

**In the National Company Law Tribunal  
Single bench, Chennai**

**TP(HC)/16&17/CAA/2017**  
[TCA(HC)/5&6&7/CAA/2017]

**In the matter of Scheme of Amalgamation of**

M/s. NSL Power Equipment Trading Private Limited  
(Transferor Company)

**With**

M/s. ReGen Powertech Private Limited  
(Transferee Company)

Order delivered on: 14.07.2017

Coram:

Ch. Mohd Sharief Tariq, members (J)  
S. Vijayaraghawan, member (T)

For Petitioners: Shri P.H. Arvinth Pandian, Sr. Advocate

**ORDER**

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

1. Under consideration are the Company Applications filed jointly by the Petitioner Companies before the Hon'ble High Court of Madras and transferred to this Tribunal pursuant to the Companies (Transfer of Pending Proceedings) Rules, 2016 & renumbered as TP (HC)/16&17/CAA/2017. The purpose of the Company Petitions is to obtain sanction of the Scheme of Amalgamation (in short, 'Scheme') between M/s. NSL Power Equipment Trading Private Limited (hereinafter referred to as 'Transferor Company') and M/s. ReGen Powertech Private Limited (hereinafter referred to as 'Transferee Company') and their creditors and shareholders in terms of the said scheme of amalgamation.

2. The Share Capital of the Companies as on 31<sup>st</sup> March, 2015 is as under:

Types of Share Capital	Authorized Capital	Issued, Subscribed & Paid up capital
Transferor Company	1,30,00,000	1,28,61,700
Transferee Company	30,00,00,000	24,87,59,460

3. At the outset, it is necessary to know the details of the scheme which needs determination. Both the Companies are Private Limited Companies having its registered office at KRM Plaza, North Tower, 7<sup>th</sup> Floor, 2, Harrington Road, Chetpet, Chennai- 600032 and the Board of Directors of both the companies vide their resolutions dated 27<sup>th</sup> May, 2011 have approved the said scheme of Amalgamation. The Transferor Company is engaged in the business of trading, generating, accumulating distributing, leasing and renting of electricity, steam, power, solar energy, geo-thermal energy and wind energy whereas the Transferee Company is engaged in the business of development and procurement of technology for sourcing and supply of wind energy generators, development and establishment of wind power projects and power evacuation facilities on a worldwide basis.
4. There are 5 equity shareholders, 3 Unsecured Creditors including the Transferee Company and Nil Secured Creditors in the Transferor Company whereas there are 3 equity shareholders, 3 Compulsorily Convertible Preference shareholders, 8 secured creditors and 1221 Unsecured Creditors in the Transferee Company. This Bench vide its order dated 15.03.2017 in TP(HC)/CA/5/2017 dispensed with the convening and holding of the meeting of the equity shareholders as well as Unsecured Creditors of the Transferor Company on the basis of production of NOC by way of consent

affidavits. Further, this Bench vide its order dated 15.03.2017 in TP(HC)/CA/6&7/2017 dispensed with the convening and holding of the meeting of the equity shareholders, Compulsorily Convertible Preference shareholders and Secured Creditors of the Transferee Company on the basis of production of NOC by way of consent affidavits. Both the companies have furnished auditors' certificate from the chartered accountants individually to this effect.

5. Shri Arvinth Pandian, learned Senior Counsel appearing for the Petitioner Companies submitted that the rational, reasons and circumstances that have necessitated the proposed scheme are that the amalgamation will enable consolidation of the business of the two 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. Further, it would help in the creation of a platform for future business activities and enable smoother implementation of policy changes at higher level from a management perspective including reducing administrative costs and garner greater visibility in the market. The learned counsel further submits that no investigation proceedings are pending against the Companies under section 235 to 251 or any other provisions of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.
6. Learned Counsel for the Companies further submitted that both the companies are Private Limited companies and equity shares of the companies are not listed with any stock exchange, thus the Companies do



not require compliance with the requirements of the Listing Agreement or any SEBI Rules/regulations.

7. To dispose of this petition as per the provisions of the Companies Act, 2013, this Bench issued notices issued to the statutory authorities as per the procedure prescribed. However, there were no objection to the scheme under reference except few observations made by the Regional Director, Southern Region (In short, '**RD**') and Official Liquidator (In short, '**OL**').
8. The RD in its Report Affidavit (for brevity, '**Report**') dated 12.06.2017 submitted that as per records of ROC, Chennai, the Transferor Company is regular in filing its statutory returns and no investigation is pending against the company, therefore, RD decided not to make any objection to the Scheme and submitted that it has been decided not to make any objection to the scheme except for the observation made in para 9 and 10 regarding amendment of the scheme in respect of enhanced authorized capital and enhanced share exchange ratio. In Para 9 of the Report of RD, it has been submitted that clause 6.1 and 6.2 of the scheme provides for merging of the authorized capital of the transferor company with that of the transferee company. Subsequent to the filing of the scheme, the transferee company has enhanced its authorized capital from Rs. 30 crores to Rs. 254 crores. The merged and enhanced authorized capital of the transferee company after amalgamation should be Rs. 255.3 crores and the transferee company may also be directed to file the amended MoA and AoA with Roc, Chennai for his records. In Para 10 of the RD Report, it is further submitted that in clause 7.1 of the scheme, it is proposed to issue 11.4798 equity shares of Rs. 10 each of the transferee company for every one share of Rs. 10 each

held in the transferor company. During the pendency of the scheme of amalgamation, the transferee company has made a bonus issue of 9 equity shares of Rs. 10 each for every 1 equity share of Rs. 10 each held. As the bonus issue happened during the pendency of the scheme and to ensure that the shareholders of the transferor company is not prejudicially affected, the transferee company has decided in its board meeting dated 15.05.2017 that the transferee company will now issue 114.7983 equity shares of Rs. 10 each for every 1 equity share of Rs. 10 each held in the transferor company. Therefore, the RD submitted that before sanctioning the scheme of amalgamation, this Hon'ble Tribunal may consider the issue and direct the company to implement the Board resolution proposal dated 15.05.2017 and also direct to file the amended version of the scheme of amalgamation along with the order of this Hon'ble tribunal approving the said scheme.

9. With regard to the observation made by the RD in his Report in relation to change of objects, the learned counsel submitted that that the company undertakes to comply with the provisions of the Act, 2013 and rules framed thereunder.
10. The OL in its report dated 9<sup>th</sup> June, 2017 submitted that M/s. B.P. Jian & Co., Chartered Accountants (in short, '**Auditor**') appointed on the order of this Bench, have scrutinized the books and accounts of the Transferor Company. The Auditor observed that the Transferor Company has maintained and written up all the statutory books in accordance with normally accepted accounting principle and policies in accordance with the requirements of the Companies Act, 2013 and also

the affairs of the company have not been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

11. It is also submitted that under clause 12 of Part- B of the proposed scheme, the interest of all the employees in the service of the Transferor Company is safeguarded. As per Clause 7.1 of Part B of the said scheme, the Transferor Company shall, without any further application, act or deed, issue and allot to every entitled member of the Transferor Company, holding fully paid up equity shares in the transferor company and whose names appear in the Register of members of the transferor company, on the Record Date in the aggregate 1,47,65,014 equity shares of the face value of Rs. 10/- each of the transferee company credited as fully paid-up in respect of the aggregate of 12,86,170 equity shares of face value of Rs. 10/- each fully paid held by them in transferor company at a ratio of 11 (approx.. 11.4798308155) equity shares in the transferee company for every one equity share held in the transferor company. M/s. ABCV & Co., the valuers vide their report dated 24.02.2017 have recommended the exchange ration of 1:11.48 of the transferor company and the transferee company and the Auditor appointed by the OL has not made any observations as regards to the said share exchange ratio.

12. In para 6 of the OL Report, it is further submitted that the Auditor appointed by the OL have audited accounts of the Transferor Company for the years from 01.04.2008 to 31.03.2011 and the accounts from 01.04.2011 to till the date have not been taken into their scope since the Appointed Date of the scheme is 1<sup>st</sup> April 2011, hence the transaction



made by the Transferor Company after 01.04.2011 is not in their scrutiny. As per Para 9 of OL Report, it is submitted that the Appointed Date is 01.04.2011 and the subject Transferor Company has filed Financial Statement i.e. Balance Sheets for the financial year ended 2011-12 to 2015-16 with the RoC, Chennai as per available records and documents. Since, the Transferor Company has already filed its Balance Sheet after duly audited, the appointed date for the subject scheme should be 01.04.2016, but not 01.04.2011, so as to give a true and fair view of the financial position of the Transferor Company. Therefore, the OL submitted that the Transferor Company may be directed to amend/alter the Appointed Date from 01.04.2011 to 01.04.2016 for the benefit of the stakeholders and to give a clear picture about financial position.

13. With regard to the observations made by the OL, learned Senior Counsel submitted that the Transferor Company undertakes to amend/alter the Appointed Date from 01.04.2011 to 01.04.2016 for the benefit of the stakeholders and to give a clear picture about financial position. He also produced on record two Affidavits of Madhusudan Khemka and R. Sundaresh on behalf of the Transferor Company and the Transferee Company respectively in relation to the clubbing of Authorized Capital of the Transferor Company with that of the Transferee Company. In the said affidavits, both the companies undertakes to accept the submissions made by the OL and further submitted that the Post-merger, the authorised capital of the Transferee Company would be Rs.

255,30,00,000/- in terms of para 6.0 of the scheme. In Affidavit, it is further submitted that the Petitioner Companies accept the suggestion of the OL and hence the Share Exchange Ratio factoring the allotment of bonus shares would now be '114.798308155' equity shares of the Transferee Company of Rs. 10 each/- for every 1 equity share of the Transferor Company of Rs. 10 each.

**14.** 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 Arrangement will not cost 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 shall be 1<sup>st</sup> April, 2016 as suggested by the RD and agreed by the counsel for the Petitioner companies.


**15.** There does not require any other modification to the scheme except mentioned as above. The said Scheme of Amalgamation appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. All the statutory compliances have been made under section 391 of the Companies Act, 1956. Taking into consideration all the above, the Company Petition is allowed and the scheme of Amalgamation annexed with the petition is hereby sanctioned which shall be binding on all the members, creditors and shareholders.

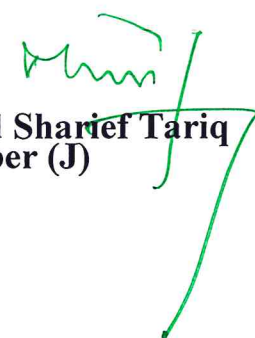
**16.** While approving the scheme as above, we further clarify that this order will not be construed as an order granting exemption from payment of stamp



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. The Transferee Company is also directed to comply with the provisions of the Act, 2013 as has been suggested by the RD in its report dated 3<sup>rd</sup> March 2017 for change of its main object as well as ancillary objects.

17. The Company 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 working of the said Scheme. The Petitioner Company do file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.
18. 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 as has been notified on 14<sup>th</sup> December, 2016.
19. Accordingly, the Scheme stands sanctioned.

  
**S. Vijayaraghawan**  
Member (T)

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