

**In the National Company Law Tribunal
Division Bench, Chennai**

CP/155/CAA/2017

CP/156/CAA/2017

CP/157/CAA/2017

[CA/114&115&116/CAA/2017]

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation of

M/s. Vishwatej Projects Private Limited
(Transferor Company 1)

And

M/s. N.K. Telecom Products Limited
(Transferor Company 2)

With

M/s. Hexa Wind Farm Private Limited
(Transferee Company)

Order delivered on: 09.10.2017

Coram:

Ch. Mohd Sharief Tariq, Member (J)

S. Vijayaraghavan, Member (T)

For the Petitioner: Shri Pawan Jhabakh, Advocate

Shri Abhishek Raman, Advocate

Shri Chandra Prakash Surana, Advocate

ORDER

Per: Ch. Mohd Sharief Tariq, Member (J)

1. Under consideration are three Company Petition Nos. CP/155&156&157/CAA/2017 filed by above mentioned Petitioner Companies under section 230 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules 2016. The purpose of the Company Petition is to obtain sanction of the Scheme of Amalgamation (in short, 'Scheme') by virtue of which M/s. Vishwatej Projects Private Limited (hereinafter referred to as

‘Petitioner/Transferor Company 1’) and M/s. N.K. Telecom Products Limited (hereinafter referred to as ‘Transferor Company 2’) are proposed to be merged, amalgamated and vested with M/s. Hexa Wind Farm Private Limited (hereinafter referred to as ‘Transferee Company’) as a going concern.

2. The details of Share Capitals, shareholders, Secured & Unsecured creditors of the Companies are as under:

Particulars	Authorised Capital	Issued, S&P Capital	Share-holders	Secured Creditors	Unsecured Creditors
Transferor Company 1	Rs. 47,00,00,000	Rs. 46,58,07,680	2	Nil	7
Transferor Company 2	Rs. 10,00,000	Rs. 5,00,000	7	Nil	1
Transferee Company	Rs. 4,10,00,000	Rs. 3,48,10,000	7	2	19

3. Before proceeding with the matter, it is pertinent to mention the background facts of the case which needs determination. The Transferor Company 2 is an Unlisted Public Limited Company whereas the Transferor Company 1 & the Transferee Company are Private Limited Companies. The Transferor Company 1 is engaged in real estate business and Transferor Company 2 is engaged in the business of manufacturing & selling of telecommunication equipments whereas the transferee company is engaged in the business of power generation & sale of electricity. The Board of Directors of the Petitioner Companies vide its resolution dated

31.03.2017 have approved the said scheme of Amalgamation. The Transferor Company 1 & the Transferee Company are having their registered office in Chennai whereas the Transferor Company 2 is having their registered office in Madurai.

4. This Bench vide its order dated 02.08.2017, in CA/114&115&116/CAA/2017 dispensed with the convening & holding of the meeting of the equity shareholders and unsecured creditors of both the transferor companies and the transferee company under the provisions of section 230(9) of the Companies Act, 2013. There are no secured creditors in the transferor companies whereas there are 2 secured creditors in the transferee company and the transferee company has produced the consent affidavits of the said secured creditors. The petitioner companies complied with all the orders passed by this Bench.
5. Shri Pawan Jhabakh, the learned counsel appearing for the Petitioner Companies submitted that the rationale and circumstances that have necessitated the proposed scheme are that the amalgamation will enable consolidation of the business of the three entities into one entity which will facilitate in focused growth, operational efficiency, resulting in more productive utilization of said resources and cost & operational efficiency which would be beneficial to all stakeholders. The learned counsel further submits that no investigation proceedings are pending against the Company under the provisions of the

Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.

6. Learned counsel for the Companies has further submitted that the equity shares of the Petitioner Companies are not listed with the stock exchange, thus the Petitioner Companies do not require any compliance of Listing Agreement or SEBI Rules/regulations.
7. The notices were issued to the statutory authorities viz. Official Liquidator, Regional Director, RoC & Income Tax Authority as per the procedure prescribed. However, there has been no objection to the proposed scheme under reference.
8. The Regional Director, Southern Region (In short, '**RD**') in the Report Affidavit (for brevity, '**Report**') dated 21.09.2017 submitted that as per records of ROC, Chennai, the transferor Companies and transferee company are regular in filing their statutory returns and no investigation is pending against the companies. It is further submitted that clause 10 of the subject scheme provides for the protection of the interest of the employees of the Transferor Companies. However, in Para 10 of the Report, it has been submitted that the transferee company proposes to amend its main objects by inserting 4 more clauses after the sub-clause 5 in its MoA, therefore it may be directed to file the amended MoA with RoC, Chennai. Also, in Para 11 of the Report, it has been submitted that the transferee company proposes to merge the authorised capital of both the transferor companies with its

authorised capital and further proposes to convert part of unissued equity capital into Compulsorily Convertible Preference Shares (in short, 'CCPS') of Rs. 10 each, therefore the transferee company may be directed to file the amended MoA & AoA with RoC, Chennai for records. The RD has decided not to make any objection to the Scheme and submitted that the petition may be disposed of on merits.

9. With regard to above observation made by the RD, the transferee company has produced an affidavit signed by Mr. K U Sivadas wherein it has been stated that the transferee company undertakes to comply with the observation made in Para 10 & 11 of the Report of RD.

10. The Official Liquidator (In short, 'OL') in its report dated 21st September, 2017 submitted that M/s. Siva Anantharaman & Co., Chartered Accountants (**Auditor**) has scrutinized the books and accounts of the Transferor Companies. The said Auditor has broadly reviewed and observed that the Transferor Companies have maintained and written up all the statutory books in accordance with normally accepted accounting principles and fulfilled the requirements of the Companies Act, 2013 and also the affairs of the Transferor companies have not been conducted in a manner prejudicial to the interest of its members, creditors or the public. The OL further submits that under Clause 10.1 of Part- III of the proposed scheme, the interest of all the workmen and employees in the service

of the Transferor Companies are safeguarded. It is also submitted that the transferor company 2 is a wholly-owned subsidiary of the transferor company 1 and its entire issued, subscribed & paid up capital is held by the transferor company 1, therefore there shall be no separate allotment of shares by the transferee company to transferor company 1. The OL submitted that the petition may be decided appropriately.


- 11.** Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any of the creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of Amalgamation will not cast any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed date of the said Scheme is 1st April, 2016.
- 12.** There is no additional requirement for any modification and the said Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under section 230 to 232 of the Companies Act, 2013. Taking into consideration the above facts, the Company Petition is allowed and the scheme of Amalgamation annexed with the petition is hereby sanctioned which shall be binding on the members, creditors and shareholders.

13. While approving the scheme as above, we further clarify that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.
14. The Transferee Company is directed to file the amended MoA & AoA with RoC, Chennai for records.
15. The Companies to the said Scheme or other person interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the implementation of the said Scheme.
16. The Petitioner Companies shall file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.
17. The Transferor Companies shall be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies, Chennai.
18. Upon receiving the certified copy of this order, the RoC, Chennai is directed to place all documents relating to the Transferor Companies with that of the Transferee Company and the files relating to the Transferor Companies shall be consolidated with the files and records of the Transferee Company.

19. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.

20. Accordingly, the Scheme stands sanctioned and CP/155&156&157/CAA/2017 stands disposed of.


(S. Vijayaraghavan)
Member (T)


(Ch. Mohd. Sharief Tariq)
Member (J)

RLS

National Company Law Tribunal, Division Bench, Chennai

In the matter of the Companies Act, 2013

And

In the matter of Scheme of Amalgamation of

M/s. Vishwatej Projects Private Limited

And

M/s. N.K. Telecom Products Limited

With

M/s. Hexa Wind Farm Private Limited

Order on petition

The above named petitioner companies filed the Company Petition Nos. CP/155&156&157/CAA/2017 under section 230 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The purpose of the Company Petitions is to obtain sanction of the Scheme of Amalgamation. All the statutory requirements under law have been fulfilled. The Petitioner Companies complied with all the directions given by this Bench. The Petition came up for hearing before this Tribunal on 27.09.2017.

For the purpose of considering and approving without modification, the Scheme of Amalgamation by virtue of which M/s. Vishwatej Projects Private Limited and M/s. N.K. Telecom Products Limited are proposed to be merged, amalgamated and vested with M/s. Hexa Wind Farm Private Limited as a going concern in terms of the said scheme of amalgamation,

Upon perusal and hearing Shri Pawan Jhabakh, Shri Abhishek Raman & Shri Chandra Prakash Surana, learned counsel for the Petitioner Companies on 27.09.2017,

THIS TRIBUNAL DO ORDER

- 1) That the Scheme of Amalgamation as annexed with the Petition alongwith Schedules is hereby sanctioned.
- 2) That this order of the Scheme of Amalgamation shall be binding on the shareholders and the Secured & Unsecured Creditors of the Transferor Companies and the Transferee Company; and
- 3) That the Appointed Date of the said Scheme is 1st April, 2016; and
- 4) That Transferor Company 1 & the Transferor Company 2 are directed to deposit Rs. 50,000/- each within 15 days of receipt of this Order to the OL for making payment to the Auditor, who has investigated into the affairs of Transferor Companies; and
- 5) The Transferee Company is directed to file the amended MoA & AoA with RoC, Chennai for records; and
- 6) The Transferor Companies shall be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies; and
- 7) The Petitioner Companies do file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order; and
- 8) This Tribunal do further order that the parties to the Scheme of Amalgamation or other persons interested shall be at liberty to apply to this Tribunal for any directions that may be necessary with regard to the working of the said Scheme.

SCHEDULE

The Scheme of Amalgamation as sanctioned by the Tribunal contains the details of the properties, stocks, shares, debentures and other charges in action of the transferor companies.

Dated this 10th day of October, 2017, NCLT, DB, Chennai.

G. Karan
Registrar/Dy. Registrar

DEPUTY REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
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