IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 440 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 385 OF 2016

RELIANCE INFRASTRUCTURE LIMITED

....Petitioner / the Transferor Company

AND

COMPANY SCHEME PETITION NO 441 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 386 OF 2016

RELIANCE ELECTRIC GENERATION AND SUPPLY LIMITED

....Petitioner / the Transferee Company

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

AND

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

AND

In the matter of Scheme of Arrangement

BETWEEN

Reliance Infrastructure Limited

AND

Reliance Electric Generation and Supply Limited

AND

their respective shareholders and creditors

Called for Hearing

Mr. Janak Dwarkadas, Senior Advocate, a/w. Ms Alpana Ghone, Counsel, Mr. Rajesh Shah and Mr. Ahmed M Chunawala i/b Rajesh Shah & Co., Advocate for the Petitioner Companies.

Mr. Zal Andhyarujina, a/w. Meit Sampat and Ms. Gaurangi Pujara, i/b. Little & Co, Advocate for Life Insurance Corporation of India, objecting shareholder as well as debenture holder in Company Scheme Petition no. 440 of 2016.

Mr. Shailesh Mehta, Objecting Shareholder, party in person in Company Scheme Petition no. 440 of 2016.

Mr. Ashish Mehta, for the Regional Director.

Mr. Aditya Parab, i/b. Zastriya Attorneys and Legal Consultants for Prakash Asphalting and Toll Highways (India) Limited.

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CORAM: S.C Gupte. J.

DATE: 19 January, 2017.

P.C.:

1 Heard learned Counsel for the parties, and also Mr. Shailesh Mehta, who is an objecting shareholder appearing in person.

2 The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Arrangement between Reliance Infrastructure Limited ("RInfra" or "Transferor Company") and Reliance Electric Generation and Supply Limited ("Reliance Electric" or "Transferee Company") and their respective Shareholders and Creditors ('the Scheme').

3 The Transferor Company is one of the largest infrastructure companies, developing projects through various Special Purpose Vehicles (SPVs) in several high growth sectors within the infrastructure space such as power, roads, metro rail and defence. The Transferee Company has been incorporated with the intention of

engaging in the business of generation and supply of electricity and related activities.

4 The rationale for the Scheme is to increase shareholders' value by leveraging diversified investment opportunities, attribution of appropriate risk and valuation to different businesses based on their respective risk-return profile and cash flows, pooling of resources at the level of the Transferor Company and allocation of capital to each of the businesses based on the risk-return and simplified and transparent business structure resulting into better management control of the businesses and achieving operational synergies.

5 The learned counsel for the Petitioner Companies 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.

6 The learned counsel for the Petitioner Companies 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 order passed in Company Summons for Directions.

7 The learned counsel appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of this Court and filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Companies undertake to comply with all statutory requirements under the Companies Act, 1956 / 2013 and the Rules made there

under whichever applicable. The said undertakings given by the Petitioner Companies are accepted.

8 Three unsecured creditors of the Transferor Company had objected to the sanction of the scheme, namely, Cipla Limited, Loesche India Private Limited and M/s Prakash Asphalting and Toll Highways (India) Limited. All three unsecured creditors have subsequently withdrawn their objections to the scheme. No-objection letters from all three unsecured creditors have been filed in Court.

9 Life Insurance Corporation of India ("LIC"), a creditor as well as the shareholder of the Transferor Company, has filed its affidavits dated 3rd August, 2016 and 28th November, 2016, objecting to the sanctioning of the scheme. The Learned Counsel for the Petitioner Companies tender Affidavits in Reply dated 28th September, 2016 and 1st December, 2016 to the Affidavit filed by LIC. The objection, inter-alia, is that LIC is prohibited under the provisions of Section 27A(4) of the Insurance Act, 1938 from investing in shares and /or debentures of any private limited company. Pursuant to the sanction of the scheme, the debentures in Transferor Company held by LIC, to the extent pertaining to the Transferred Divisions, would be transferred to the Transferee Company. The Transferee Company was a private limited company upto 3rd August, 2016. In view thereof, LIC had objected to the Scheme. Subsequently, the Transferee Company was converted to a public company and name of the Transferee Company has been changed from "Reliance Electric Generation and Supply Private Limited" to "Reliance Electric Generation and Supply Limited" pursuant to a Certificate of Incorporation. Consequent upon such conversion to Public Limited Company on 4th August, 2016, both the Petitioner Companies filed

applications for making necessary amendments to the Scheme and the pending scheme petitions. The said Applications were granted vide order dated 17th October, 2016. Accordingly, necessary amendments were carried out in both the Company Scheme Petitions. LIC has, in its Affidavit dated 28th November, 2016, inter alia, stated that its objection has now been complied with by the Transferee company. LIC has in its Affidavit dated 28th November, 2016, inter alia, stated that LIC shall not consent to the sanction of the scheme unless the conditions in paragraph 9 of that Affidavit are complied with. In response to the said requisition of LIC, the Petitioner companies have filed an Affidavit dated 1st December, 2016 inter alia, stating that they will comply with the requisitions of LIC. In any event, the Learned Counsel appearing for the Petitioner Companies also submits that as per the Additional Affidavit dated 2nd August, 2016 filed by the Transferor Company, written consent of LIC, being a Financial Institution, would in any case be required before making the Scheme effective. The statement and explanation are found to be satisfactory as the interests of LIC are adequately safeguarded. The Learned Counsel appearing for LIC submits that since the Transferee Company is now a Public Limited Company and also as written consent of LIC would be required before making the Scheme effective, they have no objection to the scheme being sanctioned.

10 The Regional Director has filed his Affidavit on 18th October, 2016, inter alia, stating, that save and except as stated in paragraph 6 (i) to (vii), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:-

6. That the Deponent further submits that,

i. *The Petitioner vide para no. 2.3.2 has stated as follows:-*

The Transferor Company shall transfer the revaluation reserve pertaining to the Goa Power Station Division at the amount appearing as on the Appointed Date, to the General Reserves of the Transferor Company.

The deponent prays that the word 'General Reserves' should be substituted by 'Profit and Loss Account'.

ii. *The Petitioner vide para no. 3.3.2 has stated as follows:-*

The Transferor Company shall transfer the reserves as mentioned in clause 1.1.9(d)transferred as part of the Mumbai Power Division pursuant to the Scheme, at the amount appearing as on the Appointed Date, to the General Reserves of the Transferor Company.

The deponent prays that the balance appearing in the "Revaluation Reserve" as part of Mumbai Power Division should be transferred to the profit and loss a/c of the Transferor Company.

iii. *The Petitioner vide para no. 4.3.2 has stated as follows:-*

The Transferor Company shall transfer the revaluation reserve pertaining to the Samalkot Power Station Division at the amount appearing as on the Appointed Date, to the General Reserves of the Transferor Company.

The deponent prays that the word 'General Reserves' should be substituted by 'Profit and Loss Account'.

iv. *The Petitioner vide para no. 5.3.2 has stated as follows:-*

The Transferor Company shall transfer the revaluation reserve pertaining to the Samalkot Power Station Division at the amount appearing as on the Appointed Date, to the General Reserves of the Transferor Company.

The deponent prays that the word 'General Reserves' should be substituted by 'Profit and Loss Account' and Samalkot Power Station Division as mentioned in para 5.3.2 of the scheme to be read as Windmill Division of Transferor Company.

v. *The Petitioner vide para 2.3.3, 3.3.3,4.3.3 and 5.3.3 has stated as follows:*

The statement of the profit and loss account of the Transferor Company shall be debited/credited with the difference between the value of net assets i.e. book values of assets as reduced by the liabilities pertaining to the Goa Power Station Division, Mumbai Power Division, Samalkot Power Station Division & Windmill Division over the value of the lumpsum Consideration receivable by the Transferor Company.

The deponent prays that the Transferee Company i.e RInfra should comply with Accounting Standard-5 and all other Accounting Standards as applicable and as provided under section 133 of the Companies Act, 2013.

vi. *On perusal of the scheme, it is observed that 4 divisions i.e. Goa Power Station Division, Mumbai Power Division, Samalkot Power Station Division & Windmill Division of the RInfra i.e. Transferor Company is transferred to Reliance Electric Generation and Supply Private Limited (Transferee Company). The deponent wish to bring to the notice of the Hon'ble High Court that the authorized and paid up share capital of the Transferee Company as observed from the scheme is Rs 5.00 Lacs. However, the total consideration payable by the Transferee Company for acquiring the 4 Power Divisions amounts to Rs 6282.50 Crores. This scheme does not provide* *for methods of payment consideration by the Transferee Company to Transferor Company.*

Information was called and the Petitioner has stated as follows:

"Clarification as to how the Transferee Company will pay consideration to Transferor Company

Transferee Company would pay the consideration to Transferor Company through its internal accruals from the operations of the Transferred Division(s) with effect from the Appointed date and/or from proceeds of borrowings and/or capital infusion by the parent company i.e. Transferor Company, as the case may be."(Copy enclosed and marked as Exhibit 'B-2).

vii. That the Deponent further submits that 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 Demerger. The decision of the Income Tax Authority is binding on both the Transferor Company and the Transferee Company.

11 In response to the Affidavit of the Regional Director, the Petitioner Companies have filed an Affidavit dated 20th October, 2016.

12 As far as the observation in paragraph 6(i) of the affidavit of Regional Director is concerned, the Transferor Company has undertaken that in relation to para no. 2.3.2 of the Scheme, the Transferor Company shall transfer the revaluation reserve pertaining to the Goa Power Station Division at the amount appearing as on the

Appointed Date to the Profit and Loss Account of the Transferor Company.

13 As far as the observation in paragraph 6(ii) of the affidavit of Regional Director is concerned, the Transferor Company has undertaken that in relation to para no. 3.3.2 of the Scheme, the Transferor Company shall transfer the revaluation reserve pertaining to the Mumbai Power Division at the amount appearing as on the Appointed Date to the Profit and Loss Account of the Transferor Company.

14 As far as the observation in paragraph 6(iii) of the affidavit of Regional Director is concerned, the Transferor Company has undertaken that in relation to para no. 4.3.2 of the Scheme, the Transferor Company shall transfer the revaluation reserve pertaining to the Samalkot Power Station Division at the amount appearing as on the Appointed Date, to the Profit and Loss Account of the Transferor Company.

15 As far as the observation in paragraph 6(iv) of the affidavit of Regional Director is concerned, the Transferor Company has undertaken that in relation to para no. 5.3.2 of the Scheme, the Transferor Company shall transfer the revaluation reserve pertaining to the Windmill Division at the amount appearing as on the Appointed Date to the Profit and Loss Account of the Transferor Company.

16 The Transferor Company has also accepted the observation of the Regional Director that the “Samalkot Power Station Division” as

mentioned in para 5.3.2 of the Scheme should be read as "Windmill Division" of the Transferor Company. The Petitioner Companies have moved Amendment to the Scheme to this effect. Leave to amend the scheme is granted accordingly.

17 As far as the observation in paragraph 6(v) of the affidavit of Regional Director is concerned, the Transferor Company has undertaken that in relation to para nos. 2.3.3, 3.3.3, 4.3.3 and 5.3.3 of the Scheme, the Transferor Company shall comply with Accounting Standard - 5 and all other Accounting Standards as applicable and as provided under Section 133 of the Companies Act, 2013.

18 As far as the observation in paragraph 6(vi) of the affidavit of Regional Director is concerned, it is submitted that the Transferee Company would pay the consideration to Transferor Company through its internal accruals from the operations of the Transferred Division(s) with effect from the Appointed Date and /or from proceeds of borrowings and /or capital infusion by the parent Company i.e. Transferor Company, as the case may be. A letter dated 28th September, 2016 to the same effect is issued by the Advocate for the Transferee Company to the Regional Director.

19 As far as the observation in paragraph 6(vii) of the affidavit of Regional Director is concerned, the Petitioner Companies have undertaken that they are bound to comply with all applicable provisions of Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

20 The Learned Counsel for Regional Director on instructions of Mr. R K Dalmia, Dy Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the above undertakings given by the Petitioner Companies. The above undertakings are accepted.

21 One of the Shareholders of the Transferor Company, Mr. Shailesh Mehta, who holds 4 shares in the Transferor Company, has objected to the sanction of the Scheme on diverse grounds. Mr. Shailesh Mehta has also attended the Court Convened Meeting and objected to the Scheme. Broadly the grounds on which Mr. Shailesh Mehta seeks rejection of the Scheme are as follows:

a) The valuation arrived at by the valuers appointed by the Petitioner Companies is incorrect;
b) The Scheme is in violation of section 27A(4) of the Insurance Act;
c) The Scheme does not provide for payment mechanism of the consideration by the Transferee Company to the Transferor Company.

22 In respect of the Valuation Report, the Learned Counsel for the Petitioner Companies submits that the valuation in the present case has been done by a reputed firm of valuers namely, M/s. SSPA & Co who are experts in the field. Valuation of business is a highly technical and complex matter, which can be appropriately left to the experts in the field of accountancy. The valuation report in the present case has been approved by the Stock Exchanges and Securities and Exchange Board of India ('SEBI'). No other shareholders, including LIC, has raised any objections. M/s. SSPA & Co have applied appropriate methods of valuation as applicable to each of the Transferred Divisions

to arrive at their respective fair values. There is hardly any material adduced, or referred to, by the objector to justify his objections to the valuation. Merely on the basis of some vague allegations, the valuation made by experts in the field and accepted by all other stakeholders including SEBI and various corporate entities who are either shareholders or creditors of the companies, cannot be rejected.

23 The Supreme Court in case of Miheer Mafatlal vs. Mafatlal Industries Ltd (1997) 1 SCC 579 whilst explaining the contours of the sanctioning Court's jurisdiction in the matter of a scheme, has observed as follows :

> *"It must at once be stated that valuation of shares is a technical and complex problem which can be appropriately left to the consideration of experts in the field of accountancy" (Para 40 on page 615)*
>
> *In this connection we may also refer to a decision of Maugham, J., in Hoare & Co.(No.2) Re, case [(1984) 55 Comp Cas 308 (Mad)] wherein it was laid down that where statutory majority had accepted the offer the onus must rest on the applicants to satisfy the court that the price offered is unfair. In this connection the following pertinent observations were made by the learned Judge:*
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> *"The other conclusion I draw is this ... the court ought to regard the scheme as a fair one inasmuch as it seems to me impossible to suppose that the court, in the absence of very strong grounds, is to be entitled to set up its own view of the fairness of the scheme in opposition to so very large a majority of the shareholders who are concerned. Accordingly, without expressing a final opinion on the matter, because there may be special circumstances in special cases, I am unable to see that I have any right to order otherwise in such a case as I have before me, unless it is affirmatively established that, notwithstanding the*

views of a very large majority of shareholders, the scheme is unfair." (Last para on pages 617, 618)"

24 This Court has in the matter of Cadbury India Limited (Company Petition No. 1072 of 2009) held as follows:

"7.1.9 The sanctioning court has no power or jurisdiction to exercise any appellate functions over the scheme. It is not a valuer. It does not have the necessary skills or expertise. It cannot substitute its own opinion for that of the shareholders. Its jurisdiction is peripheral and supervisory, not appellate. The Court is not "a carping critic, a hair-splitting expert, a meticulous accountant or a fastidious counsel; the effort is not to emphasize the loopholes, technical mistakes and accounting errors".

7.1.10 Valuation is not an exact science. Far from it. It is always and only an estimation, a best judgment assessment. The fact that a particular estimation might not catch an objector's fancy is no ground to discredit it. All valuations proceed on assumptions. To dislodge a valuation, it must be shown that those assumptions are such as could never have been made, and that they are so patently erroneous that the end result itself could not but be wrong, unfair and unreasonable. The court must not venture into the realm of convoluted analysis, extrapolation, and taking on itself an accounting burden that is no part of its remit or expertise, and no part of a statutory obligation. In particular, the court must guard against the seductiveness of a proposition that suffers from the fallacy of the undistributed middle: all x is z; some y is z; ergo, all y is z.27 The errors and *consequent unreasonableness must be shown to be patent and self-evident.*

7.1.11 It is impossible to say which of several available valuation models are "best" or most appropriate. In a given case, the CCM method may be more accurate; in another, the DCF model. There are yet others. No valuation is to be disregarded merely because it has used one or the other of various methods. It must be shown that the chosen method of valuation is such as has resulted in an artificially depressed or contrived valuation well below what a fair-minded person may consider reasonable."

25 In view of the aforesaid decisions of the Hon'ble Supreme Court and this Court, the objection raised by Mr. Mehta in respect of valuation of shares has absolutely no merit and the same is rejected.

26 With respect to the objection that the Scheme is in violation of section 27A(4) of the Insurance Act, the same has already been dealt with above and the objection, as I have noted, does not survive. LIC has made it clear that they have no objection to the scheme being sanctioned under the changed circumstances. In his written submissions placed before this Court, Mr. Mehta objects to the LIC keeping funds invested in NCDs of the transferor company which does not have AA rating (it has Crisil A). He submits that such investments are contrary to IRDAI Investment Regulations and other RBI Regulations and Circulars. This cannot be a subject matter of the scheme petition, which considers legality and propriety of the transfer of undertaking as between the transferor and transferee companies. The objection, accordingly, needs to be disregarded. Mr. Mehta also submits that the transferee company has not applied for any credit

rating so far and is not likely to get any. This is nothing but pure speculation. No credence can be given to the objection.

27 With respect to the objection pertaining to payout of consideration by the Transferee Company, Mr. Mehta has highlighted that the Auditor's reports of the Transferee Company for the financial year ended 31st March, 2016 and the financial year ended 31st March, 2015 indicate that the Transferee Company has accumulated losses and its networth has been completely eroded. He has further submitted that it is not clear whether actual money will be received from the Transferor or it will be a back to back book entry. The Learned Counsel for the Petitioner Companies submits that the opinion of the Auditor is based on the financial position of the Transferee Company as on 31st March, 2016 or as on 31st March, 2015, as the case may be. Further, post sanctioning of the Scheme, the assets and liabilities of Transferred Divisions would be the assets and liabilities of the Transferee Company. The Transferee Company would own and conduct the business of all the Transferred Divisions. The Learned Counsel for the Petitioner Companies further submits that the Transferee Company would pay consideration to the Transferor Company by raising requisite funds and out of profits of the Transferred Divisions. The Learned Counsel for the Petitioner Companies further clarifies that it would be actual consideration which would be paid by the Transferee Company to the Transferor Company and not a mere book entry. An overwhelming majority of the shareholders of the transferor company have accepted the scheme as framed including the consideration coming from the transferee company and the manner and prospect of its payment. It is not for this court to doubt this commercial wisdom or substitute its opinion for the opinion of the stakeholders. Besides, the allegations

on which this objection is premised are entirely vague and speculative.

28 Mr. Mehta has also submitted in his written submissions that there is no true and full disclosure to the shareholders to enable them to take an informed view of the scheme. He has referred to the judgments of Reliance Industries Ltd. vs. Reliance Natural Resources Ltd. and other cases in this behalf. Nothing concrete is, however, brought to the notice of the court in the matter of the so-called non-disclosure. It is not known as to which particular aspects are not truly or fully disclosed to the shareholders. The scheme has gone through several layers of scrutiny including that of SEBI, Company Law administration, etc. and it is too late in the day to entertain a general objection as to non-disclosure.

29 I have gone through the various objections and statements made by Mr. Mehta in his affidavits/submissions and find that there is no merit in any of them. All the objections raised by Mr. Mehta are rejected.

30 The Transferor Company in the Company Scheme Petition No.440 of 2016 has filed an additional affidavit dated 2nd August, 2016 stating that the Scheme shall not become effective until and unless written consents to the Scheme are obtained from all the Transferor Company's secured and unsecured lenders towards Loans from Financial Institutions and Banks (including foreign currency borrowings from Credit Agricole Corporate & Investment Bank and Mizuho Bank Limited), having outstanding dues as on the date of filing of Additional Affidavit, unless the outstanding amounts due to such lenders has already been discharged and paid by the Transferor

Company after the date of filing of Additional Affidavit but prior to the Effective Date. The Transferor Company has further stated that notwithstanding anything contained in the Scheme and/ or in the averments made in Company Summons for Direction No. 385 of 2016 and/ or in the averments made in Company Scheme Petition No. 440 of 2016, in the event if any such lenders do not provide the aforementioned written consents, the Scheme shall not become effective. Learned Counsel for the Petitioner Companies requested the Court to accept the said Undertaking. None of the parties have objected to the same. In view of the same, the undertaking given by the Transferor Company is accepted.

31 Except as noted above, none of the parties concerned has come forward to oppose the Scheme nor has any party controverted any averments made in the Petition.

32 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.

33 Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 440 of 2016 filed by the Transferor Company is made absolute in terms of prayer clause (a) and Company Scheme Petition No. 441 of 2016 filed by the Transferee Company is made absolute in terms of prayer clause (a).

34 The Petitioner Companies to file 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 the order.

35 The Petitioner Companies 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, 2013.

36 The Petitioner Companies in both the Company Scheme Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of the order.

37 Filing and issuance of a drawn up order is dispensed with.

38 All concerned parties to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

39 Mr. Shailesh Mehta, the Objector in-person prays for stay of this order for a period of four weeks. The application for stay is rejected.

(S.C.Gupte. J.)