

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

CSP 612/230-232/NCLT/MB/MAH/2017

CSP 624/230-232/NCLT/MB/MAH/2017

CSP 625/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Cesare Bonetti India Private Limited

.....Petitioner in CSP 624/2017

(1st Transferor Company)

M/s. Vedaang Solar Private Limited

.....Petitioner in CSP 625/2017

(2nd Transferor Company)

M/s. Waaree Industries Private Limited

.....Petitioner in CSP 612/2017

(Transferee Company)

Order delivered on: 29.09.2017

Coram :

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Rajesh Shah a/w. Mr. Ahmed Chunawala i/b. Rajesh Shah & Co., Advocates for the
Petitioners

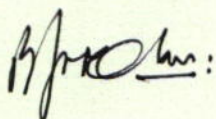
For the Regional Director :

Mr. Ramesh Gholap – Asst. Director (WR).

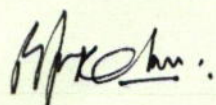
Per : Bhaskara Pantula Mohan, Member (J)

ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation between M/s. Cesare Bonetti India Private Limited (1st Transferor Company) and M/s. Vedaang Solar Private Limited (2nd Transferor Company) with M/s. Waaree Industries Private Limited (Transferee Company).



2. The Transferor Companies and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The first transferor company is in the business of manufacturing of valves and liquid level indicators.
4. The second transferor company is in the business of generation and distribution of power generated through non-conventional / renewable energy and also operation and maintenance of power stations Gas Turbines, Wind Farms Projects.
5. The transferee company is in the business of manufacturing and trading of Industrial, household sanitary and agricultural valves and related products and accessories.
6. As both the transferor companies and the transferee company are under the same management and the shareholding owned and controlled by same hence this merger arrangement will lead to synergies of operations and more particularly the proposed amalgamation will rationalize and optimize the group legal entity structure to ensure greater alignment with the businesses and that it is expected that such consolidation of entities will provide operational synergies which in turn will eliminate inefficiencies and will streamline corporate structure and cash flows and that a single operating entity will result in better centralized management and oversight, cost efficiencies and supporting the group competitive growth and that the proposed amalgamation shall result into elimination of duplication of work, rationalization of expenses, economies of scale and that the amalgamated company will be in a position to generate / raise additional funds and diversify and expand into other profitable ventures with larger resources.
7. The Authorised Share Capital of the First Transferor Company is Rs. 56,00,00,000/- comprising of 4,10,00,000 equity shares of ₹ 10/- each and 1,50,00,000 0% Compulsory Convertible Preference Shares (CCPS) of ₹ 10/- each and the Issued, subscribed and paid up capital is ₹ 54,35,83,020/- comprising of 4,02,18,300 equity shares of ₹ 10/- each and 1,41,40,002 - 0% Compulsory Convertible Preference Shares (CCPS) of ₹ 10/- each fully paid up.
8. The Authorised Share Capital of the Second Transferor Company is ₹ 1,00,000 comprising of 10,000 equity shares of ₹ 10/- each and the Issued, subscribed and



paid up capital is ₹ 1,00,000/- comprising of 10,000 Equity Shares of ₹ 10/- each fully paid up.

9. The Authorised Share Capital of the Transferee Company is ₹ 5,00,00,000 comprising of 50,00,000 equity shares of ₹ 10/- each and the Issued, subscribed and paid up capital is ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 10/- each.

10. The averments made in the petitions and the submissions made by the Learned Representative for the Petitioners are:

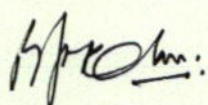
a) The Petitioner Companies had complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.

b) The Regional Director has filed his report on 21st August, 2017, inter alia, stating therein that save and except as stated in paragraph IV of the said report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said report, the Regional Director has stated that:-

“IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT are as under:

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. Regarding clause 9 of the Scheme it is submitted that the surplus if any arising out of the Scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be



adjusted against Profit & Loss Account of the Transferee Company

c. As per clause Definitions 4.2 of the scheme "Appointed Date" means 1st October, 2016 or such other date as may be fixed by the National Company Law Tribunal or any other appropriate authority as may be applicable. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st October, 2016.

d. As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 9th May, 2017 has served a copy Company Scheme Application Nos. 306 to 308 of 2017 along with relevant order etc., further this Directorate has also issued a reminder 04/07/2017 to IT Department.

e. 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 Tribunal 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.

- c) Apropos the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioners submits that, the Petitioner Company undertakes that in addition to compliance of AS-14 corresponding (IND AS-103) accounting treatment, the Transferee Company shall pass such accounting entries which are necessary in connection with the

Apkm.

scheme to comply with other applicable Accounting Standards such as AS-5 / corresponding IND AS-8.

- d) Apropos the observation in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioners submits that, the surplus if any arising out of the Scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against Profit & Loss Account of the Transferee Company.
- e) Apropos the observation in paragraph IV (c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioners submits that, the Appointed Date for the Scheme will be 1st October, 2016.
- f) Apropos the observation in paragraph IV (d) and (e) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioners submits that, the Petitioner Companies undertakes to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
- g) The Official Liquidator has filed his report dated 6th June, 2017 and stating therein that, the affairs of the Transferor Company have been conducted in a proper manner and accordingly the Transferor Company can be dissolved without winding up. Further it is submitted that, the Scheme is not prejudicial to the interest of public or shareholders.
- h) No objector has approached, neither to the Petitioners nor before Tribunal, to oppose this Scheme of Amalgamation.

11. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this Bench, to the Petitioner Companies, **do Order that:**

- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Company be transferred to the Transferee Company and accordingly the same shall pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.

- b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- c) In lieu of Consideration of the Scheme, the Transferee Company shall issue 1 fully paid-up equity shares of ₹ 10/- each credited as fully paid-up for every 150 equity shares of ₹10/- each held by the Equity Shareholder in the Transferor Companies.
- d) Similarly, The Transferee Company shall issue and allot 1 fully paid-up 0% Compulsory Convertible Preference Shares (CCPS) of ₹ 10/- each credited as fully paid-up for every 150 0% Compulsory Convertible Preference Shares of ₹ 10/- each held by the preference shareholder in Transferor Companies.
- e) As regards to 51,25,002 0% Compulsory Convertible Preference Shares (CCPS) of ₹ 10/- each, held by 2nd Transferor Company in 1st Transferor Company, the same shall stand cancelled on the Effective Date and no shares of Transferee Company will be issued or allotted with respect to the compulsorily convertible preference shares held by 2nd Transferor Company in 1st Transferor Company in lieu of consideration for amalgamation.
- f) Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the Order by the Registry, duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- g) The Petitioner Companies to lodge a copy of this Order and the Scheme duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, 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.

- h) Each Petitioner Companies to pay cost of ₹ 25,000/- to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- i) Transferor Companies i.e. Petitioner in CSP No. 624 of 2017 and Petitioner in CSP No. 625 of 2017 each to pay cost of ₹ 25,000/- to the Official Liquidator, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- j) All authorities concerned, to act on a copy of this Order along with Scheme duly Certified by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- k) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
- l) The Scheme is sanctioned and the appointed date of the Scheme is fixed as, 1st October, 2016.

12. Ordered accordingly.

Sd/-

**BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)**

Dated : 29.09.2017

Sd/-

**M. K. SHRAWAT
MEMBER (JUDICIAL)**