IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 504 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 440 OF 2015

Samimeru Windfarms Private Limited….Petitioner/Transferor Company

AND

COMPANY SCHEME PETITION NO 505 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 441 OF 2015

Hub Renewable Energy Private Limited….Petitioner/Transferee Company

In the matter of the Companies Act (I of 1956);

AND

In the matter of Sections 391 to 394 and other relevant provisions of the Companies Act, 1956

AND

In the matter of Scheme of Amalgamation of Samimeru Windfarms Private Limited with Hub Renewable Energy Private Limited and their respective Shareholders

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co, Advocate for the Petitioner in both the Petition.

Ms. Anjani Kumar Singh, i/b Shri. A. A. Ansari for Regional Director in both the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in C.S.P No. 504 of 2015.

CORAM: S. C. GUPTE, J

DATE : 9^{TH} OCTOBER, 2015

PC:

1. Heard learned counsel for parties. None appears 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 to the Companies Act, 1956, to a Scheme of Amalgamation of Samimeru Windfarms Private Limited with Hub Renewable Energy Private Limited and their respective Shareholders.
3. The Transferor Company is engaged in the business of power and renewable energy and allied activities. The Transferee Company is engaged in the business of power and renewable energy and allied activities.
4. Learned Counsel for the Petitioner states that the scheme would result into benefits as the Transferor and Transferee Companies are engaged in the similar business of power and renewable energy in India. With a view to maintain a simple corporate structure and eliminate duplicate corporate procedures, it is desirable to merge and amalgamate all the undertakings of the Transferor Company with the Transferee Company. The amalgamation of the undertakings of the Transferor Company into the Transferee Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations. Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.

5. The Petitioner Companies have approved the said Scheme by passing the Board Resolution which is annexed to the respective Company Scheme Petition.

6. The learned counsel for the Petitioners states that the Petitioners have complied with all directions passed in Company Summons for Directions and that the Company Scheme Petition has been filed in consonance with the orders passed in respective Company summons for Directions.

7. The learned counsel for the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, Petitioner Companies undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956/2013 and the rules made there under. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 6th October, 2015 in the above Petition stating therein that save and except as stated in paragraphs 6(a) and 6(b) of the said Affidavit, it appears that the scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6(a) and 6(b) of the said Affidavit, the Regional Director has stated that:-

> 6. *"That the Deponent further submits that:-*
>
> (a) *Clause No.11.1 of the Scheme provides for issue of shares upon coming into effect of this scheme . the authorised share capital of Transferee Company may not be sufficient to issue further shares as provided in clause No.11.1 of the Scheme. In this regard, it is suggested that Transferee Company may, if necessary and to the extent required, increase its Authorised share Capital to facilitate*

issue and allotment of shares under this Scheme. In this connection, the Transferee Company may be directed to comply with provisions of section 61/64 of the Companies act, 2013 corresponding to section 94/97 of Companies act, 1956, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.

(b) *The Income Tax Department vide its letters dated 13/08/2015 and 19/08/2015 has brought to the notice of Deponent that the funds invested by the shareholders of Transferor Company /Transferee Company are not out of tax paid money and it is a movement of capital from one account to another account. However they have further observed that money used for the investment is out of sale of shares held in the group companies and the sale is either claimed or exempted income. However, the Income Tax Authority has not made out any specific violation of provisions of Income Tax Act. In this regard, it is respectfully submitted that the tax issue, if any , arising out of the Scheme or investigation, if any initiated by the Income Tax Authority against the promoters/ shareholders of Transferor /Transferee company 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 Petitioner Companies.*

9. As far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Transferee Company through their Counsel undertakes that the Transferee Company , if necessary and to the extent required, will increase its Authorised share Capital to facilitate issue and allotment of shares

under this Scheme and shall comply with provisions of section 61/64 of the Companies act, 2013 corresponding to section 94/97 of Companies act, 1956, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.

10. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, Petitioner Companies are bound to comply with all the applicable provision of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with law.

11. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamutthu, Joint Director (Legal) in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertaking given by the Petitioner Company. The said undertaking given by the Petitioner Company is accepted.

12. The Official Liquidator has filed his report on 9th September 2015 stating therein that the Affairs of the Petitioner/ Transferor Company has been conducted in a proper manner and that the Petitioner/ Transferor Company may be ordered to be dissolved by this Hon’ble Court.

13. 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.

14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 504 of 2015 and 505 of 2015 are made absolute in terms of the prayer clause (a) of the respective Company Scheme Petition.

15. The Petitioner Companies are directed to lodge a copy of this order and Scheme along with form of minutes duly authenticated by the Company Registrar, High Court, 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 receipt of the order.
16. Petitioner is directed to file a copy of this order along with a copy of the Scheme and form of minutes with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.
17. The Petitioners in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and Petitioner Company in Company Scheme Petition No. 504 of 2015 to pay cost of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.
18. Filing and issuance of the drawn up order is dispensed with.
19. All concerned regulatory authorities to act on a copy of this order along with the Scheme and form of minutes duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. Gupte, J.)

CERTIFICATE

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

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