

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH  
AT HYDERABAD

C.P.No.334/2016  
[CP(TCAA)No.30/HDB/2017]

&

C.P.No.335/2016  
[CP(TCAA)No.31/HDB/2017]

Under Section 391/394 of the Companies Act, 1956

In the matter of

Giant Power Industries Private Limited  
H.No.503, BNR Towers, Near Jyothi Theatre,  
Jyothi Nagar, Ramachandra Puram,  
Hyderabad -- 502 032.

.... Petitioner/Transferor Company

APT Power Engineering Limited  
No.25-35/10/2, Mumbai Highway, Mallikarjuna Nagar,  
Ramachandra Puram,  
Hyderabad -- 502 032.

.... Petitioner/Transferee Company

Vs.

1. The Official Liquidator,  
Corporate Bhawan, 1<sup>st</sup> Floor,  
Bandlaguda, Nagole,  
Hyderabad.
2. The Regional Director (SER),  
Ministry of Corporate Affairs,  
Corporate Bhawan, 3<sup>rd</sup> Floor,  
Bandlaguda, Nagole,  
Hyderabad.

CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL



... Respondents.

Order delivered on: 10.10.2017

**CORAM:**

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)  
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

For Petitioners : Mr. K. Phani Kumar, Advocate

For Respondents : Mr. J. Srinath Reddy, Advocate for Official Liquidator.

: Mr. B. Appa Rao, Central Government Standing  
Counsel for Regional Director.

Per: **Ravikumar Duraisamy, Member (Technical)**

**ORDER**

1. The Company Petitions bearing CP.No.334/2016 [CP(TCAA)No.30/HDB/2017] and CP.No.335/2016 [CP(TCAA)No.31/HDB/2017] were filed by Giant Power Industries Private Limited (Petitioner/Transferor Company) and APT Power Engineering Limited (Petitioner/Transferee Company) respectively before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh under Sections 391 & 394 of the Companies Act 1956, by seeking the Hon'ble High Court to sanction scheme of Merger/Amalgamation in question (enclosed to the Company Petition), so as to be binding on all the Shareholders and Creditors of the Petitioner Companies.
2. As per Gazette Notification GSR 1134(I) dated 14<sup>th</sup> December, 2016 issued by the Ministry of Corporate Affairs with effective date of 15<sup>th</sup> December, 2016 and in terms of Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 & Rule 23A of NCLT Rules R/w Rule 3 of Companies (Transfer of Pending Proceedings) Rules, 2016, jurisdiction is conferred on this Tribunal in respect of subject cases and thus pending cases also transferred from the Hon'ble High Court to the NCLT. Accordingly, the Hon'ble High Court transferred these cases to this Bench. On transfer, the cases were listed before this Bench on 01.02.2017, 17.02.2017, 03.03.2017, 20.06.2017, 23.06.2017; 27.06.2017; 30.06.2017; 07.07.2017; 18.07.2017 and finally posted on 01.08.2017 for certain clarifications i.e. exchange ratio of shares consequent to the sanction of Scheme, Appointed Date and Latest Balance Sheet etc.
3. Heard, Mr. K. Phani Kumar, Learned Counsel for the Petitioner Companies, Mr. J. Srinath Reddy, Learned Counsel for the Official Liquidator, Mr. B. Appa Rao, Central Government Standing Counsel for RD and perused all pleadings along with material papers filed in its support.



4. Brief facts of case which are relevant to the issue in question, are submitted as under:

a. Initially, the Petitioner/Transferor Company has filed Company Application No.493 of 2016 before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh for dispensing with the convening of meeting of Shareholders and Creditors of the transferor Company for consideration of the proposed Scheme of Merger/Amalgamation of Petitioner/Transferor Company with APT Power Engineering Limited (Transferee Company) as detailed in the Scheme.

b. The said Company Application No.493 of 2016 was disposed of by Hon'ble High Court vide its Order dated 12.04.2016 dispensing with the conducting of meeting of the Shareholders and Creditors of Petitioner/Transferor Company as the Petitioner/Transferor Company has already taken consent from the stakeholders. After fulfilling requisite conditions for sanction of scheme in question, the present Petition is filed before this Tribunal for sanction of the scheme.

c. Similarly, the Petitioner/Transferee Company has filed Company Application No.494 of 2016 before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh for dispensing with the convening of meeting of shareholders of the transferee Company for consideration of the proposed Scheme of Merger/Amalgamation of Petitioner/Transferee Company with Giant Power Industries Private Limited (Transferor Company) as detailed in the Scheme.

d. The said Company Application No.494 of 2016 was disposed of by Hon'ble High Court vide its Order dated 18.08.2016 stating that this Court by order dated 12.04.2016 appointed Shri T. Krishna Kumar, Advocate as a Chair Person to convene the meeting of the Shareholders of the Petitioner/Transferee Company for consideration of the proposed Scheme of Merger/Amalgamation and the Chair Person filed his report on 28.07.2016 and the same was taken on record. It is further stated that all the Creditors have filed their consent letters expressing their no objection for the scheme of





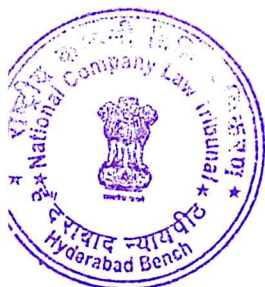
merger. After fulfilling requisite conditions for sanction of scheme in question, the present Petition is filed before this Tribunal for sanction of the scheme.

**e. Details of the Petitioner/Transferor Company**

The Petitioner/Transferor Company i.e. Giant Power Industries Private Limited is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 22.04.2010 vide Corporate Identification No.U40108AP2010PTC068053. The Registered Office of the Company is situated at Flat No.503, BNR Towers, Near Jyothi Theatre, Jyothi Nagar, Ramachandra Puram, Hyderabad - 502 032.

The main objects of the Transferor Company as per its Memorandum of Association, in brief are to carry on in India or elsewhere the business of manufacture, acquire, own, import, market, develop, sell, process, buy, fabricate, export, trade, alter, improve and otherwise deal in all types of Plant, machinery and equipments used in all types of power generation, transmission and distribution plants, to manufacture power gensets and generators of all kinds, uninterrupted power systems, control panels, panel boards and batteries used in uninterrupted power systems and export all types of technical know-how and technology in the fields of power, electricity, fuel and energy and other related fields and deal in the related equipments, machinery and plant as manufacturers, buyers, sellers, exporters and importers, etc.

The Authorized Share Capital of the Petitioner/Transferor Company as on 31.03.2015 is Rs.2,60,00,000/- divided into 26,00,000 Equity Shares of Rs.10/- each. Issued, Subscribed and Paid-up Share Capital of the Petitioner/Transferor Company as on 31.03.2015 is Rs.2,59,62,500/- divided into 25,96,250 Equity Shares of Rs.10/- each.



**f. Details of the Petitioner/Transferee Company**

The Petitioner/Transferee Company i.e. APT Power Engineering Limited is a Private Limited Company originally incorporated under the provisions of the Companies Act, 1956 on 04.01.2007 under the name APT Power EPC Limited. Subsequently, on 02.01.2008, the name of the Company was changed to APT Power Engineering Limited and a fresh certificate of incorporation consequent upon change of Name on conversion to Public Limited Company was given on 19.03.2009. The Registered Office of the Company is situated at 25-35/10/2, Mumbai Highway, Mallikarjuna Nagar, Ramachandra Puram, Hyderabad -- 502 032.

The main objects of the Petitioner/Transferee Company as per its Memorandum of Association, in brief are to carry on the business of turnkey execution of power plants, EPC (Erection, procurement and commissioning) contracts of power plants, power plant related services in India and abroad, Field maintenances of Power Projects and carrying on Repairs, Renovation, Retrofitting, Planting, Erecting Power Equipments, Plants and Machineries and providing auxiliary services to organizations into power generating distribution, transmission industry, etc.

The Authorized Share Capital of the Petitioner/Transferee Company as on 31.03.2015, is Rs.20,00,00,000/- divided into 2,00,00,000 Equity Shares of Rs.10/- each. The Issued, subscribed & Paid up capital of the company is Rs.15,90,53,080/- divided into 1,59,05,308 equity shares of Rs.10/- each.

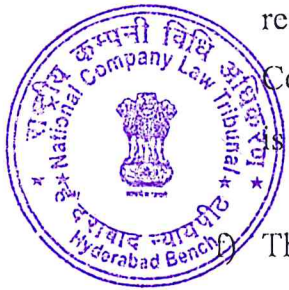
5. The object of Scheme of Merger/Amalgamation is as follows:

- a) The Scheme of Merger/Amalgamation upon implementation will result in the Transferee Company and Transferor Company to consolidate, integrate and run business to supply and deal in all types of Plant, Machinery and Equipment used in all types of power generation, transmission and distribution plants etc. together with EPC contracts and maintenance of power plants as a one place for all power plant requirements i.e. to pursue growth strategies, in the best interests of all concerned.





- b) The Scheme will be economical scale of operation if all activities are merged since common activities like marketing, purchase, Accounts, Design etc operations can be combined.
- c) The Scheme will be beneficial as both the companies are situated in Hyderabad and Directors and Promoters are Common and staying in Hyderabad.
- d) The business of Transferor Company and Transferee Company can be conveniently and advantageously combined together as dealing in all kinds of Plant and machinery, spare parts, accessories etc used in generating power, distribution, transmission and undertaking EPC contracts and manufacturing of turbines etc are part of one business i.e. this will result in vertical integration and consequent saving of cost.
- e) The Scheme will result in economics of Scale including reduction in over head expenses, efficient and more productive utilization of labour and other resources and in general the business of Transferee Company and Transferor Company can be carried on more economically and profitably if the scheme is implemented.
- f) The Scheme will enable Transferee Company and Transferor Company to rationalize and stream line their finance and management and will equip them to face the increasing competition in the global market.
- g) The Scheme will provide the Transferor Company and Transferee Company, enhanced flexibility in their business operations, Formulation of growth strategies and implementation of growth plans.
- h) The Proposed Scheme will create enhanced value for shareholders, Employees and allow a focused strategy in operations, which would be in the best interests of the Transferor Company and Transferee Company and its shareholders, creditors and all persons connected with the Transferor Company.



6. The following are brief terms of Scheme of Amalgamation:

- a) The Appointed Date for the purpose of this Scheme has been revised and proposed as 01.04.2016.
- b) Upon the Scheme becoming effective, the entire business and whole of the undertaking(s), property and liabilities of the Transferor Company shall be transferred to and vested in and/or deemed to be transferred to and vested in the Transferee Company, so as to become the properties and liabilities of the Transferee Company.
- c) On the scheme sanctioned, the Petitioner/Transferee Company shall issue and allot to the equity shareholders of the Petitioner/Transferor Company whose name appears in the Register of Members of the Petitioner/Transferor Company as on the record date, equity shares in its share capital at par in the following proportion:-
  - i) In respect of 25,90,000 existing equity shares held by Transferor Company in the Share Capital of the Transferee Company: 25,90,000 fully paid up equity shares of Rs.10/- each to the shareholders of Transferor Company in the ratio of their existing shareholding.
  - ii) In respect of 6250 Equity Shares held by the shareholders in Transferor Company: 6250 fully paid up equity shares of Rs.10/- each to the shareholders of Transferor Company by the Transferee Company in the exchange ratio of 1:1 i.e. for every 1 (one) share of Transferor Company 1 (one) share of the Transferee Company will be allotted to the shareholders of the Transferor Company.
- d) On the scheme sanctioned, the investments in the equity share capital of the Transferee Company as appearing in the books of accounts of the Transferor Company shall stand cancelled and accordingly, the issued and paid up equity share capital of the Transferee Company shall stand reduced to the extent of the face value of the equity shares held by Transferor Company in the Transferee Company.
- e) On the scheme becoming effective, all staff, workmen and employees of the Transferor Company in service on the Effective Date shall be deemed to have become staff, workmen and employee of Transferee Company with effect from the Appointed Date without any break, discontinuance or interruption in





their service and on the basis of continuity of service, and the terms and conditions of their employment with Transferee Company shall not be less favourable than those applicable to them with reference to the Transferor Company on the Effective Date.

f) On the scheme becoming effective, the Transferor Company shall without any further act or deed stand dissolved without being wound up.

7. The Board of Directors of the Petitioner Companies at their respective meetings held on 20.02.2016 approved the Scheme in question.

8. It is stated that the Hon'ble High Court by Orders dated 12.04.2016 passed in C.A.No.493/2016 dispensed with convening the meeting of the Shareholders and Creditors of the Petitioner/Transferor Company. Further, the Hon'ble High Court by Orders dated 18.08.2016 passed in C.A.No.494/2016 appointed a Chair Person to conduct the meeting of the Shareholders of the Petitioner/Transferee Company and the report submitted by the Chair Person was taken on record. It is further stated that all the Creditor have filed their consent letters expressing their no objection for the Scheme of Merger/Amalgamation.



The Learned Counsel filed an Affidavit dated 14.02.2017 stating that as per the directions of the Hon'ble High Court dated 30.09.2016, the Petitioner Companies got published in Newspaper advertisement of the "Notice of Petition" in English Daily (Business Standard) and Telugu Daily (Andhra Bhoomi) on 20.10.2016 and filed a proof of the same before the Hon'ble High Court on 16.11.2016. The Learned Counsel further submitted that they have not received any complaints/objections against the proposed Scheme of Merger/Amalgamation.

10. The Regional Director (SER), Hyderabad has filed a common affidavit dated 29.11.2016 in C.P.Nos.334/2016 and 335/2016, by inter-alia stating that the Petitioner Companies are regular in filing statutory returns, and no complaints, no investigations and no inspections are pending against it.

He has further stated that in pursuant to the General Circular No.1/2014 dated 15.01.2014 issued by the Ministry of Corporate Affairs, New Delhi, wherein



comments of Income Tax Department is required to be sought under Section 391 or 394 of the Companies Act, 1956, a letter dated 05.01.2017 was issued to the Income Tax Department for submitting their comments/objections, if any, within 15 days. However, no comment/objection of the Income Tax Department were received in response to the said notice till date.

11. The Official Liquidator vide his Report inter-alia stated that the affairs of the Company appears to have not been conducted in a manner prejudicial to the interests of the members or to public interest.

12. We have perused all the pleadings, Report of the Regional Director (SER), Official Liquidator and also relevant provisions of Companies Act. We are convinced that the Petitioner Companies have complied with statutory requirements as required under Section 391 & 394 and other relevant provisions of Companies Act, 1956 as detailed supra. The Board of Directors of the Petitioner Companies at their respective meetings held on 20.02.2016 have duly considered the Scheme of Amalgamation in question and it was approved. It is to be mentioned herein that the Scheme in question is not opposed by any authorities and the Petitioner Companies are admittedly following all rules/regulations of Companies Act as stated by Regional Director. Hence, we are of considered view that the Company Petitions deserved to be allowed as prayed for.

13. In the result, the C.P.No.334/2016 [CP(TCAA)No.30/IIDB/2017] and C.P.No.335/2016 [CP(TCAA)No.31/IIDB/2017] are allowed with the following directions:-

- a. Sanctioned the Scheme of Merger/Amalgamation as proposed (which is enclosed along with material papers with the Petition) and fixed Appointed Date as 01.04.2016, and it is ordered that the same is binding on all the Equity Shareholders/Members, Creditors (Secured & Unsecured), and employees of both the Petitioner Companies.



- b. Both the Petitioner Companies to depict the pre and post issue shareholding pattern after Scheme of Merger/Amalgamation as per the share exchange ratio.
- c. The Petitioner Companies are directed to take appropriate steps to submit the said Scheme to Registrar of Companies within 30 days from the date of receipt of Copy of this order.
- d. The Petitioner Companies are directed to issue newspaper publication with respect to approval of Scheme of Merger/Amalgamation, in the same newspapers in which previous publications were issued in order to ensure transparency/dissemination of complete information to all concerned parties about the approval granted by the Tribunal for the Scheme as proposed.
- e. The Petitioner Companies are further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Merger/Amalgamation under the Provisions of the Act.
- f. Liberty is granted to any party/parties, who are aggrieved by this order, to seek any direction(s) by way of filing miscellaneous application in the present CPs.
- g. The Petitioner Companies are directed to strictly adhere to the above directions and applicable provisions of the Companies Act.

*Sd/-*  
RAVIKUMAR DURAISAMY  
MEMBER (TECHNICAL)

*Sd/-*  
RAJESWARA RAO VITTANALA  
MEMBER (JUDICIAL)

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*H*  
For Dy. Regr./Asst. Regr./Court Officer/  
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति  
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केस संख्या  
CASE NUMBER: P.No. 334/2016(CP(TAA)) NO 5  
निर्णय का तारीख 10/10/2017  
DATE OF JUDGEMENT...10..10..2017  
प्रति तैयार किया गया तारीख  
COPY MADE READY ON...10..10..2017