

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 362 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 226 OF 2016

In the matter of the Companies Act, 1956
(1 of 1956) (or any re-enactment thereof
upon effectiveness of companies Act,
2013);

AND

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

AND

In the matter of Scheme of Amalgamation
OF

Solarsys Energy Private Limited (“the
Transferor Company”)

AND

Welspun Renewables Energy Private
Limited (“the Transferee Company”)

AND

Their Respective Shareholders

**SOLARSYS ENERGY PRIVATE)
LIMITED)**

..... Petitioner Company

Called for Hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocates for the Petitioner

Mr. Vinod Sharma, Official Liquidator present

Ms. Shalaka Gujar i/b Mr. Pankaj Kapoor for Regional Director

Coram: A. K . Menon, J.

Date: 27 October, 2016

1. Heard the learned advocate for the Petitioner Company. 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 and other applicable provisions of the Companies Act, 1956 / Companies Act, 2013 to the Scheme of Amalgamation of Solarsys Energy Private Limited with Welspun Renewables Energy Private Limited and their respective shareholders.
3. Learned Advocate for the Petitioner states that the Petitioner and the Transferee Companies are engaged in establishing, commissioning, setting up, operating and generating of electricity/power supply through renewable energy source.
4. Learned Advocate for the Petitioner further states that the rationale for the merger is that the amalgamation of the Petitioner Company with the Transferee Company will ensure simplification of group structure by elimination of multiple entity and achieve greater administrative efficiency; Significant reduction in the multiplicity of regulatory compliances required at present to be carried out by Solarsys Energy Private Limited and Welspun Renewables Energy Private Limited; and Elimination of administrative functions and multiple record keeping, thus resulting in reduced expenditure.

5. Learned Advocate for the Petitioner Company states that the Petitioner Company is wholly owned subsidiary of the Transferee Company and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Petitioner Company by the Transferee Company and the entire share capital of the Petitioner Company will stand cancelled and in view of the judgement of this Court in Mahaamba Investments Limited Vs IDI Limited (2001) Company Cases 105, filing of a separate Company Summons for Direction and Company Scheme Petition by Welspun Renewables Energy Private Limited, the Transferee Company was dispensed with, by order dated 16th April, 2016 passed in CSD NO. 226 of 2016.
6. The Petitioner and the Transferee Companies have approved the said Scheme by passing Board Resolution which are annexed to the Company Scheme Petition.
7. The Advocate for the Petitioner states that the Petitioner Company have complied with all directions passed in Company Summons for Directions and that the Scheme has been filed in consonance with the order passed in the Company Summons for Directions.
8. The Advocate for the Petitioner further states that the Petitioner Company has complied with all requirements as per direction of this Court and filed necessary affidavits of compliance in the Court. Moreover, Petitioner Company 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.

9. The Regional Director has filed its Affidavit on 25th October, 2016 stating therein that save and except as stated in paragraph 6 (i) to 6 (iii) of the said affidavit, it appears according to Regional Director that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 (i) to 6 (iii) of the said Affidavit, the Regional Director submits that:-

In paragraph 6, of the said affidavit it is stated that:

- i. That the Deponent further submits that, the Tax issues, if any, arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the Petitioner Companies.*
- ii. That the Petitioner in the clause responding to the accounting treatment has not mentioned about the accounting standard that would be followed. The Deponent prays the Hon'ble Court may direct the Company to undertake to comply with Accounting Standard – 14 and such other applicable Accounting Standard including AS – 5.*
- iii. ROC has observed that the Petitioner Company has not given information and particulars in respect of Profit and Loss account for the non-current period.*

The Deponent prays that the Hon'ble Court may direct the Company to undertake to prepare and submit the same or pass such order as deems fit.

10. As far as observation made in paragraph 6 (i) of Affidavit of the Regional Director are concerned, the Petitioner Company submits that the Transferee Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
11. As far as observation made in paragraph 6 (ii) of Affidavit of the Regional Director are concerned, the Petitioner Company undertakes that in addition to compliance of Accounting Standard - 14, the Petitioner Company shall pass such accounting entries which are necessary in connection with the Scheme of Amalgamation to comply with any other accounting standards.
12. As far as observation made in paragraph 6 (iii) of Affidavit of the Regional Director are concerned, the Petitioner Company submits that, it was incorporated for setting up solar power projects in India. However, till the appointed date, it has not started its business operations. Accordingly, in the absence of any business operations, the Petitioner Company has not prepared its Profit and Loss account.

13. The Learned Counsel for the Regional Director on instructions of Ms. P Sheela, Joint Director Legal in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the submissions and undertakings given by the Petitioner Company. The said submissions and undertakings given by the Petitioner Company are accepted.
14. The Official Liquidator has filed his report on 1st October, 2016 stating therein that the affairs of the Petitioner Company have been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved by this Court.
15. 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.
16. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 362 filed by the Petitioner /Transferor Company is made absolute in terms of prayer clause (a).
17. The Petitioner Company to lodge 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 issuance of Order.

18. The Petitioner/Transferee Company are directed to file a copy of this order along with a copy of the Scheme 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.
19. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.
20. Filing and issuance of the drawn up order is dispensed with.
21. 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.

(A. K. Menon, J.)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer.