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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CO.PET. 232/2011 & CO. APPL. 2105/2011

IN THE MATTER OF

S.E INVESTMENTS LIMITED & ORS.

..... Petitioners

Through: Mr. P. Nagesh, Advocate with

Mr. Anand M. Mishra, Advocate for
petitioners.

Mr. K.S. Pradhan, Deputy Registrar of
Companies for Regional Director,
Northern Region.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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01.11.2011

1. This second motion joint Petition has been filed under Sections 391 to 394 of the Companies Act, 1956 (for short 'Act') seeking sanction of the Scheme of Arrangement/ Demerger (for short 'Scheme') wherein the Non Conventional Energy Division of S.E. INVESTMENTS LIMITED (hereinafter referred to as 'Transferor Company') is being demerged and vested in S.E. POWER LIMITED (hereinafter referred to as 'Transferee Company').

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2. The registered offices of the Transferor and Transferee Companies are situated at New Delhi, within the jurisdiction of this Court.
 3. Details with regard to the date of incorporation of Transferor and Transferee Companies, their authorized issued, subscribed and paid up capital have been given in the petition.
 4. Copies of the Memorandum and Articles of Association as well as the latest audited Annual Accounts for the year ended 31st March, 2010 of the Transferor and Transferee Companies have also been enclosed with the petition.
 5. Copies of Resolutions passed by the Board of Directors of the Petitioner Companies approving the Scheme have also been placed on record.
 6. It has been submitted that no proceeding under Sections 235 to 251 of the Act is pending against the Petitioner Companies.
 7. In terms of the Scheme and upon the demerger fully becoming effective, the Transferee Company shall without any further act or deed,

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issue and allot to each member of Transferor Company whose name is recorded in the register of members and records of the depository as members of the Transferor Company on the record date, 40,560,000 equity shares of ₹ 10/- each as fully paid-up to the shareholders of the Transferor Company in proportion of the shares held by them in the Transferor Company.

8. The Petitioner Companies had earlier filed C.A. (M) No. 38 of 2011 seeking directions of this Court for dispensation of meetings of the equity shareholders and creditors of the Transferee Company and for a direction for convening meetings of the equity shareholders, secured and unsecured creditors including fixed deposit holders of the Transferor Company. Vide order dated 23rd February 2011, this Court allowed the application and directed convening of meetings of the equity shareholders, secured creditors, unsecured creditors including fixed deposit holders of the Transferor Company and dispensed with the requirement of convening meetings of preferential shareholders of the Transferor Company and the meetings of the equity shareholders, secured creditors of the Transferee Company. The Chairpersons appointed by this Court have filed their respective reports

stating that the Scheme has been approved unanimously at the aforesaid meetings convened vide order dated 23rd February 2011.

9. The Petitioner Companies have thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 16th May, 2011, notice of the Petition was directed to be issued to the Regional Director, Northern Region, Ministry of Corporate Affairs. Citations were also directed to be published in "Indian Express" (English, Delhi Edition) and "Jansatta" (Hindi Delhi Edition). Affidavit of Service and Publication has been filed by the Petitioners on 17th October, 2011 showing compliance regarding service of the Petition on the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 13th October 2011. Copies of the newspapers' cuttings, in original, containing the publications have been filed with the affidavit of service.

10. On 17th October, 2011, Petitioner Companies filed an application being C.A. No. 2105 of 2011 under Rules 6 & 9 of the Companies (Court) Rules, 1959 placing an amended Scheme on record as a result of the consolidation of the equity shares of the Transferor Company by converting the face value from ₹ 1/- to ₹ 10/- each and also as a result of the increase in

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the authorized share capital of the Transferee Company. Copies of the Resolution passed by the shareholders of both the Transferor and Transferee Companies and the amended Scheme as approved by the Board of Directors of both the Transferor and Transferee Companies have been annexed to the said application. On notice being issued on the said application to the Regional Director on 19th October, 2011, Mr. K.S. Pradhan, Deputy Registrar of Companies who is present today in the Court did not oppose the said application. Accordingly C.A No. 2105 of 2011 is allowed and the amended Scheme is taken on record.

11. In response to the notices issued in the Petition, Mr. B.K. Bansal, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his affidavit dated 20th October, 2011. Relying on Clause XI(a) of the Scheme, he has stated that all the employees of the Transferor company engaged in Non Conventional Energy Division shall become the employees of Transferee Company without any break or interruption in their services upon sanctioning of the Scheme by the Court. He further stated that the increase in authorized capital by the Transferee Company can be undertaken only by following the procedure prescribed under the relevant provisions of

the Act. He further stated that the Petitioner Companies be asked to comply with the relevant provision of the Act for satisfaction and creation of charge in the Transferor Company and Transferee Company respectively. The Regional Director lastly submits that the Transferor Company being a Non-Banking Finance Company and registered with the Reserve Bank of India, it needs to inform Reserve Bank of India within one month from the date of the order about the merger or amalgamation and submits that the case may be decided by the Court on merits.

12. In response to the representation/affidavit of the Regional Director, the Transferor Company filed a reply on 29th October, 2011 stating that the Petitioner Companies undertake to comply with all the relevant provisions of the Act for satisfaction and creation of charge in relation to the transfer of the Non Conventional Energy Division of the Transferor Company to the Transferee Company. Insofar as the circular of the Reserve Bank of India relating to Non Banking Finance Company, it is stated by the Petitioners that firstly the said circular does not apply as the present Scheme is Scheme of Demerger and not a Scheme of Merger or Amalgamation. However, the Transferor Company submits in the reply that it undertakes to file a copy of

the order passed by this Court sanctioning the Scheme with the Reserve Bank of India within thirty days of passing of the order. The aforesaid undertaking is accepted by this Court and the Petitioner Companies are held bound by the same.

13. Insofar as the increase in Authorized Share Capital of Transferee Company through the Scheme, Mr. P. Nagesh, learned counsel for Petitioner has relied on some judgments of this court, wherein Authorized Share Capital of the Transferee Company was allowed to be increased without following the procedure provided by the Act.

14. Mr. Nagesh further submits that Sections 391 – 394 of the Act is a complete Code in itself which vests with the Court, the power to sanction a Scheme of Compromise or Arrangement even if it includes certain provisions for which a separate set of procedure is prescribed under the Act. It is not only a complete code in itself but it is intended to be in the nature of a “single window clearance” system. Reliance in this regard is placed upon the judgment of *ManekChowk and Ahemdabad Nfg. Co. Ltd. (In Re.)* 40 *Comp Cas 819* wherein Gujarat High Court has held:

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“If section 391 was subject to other provisions of the Act every time the Scheme of compromise and arrangement is put forth for the sanction of the court, if it includes things for which specific provisions are made and that will have to be gone through before the scheme is sanctioned it would result in unnecessary duplication of procedure and would be cumbersome. On the contrary it appears that if the creditors and members of the company arrive at a certain compromise which the court considers fair, it can be sanctioned under section 391 despite the fact that for some of those things included in the compromise another procedure is prescribed in the Companies Act and which has not been carried out. It, therefore, appears that section 391 is a complete code in itself which provides for sanctioning of the scheme of compromise and arrangement.”

15. In view of the above judgment, the aforesaid objection of the Regional Director does not survive.

16. No objection has been received to the Scheme from any other party, Mr. P. Nagesh, learned counsel for the Petitioner Companies has filed an affidavit dated 29th October, 2011 of ‘No Objection’ confirming that he has not received any application or petition opposing the sanction of the Scheme by this Court pursuant to the citations published in the newspapers.

17. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies, representations/affidavit filed by the Regional Director, Northern Region to the proposed Scheme, there appears to be no

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impediment to the grant of sanction to the Scheme. Consequently sanction is hereby granted to the Scheme under Sections 391 and 394 of the Act as modified and which has been placed along with C. A. No. 2105 of 2011. The Petitioner Companies will comply with the statutory requirements in accordance with law. Certified copy of the order be filed with the Registrar of Companies within thirty days from receipt of the same. In terms of the provisions of Sections 391 and 394 of the Act and in terms of the Scheme, all the properties, rights, interests, powers, liabilities, duties and engagement relation to the Non Conventional Energy Division of Transferor Company shall pursuant to Sections 394 (2) of the Act read with Section 2 (19AA) of the Income Tax Act without any further act or deed be transferred to and vest in the Transferee Company. It is, however, clarified 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 in accordance with any law; or permission/ compliance with any other requirement which may be specifically required under any law.

18. Mr. P. Nagesh, learned counsel states that the Petitioner Companies would voluntarily deposit a sum of ₹ 1,00,000/- with the Common Pool fund

of the Official Liquidator within three weeks from today. The said statement is accepted.

19. The petition is allowed in the above terms.

Order dasti.


MANMOHAN, J

NOVEMBER 01, 2011

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