

BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH
AT HYDERABAD

C.P.No.353/2016
[CP(TCAA)No.33/HDB/2017]

Date of order: 09.05.2017

HBL Power Systems Limited

Having its registered office at 8-2-601, Road No.10,
Banjara Hills,
Hyderabad --- 500 034.

.... Petitioner/Transferee Company

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

Parties Present:

Counsel for the Petitioner : Mr. V.S. Raju & Mr. V.B. Raju
Counsel for ROC & RD : Mr. B. Appa Rao, CGSC
Counsel for Shareholder : Mr. A. Mahadev with Mr. Badri Vishal Bajaj

Coram:

HON'BLE Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDICIAL)

ORDER

(As per Rajeswara Rao Vittanala, Member (Judicial))



1. The Company Petition bearing C.P.No.353/2016 [CP(TCAA)No.33/HDB/2017] was filed by M/s IIBL Power Systems Limited (Petitioner/Transferee Company) 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 to sanction and confirm Scheme of Arrangement and Amalgamation in question (enclosed as Annexure A5 to the Petition) so as to be binding on all Members, Creditors and employees of the Petitioner/Transferee Company, etc.
2. A Gazette Notification GSR 1134(E) dated 14th December, 2016 is issued by the Ministry of Corporate Affairs with effective date of 15th 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 this case to this Bench. On transfer, the case is listed before this Bench on 01.02.2017, 20.02.2017, 28.02.2017, 16.03.2017, 31.03.2017, 17.04.2017, 26.04.2017, 08.05.2017 and finally on 09.05.2017.

3. Heard Mr. V.S. Raju and V.B. Raju, Learned Counsel for the Petitioner, Mr. B. Appa Rao, Learned Counsel for ROC & RD and Mr. A. Mahadev, Learned Counsel for the Shareholder i.e. Mr. Badri Vishal Bajaj (party in person) and perused all pleadings along with material papers filed in their support.
4. Brief facts of case, which are relevant to the issue in question, are submitted as under:
 - a) Initially, the Petitioner/Transferee Company has filed Company Application bearing No.1111 of 2016 before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh for convening meetings of equity shareholders, unsecured/trade creditors and secured creditors. The Hon'ble High Court by its order dated 11.08.2016 passed in C.A.No.1111 of 2016 directed the Petitioner Company to hold meetings of the Equity Shareholders, Unsecured/Trade Creditors and Secured Creditors on 17.09.2016 at KLN Prasad Auditorium, FTAPCCI Marg, Redhills, Lakdikapul, Hyderabad for the purpose of consideration of the Scheme of Arrangement and Amalgamation of the Petitioner/Transferee Company with M/s Beaver Engineering & Holdings Private Limited (Transferor Company) as detailed in the Scheme enclosed to the Company Petition. After fulfilling requisite conditions for sanction of scheme in question, the present petition is filed before the Hon'ble High Court for sanction of the scheme.
 - b) M/s HBL Power Systems Limited (Petitioner/Transferee Company) was originally incorporated as a Public Limited Company under the name and style of Sab Nife Power Systems Limited on 29.08.1986. Later on, the Company had changes its name to HBL Nife Power Systems



Limited and a fresh certificate of incorporation consequent to change of name was issued by the ROC on 26.04.2000. Again the Company had changed its name to present name i.e. IIBL Power Systems Limited and a fresh certificate of incorporation consequent to change of name was issued by ROC on 20.10.2006. The Registered Office of the Company is situated at 8-2-601, Road No.10, Banjara Hills, Hyderabad -- 500 034. The objects of the Transferee Company in brief, are to manufacture, assemble, purchase, import, export and otherwise deal in India or abroad in all types of cells, batteries, energy storage devices, conversion and generation devices, appliances, gadgets, equipments and products, including power packs, power suppliers, generators, solar panels, chargers and sub-assemblies, components, parts and accessories thereof, etc.

- c) The authorised, issued, subscribed and paid-up share capital of the Transferee Company as on 31.03.2016 was as under:

| | |
|---|---------------------|
| Authorised Share Capital | Amount (Rs.) |
| 30,00,00,000 Equity Shares of Rs.10 each | 30,00,00,000 |
| Issued, Subscribed and Paid-up Capital | |
| 25,30,00,000 Equity Shares of Rs.1 each | 25,30,00,000 |

- d) The Transferor Company was originally incorporated as a Private Limited Company under the provisions of the Companies Act, 1956 on 30.03.1992 under the name and style of Beaver Engineering Private Limited. Later it became a deemed Public Limited Company w.e.f. 01.07.1992. Subsequently, the Company had changed its name to Beaver Engineering & Holdings Limited and a fresh certificate of incorporation consequent on change of name was issued by ROC on 24.11.2010. Thereafter, the Company converted itself into a Private Limited Company and a fresh certificate of incorporation was issued by the ROC on 29.08.2013 and its Corporate Identification Number is U21011TG1992PTC014050. The Registered Office of the Company is situated at 8-2-601, Road No.10, Banjara Hills, Hyderabad -- 500 034. The objects of the Petitioner/Transferor Company in brief are to convert the firm now being carried in Partnership under the name and type of M/s Beaver Engineering situated at 8-2-601, Road No.10, Banjara Hills, Hyderabad -- 500 034 into a Private Limited Company and vest its all



properties, movable and immovable (including actionable claims) belonging to and vested in the Scheme referred firm shall on the date of registration of this Company under Para IX of the Companies Act, 1956 pass to and vest in the Company as incorporated under this Act for all the estate and interest of the Company therein for effectively carrying on organizing and pursuing the objectives of that firm as a body corporate in pursuance of Part IX of the Companies Act, 1956 and all the partners in the erstwhile firm shall become share holders in the Company in proportion of their capital held by them in the firm, etc.

- c) The authorised, issued, subscribed and paid-up share capital of the Applicant/Transferor Company as on 31.03.2016 was as under:



| Authorised Share Capital | Amount (Rs.) |
|--|---------------------|
| 9,50,000 Equity Shares of Rs.10 each | 95,00,000 |
| 1,00,000 Preference Shares of Rs.10 each | 10,00,000 |
| 1,00,000 Preference shares of Rs.20 each | 20,00,000 |
| Total | 1,25,00,000 |
| Issued, Subscribed and Paid-up Capital | |
| 3,04,726 Equity Shares of Rs.10 each | 30,47,260 |
| 77,163 Compulsorily Convertible Preference Shares of Rs.10 each | 7,71,630 |
| 68,726 Optionally Convertible Redeemable Preference Shares of Rs.20 each | 13,74,520 |
| Total | 51,93,410 |

5. It is submitted that both the Transferor and Transferee Companies are part of HBL group and the proposed merger shall allow the shareholders of the Transferor Company viz. the promoters and the investors to directly hold shares in the listed company. This will result in the following benefits to the Companies and their respective shareholders and stakeholders:-

- Improve debt equity ratio for Transferee Company
- The merger will result in an increase in public float of the Transferee Company. This will turn increase trading stock and positively impact the liquidity of shares of the Transferee Company.
- Simplification of group structure.

Hence, the Board of Directors of the Petitioner/Transferee Company at their meeting held on 23.03.2016 approved the Scheme of Arrangement and

Amalgamation between the Transferor Company and Transferee Company and their respective shareholders and creditors w.e.f. 01.04.2016 subject to approval of the shareholders/Creditors and confirmation by the Tribunal.

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

a) Transfer and Vesting

With effect from the Appointed Date i.e. 01.04.2016, the Transferor Company including its properties and assets (whether movable tangible or intangible) of whatsoever nature including investments, shares, debentures, securities, loans and advances, licenses, permits, approvals, lease, tenancy rights, titles, permissions, if any, benefits of tax relief including under the Income Tax Act, 1961 such as credit for advance tax, taxes deducted at source and all other rights, title, interest, contracts, consent, approvals or powers of every kind, nature and description whatsoever shall under the provisions of Section 391-394 and pursuant to the orders of the High Court or any other appropriate authority sanctioning this Scheme and without further act, instrument or deed, but subject to the charges affecting the same as on the Effective Date shall stand transferred and/or deemed to be transferred to and vested in the Transferee Company so as to become the properties and assets of the Transferee Company, etc.



b) Consideration

Upon this Scheme becoming effective and upon amalgamation of the Transfer Company into the Transferee Company in terms of this Scheme, the Transferee Company shall, without any application or deed, issue and allot equity shares, credited as fully paid up, to the extent indicated below, to the members of the Transferor Company holding fully paid-up equity shares and preference shares of Transferor Company and whose names appear in the register of members of the Transferor Company, or to such of their respectively heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of the Transferor Company/Transferee Company in the following proportion:

- i) 3,833 fully paid up equity shares of Rs.1 of the Transferee Company shall be issued and allotted as fully paid up for every 10

equity shares of Rs.10 fully paid up held in the Transferor Company.

- ii) 3,753 fully paid up equity share of Rs.1 of the Transferee Company shall be issued and allotted as fully paid up for every 10 compulsorily convertible preference shares of Rs.10 fully paid up held in the Transferor Company.
- iii) 3,901 fully paid up equity share of Rs.1 of the Transferee Company shall be issued and allotted as fully paid up for every 10 optionally convertible redeemable preference shares of Rs.20 fully paid up held in the Transferor Company.

c) **Accounting Treatment in the books of Transferee Company**

With effect from the Appointed Date and upon the Scheme becoming effective, the Transferee Company shall account for the amalgamation in its books, all the assets and liabilities appearing in the books of accounts of the Transferor Company shall stand transferred and vested in the Transferee Company pursuant to the Scheme and shall be recorded by the Transferee Company at book values, etc.

d) **Employees**

On the Scheme becoming effective all the employees of the Transferor Company shall become the employees of the Transferee Company, without any break or interruption in their services, on same terms and conditions on which they are engaged as on the effective date. The Transferee Company further agrees that for the purpose of payment of any retirement benefit/compensation, other terminal benefits, such immediate uninterrupted past services with the Transferor Company shall also be taken into account, etc.

e) **Legal Proceedings**

If any suit, appeal or other proceeding of whatever nature by or against the Transferor Company is pending, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of or by anything contained in this Scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced by or against the Transferee Company, as the case may be, in the same



manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Company as if this Scheme had not been made etc.

f) **Saving of concluded transactions**

The transfer of properties and liabilities under Clause 4 of the Scheme and the continuance of proceedings by or against the Transferor Company under Clause 11 of the Scheme shall not affect any transaction or proceedings already concluded by the Transferor Company on or after the Appointed Date till the effective date (both days inclusive), to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things done and executed by the Transferor Company in respect thereto as done and executed on behalf of the Transferee Company.



g) **Dissolution of the Transferor Company**

On the Scheme becoming effective, the Transferor Company shall stand dissolved without being wound up.

h) **Modifications/amendments to the Scheme**

The Transferor Company and the Transferee Company by their respective Boards of Directors, may assent to/make and/or consent to any modifications/amendments to the Scheme or to any conditions or limitations that the Courts and/or any other Authority under law may deem fit to the director or impose, or which may otherwise be considered necessary, desirable or appropriate as a result of subsequent events or otherwise by them (i.e. the Board), etc.

i) **Conditionality of the Scheme**

This Scheme is and shall be conditional upon and subject to the Scheme being approved by the requisite majorities in number and value of such classes of persons including the respective members and/or creditors of such classes of persons including the respective members and/or creditors of the Transferor Company and Transferee Company as may be directed by the High Court, etc.

j) **Effect of non-receipt of approvals**

In the event of any of the said sanctions and approvals referred to in the preceding Clause not being obtained and/or the Scheme not being sanction by the Hon'ble High Court or such other competent authority and/or the Order not being passed as aforesaid before 31.12.2016 or within such further period or periods as may be agreed upon between the Transferor Company and Transferee Company by their Board of Directors this scheme shall stand revoked, cancelled and be of no effect, save and except in respect of any act or deed done prior thereto as is contemplated herein or as to any rights and/or liabilities which might have arisen or accrued pursuant thereto and which shall be governed and be preserved or worked out as is specifically provided in the Scheme or as may otherwise arise in law.



k) **Costs, charges and expenses**

All costs, charges, taxes including duties, levies and all other expenses, if any (save as expressly otherwise agreed) arising out of or incurred in connection with and implementing this Scheme and matters incidental shall be borne by the Transferor Company and/or its shareholders.

7. The Learned Counsel further submitted that as per the directions of the Hon'ble High Court, the petitioner got published in Newspaper advertisement of the "Notice of Petition" in English Daily (Business Standard – Hyderabad Edition) and Telugu Daily (Andhra Bhoomi – Hyderabad Edition) on 05.11.2016 and filed a proof of the same before the Hon'ble High Court on 17.11.2016. In pursuance to said notification, an objection was received by the Counsel from Mr. Badri Vishal Bajaj, a shareholder of the Company holding 5040 shares in regard to the proposed Scheme of Amalgamation. Mr. Bajaj is a shareholder in Transferee Company, who was holding 1570 shares, which is 0.0006% of share capital of Transferee Company, as on the date of Court convened Meeting of the Members of the Transferee Company held on 17.09.2016 and as on today holds 5040 (0.002%) shares in the Transferee Company. Mr. Bajaj had voted against the Scheme of Arrangement and

Amalgamation. The scheme has been approved by 99.99% shareholders of the Transferee Company and unanimously consented by shareholders of the Transferor Company and creditors of both the companies.

8. The Learned Counsel further submits that in pursuant to Orders dated 31.10.2016 of the Hon'ble High Court, notices were also issued to the Registrar of Companies, Regional Director (SER) and Official Liquidator.

9. It is stated that the Regional Director (SER), Hyderabad has filed a common affidavit dated 23.01.2017 in C.P.Nos.352/2016 and 353/2016, by inter-alia stating 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 11.11.2016 was issued to the Income Tax Department for submitting their comments/objections, if any, within 15 days. However, no comments/objections of the Income Tax Department were received in response to the said notice till date.



10. The learned Counsel 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, a letter dated 11.11.2016 was issued to The Securities and Exchange Board of India (SEBI), Mumbai with a copy to National Stock Exchange of India Limited and BSE Limited for submitting their comments/objections, if any, within 15 days. SEBI vide letter dated 02.12.2016 stated that above referred draft scheme was forwarded to SEBI by the Bombay Stock Exchange Limited and SEBI vide letter No, CFD/DIL-2/OW/17215/2016 dated 16.06.2016 issued comments on the draft scheme to BSE and NSE stating the following:-

- a) The Stock Exchange shall ensure that additional information, if any, submitted by the Company, after filing the scheme with the stock exchange, is displayed from the date of receipt of this letter on the websites of the listed company and stock exchanges.
- b) The stock exchange may ensure compliance with the said Circulars.
- c) The Company shall duly comply with various provisions of the Circulars.

It is further stated that the RD received letter dated 15.10.2016 from one Mr. Badri Vishal Bajaj raising objections for the proposed scheme of arrangement and amalgamation.

11. The Regional Director, by confirming averments of Petitioner in CP, has further stated that the Petitioner Company is regular in filing statutory returns, no complaints, no investigations and no inspections are pending against it. Therefore, he submitted that Tribunal can consider the case as per merits and pass appropriate orders.
12. I have carefully gone through all the pleadings, Report of the Regional Director (SER) and also relevant provisions of Companies, 1956. I am convinced that the Petitioner/Transferor Company has complied with all 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 Company at its meeting held on 23.03.2016 have duly considered the pros and cons of Scheme of Arrangement and Amalgamation in question, after perusing various reports on the issue, and found it is advantageous and beneficial to the Company, its Members, the Secured Creditors and all other concerned parties of the Company, and thus it was approved. I am satisfied that the Scheme of Amalgamation in question is on bonafide reasons meant for favour of interested parties of the Companies in question in particular and public in general. It is to be mentioned herein that the Scheme in question is not opposed by any authorities and the Petitioner/Transferee Company is admittedly following all rules/regulations of Companies Act as stated by Regional Director. Hence, I am of considered view that the Company Petition deserved to be allowed as prayed for.
13. Shri Badri Vishal Bajaj, who is holding 5040 equity shares in the Petitioner/Transferee Company is present along with his Counsel, and had opposed the Scheme in question. However, the scheme is approved by the majority of shareholders of the Company as stated above. He has given a notice dated 12.11.2016 to Mr. V.S. Raju, Counsel for the Petitioner, alleging so many acts of violations by the Company, and some of the allegations are as under:-



- a) The present debt to equity ratio of Applicant/Transferee Company on consolidated balance sheet stands at 2.47 and post amalgamation is just remains at 2.45 which is insignificant as Transferor Company has only Rs.145.10 Crores of equity fund and converting this fund to additional equity shares of Transferee Company being issued to the tune of 2.41 Crore shares.
- b) There will be no increase in public float of Transferee Company and it is again financial trick presentation. Yes there is decrease in promoter's holding from 18.75 cores shares to 15.59 crores shares. But there are two funds long associates with Transferor Company i.e. Banyan Tree Growth Capital LLC and Oman Indian Joint Investment Fund Management Company Private Limited, who will be the new shareholders of Transferee Company. Both will be holding about 5.57 Crores shares of Transferee Company post amalgamation. Hence there is no question of public float as these funds are very much in line and stay with Dr. A.J. Prasad family, etc.
- c) Already the consolidate Cash Flow Statement for the year 2015-16 is very healthy and Net Cash Flow from operating activities has improved from Rs.78.88 Crores in the year 2014-15 to Rs.137 Crores in the year 2015-16.
- d) Under the Scheme of Arrangement and Amalgamation Part B item 15 on Page 23 of the Notice, it states that on the Scheme becoming effective, the Transferor Company shall stand dissolved without being wound up. So nobody will be existing post amalgamation to identify Transferee Company from such future liabilities etc.



14. I have considered the above allegations/objections against the proposed scheme and found that they are hardly have any bearing on the present scheme. As stated supra, the proposed scheme is accepted by 99.99% of the shareholders of the Petitioner Company.

15. In the result, the C.P.No.353/2016 [CP(TCAA)No.33/HDB/2017] is allowed with the following directions:-

- a) Sanctioned the proposed Scheme of Arrangement and Amalgamation which is enclosed (at Page No.191 to the petition) and it is ordered that the same is binding on all the Equity Shareholders/Members and

Creditors (Secured & Unsecured) of the Petitioner Transferee Company/Transferor Company.

- b) The Petitioner Company is 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.
- c) The Petitioner/Transferee Company is directed to issue newspaper publication with respect to approval of scheme of arrangement and 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.
- d) The Petitioner/Transferee Company is further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Arrangement and Amalgamation under the Provisions of the Act.
- e) Liberty is granted to any party/parties, who is/are aggrieved by this order, to seek any direction(s) by way of filing miscellaneous application in the present Company Petition



**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

V. Annapoorna
V. ANNAPOORNA
Asst. DIRECTOR
NCLT, HYDERABAD.

*Order received by the
Registry on: 07/07/2017*