IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 487 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 391 OF 2015

NewGen Saurashtra Windfarms Limited …Petitioner / Transferor Company

In the matter of:

The Companies Act, 1956;

AND

In the matter of:
Sections 391 to 394 of the Companies Act, 1956;

In the matter of:
The Scheme of Amalgamation of NewGen Saurashtra Windfarms Limited with Tata Power Renewable Energy Limited and their respective shareholders and creditors.

CALLED FOR HEARING:

Mr. Rohan Rajadhyaksha, Mr. Molla Hasan and Mr. Chinmaya Gajaria i/b AZB & Partners, Advocates for Petitioner.

Mrs. Purnima Awasthi i/b K. L. Kamboj for the Regional Director.

Mr. S. Ramakantha, Official Liquidator present.

CORAM: K.R. SHRIRAM J.

DATE: 4th December, 2015

P.C.:

1. Heard learned counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Amalgamation of NewGen Saurashtra Windfarms Limited with Tata Power Renewable Energy Limited and their respective shareholders and creditors.

3. The Learned Counsel for the Petitioner Company states that the Petitioner Company is engaged in engaged in the business of generation and sale of power. It operates of a 39.2 MW wind farm in Gujarat. The Transferee Company is engaged in the business of power generation including but not limited to solar power generation, wind power generation, and captive generation, and sale of electrical energy.

4. The Learned Counsel for the Petitioner Company states that the merger of the Transferor Company with the Transferee Company will consolidate the renewable assets of the Transferee Company into a single entity which will help in more efficient management as well as implementation of the strategy of the Transferee Company's growth plans and future expansions. A consolidation of the Petitioner Company and the Transferee Company by way of amalgamation would lead to a more efficient utilization of capital and create a consolidated base for future growth of the amalgamated entity. Further, the Petitioner Company is a wholly owned subsidiary of the Transferee Company and the proposed

amalgamation will reduce managerial overlaps, which are necessarily involved in running multiple entities.

5. Learned Counsel for the Petitioner Company further states that the Board of Directors of the Petitioner Company and the Transferee Company have passed respective resolutions for approval of the Scheme of Amalgamation which are annexed to the Company Scheme Petition filed by the Petitioner Company.

6. The Learned Counsel for the Petitioner Company further states that the Petitioner Company has complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petition has been filed in consonance with the order passed in the Company Summons for Directions.

7. The Learned Counsel appearing on behalf of the Petitioner Company has stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Company undertakes to comply with all the statutory requirements, if any, as required under the Companies Act, 1956/ 2013 and the rules made thereunder whichever is applicable. The undertaking is accepted.

8. The Official Liquidator has filed his report on September 14, 2015 in Company Scheme Petition No. 487 of 2015 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

9. The Regional Director has filed an affidavit on November 6, 2015 stating therein that save and except what is stated in paragraphs 6 (a), (b) & (c) thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a), (b) & (c) of the said Affidavit, the Regional Director has stated that:-

"*6. That the Deponent further submits that,*

(a) *Clause 17.2 of the scheme states that the excess of deficit of the value of net assets over liabilities of the Transferor Company over the investment value of Transferor Company in the books of the Transferee company shall be adjusted in the general reserves of the Transferee company. In this regards, it is submitted that the Surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and the Deficit, if any arising, shall be debited to Goodwill Account of the Transferee Company.*

(b) *Clause 17.3 of the Scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to compliance of Accounting Standard-14, the Amalgamated Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standard such as AS-5, etc.*

(c) *It is respectfully submitted that the tax implication, if any arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Transferee Company."*

10. So far as the observation made by the Regional Director in paragraph 6(a) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that the Surplus, if any arising out of the Scheme shall be credited to Capital Reserve Account of the Transferee Company and the Deficit, if any arising, shall be debited to Goodwill Account of the Transferee Company.

11. So far as the observation made by the Regional Director in paragraph 6(b) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that in addition to the compliance of Accounting Standard -14, the Transferee Company shall pass such accounting entries which are

necessary in connection with the scheme and to comply with other applicable Accounting Standard such as AS-5 etc.

12. So far as the observation made by the Regional Director in paragraph 6(c) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that the Petitioner Company is bound to comply with all the applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

13. The Learned Counsel of Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the Learned Counsel appearing for the Petitioner Company. The undertakings given by the Petitioner Company above are accepted.

14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 487 of 2015 filed by the Petitioner Company is made absolute in terms of the prayer made under clauses (a) to (c).

16. The Petitioner Company to file a copy of this Order and the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the Order.

17. The Petitioner Company is directed to file a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form 21 or INC 28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956/ 2013, which ever is applicable.

18. The Petitioner Company to pay costs of Rs.10,000/- to the Regional Director, Western Region, Mumbai and Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

19. Filing and issuance of the drawn up order is dispensed with.

20. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(K. R. SHRIRAM J.)

CERTIFICATE

I certify that the Order uploaded is a true and correct copy of original signed order.

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