IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.09.2016

DELIVERED ON : 18.10.2016

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The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.No.210 of 2016

HHV Solar Technologies Limited
Numeric House,
No.5, Sir P.S.Sivasamy Salai,
Mylapore, Chennai - 600 004
represented by its Managing Director
Mr.R.Chennappan

.. Petitioner/ Transferor Company

Petition filed under Sections 391 to 394 of the Companies Act, 1956 to sanction the Scheme of Amalgamation.

For Petitioner : Mr.T.K.Bhaskar

Mr.K.Raju
Central Government Standing Counsel
for Regional Director
Ministry of Company Affairs,Chennai

Mr.Atchuta Ramaiah,
Official Liquidator

O R D E R

1. This company petition is preferred under Sections 391 to 394 of the Companies Act, 1956 for sanctioning the scheme of

amalgamation of the transferor company with the transferee company with effect from 01.04.2015. The scheme of amalgamation (in short scheme) is appended as Annexure '13' to the petition.

2. The petitioner in this petition is the transferor company. It is stated that the petitioner/transferor company is a 100% wholly owned subsidiary of transferee company, i.e., Swelect Energy Systems Limited 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, is preferred on behalf of the transferee company.

2.1. To be noted, this Court, by order dated 18.04.2016, passed in C.A.No.416 of 2016 dispensed with the requirement of the transferee company having to approach this Court under Section 391 to 394 of the Companies Act, 1956, for sanction of the Scheme of amalgamation.

3. A perusal of the record shows that the petitioner has complied with the prescribed procedure. It is stated that there are two secured creditors in so far as petitioner/transferor company is concerned. The

certificate of the Chartered Accountant confirming the same is appended as Annexure '10' to the petition. The transferor company has obtained the consents of its secured creditors, which are appended as Annexures '11 and 12' to the petition.

3.1. The petitioner/transferor company has filed a certificate of the Chartered Accountant dated 21.09.2016, wherein, it is stated that the petitioner/transferor company has 70 unsecured creditors. The unsecured creditors comprise of Sundry Creditors Suppliers - Indigeneous, Sundry Creditors Services - Indigeneous, Sundry Creditors Services - Imports and Sundry Creditors Suppliers - Imports, Purchases from fellow subsidiary of HHV and unsecured loan from holding company. The amount outstanding to the unsecured creditors, as on 15.08.2016, is equivalent to Rs.52,06,99,606/-.

3.2. It is averred in the additional affidavit filed by the petitioner/transferor company that 96% of the above outstanding amount is due and payable to the holding company. It is further averred that the transferee company has a net worth of Rs.6,62,13,01,783/-, as on 31.03.2016. It is also stated, as indicated above, that the petitioner/transferor company is a wholly owned subsidiary of the transferee company, all the debts and liabilities will get transferred to the transferee company and that, the transferee company has enough resources to discharge the liabilities as and whey they arise.

4. It is stated that there are three secured creditors in so far as transferee company is concerned. The certificate of the Chartered Accountant confirming the same is appended as Annexure '20' to the petition. The transferee company has obtained the consents of its secured creditors, which are appended as Annexures '21, 22 and 23' to the petition.

4.1. It is further stated that the transferee company is a listed company. Accordingly, the National Stock Exchange and Bombay Stock Exchange have given their no objection to the proposed Scheme, which are appended as Annexures '24 and 25' respectively.

5. A copy of resolution dated 16.12.2015, passed by the Board of Directors of the petitioner/transferor company approving the proposed the scheme is enclosed as Annexure '5' to the petition.

6. The affidavits of equity shareholders as well as the preference shareholders of the transferor company giving their consent to the proposed scheme are appended as Annexure '7 and 8' to the petition respectively. This Court, by order dated 18.04.2016, passed in C.A.Nos.414 and 415 of 2016 dispensed with the convening, holding and conducting of the meeting of the equity as well as preference shareholders of the transferor company to consider the proposed Scheme, inter alia, for the reason that its equity shareholders as well as preference shareholders had given their consent to it.

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

8. The Official Liquidator has also filed his report along with the report of the Chartered Accountant. The Chartered Accountant, in his report, 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, the Official Liquidator has filed his report before this Court for appropriate orders.

9. I have perused the proposed scheme filed along with the company petitions as also the affidavits placed on record. I find that the Scheme as proposed is not prejudicial to the interest of any person or entity, which has a stake/interest in the petitioner company. The said scheme, as framed, is not violative of any statutory provisions.

10. 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.

11. Consequently, there shall be an order approving the scheme of amalgamation between the transferor company, viz., HHV Solar Technologies Limited with the transferee company, viz., Swelect Energy Systems Limited, with effect from 01.04.2015, as per the procedure laid down under Sections 391 to 394 of the Companies Act.

12. 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, albeit, without winding up.

13. 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.

14. The learned Senior Central Government Standing Counsel will be entitled to a fee of Rs.5,000/-, which shall be paid by the transferee company.

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

Index: Yes / No
Internet: Yes / No 18.10.2016
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RAJIV SHAKDHER,J.

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Pre-Delivery Order in

C.P.No.210 of 2016

Dated: 18.10.2016