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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 23rd August, 2012*

+ **Co. Pet. 207/2012**

IN THE MATTER OF

NSL RENEWABLE POWER (P) LTD.

.... Petitioner

Through Mr. Bhagvan Swarup Shukla and
Mr. Rajeev Kumar, Adv.
Mr. K. S. Pradhan, Dy. Registrar
(NR), Registrar of Companies.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by NSL Renewable Power Private Limited (hereinafter referred to as Petitioner/Transferee Company) seeking sanction of the Scheme of Amalgamation of Perpetual Energy Systems Limited (hereinafter referred to as Transferor Company I) and Indur Green Power Private Limited with NSL Renewal Power Private Limited (hereinafter referred to as Transferor Company II).

2. The registered office of the Petitioner/Transferee Company is situated at New Delhi, within the jurisdiction of this Court. Registered

office of the Transferor Company I and Transferor Company II are situated at Hyderabad, outside 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, 2011 of the Petitioner Transferee Company have also been enclosed with the petition.

5. Copies of the Resolutions passed by the Board of Directors of the Petitioner Company approving in the Scheme of Amalgamation have also been placed on record.

6. It has been submitted that no proceedings under Sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Company.

7. So far as the share exchange ratio for amalgamation is concerned, the Scheme provides that, upon the Scheme finally coming into effect, the Transferee Company shall issue shares in the following manner:

- 1 (one) fully paid up Equity Share of Rs. 10 (Rupees Ten) each,

of the Transferee Company for every 6 (six) fully paid up Equity Share of Rs. 10 (Rupees Ten) each held by the equity shareholders in Transferor Company I.

- 1 (one) fully paid up Equity Share of Rs. 10 (Rupees Ten) each, of the Transferee Company for every 5 (five) fully paid up Equity Share of Rs. 10 (Rupees Ten) each held by the equity shareholders in Transferor Company II.

8. The Petitioner Company had earlier filed CA (M) No. 46 of 2012 seeking directions of this Court for dispensation/convening of meetings. Vide Order dated 14th March, 2012, this Court allowed the Application and dispensed with the requirement of convening meeting of Equity Shareholders of the Transferee Company and directed to convene the meetings of Secured and Unsecured Creditors of the Transferee Company. From the reports of the Chairpersons at the aforesaid meeting, it is apparent that Scheme was approved unanimously by the Secured and Unsecured Creditors participated in the meetings.

9. The Petitioner Transferee Company has thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide Order dated 8th May, 2012, notice in the petition was directed to be

issued to the Regional Director, Northern Region.

Citations were also directed to be published in 'Indian Express' (English, Edition) and 'Jansatta' (Hindi, Delhi). Affidavit of Service and Publication has been filed by the Petitioner showing compliance regarding service of the petition on the Regional Director, Northern Region, and also regarding publication of citations in the aforesaid newspaper on 25th July, 2012. Copies of the newspaper cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

10. In response to the notices issued in the petition, Mr. Rakesh Chandra, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated 30th July, 2012. Relying on Clause 9.1 of Part B of the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme of Amalgamation, all the staff/employees of both the Transferor Companies shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation by the Hon'ble Court.

11. The Regional Director has further submitted that there is no

mention whether the Petitioner Company has complied with the Accounting Standard -14 issued by the Institute of Chartered Accountant of India.

12. In response to the above objection, the Petitioner has filed an affidavit of Mr. N.M. Vaidyanathan, authorized signatory of the Petitioner Company dated 6th August, 2012, wherein the Petitioner has given an undertaking to comply with the Accounting Standard-14 issued by the Institute of Chartered Accountant of India upon approval of the Scheme. The undertaking is accepted and the petitioner shall remain bound by the same. In view thereof, the objection raised by the Regional Director does not survive.

13. No objection has been received to the Scheme of Amalgamation from any other party. Mr. N.M. Vaidyanathan, Authorized Signatory of the Transferee Company, has filed an affidavit dated 18th August 2012 confirming that neither the Petitioner Company nor their Legal Counsel has received any objection pursuant to citations published in the newspapers.

14. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Company; representation/reports filed by the

Regional Director, Northern Region, attached with this Court to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956. The Petitioner Company will comply with the statutory requirements in accordance with law. Certified copy of the Order be filed with the Registrar of Companies within 30days from the date of receipt of the same. In terms of the provisions of Sections 391 and 394 of the Companies Act, 1956, and in terms of the Scheme, the whole or part of the undertaking, the property, rights and powers of the Transferor Companies be transferred to and vest in the Transferee Company without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of the Transferor Companies be transferred to 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 permission/compliance with any other department which may be specifically required under any law.

Further since the jurisdiction of the Transferor Companies is before the High Court of Hyderabad and the said Transferor Companies have already moved a petition over there, this order is subject to the sanction of the Scheme by the High Court of Hyderabad.

15. Learned Counsel for the Petitioner states that the Petitioner Company would voluntarily deposit a sum of Rs. 1 lac in the Common Pool Fund of the Official Liquidator within three weeks from today. The statement is accepted.

16. The Petition is allowed in the above terms.

Order dasti.

INDERMEET KAUR, J

AUGUST 23, 2012

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