

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO. 172 OF 2017

(HIGH COURT TRANSFERRED PETITION)

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 780 OF 2016

BHORUKA POWER HOLDINGS PRIVATE LIMITED

....Petitioner/ the Transferor Company

AND

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO. 173 OF 2017

(HIGH COURT TRANSFERRED PETITION)

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 781 OF 2016

BHORUKA POWER INVESTMENTS INDIA PRIVATE LIMITED

....Petitioner/ the Transferee Company

In the matter of the Companies Act, 2013
(18 of 2013);

AND

In the matter of Sections 230 to 232 of the
Companies Act, 2013 and other relevant
provisions of the Companies Act, 2013

AND

In the matter of Sections 391 to 394 of the
Companies Act, 1956 and other relevant
provisions of the Companies Act, 2013;

AND

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In the matter of Scheme of Amalgamation of BHORUKA POWER HOLDINGS PRIVATE LIMITED, the Transferor Company with BHORUKA POWER INVESTMENTS INDIA PRIVATE LIMITED, the Transferee Company.

Called for hearing

Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s. Rajesh Shah & Co., Advocate for the Petitioner.

Coram: SH. M.K Shrawat Hon'ble Member (J)

Date: 16th June, 2017

MINUTES OF THE ORDER

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Amalgamation of BHORUKA POWER HOLDINGS PRIVATE LIMITED, the Transferor Company with BHORUKA POWER INVESTMENTS INDIA PRIVATE LIMITED, the Transferee Company.
2. The sanction of the Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation of BHORUKA POWER HOLDINGS PRIVATE LIMITED, the Transferor Company with BHORUKA POWER INVESTMENTS INDIA PRIVATE LIMITED, the Transferee Company.

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3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in their Company Summons for Direction Nos. 780 of 2016 and 781 of 2016 of the Hon'ble Bombay High Court.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all the 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.
6. The Learned Counsel for the Petitioners states that the Transferor Company has been carrying on the business of providing services relating to Site Formation & Excavation Works and the Transferee Company has been carrying on the business of acquisition of shares and securities and holds the entire investment in its wholly owned subsidiary company, BHORUKA POWER HOLDINGS PRIVATE LIMITED. As per the opinion of the management the amalgamation will enable the Transferee Company

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to consolidate the businesses and lead to synergies in operation and create a stronger financial base and it would be advantageous to combine the activities and operations of both companies into a single Company for synergistic linkages and the benefit of combined financial resources and this will be reflected in the profitability of the Transferee Company and this Scheme of amalgamation would result in merger and thus consolidation of business of the Transferor Company and the Transferee Company in one entity, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform and that the Amalgamation of the Transferor Company with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business and that the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of both the companies and that the merged entity will also have sufficient funds required for meeting its long term capital needs and that the Scheme of amalgamation will result in cost saving for both the companies as they are capitalizing on each others core competency and resources which is expected to result in stability of operations, cost savings and better profitability levels for the Amalgamated Company and that the amalgamation will simplify shareholding structure and reduce shareholding tiers and will reduce the operating costs.

7. The Regional Director has filed a Report on 3rd day of May, 2017 stating therein, save and except as stated in paragraph IV, it

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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:-

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

1. *In addition to compliance of AS-14 corresponding (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*
2. *As per clause 3. 4 of the Definitions “The Appointed Date” means the 1 April 2016 or such other date as may be approved by the High Court of Judicature or such other competent authority. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April 2016.*
3. *As per the existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to Income Tax Department for their comments. It appears that the company vide letter dated 28th January, 2017 has served a copy of company petition No. 38 and 39 /2017 along with relevant orders etc., further this directorate has also issued a reminder 1.05.2017, to IT Department.*
4. *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.*
5. *That in view of observations made by the Registrar of Companies, Mumbai, Hon’ble Tribunal may kindly direct the company to submit certificate from auditor of the Company in terms of proviso to section 232(3) of the Companies Act, 2013.*
8. So far as the observation in paragraph III (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits

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that the Transferee Company undertakes that in addition to compliance of AS-14 corresponding (Ind AS-103) accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5/corresponding Ind AS-8 etc.

9. As far as the observation in paragraph III (b) of the report of Regional Director is concerned, the learned Counsel for the Petitioner Companies submits that the appointed date mentioned in the scheme is 1st April, 2016.
10. So far as the observation in paragraph IV © and (d) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company 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.
11. As far as the observation in paragraph III (e) of the report of Regional Director is concerned, the learned Counsel for the Petitioner Companies submits that the Petitioner Company have already submitted the certificate from auditor of the Company in terms of the proviso to section 232(3) of the Companies Act, 2013 with the Regional Director vide their letter dated 24th May, 2017.
12. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 11 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.

m/s

13. The Official Liquidator has filed his report on 31st March, 2017 in the Transferred Company Scheme Petition No. 38 of 2017 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Tribunal.
14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
15. Since all the requisite statutory compliances have been fulfilled, Company Petition No. ¹⁷²38 of 2017 is made absolute in terms of prayers clause (a) to (d) and ¹⁷³39 of 2017 is made absolute in terms of prayer clauses (a) to (c). MKS
16. Petitioners are directed to lodge 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 physical copy, as per the relevant provisions of the Companies Act 1956 / 2013.
17. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the order, if any.
18. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition No. 38 of 2017 to pay costs of Rs.25,000/- to the

Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of receipt of the Order.

19. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Date: 16.06.2017

Sd/-
M.K Shrawat Member (J)