

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
TRANSFERRED COMPANY SCHEME PETITION NO. 31 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SCHEME PETITION NO. 234 OF 2016
JSW Power Trading Company Limited ...Petitioner/Demerged Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 32 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SCHEME PETITION NO. 235 OF 2016
JSW Green Energy Limited ...Petitioner/Resulting Company

In the matter of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between JSW Power Trading Company Limited ("Demerged Company") And JSW Green Energy Limited ("Resulting Company") And JSW Energy Limited ("Transferee Company") and their respective shareholders.

CALLED FOR HEARING

Mr. Hemant Sethi i/b M/s. Hemant Sethi & Co., Advocate for the Petitioners in both Petitions.

Mr. Ramesh Gholap, Assistant Director in the office of Regional Director

CORAM: Shri B.S.V. Prakash Kumar, Member (Judicial)

V. Nallasenapathy, Member (Technical)

DATE: 9th March , 2017

MINUTES OF ORDER

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Arrangement between JSW Power

Trading Company Limited ('Demerged Company') and JSW Green Energy Limited ('Resulting Company') and JSW Energy Limited ('Transferee Company') and their Respective Shareholders.

3. Learned Counsel for the Petitioners states that the Demerged Company is engaged in the power trading activities. The Resulting Company has been carrying on the business pertaining to renewable energy.
4. The Petitioner Companies and the Transferee Company have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
5. The Learned Counsel appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the orders passed in their respective Company Summons for Directions Nos. 162 of 2016 and 161 of 2016.
6. The learned Counsel appearing on behalf of the Petitioners has stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Companies undertake 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.
7. The Official Liquidator has filed his report on 23rd November, 2016 in the Company Scheme Petition No. 31 of 2017 *inter alia*, stating therein that the affairs of the Demerged Company have been conducted in a proper manner and that the Demerged Company may be ordered to be dissolved.
8. The Regional Director has filed an Affidavit on 21st February, 2017, *inter alia*, stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of

shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:-

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- a) *In additional 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 Accounting Standards such as AS-5/corresponding IND AS-8 etc.*
 - b) *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 of Transferee Company.*
 - c) *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 returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*
 - d) *Since the Transferee Company has got several Direct/main overseas subsidiaries in Mauritius, South Africa, British Virgin Islands, UK, etc., the FEMA Regulations/RBI Guidelines if any applicable is to be complied with by the Transferee Company.*
 - e) *The Statutory Auditors of M/s. JSW Energy Limited, the Transferee Company in their report dated 27th April 2015 to the financial statements for the financial year 2014-15 have mentioned that “the company has not disclosed the impact of pending litigations on its financial statement. Refer Note 25(1)(a) to the financial statements” also to refer note-16. Company may be directed to inform this Hon'ble Court, the details of pending litigations and its impact on its financial position referred by Statutory Auditors with reference to financial statement. Note 25(1)(a) to the financial statements.”*
 - f) *That in view of para 3(x) above, it is humbly submitted that Sanction of the scheme should not come in the way of any investigating agency including CBI to proceed against M/s. JSW Energy Limited the Transferee Company, in accordance with law. This Hon'ble Court may kindly direct M/s. JSW Energy Limited the Transferee Company to inform the current status of enquiry.”*

9. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV(a) of his Affidavit is concerned, the Transferee Company undertakes that in addition to compliance of AS-14 corresponding accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards.
10. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his Affidavit is concerned, the Transferee Company undertakes to pass such accounting entries as may be necessary in connection with the Scheme.
11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of his Affidavit is concerned, the Petitioner Company submits that the Petitioner Company is bound 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.
12. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of his Affidavit is concerned, the Transferee Company agrees to comply with the provisions of FEMA/ RBI regulations, if any applicable.
13. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (e) of his Affidavit is concerned, the Transferee Company states that as per the Statutory Auditors report dated 27th April 2015 it is clearly stated that the company has disclosed the impact of pending litigations on its financial positions in its financial statements.
14. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (f) of his Affidavit is concerned, the

Transferee Company states that the Regional Director has mentioned about proceedings being pending against the Chairman of LIC of India for investing in IPO's of various companies and JSW Energy Limited is one of them. The Regional Director has stated that the Transferee Company should inform the current status of the inquiry. The Counsel for the Petitioner submits that the Transferee Company by their letter dated 24th February 2017 informed the Regional Director that the Transferee Company has not received any notice from CBI in respect of any inquiry into the matters mentioned by them in their report.

15. Mr Ramesh Gholap, Assistant Director in the office of Regional Director states that they are satisfied with the clarifications and undertakings given by the Petitioner Company. The undertakings given by the Petitioner Company are hereby accepted.

16. 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.

17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 31 of 2017 and 32 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.

18. Petitioners are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to physical copy, within 30 days from the date of issuance of the order by the Registry.

19. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by 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.

20. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and Petitioner Company in Company Scheme Petition No. 31 of 2017 to pay cost of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.
21. All authorities concerned to act on a certified copy of this order along with the Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
22. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

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

Sd/-

V. Nallasenapathy, Member (Technical)