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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CO.PET. 345/2011

IN THE MATTER OF
AREVA T&D INDIA LIMITED

..... Petitioner

Through: Mr. Anirudh K. Das, Advocate with
Mr. Rohan Dheman, Advocate for
Petitioner Companies.

Mr. Rajiv Bahl, Advocate for Official
Liquidator.

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

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

ORDER
24.10.2011

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1. The present second motion petition has been filed under Section 391-394 of the Companies Act, 1956 [in short 'the Act'] seeking sanction and approval of the Scheme of Arrangement for Demerger [in short '**Scheme**'] between M/s. Areva T&D India Limited [hereinafter referred to as 'Transferor Company'] and M/s. Smartgrid Automation Distribution and

Switchgear Limited [hereinafter referred to as 'Transferee Company']. The Scheme is annexed as ANNEXURE "A" to the Company Petition.

2. The Registered office of the Transferor Company is situated at New Delhi, within the jurisdiction of this Court. The Registered Office of the Transferee Company is situated in the State of Gujarat. The Gujarat High Court vide order dated 19th September, 2011 passed in Company Petition No.100 of 2011 has sanctioned the Scheme. A copy of the said order has today been handed over in Court. The same is taken on record.

3. Details with regard to the date of incorporation of the 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 available accounts of the Transferor and Transferee Companies for the financial year 2009-2010 and the year ending 31st March, 2011 respectively have also been enclosed with the Petition.

5. Copies of the 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 Transferor and Transferee Companies.

7. So far as the share exchange ratio under the Scheme is concerned, the Scheme provides that upon the same becoming effective, every Equity Shareholder of the Transferor Company shall be entitled to receive one equity share of Rs.2/- each of the Transferee Company for every one equity share of Rs.2/- each held in the Transferor Company.

8. The Transferor Company had earlier filed Company Application (M) No.108 of 2011. Vide order dated 3rd June, 2011, this Court had directed convening of meetings of the Equity Shareholders and Unsecured Creditors of the Transferor Company. The Transferor Company had no Secured Creditors.

9. The said meetings of Equity Shareholders and Unsecured Creditors of the Transferor Company were held on 30th July, 2011. The Equity Shareholders and Unsecured Creditors of the Transferor have approved the Scheme in the said meetings.

10. The Transferor Company thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 17th August, 2011, notice in the

Petition was directed to be issued to the Regional Director (Northern Region). Citations were also directed to be published in 'The Indian Express' (English Edition) and 'Jansatta' (Hindi Edition). Affidavit of Service and Publication has been filed by the Transferor Company showing compliance regarding service of the Petition on the Regional Director (Northern Region), and also regarding publications of citations in the aforesaid newspapers on 9th September, 2011. Copies of the newspapers' cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

11. Pursuant to the notice issued, Mr. B.K. Bansal, Regional Director, Northern Region, Ministry of Corporate Affairs, has filed his Affidavit dated 29th September, 2011. Relying on Clause 3.2 (f) of Part-III of the Scheme, it has been stated that all employees of the Transferor Company engaged in the Demerged Undertaking shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme by the Court.

12. It has been stated in para 4 of the affidavit that at the meeting of the Equity Shareholders of the Transferor Company, seven Equity Shareholders

entitled to 697 Equity Shares voted against the Scheme. It has further been stated in para 5 of the affidavit that the Transferor Company is to comply with the conditions raised by the Bombay Stock Exchange Limited, National Stock Exchange of India Limited and the Calcutta Stock Exchange. In para 7 of the affidavit, it has been stated that one, M/s B.D. Castings Limited by their letter dated 25th July, 2011 has objected to the Scheme. It has also been stated in para 8 of the affidavit that the office of the Regional Director has received a complaint dated 15th September, 2011 from Mr. P.L. Lakshmanan. The Regional Director has further stated that said Mr. Lakshmanan is not a shareholder of the Transferor Company and being a share advisor took up the matter on behalf of his clients who are shareholders of the Transferor Company.

13. The Transferor Company in response to the affidavit dated 29th September, 2011 of the Regional Director has filed a reply dated 17th October, 2011.

14. It has been submitted that at the Equity Shareholder's meeting of the Transferor Company, the resolution approving the Scheme was passed by

the Equity Shareholders representing 97.53% in number and 99.99% in value of the Equity Shareholders, present and voting.

15. The Transferor Company has in its Reply Affidavit dated 17th October, 2011 stated that it shall comply with the conditions communicated by the National Stock Exchange of India Limited, Bombay Stock Exchange Limited and Calcutta Stock Exchange vide their letters dated 21st April 2011, 9th May, 2011 and 2nd May, 2011 respectively. The said undertaking is accepted by this Court and the Petitioner Company is held bound by the same.

16. In reply to para 7 of the affidavit of the Regional Director, it has been submitted that M/s B.D. Castings had issued a communication dated 25th July, 2011 conveying their objection to the Scheme and had also deposited a Form of Proxy for the meeting of the Unsecured Creditors of the Transferor Company. It is submitted that M/s B.D. Castings Limited did not attend and vote at the meeting of the Unsecured Creditors either through their authorized representative or proxy and accordingly the said entity is not entitled to be heard in the present proceedings for sanction of the Scheme. The Transferor Company submits that M/s B.D. Castings Limited has issued

a communication dated 13th October, 2011 stating that the said Company has no objection to the Scheme. This communication has been annexed as **ANNEXURE "C"** to the Reply Affidavit dated 17th October, 2011.

17. In view of the aforesaid and in particular the communication dated 13th October, 2011 enclosing a no objection resolution to the present Scheme, this Court is of the view that the objection of M/s B.D. Castings Limited does not survive.

18. With respect to the communication of Mr. P.L. Lakshmanan and his investor complaint dated 2nd May, 2011 to the Bombay Stock Exchange Limited, it has been submitted that Mr. Lakshmanan has in the said communication questioned the commercial and business decision for the demerger and has not placed any material on record to show any illegality in the Scheme or that the provisions of the Scheme are violative of the provisions of law. It is also submitted that Mr. Lakshmanan is neither a shareholder nor a creditor of the Petitioner/Transferor Company and purports to represent the interest of certain shareholders, details of which have not been furnished. The Transferor Company has on 7th September, 2011 and 10th October, 2011 respectively replied to the communications

dated 2nd May, 2011 and 15th September, 2011 of Mr. Lakshmanan, copies of which have been placed on record with the Reply Affidavit dated 17th October, 2011 at ANNEXURE "E" and ANNEXURE "G". It has been submitted that the Scheme has been approved by an overwhelming majority of the Equity Shareholders and Unsecured Creditors of the Transferor Company and the Regional Director has also not raised any objection to the proposed Scheme. Mr. Lakshman is neither a shareholders nor a creditor of the Transferor Company and it is submitted that he has no locus to object to the Scheme. Accordingly, it is submitted that there is no impediment to the sanction of the Scheme. The Transferor Company relies on the following judgments in support of the aforesaid submissions :-

- i. Miheer H. Mafatlal, (1997) 1 SCC 579;
- ii. Sequent Scientific Ltd. (2009) 93 CLA 94.

19. In any event, this Court is of the opinion that the complaint of Mr. P.L. Lakshmanan which deals with change in stand of the Transferor Company is to be looked into by the Bombay Stock Exchange as well as by other statutory authorities if tenable in law. Consequently, the sanction of the present scheme need not be held up on this ground.

20. In view of the approval accorded by the shareholders and creditors of the Transferor Company, Affidavit filed by the Regional Director, Northern Region, to the proposed Scheme, there appears to be no impediments to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under Sections 391-394 of the Act. The Transferor Company 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 the date of receipt of the same. In terms of the provisions of Sections 391-394 of the Act and in terms of the Scheme, the whole of the undertakings, properties, rights and powers of the Transferor Company in relation to the Demerged Undertaking be transferred to and vest in the Transferee Company without any further act or deed. 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 compliance with any other requirement which may be specifically required under any law.

21. Learned counsel states that the Petitioner Company would voluntarily deposit a sum of ₹ 2,00,000/- with the Common Pool fund of the Official Liquidator within three weeks from today. The said statement is accepted.

22. Any person shall be at liberty to apply to the Court for directions/clarifications as permitted by law.

23. The Petition is disposed of in above terms.


MANMOHAN, J

OCTOBER 24, 2011

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