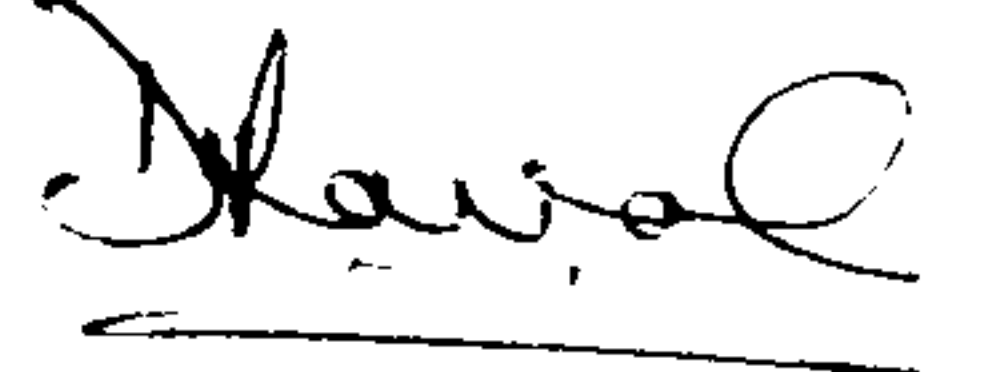
Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 14.03.2017**

Name of the Company: Welspun Energy Pvt. Ltd.  
Giriraj Renewable Pvt. Ltd. (Joint Application)

Section of the Companies Act: Section 230-232 of the Companies Act, 2013

| <u>S.NO.</u> | <u>NAME (CAPITAL LETTERS)</u> | <u>DESIGNATION</u> | <u>REPRESENTATION</u> | <u>SIGNATURE</u>  |
|--------------|-------------------------------|--------------------|-----------------------|---|
| 1.           | DHARMISHTA RAVAL              | ADVOCATE           | APPLICANT             |  |
| 2.           |                               |                    |                       |   |

**ORDER**

Learned Advocate Mrs. Dharmishtha Raval with Learned Advcoate Mr. Yuvraj Thakore present for Applicant.

Order pronounced in open Court vide separate sheet.

  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 14<sup>th</sup> day of March, 2017.

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**C.A.(CAA) No. 4/230-232/NCLT/AHM/2017**

**CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**

**Date: 14<sup>th</sup> March, 2017**

**In the matter of:**

Welspun Energy Private Limited  
(Demerged Company)

AND

Giriraj Renewables Private Limited  
(Resulting Company) : Applicants.

**Appearance:**

Mr. Saurabh Soparkar. Learned Senior Counsel along with Ms. Dharmishta Raval of M/s. Raval & Raval Advocates, and Mr. Yuvraj Thakore, Learned Advocates for the Applicants.

**FINAL ORDER**

Pronounced on 14<sup>th</sup> March, 2017

1. M/s. Welspun Energy Private Limited and M/s. Giriraj Renewables Private Limited [hereinafter referred to as “Applicant Demerged Company” and “Applicant Resulting Company” respectively], preferred this Application jointly under Section 230 read with 232 of the Companies Act, 2013.

2. Applicant Demerged Company and Applicant Resulting Company are Private Limited Companies incorporated under the Companies Act, 1956 having their Registered Offices in the State of Gujarat.

3. The proposed Scheme deals with demerger of Demerged Undertaking of Welspun Energy Private Limited with Applicant Resulting Company, i.e., Giriraj Renewables Private Limited.

4. “Demerged Undertaking” means the business on a going concern basis of setting up of projects on EPC contract basis (the “EPC Business”), other EPC related assets and liabilities, inter divisional balances and escrow account relating to EPC Business, and certain identified MOUs/LOIs with State Governments/nodal agencies for renewable energy products to the extent available and effective, and forming a part of the Demerged Undertaking, including in particular the following, but without in any manner whatsoever limiting the scope thereof:

(a) The moveable assets, wherever situated, real or personal, in possession or reversion, corporeal, tangible, present or contingent, vehicles, other fixed assets, licenses, computers, office equipment, current assets, sundry debtors, deposits, receivables, funds, cash, bank balances, loans and advances given (including but not limited to the loans and advances given to employees), accounts, claims, taxes, duties, cess, levies etc. paid regularly or in advance, wherever required by law or otherwise and all other rights, benefits of all agreements, subsidies, grants, taxes, tax credits and all other sanctions and approvals, bills of

- (b) The immovable assets (including any work-in-progress), wherever situated, incorporeal, intangible, present or contingent, brands, trademarks, goodwill, patents, copyrights and other intellectual property rights, rights under business arrangements/agreements/contracts/ and all other interests, rights and power of every kind, nature and description, whatsoever privileges, liberties, advantages, benefits, consents pertaining to the EPC Business;
- (c) all investments, equity and preference shares, pertaining to or relatable to the EPC Business;
- (d) all letters of intent, request for proposal, prequalification, bid acceptances (including benefit arising out of or in relation to any bank guarantees submitted to any authority in respect thereof by the Demerged Company), tenders, contracts, deeds, memorandum of understanding, bonds, agreements, arrangements, track-record, technical know-how, technical experience (including experience in executing projects), experience, goodwill and all other rights, claims and powers and any other instrument of whatsoever nature and wheresoever situated belonging to or in the possession of or granted in favour of or enjoyed by the Demerged Company, pertaining or relatable to the EPC Business, for all intents and purposes and specifically including but not limited to, the turnover, the profitability, performance, and market share, prequalification, net worth and reserves of or

- (e) all rights and licenses, assignments and grants thereof, permits, approvals, authorizations of all kinds, registrations, quota rights, import quotas, rights (including rights under any agreement, contracts, applications, letters of intent, or any other contracts), subsidies, grants, tax credits, incentives or schemes of central/state governments, quality certifications and/or approvals, product registrations (both Indian and foreign), regulatory approvals, entitlements, industrial and other licenses, municipal permissions, approvals, consents, tenancies, leases if any in relation to the office and/or residential properties for the employees, whether used by the employees/consultants or any other person, either solely or jointly with other parties, cash balances, promissory note, cheques, demand drafts, pay orders, investments, bank balances, bank accounts, deposits, advances, loans given to employees or third parties, recoverables, receivables, easements, advantages, financial assets, hire purchase and lease arrangements, the benefit of any guarantees issued to the Demerged Company, all awards/accreditation, public relation, corporate marketing, memberships with chamber of commerce/business association, in relation to the EPC Business; privileges, all other claims, rights and benefits, powers and facilities of every kind, nature and description whatsoever, rights to use and avail of telephones, telexes, facsimile connections and installations, utilities, electricity, water and other services, infrastructure, provisions, funds, benefits (including that of payments, revenues and experience under all agreements including but not limited to those listed in Annexure 2 hereto) of all

liabilities, if any, the liabilities allocable under this Scheme, pertaining to or which arise out of the activities or operations of the EPC Business;

- (f) all employees, managerial personnel and other persons of EPC Business substantially engaged in the EPC Business and those employees that are determined by the board of directors of the Resulting Company, to be substantially engaged in or in relation to the EPC business;
- (g) all deposits and balances with government, quasi-government, municipal, local and other authorities and bodies, customers and any other persons, earnest moneys and/or security deposits paid or received by the Demerged Company, in connection with or in relation to the EPC Business;
- (h) all books, records, files, papers, product specifications and process information, records of standard operating procedures, computer programs along with their licenses, manuals and backup copies, drawings, other manuals, data catalogues, emails, presentation, correspondences/communications with third parties/authorities, quotations, sales and advertising materials, lists of present and former customers and suppliers, customer credit information, customer pricing information, and other records whether in physical or electronic form, in connection with or relating to the EPC Business.”

5. The Effective Date or coming into effect of this Scheme, or upon the Scheme becoming effective are as mentioned in Clause 16 of the proposed Scheme.

6. The Issued, Subscribed and Paid-up Share Capital of Equity Shares of the Applicant Demerged Company as on 15<sup>th</sup> November, 2016 is 39,06,31,116. The Main Objects of the Applicant Demerged Company are set out in Annexure "B" (Memorandum of Association).

7. The Issued, Subscribed and Paid-up Share Capital of the Applicant Resulting Company as on 15<sup>th</sup> November, 2016 is 1,00,000.

8. It is contended by the learned counsel appearing for the Applicant companies, that since the Share Capital of the Applicant Demerged Company is more than Rs. 50,00,000, it is not a small company within the means of Section 2(85) of the Companies Act, 2013. It is also contended by the learned counsel appearing for the Applicant companies that it is a Scheme of Demerger of one undertaking of the Applicant Demerged Company with the Applicant Resulting Company and therefore Section 233 is not applicable. He has also contended, that in view of Section 233 sub-section (14) of the Companies Act, 2013, the Company is given option to make use of Section 232 even though it is a small Company or a subsidiary Company.

9. The above said contentions raised by the learned counsel for the Applicant Companies merit acceptance and therefore this

10. As can be seen from Annexure “L”, which is a Certificate issued by Goyal Malhotra & Associates, Chartered Accountants, the following are the shareholders in Applicant Demerged Company, i.e., Welspun Energy Private Limited;

| Sr No. | Name of the Shareholders            | No. of shares held | % holding |
|--------|-------------------------------------|--------------------|-----------|
| 1      | Welspun Enterprises Limited         | 6,04,93,342        | 15.49     |
| 2      | Rank Marketing LLP                  | 13,98,14,002       | 35.79     |
| 3      | MGN Agro Properties Private Limited | 48,16,201          | 1.23      |
| 4      | Mr. B.K. Goenka                     | 6,04,933           | 0.15      |
| 5      | Candor Power Private Limited        | 10,82,14,880       | 27.70     |
| 6      | Mr. Vineet Mittal                   | 1,29,93,491        | 3.33      |
| 7      | Reliable Record Keepers Pvt. Ltd.   | 6,36,94,267        | 16.31     |
|        | Total                               | 39,06,31,116       | 100.00    |

The Board of Directors of the Applicant Demerged Company, in their Meeting held on 3<sup>rd</sup> December, 2016 accorded approval for the Scheme of Arrangement between Applicant Demerged Company and Applicant Resulting Company and their respective shareholders and creditors as per terms and conditions mentioned in the Scheme.

11. On 3<sup>rd</sup> February, 2017, the consent affidavits of equity shareholders of the Applicant Demerged Company are filed.

12. It is stated in the Application, that there are only 3 (three) Secured Creditors of the Applicant Demerged Company of the value of Rs. 722,189,121. The Certificate issued by the Chartered Accountants M/s. Goyal Malhotra & Associates, dated 5<sup>th</sup> December,



13. In the Additional Affidavit filed by the Authorized Signatory of the Applicant Demerged Company, it is stated that at the time of filing of Application, the Applicant Demerged Company had two accounts with two Secured Creditors, i.e., State Bank of Bikaner and Jaipur and Yes Bank. It is further stated that during the course of hearing of the Application an Affidavit was filed on 7<sup>th</sup> February, 2017 stating that the State Bank of Bikaner and Jaipur is no longer the creditor of the Applicant Demerged Company as payment has been made to them. In the same Affidavit it is also stated that Yes Bank will be repaid on or before 31<sup>st</sup> March, 2017. It is stated in the Additional Affidavit dated 16<sup>th</sup> February, 2017 that Yes Bank has forwarded an Affidavit and Consent Letter that dispensing with Secured Creditor Meeting and giving no objection to the Scheme of Demerger vide Annexure "U". The Affidavit of the Authorized Signatory of the Yes Bank reads that the Bank is a Secured Creditor of Applicant Demerged Company and the Bank has gone through the proposed Scheme of Arrangement between Welspun Energy Private Limited and Giriraj Renewables Private Limited and gave consent to dispense with calling of the Meeting of the creditors pursuant to Section 230(9) of the Companies Act, 2013.

14. It is stated in the Application that Goyal Malhotra & Associates, Chartered Accountants issued Certificate vide Annexure "Q" giving the list of Unsecured Creditors of the Applicant Demerged Company.

15. In the Additional Affidavit dated 16<sup>th</sup> February, 2017 it is also stated that the Applicant Demerged Company has obtained consent on affidavit from more than 90% in value from Unsecured Creditors of the Applicant Demerged Company giving consent to the

stated that Chartered Accountants, M/s. Shweta Bansal & Associates gave a Certificate stating that more than 90% (94.72%) of the Unsecured Creditors of Applicant Demerged Company in value have given their consent vide Annexure "X".

16. It is stated in the Application, that there are only two shareholders in the Applicant Resulting Company. As per the Certificate given by Goyal Malhotra & Associates, vide Annexure "N", the following are the shareholders in Applicant Resulting Company:

| Sr No. | Name of the Shareholders                                    | No. of shares held | % Holding |
|--------|---|--------------------|-----------|
| 1      | Candor Power Private Limited                                | 9,999              | 100       |
| 2      | Mr. Vineet Mittal (Nominee of Candor Power Private Limited) | 1                  |           |
|        | Total   | 10,000             | 100       |

It is stated in the Application that both the shareholders of the Applicant Resulting Company gave their Consent Letters approving the Scheme. The Chartered Accountant also certified that both the shareholders have given consent approving the proposed Scheme of Arrangement between the Applicant Demerged Company and the Applicant Resulting Company, vide Annexure "N".

17. It is stated in the Application that there are two Unsecured Creditors of Applicant Resulting Company. The same is certified by M/s. Kailash Chand Jain & Co., Chartered Accountants vide Annexure "R". But in the Affidavit of the Authorized Signatory dated 5<sup>th</sup> February, 2017 it is mentioned that after filing of the Application, two Unsecured Creditors of the Applicant Resulting Company have been paid and hence the Applicant Resulting Company does not have

Company as on 4<sup>th</sup> February, 2017. It is stated that the Applicant Resulting Company has no Secured Creditor. M/s. Kailash Chand Jain & Co., Chartered Accountants gave a Certificate vide Annexure "P" that the Applicant Resulting Company does not have any Secured Creditor as on 15.11.2016.

18. Learned Counsel for the Applicants also stated that no investigation proceedings under the Companies Act are pending against the Applicant Companies and affidavit filed to that effect.

19. In the joint Application, both the Demerged Company and the Resulting Company are requesting to dispense with the meeting of the equity shareholders, secured and unsecured creditors or in the alternative pray that necessary directions may be given for convening and holding of the meeting of the shareholders, secured and unsecured creditors: fixing date, time and place and/or direct that the notice of scheme be published in newspapers, English and Vernacular and directions may be given as to the method of convening holding and conducting of the meetings of the equity shareholders, secured and unsecured creditors and to appoint a Chairman to preside over the meetings and submit a Report thereof to the Tribunal.

20. Learned Senior Counsel appearing for the Applicants contended that there are only 7 equity shareholders in the Applicant Demerged Company and two shareholders in the Applicant Resulting Company and all of them have given consent affidavits in writing agreeing for the scheme and dispensation of meeting of the equity shareholders of both the Companies. He submitted that under Section 291 of the Companies Act, 1956, the Hon'ble High Court of

Section 230 of the Companies Act, the Tribunal may on an application of the Company or of any Creditor or a Member of the Company order a meeting of the creditors or class of creditors or of the members or class of members, as the case may be called, hold and conducted in such manner as the Tribunal directs. He contended that Section 230 of the Companies Act, 2013 gives discretion to this Tribunal either to order for convening the meeting of the members or creditors or dispense with the Meeting. When discretion is given to the Tribunal, the Tribunal can exercise the discretion and dispense with the meetings of the Members and Creditors depending upon the facts of the case. If the shareholders or creditors give consent letters. He further contended that there is no prohibition in Section 230 from dispensing with the meeting of the shareholders of the companies that come up before the Tribunal with a proposed compromise or arrangement. In support of his contention, he relied upon the following decisions;

1. ***Mazda Theatres Pvt. Ltd., and Anr. Vs. New Bank of India Ltd. And Ors.*** Reported in MANU/DE/0104/1974;
2. ***Mysore Cements Ltd., in Re,*** Reported in [2009] 149 Comp Cas 50 (Karn);
3. ***Ansal Properties & Industries Ltd. And Anr. Vs. Company,*** Reported in MANU/DE/0118/1976; [1978] 48 CompCas 184 (Delhi);
4. ***Scheme of Amalgamation of GE Capital Transportation Financial Services Limited Vs. GE Capital Services India,*** Reported in 2009 SCC OnLine Del 535. (2009) 149 Comp Cas 52;
5. ***In Re: Sharat Hardware Industries P.Ltd.,*** Reported in MANU/DE/0262/1976, [1978] 4 ComCas 23 (Delhi).

21. The question that requires determination by this Tribunal

that Tribunal may, on the application of a creditor or any class of creditors, member or any class of members, order a meeting of the creditors or class of creditors or of the members or class of members to be called, held and conducted in such manner as the Tribunal directs.

22. In Section 232, it is clearly stated that sub-sections (3) to (6) of Section 230 shall apply *mutatis mutandis* to the applications under Section 231. What is stated in sub-section (2) of Section 230 is what is required to be disclosed by the person who filed an application to the Tribunal by affidavit. Clause (a) of sub-section (2) of Section 230 applies to all cases of compromise or arrangement. Clause (b) of sub-section (2) of Section 230 applies only in case of reduction of share capital of the Company, if any. Clause (c) of sub-section (2) of Section 230 applies only for a scheme of corporate debt restructuring. The proposed Scheme in this case deals with demerger of Demerged Undertaking of Welspun Energy Private Limited with Applicant Resulting Company, i.e., Giriraj Renewables Private Limited and, therefore, it is not a case of reduction of Share Capital of the Company. It is not a case of corporate debt restructuring. Therefore, the requirements set out in Clause (b) and (c) of sub-section (2) of Section 230 may not give any guidance in coming to a conclusion in a given case to call, hold and conduct meeting of the members or class of members or creditors or class of creditors or not. Sub-section (2) of Section 230 enjoins upon the applicants that approach the Tribunal to disclose certain facts; the failure to disclose such facts may, at times, result in dismissal of the application also. But what is laid down in sub-section (2) of Section 230 of the Companies Act, 2013 may not necessarily lead to the conclusion that the Tribunal has no discretionary power to dispense with meetings of the members or class of members, creditors or class

the shareholders and creditors depending upon the facts of the case. Therefore, the decisions, rendered by the various Hon'ble High Courts in the country, go to show that the Company Court has got discretion to dispense with the meetings of the shareholders and creditors depending upon the facts of the case and the nature of compromise or arrangement. The wording of Section 230 sub-section (1) of the Companies Act, 2013, and the wording used in Section 391 of the Old Act are verbatim the same.

24. Now, coming to Section 230(9), it specifically gives power to the Tribunal to dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors having at least ninety per cent value, agree and confirm by way of affidavit, to the scheme of compromise or arrangement. Therefore, explicitly Section 230 sub-section (9) applies to Scheme of Compromise or Scheme of Arrangement. The Compromise or Arrangement, referred to in sub section (9) of Section 230, applies to the Section 230 only or it is applicable to Section 232 also, is not a point relevant to decide in this Application.

25. The object of holding a Meeting is to obtain the consent of the shareholders or the creditors for the proposed Compromise or Arrangement, as the case may be. No doubt, Section 230 sub-section (6) says, "Where, at a meeting held in pursuance of sub-section (1), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company which is a limited liability partnership, all the

26. Therefore, sub-section (6) applies, only in a case where a meeting is held. It does not even impliedly carry a meaning that this Tribunal has no power to dispense with the meeting of shareholders. Sub-section (6) of Section 230 is to be interpreted to come to conclusion that if the Tribunal has no discretionary power to dispense with the meetings of the shareholders or creditors in a given case, then the Legislature would not have used the words "Where at a meeting held in pursuance of sub-section (1)". It impliedly shows, that sub section (6) of Section 230 applies only in case where a meeting was ordered to be held in pursuance of sub-section (1) because a meeting cannot be held without an order of the Tribunal. Therefore, sub-section (6) of Section 230 cannot be taken as a guide to come to a conclusion whether this Tribunal has got discretion to dispense with the meetings of the members or class of members, creditors or class of creditors. If the Legislature intended to prohibit the exemption of meetings of shareholders, they would have specifically stated in the New Act that the Tribunal has no power to dispense with the meetings of the shareholders. There is no prohibition in Section 230, 231 and 232 to the effect that this Tribunal has no power to exempt meetings of the shareholders or creditors. No doubt, the Legislature has taken care in case of creditors by putting a limit of ninety per cent of the value of the creditors.

27. The decisions of the various Hon'ble High Courts in the country show that the Company Courts have been exercising discretion depending upon the facts of the case dispensing with the meetings of the shareholders or creditors. So far as the creditors or class of creditors are concerned, this Tribunal is governed by sub-section (6) of Section 230. In view of the above discussion, even under Section 230 of the Companies Act, the provisions do not take away the discretionary power of the Tribunal to dispense with the

the Company or creditors or class of any creditors or any class of members or between a Company, its creditors and its members.

28. Now, coming to the fact situation in a given Company, if there are only two equity-shareholders, and if both of them gave consent affidavits giving consent for the proposed Compromise or Arrangement, then there is no point in calling for a meeting of the shareholders. It may be said, that if a meeting is not held, the interests of other stakeholders may be affected. Mainly other stakeholders are the creditors and the public at large. Before sanctioning the compromise or arrangement under sub-section (7) of Section 230, the Tribunal has to follow Rule 16 of the Companies (Compromise, Arrangements or Amalgamations) Rules, 2016 wherein it is laid down that Tribunal shall order notice of hearing of the petition for sanction of Arrangement or Compromise which shall be notified in a Newspaper not less than 10 days before the date fixed for hearing. Therefore, there will be an opportunity for the public at large to oppose the sanction of the proposed Arrangement or Compromise. Therefore, in a given case, depending upon the facts of the case this Tribunal can exercise its discretion by following the practice laid down by the various Hon'ble High Courts in India to dispense with the Meetings of the Shareholders. The Tribunal may also ask the Company that it will take individual notices to members and/or creditors in cases of dispensing with meetings in the petition seeking sanction of scheme.

29. In the present case, in Applicant No. 1, there are only seven shareholders and all of them gave their affidavits giving consent for the Arrangement of Demerger of one undertaking of Welspun Energy Private Limited with Giriraj Renewables Private Limited. It is the case where an undertaking of Welspun Energy Private Limited is being

transferred to Giriraj Renewables Private Limited. Both the



shareholders of Welspun Energy Private Limited, Applicant No.1, can be dispensed with.

30. There are two Secured Creditors of Welspun Energy Private Limited with three accounts, of them two pertain to 'Yes Bank'. It is stated in the Affidavit of Ranchhodbhai Malaiya that the Applicant Demerged Company had two Secured Creditors and out of them the Applicant Demerged Company has after the filing of this Application made payment to State Bank of Bikaner and Jaipur. But in the caption of the Affidavit at Page No. 143, it is described that Ranchhodbhai G Malaiya is the Authorized Signatory of the Applicant Resulting Company. Therefore, what has been stated in Page No. 143 in the Affidavit of Ranchhodbhai Malaiya is being the Authorized Signatory of the Applicant Resulting Company but not as "Authorized Signatory" of the Applicant Demerged Company. In that Affidavit, Ranchhodbhai Malaiya stated that Applicant Demerged Company intends to make payment to Yes Bank by 31.3.2017. In the Additional Affidavit filed on 16<sup>th</sup> February, 2017, Mr. Ranchhodbhai Malaiya, as "Authorized Signatory" of Applicant Demerged Company stated that Yes Bank has given consent for the proposed Scheme of Demerger. A perusal of the letter of the Yes Bank and the Affidavit given by the Authorized Signatory of the Yes Bank show that they have given consent to dispense with calling of meeting of creditors pursuant to Section 230 of the Companies Act. In the Affidavit of Ranchhodbhai Malaiya filed on 16<sup>th</sup> February, 2017, it is stated that 100 per cent consent of Secured Creditors of Applicant Demerged Company is obtained. What is interesting is, in the first instance Ranchhodbhai Malaiya as 'Authorized Representative' of Applicant Resulting Company stated that they would make payment to Yes Bank by 31.3.2017, but the same person by an Additional Affidavit as 'Authorized Signatory' of Applicant Demerged Company stated that Yes Bank has given consent to the Scheme. Except the

of Bikaner & Jaipur has been paid off. No affidavit of the Authorized Signatory of State Bank of Bikaner & Jaipur is filed to show that amount has been paid to State Bank of Bikaner & Jaipur. In this context, it is necessary to refer to Annexure "O" at Page No.91. It is a Certificate issued by the Chartered Accountant, Mr. Manoj Goyal for Goyal Malhotra & Associates. It reads that the Chartered Accountant has certified about the Secured Creditors of the Company as on November 15, 2016. In the said Certificate he has shown three creditors. Of course, there are two accounts of Yes Bank among the three. But in the Certificate portion, it is stated by the learned Chartered Accountant as follows;

*"We hereby certify that all the aforesaid Shareholders of the Company have given their written consents approving the proposed Scheme of Arrangement..."*

If that Certificate at Page No. 91 (Annexure 'O') is to be taken into consideration, it will go to show that as on 05.12.2016 itself Yes Bank has given its consent for dispensing with Secured Creditors' Meeting. But in the Affidavits of Ranchhodbhai Malaiya filed on 7.2.2017 and 16.2.2017, it is stated that Yes Bank will be paid on or before 31.3.2017. But, in the meanwhile Yes Bank has given consent. That means, according to the Affidavit of Ranchhodbhai Malaiya filed on 16.2.2017, the consent of Yes Bank was given in between 7.2.2017 and 16.2.2017. If the Certificate of the Chartered Accountant at Annexure 'O' is taken into consideration, it goes to show that either all the Secured Creditors have given consent or the State Bank of Bikaner & Jaipur and Yes Bank are shareholders of Welspun Energy Private Limited. Therefore, it is clear that the contents of the Certificate of Chartered Accountant and the contents of the Affidavits of Ranchhodbhai Malaiya filed on 7.2.2017 and 16.2.2017 are

has been filed. No Certificate of Chartered Accountant is filed to show that State Bank of Bikaner & Jaipur has been paid off its dues. Therefore, this Tribunal cannot act upon different statements made by the Applicant Demerged Company in relation to its Secured Creditors. Therefore, this Tribunal directs the Applicant Demerged Company to hold Meetings of the Secured Creditors.

31. Coming to the Unsecured Creditors of the Applicant Demerged Company, as can be seen from the Annexure "Q" at Page No. 93 of the Application, which is the Certificate issued by Goyal Malhotra & Associates, Chartered Accountants, the amount due to Adani Power Limited is shown as 4,224,998,000; Advance from customers against EPC Contract is 374,658,480; Audit Fee Payable is 270,000; Staff Expenses Payable is 145,378; and Trade Payables is 320,053,188. Therefore, the total value of the Unsecured Creditors of the Applicant Demerged Company is 4,92,01,25,046, out of which 99 per cent comes to 4,92,81,25,414. The Authorized Signatory of Applicant Demerged Company Ranchhodkhai Malaiya filed affidavit on 16<sup>th</sup> February, 2017 stating that the Applicant has also obtained affidavits from more than Ninety Per Cent of the creditors of the Applicant Demerged Company. It is stated that Adani Power Limited is unsecured creditor of 90.80%. At Page No. 158, the Affidavit of Vineet S. Jain, who is Authorized Signatory of Adani Power Limited, with which the Extracts of the Minutes of the Meeting of the Board of Directors of Adani Power Limited held on 20<sup>th</sup> January, 2017 is also filed, disclose that Mr. Vineet S. Jain is Whole-time Director of the Adani Company and he is authorised to sign the Affidavit/No Objection Certificate in the matter of Scheme of Arrangement between the Applicant companies. A perusal of Certificate issued by Shweta Bancel & Associates at Page No. 242 shows that Adani Power Limited is an Unsecured Creditor to the extent of 90.89%; Cander Energy Pvt. Ltd. is an Unsecured Creditor to the extent of 0.65%;

consent for demerger. In the further Affidavit of Mr. Ranchhodbhai Malaiya, Authorized Signatory of the Applicant Resulting Company filed on 22<sup>nd</sup> February, 2017, it is stated that rights of the Unsecured Creditors of the demerged undertaking will continue to be the same and no prejudice will be caused to the unsecured creditors of the Demerged Undertaking as there are adequate assets to meet the liabilities. He has also placed on record a provisional audited statements of assets and liabilities as on 31<sup>st</sup> December 2016 forming part of the Demerged Undertaking of the Applicant Demerged Company. Therefore, the Applicant Company complied with the requirement of Section 230 sub-section (9). Hence, the meeting of Unsecured Creditors of the Applicant Demerged Company is dispensed with.

32. Coming to the Applicant Resulting Company, there are only two shareholders in the Company. Their Affidavits have been filed consenting to the Scheme of Arrangement at Pages Nos. 122-136. Therefore, the meeting of the Applicant Demerged Company is dispensed with.

33. Coming to the Secured Creditors of the Applicant Resulting Company, it is stated in the Certificate of the Chartered Accountant dated 8<sup>th</sup> December 2016 issued by M/s. Kailash Chand Jain & Co. that the Applicant Resulting Company does not have any Secured Creditors as on 16.11.2016. Coming to the Unsecured Creditors of the Applicant Resulting Company, there are only two Unsecured Creditors to the tune of 2,400 as per the Certificate of the Chartered Accountant Kailash Chand Jain & Co., filed at Page No. 92 of the Application. In the Affidavit of Ranchhodbhai Malaiya, as Authorized Signatory of Applicant Resulting Company at Page No. 109, it is mentioned that as on 15.11.2016 there are two Secured Creditors of the Applicant Resulting Company to the tune of 2,400.

the Company as on 4<sup>th</sup> February, 2017. In view of the said facts stated by the Authorized Signatory of the Applicant Resulting Company and the Certificate of the Chartered Accountants at Page No. 142 the Meeting of the Unsecured Creditors of the Applicant Resulting Company is dispensed with.

34. In view of the above discussion, this Tribunal order as follows:

(1) The meeting of the equity shareholders of the Applicant Demerged Company, for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Arrangement embodied in the Scheme of Arrangement of Welspun Energy Private Limited (Demerged Company) and Giriraj Renewables Private Limited (Resulting Company), is dispensed with.

(2) The Meeting of the Unsecured Creditors of the Applicant Demerged Company, for the purpose of considering and, if thought fit, approving with or without modification(s), the proposed Arrangement embodied in the Scheme of Arrangement of Welspun Energy Private Limited (Demerged Company) and Giriraj Renewables Private Limited (Resulting Company), is dispensed with.

(3) The Applicant Demerged Company is directed to convene and hold a Meeting of the Secured Creditors of the Applicant Demerged Company as on the date of filing of the Application. The Meeting shall be convened and held on 24<sup>th</sup> April, 2017 at 11.00 A.M. at Registered office of Demerged Company Registered Office at Welspun Energy Private Limited, 'Welspun City', Village Versamedi, Taruka Area, District Kutch, Gujarat-370110 for the purpose of considering and, if thought fit, approving with or without modification(s) of the Scheme of Arrangement. At least one month

Ahmedabad Edition and 'Gujarati' translation thereof in "Sandesh", Ahmedabad Edition. The publication shall indicate the time within which copies of the Scheme shall be made available to the concerned persons free of charge from the Registered Office of the Company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and the prescribed Form of Proxy can be obtained free of charge from the Registered Office of the Applicant Demerged Company or at the Office of its Advocates, viz., Ms. D.N. Raval, M/s. Raval & Raval Advocates, 21-23 Laxmi Chambers, Navjivan Press Road, Near Old High Court Railway Crossing, Ahmedabad-380014.

(4) In addition, at least one month before the date of aforesaid Meeting of Secured Creditors of applicant Demerged company to be held as aforesaid, a Notice convening the said Meeting indicating the day, date, place and time aforesaid, together with a copy of the Scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the Secured Creditors of the Applicant Demerged Company at their respective registered or last known addresses either by Registered Post or Speed Post /Airmail or by Courier. The Notice shall be sent to Secured Creditors appearing on the record of the Applicant Demerged Company as on the date of the filing of the Application.

(5) Mr. Sandeep Mehta a Chartered Accountant and, in his absence, Mr. Nilesh Shah a Company Secretary shall be the Chairman of the aforesaid Meeting to be held on 24<sup>th</sup> April, 2017 at 11:00 A.M. and in respect of any adjournment or adjournments thereof.

(7) The Chairman appointed for the aforesaid Meeting shall issue Advertisements and send out the Notices of the Meeting referred to above. The Chairman is free to avail the services of the Applicant Demerged Company or any agency for carrying out the aforesaid directions. The Chairman shall have all powers under the Articles of Association of the Applicant Demerged Company and also under the Rules in relation to the conduct of Meeting, including for deciding any procedural question that may arise at the Meeting or adjournment thereof proposed at the said Meeting, amendment(s) to the aforesaid scheme or resolutions, if any, proposed at the aforesaid Meeting by any person(s) and to ascertain the decision of the sense of the Meeting of the Secured Creditors by ballot or polling paper at the venue of the Meeting of the Secured Creditors.

(8) The quorum for the Meeting of Secured Creditors of the Applicant Demerged Company shall be 2 (two) persons present in person.

(9) Voting by proxy or authorised representative is permitted, provided that the proxy in the prescribed form/authorisation duly signed by the person entitled to attend and vote at the aforesaid Meeting is filed with the Applicant Demerged Company at its Registered Office at Welspun Energy Private Limited, 'Welspun City', Village Veramedi, Taluka Anjar, District-Kutch, Gujarat-370110.

(10) The Chairmen to file an Affidavit not less than 7 (seven) days before the date fixed for holding of the Meeting of the Secured Creditors of the Applicant Demerged Company and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the Meeting have been duly complied with as per Rule 12 of Companies (CAA) Rules, 2016.

his Affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 in Form No. CAA-4 within seven days after conclusion of the Meeting.

(12) The Meeting of the equity shareholders of the Applicant Resulting Company, for the purpose of considering and if thought fit approving with or without modification(s) the proposed Arrangement embodied in the Scheme of Arrangement of Welspun Energy Private Limited and Wirsing Renewables Private Limited, is dispensed with.

(13) The Meeting of the Secured Creditors and Unsecured Creditors of the Applicant Resulting Company is dispensed with.

(14) In compliance of sub-section (5) of Section 230 and Rule 18 of the Companies (CAA) Rules, 2016 the Applicant Demerged Company shall send a notice of Meeting under sub-section (3) of Section 230 read with Rule 6 of the Companies (CAA) Rules, 2016 in Form No. CAA-3 along with a copy of the Arrangement, the Explanator, Statement and the disclosures mentioned under Rule 6 to:

- (i) the Central Government through the Regional Director North Western Region;
- (ii) the Registrar of Companies, Gujarat;
- (iii) the Income-tax authorities;
- (iv) the Reserve Bank of India, and
- (v) the Competition Commission of India


stating the representations, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objections

to the proposed Arrangement. The said Notice shall be sent



at the office of the authority as required by sub-rule (2) of Rule 8 of the Companies (CAA) Rules, 2016.

This Company Application is disposed of accordingly.

  
**BIKKI RAVEENDRA BABU**  
**MEMBER JUDICIAL**

Pronounced by me in open court on this 14<sup>th</sup> day of March, 2017.

RKS/PS