IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 387 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 223 OF 2016

GLOBTECH ADVISORY SERVICES LIMITED

....Petitioner/Transferor Company No 1

AND

COMPANY SCHEME PETITION NO 388 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 224 OF 2016

RELIANCE THERMAL ENERGY LIMITED

....Petitioner/Transferor Company No 2

AND

COMPANY SCHEME PETITION NO 389 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 225 OF 2016

JAYAMKONDAM POWER LIMITED

....Petitioner/Transferee Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956;

AND

In the matter of Scheme of Arrangement

between

Globtech Advisory Services Limited ('GASL' or 'The transferor Company No 1') and

Reliance Thermal Energy Limited ('RTEL' or 'Transferor Company No 2')

and

Jayamkondam Power Limited ('JPL' or 'Transferee Company')

and

Their respective Shareholders

Called for Hearing

Ms. Alpana Ghone, Counsel, Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b Rajesh Shah & Co., Advocate for the Petitioners in the Petition.

Mr. A. R. Singh i/b Mr. Pankaj Kapoor for the Regional Director.

Mr. Vinod Sharma, Official Liquidator, present.

CORAM: S.C.Gupte J.

DATE: 9th December, 2016

1. Heard 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 Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956, to the Scheme of Arrangement between Globtech Advisory Services Limited ('GASL' or 'Transferor Company No 1') and Reliance Thermal Energy Limited ('RTEL' or 'Transferor Company No 2') and Jayamkondam Power Limited ('JPL' or 'Transferee Company') and their respective shareholders.

3. Learned Counsel for the Petitioners state that the Transferor Companies and the Transferee Company are engaged in the business of trading and investment activities. The rationale for the Scheme is to reduce managerial overlaps, which are necessarily involved in running multiple entities, reduce administrative cost and achieving operational and management efficiency.

4. Learned counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme by passing Board Resolutions, which are annexed to the respective Company Scheme Petitions.

5. The learned counsel for the Petitioners states that the reduction of Equity Share Capital of the Transferee Company shall be effected as an integral part of the Scheme and it neither involves diminution of liability in respect of unpaid share capital nor payment to any shareholder of any paid up share capital and upon an undertaking given by the Transferee Company to pass a special resolution, the procedure prescribed under section 101(2) of the Companies Act, 1956 was dispensed with as per order dated 16th April, 2016 passed in Company Summons for Direction No. 225 of 2016. Accordingly, the undertaking to pass special resolution has been complied with and the said special resolution is annexed as Exhibit J to the Company Scheme Petition No.389 of 2016.

6. Learned Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in Company Summons for Directions.

7. The learned counsel appearing on behalf of the Petitioners has stated that the Petitioners have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court.

Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever applicable. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 2nd day of December, 2016 in Company Scheme Petition Nos. 387 of 2016 & 388 of 2016, interalia, stating that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved without winding up.

9. The Regional Director has filed an affidavit on 5th October, 2016 stating therein that save and except as stated in paragraph 6 of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said affidavit it is stated that:

"6 That the Deponent further submits that,

a. The Tax issue 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.

b. Deponent to state that the Petitioner companies has not mentioned the Accounting standard 14 for accounting for the amalgamation in its books of accounts. Therefore, it is prayed that the the Hon'ble Court may direct the company to comply with the Accounting Standard-14 and other applicable accounting *standards as per the provisions of the Companies Act.*

c. *Petitioner in Clause No.3.4 of Part 3 of the scheme inter alia has mentioned that the transferor company shall carry on and be deemed to have been carrying on their business for the transferee company until the effective date. Further, it is inter alia mentioned that all the profits or income arising to the transferor company or expenditure or losses incurred by the transferor company shall be deemed to be profit or income or expenditure or loss of the transferee company.*

d. *Petitioner in clause 3.2.5 of the scheme inter alia has mentioned that the Transferee Company shall take necessary steps to increase or alter or reclassify, if necessary, its Authorised Share Capital suitably to enable it to issue and allot the shares required.*

Further the approval of the scheme shall be deemed to be due compliance of all applicable provisions of the Act for the issue and allotment of shares by the Transferee company.

Deponent prays that the Hon'ble Court may direct the petitioner company to comply with applicable provisions of the Companies Act, 2013.

e. *Petitioner companies in Clause 2 .1 of Part 2 of the scheme inter alia has mentioned that upon the scheme becoming effective 4, 10,000 equity shares of Rs. 10/- each fully paid up of the Transferee company shall without any application or deed shall stand reduced* *without any payments/consideration to the shareholders of such equity shares by reducing face value from 1 equity share of Rs.10 fully paid up to 1 equity share of Rs.3.50 each fully paid up. Simultaneously 4,10,000 equity shares of Rs.3.50 each shall be consolidated into 1,43,500 fully paid up equity share of Rs. 10l- each.*

Deponent prays that the Hon'ble Court may peruse the above clause and approve the alteration of Share capital to reduce the share capital or pass such order as deem fit.

f. *Petitioner in clause 3.2.1 of Part 3 of the scheme inter alia has mentioned that upon the scheme becoming effective and in consideration of merger, issue and allot to the shareholders of Transferor companies in the following Ratio"*

117 equity shares of Rs. 10/- each fully paid up of the Transferee Company for every 100 equity shares of Rs.10/- each fully paid up held by equity shareholders in the Transferor company-1

Petitioner in clause 3.2.5 of Part2 of the Scheme inter alia has mentioned that Equity shares of the face value of Rs. 10,000 of the Transferee Company to be issued to and allotted to the equity shareholders of the Transferor Company 2 on the proportionate basis.

1 preference share of Rs. 1 each fully paid up of the Transferee Company for every 1 preference share of

Rs. 1 each fully paid up by the preference shareholders in the Transferor Company 2.

Deponent submits that Exchange ratio is not clear and therefore prays that the Hon'ble Court may direct the company to clarify the same.

10. In response to above observations of the Regional Director, the Petitioner Companies have filed respective affidavits in reply dated 22nd November, 2016 dealing with the observations made by the Regional Director.

11. As far as observations made in paragraph 6(a) of the Affidavit of the Regional Director are concerned, the Petitioner Companies have submitted that they will comply with all 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.

12. As far the observations made in paragraph 6(b) of the Affidavit are concerned, the Transferee Company shall comply with Accounting Standard-14 and any other applicable Accounting Standards.

13. As far as paragraph 6(c) of the Affidavit of the Regional Director is concerned, the Regional Director has not stated any objection to such clause.

14. As far as observations made in paragraph 6(d) of the Affidavit of the Regional Director are concerned, the Transferee Company has submitted that there is a single window clearance for all allied acts to be done by the Companies involved in the Scheme to avoid unnecessary, multiple and cumbersome procedures required to be followed under various provisions. Therefore, separate procedure / formalities for issue and allotment of shares (as per clause 3.2) is not required to be followed and is being done as an

integral part of the Scheme. The Transferee Company through its counsel has undertaken to increase its authorized share capital after giving effect to clause 4.2 of the Scheme and will take necessary steps in this behalf under the Companies Act, 1956 / 2013. The explanation and undertaking is found to be satisfactory.

15. As far as observations made in paragraph 6(e) of the Affidavit of the Regional Director are concerned, Clause 2.1 provides for reorganisation of the share capital of the Transferee Company as an integral part of the Scheme. Further, the Transferee Company has passed a special resolution for reorganisation of its share capital at an extra ordinary general meeting of the shareholders. The requirements as per Companies Act 1956 / 2013 are met. This Hon'ble Court has by its order dated 16th April, 2016 passed in Company Summons for Direction No. 225 of 2016 dispensed with following of procedure u/s 101(2) of the Companies Act, 1956. The said explanation is found to be satisfactory.

16. As far as observations made in paragraph 6(f) of the Affidavit are concerned, clause 3.2 of Scheme deals with issue and allotment of shares pursuant to the Scheme. The Petitioner Companies have clarified that with respect to shares to be issued to the equity shareholders of Transferor Company No 2, 1,000 shares of Rs.10 each worth Rs.10,000 will be issued and allotted to the equity shareholders of the Transferor Company No 2 on proportionate basis. The equity shareholders of the Transferor Company No 2 have consented to the said Scheme and approved the share entitlement. The said explanation is found to be satisfactory. Further, Scheme erroneously provides for issue of preference shares of Transferee Company to the preference shareholders of the Transferor Company No. 2 instead of the Transferor Company No. 1. Leave has been granted to amend Clause 3.2.1 of the Scheme accordingly. Amendment to be carried out within one week from today.

17. The Learned Counsel for Regional Director on instructions of Joint Director in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai has not raised any further objections to the submissions made by the Petitioner Companies. The said submissions and undertakings of the Petitioner Companies are accepted.

18. 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.

19. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 387 of 2016 & 388 of 2016 filed by the Petitioner Companies are made absolute in terms of prayer clauses (a), (c) and (d) and the Company Scheme Petition No. 389 of 2016 filed by the Petitioner Company is made absolute in terms of prayer clauses (a), (b) and (d).

20. The Petitioner Companies to file an authenticated copy of this order and the Scheme and Form of Minutes 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.

21. The Petitioner Companies are directed to file an authenticated 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, 2013.

22. The Petitioners in all the Company Scheme Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in Company Scheme Petition No. 387 of 2016 & 388 of 2016 to pay costs of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of the Order.

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

24. All concerned regulatory authorities to act on an authenticated copy of this order along with Scheme and Form of Minutes.

(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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