

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 08.02.2016**

**CORAM**

**THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU**

**C.P. No. 509 to 511 of 2015**

Operational Energy Group India Private Limited

Registered Office:

5<sup>th</sup> Floor, East Wing,

Gokul Arcade, No. 2 & 2A,

Sardar Patel Road, Adyar,

Chennai. Rep by its Managing Director

Mr.S.Ramesh.

...Petitioner Company/Demerging Company  
in C.P. No. 509 of 2015.

OEG Solar Energy Private Limited

Registered Office:

5<sup>th</sup> Floor, East Wing,

Gokul Arcade, No. 2 & 2A,

Sardar Patel Road, Adyar,

Chennai. Rep by its Director

Mrs.Usha Ramesh.

...Petitioner Company/  
Resulting Company No.1  
in C.P. No. 510 of 2015.

Sri Balaganapathy Mills Limited

Registered Office:

No. 37, 2A1, Malli Village,

Srivilliputtur, Tamil Nadu.

Rep by its Director

Mr.S.V.Natarajan.

...Petitioner Company/  
Resulting Company No.2  
in C.P. No. 511 of 2015.

**Prayer in all petitions:** Petitions under Section 391 and 394 of the Act for  
sanctioning the Scheme of Arrangement.

For Petitioners : Mr.P.S.Suman  
: Mr.G.Venkatesan,  
Senior Central Government Standing  
Counsel  
For Regional Director  
  
Mr. P.Atchuta Ramaih  
Official Liquidator.

### **COMMON ORDER**

Company Petition No. 509 of 2015 is filed by the demerging Company praying that the scheme of arrangement between M/s. Operational Energy Group India Private Limited, M/s. OEG Solar Energy Private Limited and M/s. Sri Balaganapathy Mills Limited be sanctioned with effect from 1<sup>st</sup> April, 2013, so as to bind all the shareholders of the demerging company and the resulting company and further praying for dissolving the demerging Company.

2. Company Petition Nos. 510 and 511 of 2015 are filed by the resulting companies 1 and 2 namely, OEG Solar Energy Private Limited and Sri Balaganapathy Mills Limited, respectively, praying for sanction of the scheme of appointment between the demerging company and resulting companies with effect from 1<sup>st</sup> April, 2013, so as to bind all the shareholders of the petitioner's company.

3. The learned Official Liquidator filed a report stating that the

books of accounts of the demerging company have been audited and the auditors have not made any adverse remarks or comments on the books of accounts and the profit and loss accounts and balance sheet during the relevant financial years. It is also reiterated by the learned Official Liquidator that the Chartered Accountant engaged by the Official Liquidator has inspected the records of the Registrar of Companies, Ministry of Corporate Affairs of the demerging Company for the past three years and found that the demerging company has filed all the reports in accordance with law and no cases are pending against the Company or any of its Directors/Officers. The report further proceed to state that demerging Company is regular in filing income tax returns and as on date, no dispute is pending before any authority in respect of payment of income tax. It is further stated that demerging Company has no unpaid dividends and hence, the question of commenting on compliance under Section 205A of the Companies Act does not arise. The report further proceed to state that the Chartered Accountant who have inspected the books of accounts and other records have found that the demerging Company has not been conducted in a manner which is prejudicial to the interest of the members or public interest and they have not come across any transaction involving act of misfeasance, attracting provisions under Section 542/543 of the Act.

4. The learned Official Liquidator submitted that in view of the report filed by him, it can be recorded that he is not having any objection

as against these petitions filed by the respective petitioners.

5. The Regional Director filed an affidavit dated 07.01.2016 wherein, it is stated that the scheme of arrangement filed by the petitioners has been examined and it has been decided not to make any objection to the scheme except the observation/objection made in para Nos. 9, 10 and 11. The objections so made at para Nos. 9, 10 and 11 reads as follows;

"9. It is respectfully submitted that clause 7.1 and 7.2 of the scheme provides that the Resulting companies 1 and 2 will insert/amend three clauses each in the Main object without going through the procedures laid down under the Companies Act, 2013 and rules framed thereunder. However the Resulting companies 1 and 2 may be directed to file the relevant e-form with the ROC, Chennai for taking on record such amendment of object clauses.

10) It is respectfully submitted that clause 5.2 of the scheme provides for change of name of the Resulting company No. 2 to that of the demerging Company without going through the procedure laid down under the Companies Act, 2013 and rules framed thereunder. However, the resulting Company No. 2 may be directed to file the relevant e-form with ROC, Chennai.

11) I respectfully submit that the petitioner demerging Company viz., M/s. Operational Energy Group India Private Limited seeks dissolution without winding up."

6. The learned counsel appearing for the petitioners submitted that

insofar as the demerging Company is concerned, totally there are four shareholders and all the four shareholders have given their consent affidavits to approve the entire scheme of arrangement and for dispensing with the calling and holding of the meeting of the equity shareholders of the demerging Company in relation to the scheme. He further submitted that insofar as the resulting Company No.1 namely, OEG Seller Equity Pvt. Ltd. is concerned, there are totally two shareholders and both of them have given their consent affidavits approving the entire scheme of arrangement and also consenting for dispensing with the calling and holding of the meeting of the equity shareholders of the resultant Company No. 1 in relation to the scheme. Insofar as the resultant Company No. 2 is concerned, the learned counsel appearing for the petitioner submitted that this Court while ordering Company Application No. 928 of 2015, dated 27.08.2015 for conducting the meeting of the equity shareholders for the purpose of considering the scheme of arrangement, fixed the quorum of the said meeting of the equity shareholders as ten. Thus, he submitted that the meeting so conducted with a total 23 members present in person or by proxy voted in favour of the proposed scheme of arrangement as seen from the report of the Chairman of the 2<sup>nd</sup> resulting Company dated 09.10.2015, was in order. While submitting so, the learned counsel for the petitioner invited this Court's attention to the relevant consent affidavits filed by the respective shareholders as stated supra as well as the order passed by this Court in Company Application No. 928 of 2015, dated 27.08.2015, and also

the report of the Chairman of the 2<sup>nd</sup> resulting Company dated 09.10.2015.

7. Perusal of the above said consent Affidavits, order passed by this Court and the report of the Chairman of the 2<sup>nd</sup> resulting Company which is made available in the typed set of papers, shows that the objection raised by the Regional Director at para Nos. 9, 10 and 11, cannot be sustained, in view of the fact that the similar objections raised were earlier considered by this Court and decided in favour of the Companies therein in decision reported in **[2015] 192 Comp Cas 152 (Mad)** and an unreported decision made in C.P. Nos. 299 and 300 of 2015, dated 13.10.2015.

8. Para Nos. 16 and 18 of the decision of this Court dated 04.02.2015, reads as follows;

"16. Now coming to the objection of the Regional Director as to the change of name, it may be noted that as per clause 15 of the scheme, upon the scheme being sanctioned, the name of the transferee company shall be changed to "M/s. Michelin India P.Ltd.". Normally, but for the scheme presented under Section 391 of the Companies Act, to effect such a change in the name of a company, the procedure under section 21 of the Companies Act as amended by Section 13 of the 2013 Act has to be complied with. However, in terms of the scheme passed by the requisite majority as laid down under Section 391 of the Companies Act complying with the procedure laid down thereon, I do not find that there exists any necessity to have a repeated exercise of the same in terms of Section

21 of the Act as amended by Section 13 of the 2013 Act.

18) It seems to me, on a closer reading of section 13 of the 2013 Act, as also section 21 of the Companies Act, 1956, to which I will presently refer that the amalgamation is principally an internal arrangement of the company for a mutual benefit in enlarging its capital base. Normally, the procedure under Section 21 of the Companies Act, as amended as section 13 of the 2013 Act, has to be complied with. However, it may be noted that on conversion, a company does not cease to exist to bring into existence any new company. In the scheme of things to emerge on an amalgamation, a transferor company is united with the transferee company. The scheme herein contemplates a change in their name. In the face of such facts, the question is whether the petitioner is to be subjected to the procedure under section 21 of the Companies Act, as amended as section 13 of the 2013 Act. This section requires special resolution to be passed on the proposed change of name of the company and the approval of the Central Government thereupon for changing the company's name. It may be noted that Chapter V is a complete code by itself on the subject of arrangement/ compromise and reconstruction comprehensive enough to include a change in the name consequent on the amalgamation or arrangement. Similar view was taken by this court in C.P.Nos.133 to 135 of 2006, dated August 19,2006 in the matter of K.P.R.Mill P.Ltd., and also in the decisions cited supra by learned senior counsel for the petitioners. Thus, the objection raised by the Regional Director is satisfactorily explained."

9. In Company Petition Nos. 299 and 300 of 2015, the learned Single Judge of this Court in the order made on 13<sup>th</sup> October, 2015, while considering the same objection, has observed as follows;

"The Regional Director, Ministry of Company Affairs has filed his report objecting the scheme as follows:-

"The Regional Director, Ministry of Company Affairs has filed his report objecting the scheme as follows:

Para 15 of Part B of the scheme of amalgamation contemplates to change the name of the transferee company as Polaris Banyan Holding Private Limited without going through the procedures enunciated under Section 13 and other applicable provisions of the Companies Act, 2013. This is objected to. The transferee company may be directed to go through the procedure enunciated under Section 13 and other applicable provisions and rules framed thereunder of the Companies Act, 2013."

Except the above objections the Regional Director has no other objection to the scheme being sanctioned and to the above objection, the learned counsel for the petitioner has given explanation and in view of the explanation submitted by the learned counsel for the petitioner and from the reading of the Sec. 13 of the Companies Act and this Court is of the view that the sole objection raised by the Regional Director is satisfactorily explained by the learned counsel for the petitioner. Moreover, the Official Liquidator has also filed his report along with the report of the Chartered Accountant and the report of the Chartered Accountant states that the

transferor company has no unpaid or unclaimed dividends and hence, the question of commenting on compliance of Section 205 A of the Companies Act, 1956 does not arise."

10. Learned counsel appearing for the Regional Director is not having any other objection except the contentions raised at para Nos. 9 to 11 as stated above. Considering the fact that the Regional Director has decided not to make any objection to the scheme except to the objections/observations made at para Nos. 9 to 11 in his affidavit and considering the fact that those objections/observations cannot be sustained in view of the findings rendered as stated supra by following the earlier decisions of this Court, I find that there cannot be any impediment for this Court to allow all these company petitions. Accordingly, all the company petitions are allowed as prayed for.

11. The learned Senior Central Government Standing Counsel appearing for the Regional Director shall be paid a sum of Rs. 15,000/- from the petitioner Company.

08.02.2016

rms/vsi

**K.RAVICHANDRABAABU,J.**

rms/vsi

**C.P. No. 509 to 511 of 2015**

**08.02.2016**