

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.09.2016

DELIVERED ON: 18.10.2016

Coram

The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.No.134 of 2016

M/s.Maharashtra Revangaon Wind Farm
Development Private Limited
having its Registered Office at
4th Floor, South Wing, Kakani Towers,
No.15, Khader Nawaz Khan Road,
Nungambakkam,
Chennai - 600 006
represented by its Authorized Signatory
Mr.Nilesh Patil

.. Petitioner
/Transferor Company

Vs.

M/s.Continuum Wind Energy (India)
Private Limited
having its Registered Office at
4th Floor, South Wing, Kakani Towers,
No.15, Khader Nawaz Khan Road,
Nungambakkam,
Chennai - 600 006

.. Respondent/Transferee
Company

Petitions filed under sections 391 to 394 of the Companies Act,
1956, to sanction the scheme of amalgamation.

For Petitioner & Respondent: Mr.P.S.Raman, S.C.
for Mr.K.Ramasamy

Mr.Venkatasamy Babu
Central Government Standing Counsel
for Regional Director
Ministry of Company Affairs,Chennai

Mr.P.Achutha Ramaiah
Official Liquidator

ORDER

1. This Company Petition is preferred under Sections 391 to 394 of the Companies Act, 1956, for sanctioning the scheme of amalgamation with effect from 01.04.2015. The scheme of amalgamation (in short the Scheme) is appended as Annexure 8 to this petition.

2. M/s.Maharashtra Revangaon Wind Farm Development Private Limited, petitioner in this petition, is the transferor company and M/s.Continuum Wind Energy (India) Private Limited, respondent in this petition, is the transferee company.

2.1. To be noted, in paragraph No.21 of the petition, it is stated that the transferor company is a wholly owned subsidiary of the transferee company and therefore, in view of the judgment in the case

of ***Mahamba Investments Vs. IDI Limited*** reported in ***2001 (105) Comp Cases 16***, no separate petition, in any case, is preferred on behalf of the transferee company.

3. I must note that in this matter, arguments had been heard and the judgment was reserved on 08.08.2016. On a closer examination of the matter, it came to light that the transferee company had not obtained the consents of their secured and unsecured creditors to the proposed scheme. Hence, the matter was directed to be listed in Court, on 10.08.2016, for clarification.

4. On 10.08.2016, learned Senior Counsel appearing in support of the proposed Scheme sought time to furnish the relevant details. Accordingly, the matter stood adjourned to 19.08.2016. Upon the matter being called out on 19.08.2016, learned counsel filed the Chartered Accountant's Certificate, indicating the details of the secured and unsecured creditors of the transferee company. However, on that very date time is sought to file a provisional balance sheet. Accordingly, the matter was, once again, stood over to 23.08.2016.

5. On 23.08.2016, the matter came to be reserved. As the details sought for had not been furnished, the matter was, once again, listed before Court on 31.08.2016. Thereafter, the matter was listed before the Court thrice, to enable the transferee company to furnish the details. On 28.09.2016, the learned Senior Counsel for the transferee company furnished the details sought for by the Court. Hence, the matter was reserved on 28.09.2016.

5.1. During the hearing, Mr.P.S.Raman, learned Senior counsel, who appeared in support of the proposed Scheme submitted that the proposed Scheme could be sanctioned subject to the conditions incorporated in the letter dated 27.09.2016, issued by State Bank of India, which is, one of the Secured Creditors of the transferee company.

5.2. To be noted, the conditions contained in the letter dated 27.09.2016 are as follows:

"1. Entire sale proceeds of Wind power division of MRWDPL to be utilized for reduction of Term Loan dues of SBI and Yes Bank, in proportionate to the share in exposure.

2. Similar approvals to be obtained from Yes Bank.

*3. Applicable Processing/Miscellaneous charges
(Rs.2 Lakh + applicable ST) will be charged."*

6. Apart from what is stated above, the perusal of the record would show that the transferor and transferee companies have complied with the prescribed procedure. It is stated that there is no secured creditor in so far as transferor company is concerned. A certificate of the Chartered Accountant confirming the same is appended as Annexure '11' to this petition.

6.1. Furthermore, another certificate of the Chartered Accountant dated 11.08.2016, issued by Anshani & Associates, has been filed stating therein that the transferee company has two secured creditors, viz., State Bank of India and Yes Bank. The said certificate is appended to the affidavit dated 13.08.2016. The certificate, in addition, also adverts to the unsecured creditors of the transferee company.

6.2. As per the certificate of the Chartered Accountant dated 11.08.2016, the amount owed to the secured creditors of the transferee company is a sum equivalent to Rs.139,34,49,813/- and

that, which is owed to unsecured creditors of the transferee company, amounts to Rs.1,047,83,31,990/-. Both figures having been frozen as on 31.03.2016.

7. To be noted, the transferee company has also filed a certificate dated 12.08.2016, which has been issued by the same Chartered Accountant, i.e., Anshani & Associates. The said certificate sets out the net worth of the transferor as well as the transferee company, as of 31.03.2016, the details of which are as follows:

Total net worth of the transferor company	:	Rs.24,92,45,263/-
Total net worth of the transferee company (before merger)	:	Rs.57,53,92,746/-
Total net worth of the transferee company (After merger)	:	Rs.50,67,61,576/-

7.1. Pertinently, the State Bank of India has given its consent, vide letter dated 27.09.2016 to the proposed Scheme subject to certain conditions, while YES Bank, has given its unconditional consent to the very same Scheme vide letter dated 26.09.2016. The said consent letters are filed as additional documents.

7.2. It is seen that the transferee company has obtained consent from its unsecured creditors. The consent letters of its unsecured creditors are filed as additional documents.

8. Copies of two (2) separate resolutions of even date, i.e., 16.02.2016, passed by the Board of Directors of both the transferor company as well as the transferee company approving the scheme are enclosed as Annexure '7a and 7b' to the petition.

9. The affidavits of equity shareholders of the transferor company giving their consent to the proposed scheme are appended as Annexure '10' to the Petition.

10. This Court, in its order dated 31.03.2016, in C.A.No.355 of 2016, dispensed with the convening, holding and conducting of the meeting of the equity shareholders of the transferor company to consider the proposed Scheme, inter alia for the reason that its equity shareholders had given their consent to it.

11. It is stated in paragraph 20 of the affidavit, that as far as unsecured creditors of the transferor company are concerned, they

would not be adversely affected by the proposed scheme as the assets of the transferee company, post merger, are more than its liabilities and as such sufficient to discharge its liabilities.

12. Upon notice being issued, the Regional Director, Ministry of Company Affairs has filed his report stating that he has no objection to the scheme being sanctioned.

13. The Official Liquidator has also filed his report along with the report of the Chartered Accountant. The report of the Chartered Accountant states that the affairs of the transferor company have not been conducted in a manner prejudicial to the interest of its members or to public interest and that he has not come across any act of misfeasance by the Directors attracting the provisions of Sections 542 and 543 of the Companies Act, 1956. It is further stated that the records maintained in the office of the Registrar of Companies were also caused to be inspected by the said Chartered Accountant. In the absence of any inference that the affairs of the transferor company were being conducted in a manner prejudicial to the interest of its members or public interest, and in the absence of any comments that the affairs of the transferor company had been conducted in a manner

prejudicial to its members, the Official Liquidator has filed his report before this Court for orders.

14. I have perused the proposed Scheme filed along with the company petitions.

15. On a perusal of the Scheme I find that the Scheme proposed is not prejudicial to the interest of any person or entity, which has a stake/interest in the petitioner companies. The said scheme as framed is not violative of any statutory provisions.

16. The scheme as formulated is fair, just, sound and is not contrary to any public policy or public interest. No proceedings appear to be pending under the provisions of Sections 231 to 237 of the Companies Act, 1956. All the statutory provisions appear to have been complied with.

17. Consequently, subject to the conditions imposed by the State Bank of India, as agreed to by the learned Senior Counsel for the transferor and transferee company on 28.09.2016, there shall be an order approving the scheme of amalgamation between the transferor

company, viz., M/s.Maharashtra Revangaon Windfarm Development Private Limited with the transferee company, viz., M/s.Continuum Wind Energy (India) Private Limited, with effect from 01.04.2015, subject to the compliance with the extant provisions of law including Sections 391 to 394 of the Companies Act, 1956.

18. Taking note of the report by the Chartered Accountant as enclosed by the Official Liquidator, in terms of the order passed by this Court, the transferor company shall stand dissolved without winding up.

19. It is made clear, that this order will not be construed as an order granting exemption from payment of stamp duty or, taxes or, any other charges, if any, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

20. The learned Senior Central Government Standing Counsel is entitled to a fee of Rs.5,000/- from the transferee company.

21. The above petition is disposed of in the aforementioned terms.

18.10.2016

sl

RAJIV SHAKDHER,J.

SI

Pre-Delivery Order in
C.P.No.134 of 2016

Dated: 18.10.2016