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CSP NO. 685 OF 2017

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

CSP NO. 685 OF 2017

Airavat Industries Private Limited ...First Petitioner / First Transferor Company

AND

Abbie Infraventures Private Limited ...Second Petitioner Company / First Transferee Company/ Second Transferor Company

AND

Satec Solar Energy Private Limited ... Third Petitioner / Third Transferor Company

AND

Satec Envir Engineering (India) Private Limited ... Fourth Petitioner Company/ Second Transferee Company/Resulting Company

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 of the Companies Act 2013;

AND

In the matter of Composite Scheme of Amalgamation and Arrangement between Airavat Industries Private Limited having CIN U26960MH2012PTC235192 (First Transferor Company) and Abbie Infraventures Private Limited having CIN U70109MH2013PTC247622 (First Transferee Company or Second Transferor Company) and Satec Solar Energy Private Limited having CIN U40300MH2012PTC226120 (Third Transferor Company) and Satec Envir Engineering (India) Private Limited having CIN U29197MH1991PTC064661 (Second Transferee Company/Resulting Company) and Trans Polyurethane Private Limited having CIN U24132DD1996PTC002145 (Demerged Company) and their respective Shareholders.

Order delivered on 14<sup>th</sup> December, 2017

Coram:

Hon'ble **B.S.V Prakash Kumar**, Member (J)

Hon'ble **V. Nallasenapathy**, Member (T)

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

**Per: V. Nallasenapathy**, Member (T)

**ORDER**

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the Composite Scheme or to contravene averments made in the Petition.

2. The sanction of the Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Composite Scheme of Amalgamation and Arrangement between Airavat Industries Private Limited and Abbie Infraventures Private Limited and Satec Solar Energy Private Limited and Satec Envir Engineering (India) Private Limited and Trans Polyurethane Private Limited and their respective Shareholders.
3. Learned Counsel for the Petitioner Companies states that the First Transferor Company/ First Petitioner Company is primarily engaged in the business of manufacturing of concrete and EPS Panel, the First Transferee Company / Second Transferor Company / Second Petitioner Company is primarily engaged in the business of construction of buildings, house, apartments etc, the Third Transferor Company or Third Petitioner Company is primarily engaged in the business of generating, purchase, sale, accumulating, distributing and supplying solar and wind energy for its own use or for sale to Governments, State Electricity Boards, Intermediaries in Power Transmission/Distribution, Companies, Industrial Units or to other types of users/ consumers of Energy and the Second Transferee Company /Resulting Company / Fourth Petitioner Company is primarily engaged in the business of dealing in Pre Fabricated Shelters, Towers etc.
4. The proposed Composite Scheme would *inter alia* have the following benefits:
  - (a) Amalgamation would result in reducing the number of entities in the Group and thereby reducing the administrative cost and hassle of maintaining company in the ever-changing regulatory environment.
  - (b) Post arrangement, the non-core assets and liabilities of Trans Polyurethane be demerged into Satec.
  - (c) Post demerger Satec would have the trading operation and manufacturing of pre fabricated Shelters, Towers etc related to infrastructure business.
  - (d) Demerger would enable fund raising for the entities, including raising of capital through strategic or private equity transaction or listing of the companies on a standalone basis.
  - (e) The proposed demerger would enhance the value of all the stake holders including creditors and shareholders at large.
5. The Petitioner Companies have approved the said Composite Scheme by passing the Board Resolutions which are annexed to the Company Scheme Petition.
6. The learned Counsel for the Petitioner Companies further states that, the Petitioner Company have complied with all the directions passed in Company Summons for

Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Company Summons for Directions.

7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the 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 undertaking is accepted.
8. The Regional Director has filed his Report dated 8<sup>th</sup> November, 2017 stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that the modified Composite Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:
  - (a) *The Registered Office of the Demerged Company i.e. M.s Trans Polyurethane Private Limited is situated in the Union Territory of Daman, is outside the jurisdiction of this Hon'ble Tribunal and falls within the jurisdiction of Hon'ble NCLT, Bench at Ahmedabad. Therefore similar approval be obtained by the Demerged Company from Hon'ble NCLT Bench at Ahmedabad, accordingly.*
  - (b) *The Petitioner has not given any justified reason for the first merger of the First Transferor Company into the Second Transferor Company and thereafter, transfer of the Second Transferor Company /First Transferee Company into the Second Transferee Company, whereas the Petitioners can directly transfer the First Transferor Company into the Second Transferee Company. The Petitioners need to clarify the same before the Hon'ble NCLT.*
  - (c) *It is observed from the main objects of the Transferee Company No. 2/Resulting Company No. 2 that it does not contain objectives of the Transferor Company No. 2 & 3 and business of Demerged Undertaking of Demerged Company. Therefore, the Hon'ble NCLT may direct to the said Company to amend its objects as per Section 12 and other applicable provisions of the Companies Act, 2013, accordingly.*

- (d) As regards Para No. 14 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorized Share Capital, subsequent to the Amalgamation **for setting-off fees paid** by the Transferor Company on its Authorized Share Capital in accordance with the provisions of **Section 232(3)(i)** of the Companies Act, 2013.
- (e) The Transferee Company 2/Resulting Company has insufficient Authorized Share Capital by **Rs. 15,29,89,800/-** beyond the combined Authorized Share Capital for implementation of the Scheme to issue the Shareholders of the Transferor Companies and Demerged Company in lieu of consideration, therefore, the said Company shall pay requisite fees as per **Rule 12 of the Companies (Registration Offices and Fees) Rules, 2014** and applicable Stamp duty for further increase in Authorized Share Capital.
- (f) As regards amendment made by the Petitioners in Accounting Treatment by filing **Modified Composite Scheme** for use of **Security Premium Account** for the purpose of amortization of Goodwill, the Petitioners shall not be allowed to use **Security Premium Account** for the above purpose and shall be directed to make compliance of provisions contained in **Para No. 37 & 38 of Accounting Standard-14**.
- (g) The **Transferee Companies** shall pass such Accounting Entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as **AS-14, AS-5** etc.
- (h) In accordance to proviso to Section 232(3) of the Companies Act, 2013, the Petitioners may be directed to file **Certificate from the Company's Auditors** to the effect that the Accounting Treatment as proposed in the Scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013.
- (i) As regards Para No. 21 of the Scheme, in view of provisions of proviso to **Section 66(3)** of the Companies Act, 2013 in respect of reduction of Share Capital of the Second Transferee Company, the Hon'ble Tribunal may kindly direct the Company to submit **Certificate from Auditor** of the Company that "the Accounting Treatment proposed by the company for such reduction is in conformity with the Accounting Standards specified in Section 133 or any other provisions of the Companies Act, 2013."

- (j) *As per the existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the **Income Tax Department** for their comments. The Petitioner Companies served copy of the Scheme along with relevant orders etc. to Income Tax Department. Further, the Office of the Regional Director, Western Region, Mumbai has also issued reminders on 16-10-2017.*
- (k) *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax Return filed by the transferee company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the petitioner company.*
9. In so far as observations made in paragraph IV. (a) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel states that as the Demerged Company in the Composite Scheme of Amalgamations and Arrangements i.e, Trans Polyurethane Pvt. Ltd. is coming under the jurisdiction of NCLT, Ahmedabad , final hearing was on 07/12/2017 and the same is pending for pronouncement of order under CSP 115/2017 of Hon'ble NCLT, Ahmedabad Bench. Therefore similar approval will be obtained by the Demerged Company from Hon'ble NCLT, Ahmedabad Bench.
10. In so far as observations made in paragraph IV. (b) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel states that the Composite Scheme is drafted to be in compliant with the provision of Section 2(1B) of the Income-tax Act, 1961. The Petitioner Company states that 99% of the equity share capital of Airavat/First Transferor Company is held by the Abbie/Second Transferor Company. The Petitioner further states that if the First Transferor Company is merged with the Satec/Second Transferee Company, the Second Transferee Company would not be able to issue any shares to the shareholders of the First Transferor Company, being the First Transferee Company as the First Transferee Company is also getting merged with the Second Transferee Company. The Counsel for the Petitioner states that the merger of the First Transferor Company with the First Transferee Company and the merger of the First Transferee Company with the Second Transferee Company is followed to comply with the requirement of Section 2(1B) of the Income-tax Act, 1961. The above mentioned structuring forming part of the Composite Scheme of

Amalgamations and Arrangement has been unanimously approved by the shareholders of all the petitioner companies.

11. In so far as observations made in paragraph IV. (c) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel states that the Second Transferee Company/Resulting Company undertakes to amend its objects as per Section 12 and other applicable provisions of the Companies Act,2013 accordingly.
12. In so far as observations made in paragraph IV. (d) & (e) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel states that the Second Transferee Company/Resulting Company undertakes to increase its Authorized Capital accordingly as required before issuing shares to the shareholders of First Transferee Company/ Second Transferor Company , Third Transferor Company and Demerged Company and will also pay requisite fees as per Rule 12 of the Companies (Registration Offices and Fees)Rules,2014 and applicable Stamp duty for further increase in Authorized Share Capital and also the Second Transferee Company/ Resulting company shall be allowed in respect of fees payable by it on its Authorized Capital, subsequent to the Amalgamation for setting off fees paid by the Transferor Companies on its Authorized Capital in accordance with the provisions of Section 232(3)(i) of the Companies Act,2013.
13. In so far as observations made in paragraph IV. (f) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel states that Clause 22.4 of the modified Composite Scheme of Amalgamation and Arrangement does not provide for adjustment of Goodwill arising consequent to the amalgamation of the Second Transferor Company with the Second Transferee Company. The modified clause read as under:

*The difference between the fair value of the net asset (i.e. aggregate of the fair value of assets over liabilities) vested upon the Second Transferee Company pursuant to this Scheme and recorded in the books of account of the Second Transferee Company in accordance with this Clause and the difference between the fair value of shares issued by the Second Transferee Company as consideration under Clause 20, after adjusting for the face value of shares cancelled of the Second Transferee Company in case of debit would be accounted as Goodwill and shall be adjusted in accordance with AS 14. Excess of expense over income pursuant to amortization of Goodwill in accordance with AS 14 would be adjusted*

*against the amount standing to the credit of Securities Premium Account, at the option of the Board of Director of the Second Transferee Company;*

The modified Composite Scheme of Amalgamation and Arrangement provide for any excess of expense over income, i.e. the loss in the Profit & Loss Account of the Second Transferee Company would be adjusted against the amount standing to the credit of the Securities Premium Account.

14. The Petitioner Counsel also states that Section 52 of the Companies Act, 2013 provides that the Securities Premium Account may be applied for purpose other than those stated in Section 52(2) as if the Securities Premium Account were paid-up share capital of the company. The Counsel states that Section 66 permits a company to reduce its capital, subject to approval of the Shareholders by a Special Resolution, in any manner. Accordingly, the Securities Premium Account can be applied for any purpose subject to the compliance of Section 52 read with Section 66 of the Companies Act, 2013. The Counsel states that the shareholders of all the Petitioner Companies modified the Composite Scheme of Amalgamation and Arrangement to the extent of Clause 22.4 of the Composite Scheme and was approved unanimously.
15. The Counsel states that the application of the Securities Premium Account is in accordance with the provisions of Section 52 read with Section 66 of the Companies Act, 2013 and Para No. 37 & 38 of Accounting Standard-14 to the extent it relates to treatment of the Goodwill arising on amalgamation. A certificate from the Statutory Auditor of the Second Transferee Company that the proposed utilization of the Securities Premium Account is in accordance with the Accounting Standard and the provisions of the Companies Act, 2013 is placed on record.
16. In so far as observations made in paragraph IV (g) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertakes that the Second Transferee Company / Resulting Company will pass such Accounting Entries which are necessary in connection with the Composite Scheme to comply applicable Accounting Standards such as AS-14, AS 5 etc.
17. In so far as observations made in paragraph IV. (h) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel states that the Petitioner Company have already filed Certificate received from Company's Auditors dated 21<sup>st</sup> November, 2017 to Regional Director, Mumbai office on 22<sup>nd</sup> November, 2017 , to the effect that the Accounting Treatment as proposed in the Composite Scheme and the modified Composite Scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013.

18. In so far as observations made in paragraph IV. (i) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel states that the Petitioner Company have already filed Certificate received from Company's Auditors dated 21<sup>st</sup> November, 2017 to Regional Director, Mumbai office on 22<sup>nd</sup> November, 2017 to the effect that the Accounting Treatment as proposed in the Composite Scheme and the modified Composite Scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013.
19. In so far as observations made in paragraph IV. (j) & (k) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel states that the Petitioner Companies have given notice as required under section 230(5) of the Companies Act, 2013 and rules made thereunder on 11<sup>th</sup> May, 2017. The Petitioner Companies also undertake to comply with all applicable provision of the Income-tax Act, 1961 and all tax issues arising out of the Composite Scheme will be met and answered in accordance with law
20. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 09 to 19 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
21. From the material on record, the modified Composite Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Composite Scheme.
22. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 685 of 2017, filed by the Petitioner Companies are made absolute in terms of prayer clause (a), (b) and (c) of the respective Petitions.
23. The Petitioner Companies to lodge a copy of this order and the modified Composite 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.
24. Petitioner Companies are directed to file a copy of this order along with a copy of the modified Composite Scheme with the concerned Registrar of companies, electronically, along with e-form INC 28 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry.

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25. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Companies to pay cost of Rs. 25,000/- to Official Liquidator , High Court , Bombay as and where applicable. The costs to be paid within four weeks from the date of Order.
26. All authorities concerned to act on a copy of this order along with modified Composite Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

**Sd/-**

V. Nallasenapathy, Member (T)

Date: 14.12.2017

**Sd/-**

B.S.V Prakash Kumar, Member (J)