

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**CA.239/2021
IN
CP.CAA.42/2021
IN
CA(CAA)1140/2020**

Under Rule 11 Read with Rule 155 of the
NCLT Rules, 2016

In the matter of

Coastal Gujrat Power Limited

(First Applicant Company)

The Tata Power Solar Systems Limited

(Second Applicant Company)

The Tata Power Solar Company Limited

(Third Applicant Company)

Order Delivered on: 06.10.2021

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mrs. Suchitra Kanuparthi
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner: Mr. Gaurav Joshi, Ld. Senior Counsel a/w Mr. Himanshu
Vidhani, Advocate.

ORDER

Per: Suchitra Kanuparthi, Member (Judicial)

1. The Bench is convened by videoconference today.

2. The Applicant Companies have filed the present Application seeking an order from this Hon'ble Tribunal, *inter alia*, to allow the amendment to the Company Scheme Petition to *inter alia*, delete the Second Petitioner Company viz. Tata Power Solar Systems Limited from the array of parties to the Company Scheme Petition and to place on record the Amended Composite Scheme of Arrangement and make consequential changes to the Company Scheme Petition as more particular set out in the Schedule annexed hereto.
3. The Applicant Companies had preferred a Company Application being CA (CAA) No. 1140/MB-IV/2020, seeking various directions regarding holding/dispensation of meetings of creditors and shareholders. The said Company Application was allowed by this Hon'ble Tribunal and appropriate directions were passed by an order dated 5th January 2021 read with corrigendum order dated 20th January 2021 ("said Order"). The Applicant Companies have complied with the said Order and filed appropriate Affidavits evidencing compliance in this regard. Thereafter, the Company Scheme Petition was filed.
4. The Board of Directors of the Applicant Companies decided to amend the Original Composite Scheme, *inter alia*, on the basis of developments in the global power sector particularly in the renewables energy markets. It was found that it is commercially desirable that Tata Power Solar Systems Limited, which is engaged in Engineering. Procurement and Construction ("EPC") of solar plants and manufacturing of solar modules, be kept as a separate entity rather than merging it into the Transferee Company, some of the key reasons, *Inter alia* are:

- i) Following the global pandemic, global investors have become very choosy about where they invest and have begun to give far higher importance to Environment, Safety and Governance (ESG) aspects, as a result of which the way renewables businesses are organized has become critical and mixing renewables businesses with other businesses is not seen as ideal.
- ii) In recent months, few select Global Investors have reached out to the Applicant Companies and their feedback is that they prefer the entire “Renewable/Green Generation related business” to be under one roof for better value creation.
- iii) The Ministry of New & Renewable Energy vide its Notification dated 28 April 2021 sanctioned the production Linked Incentive Scheme “National Programmed on High Efficiency Solar PV Modules, for achieving manufacturing capacity of Giga Watt (GW) scale in high efficiency solar PV modules (Incentive Scheme). The primary aim and objective of the incentive Scheme is to promote manufacturing of high efficiency solar PV modules in India, to develop an ecosystem for sourcing of local material in solar manufacturing and also create a boost in the employment generation. The incentive Scheme provides for a performance linked incentive to the tune of 50% to manufacturers who propose to set up a fully integrated thin film technology or any other technology. Further, manufacturers will be given preference if a higher capacity plant is set up i.e. minimum capacity of 1,000 MW has to fulfilled by an applicant manufacturer. A copy of the Incentive Scheme is annexed as Annexure “A1” to the joint Affidavit dated 19 July 2021.

- iv) Further, the Ministry of New & Renewable Energy vide its office memorandum dated 9 March 2021, in order to promote Government of India's Atmanirbhar Bharat initiative and scale up domestic solar manufacturing including exporting solar cells/modules, has imposed a Basic Customs Duty ("BCD") on import of solar cells and solar modules w.e.f. 1 April 2022. A copy of the Office Memorandum dated 9 March 2021 is annexed as annexure "A-2" to the joint Affidavit dated 19 July 2021.
5. In the light of the aforesaid, it was felt by the Applicant Companies that it would be commercially prudent and desirable by the respective Board of Directors of the Applicant Companies to keep Tata Power Solar Systems Limited as a separate entity and let it continue as a wholly owned subsidiary of the Transferee Company, rather than merging it with the Transferee Company as envisaged under the Original Composite Scheme.
6. Accordingly, after deliberations, the Boards of the respective Applicant Companies took the view that the synergy proposed to be created out of the amalgamation of Tata Power Solar Systems Limited with the Transferee Company will no longer be as attractive to shareholders and, therefore, it was proposed that the provisions of the Original Composite Scheme be amended to remove the part that provided for the amalgamation of Tata Power Solar Systems Limited with the Transferee Company and certain consequential changes.
7. The Additional Affidavits dated 9th July 2021 and 19th July 2021, the withdrawal of Tata Power Solar Systems Limited from the Original Composite Scheme states that it will not adversely impact the rights of the

- shareholders and creditors of any of the Applicant Companies, and it is in the interest of the stakeholders and expeditious to proceed to sanction the Amended Composite Scheme for Arrangement.
8. It is not out of place of mention that the shareholders of the Transferor Company and Tata Power Solar Systems Limited (i.e. the wholly owned subsidiaries of the Transferee Company) had consented and given their unconditional approval to the Original Composite Scheme, including any amendment/modification/alteration made therein as may be considered necessary by found acceptable to the Board of Directors of the respective Applicant Companies. Similarly, the Transferee Company in its meeting of shareholders, held pursuant to direction of this Hon'ble Tribunal, had also approved a resolution approving the original Composite Scheme which *inter alia*, authorities the board of directors of the Transferee Company to do all such acts, deeds, matters and things, as it may in its absolute discretion deem requisite, desirable appropriate or necessary to give effect to the above resolution and effectively implement the arrangement embodied in the scheme and to accept such modification, amendments, limitations and/or conditions, if any, at any time and for any reason whatsoever, which the Company may deem appropriate". In terms thereof, the shareholders have duly authorized the board of directors of the respective Applicant Companies to make and accept amendments to the Original Composite Scheme, which they have undertaken.
9. This Bench allows CA-239/2021 and allows the Applicant Company to delete Applicant Company No.2 from the array of parties, amend the cause title and file all necessary and consequential amendments in the company list. The Applicant companies are directed to serve the amended

scheme Petition along with the Amended Composite Scheme of Arrangement to the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai, Maharashtra; Registrar of Companies; Official Liquidator, High Court of Bombay; Income Tax Authorities; GST Authorities; Stock Exchanges, etc.

10. Learned Senior Counsel for the Applicant Companies submitted that though the Board of Director of respective Companies are authorized to amend the Scheme, however, it would be prudent to obtain approval of Shareholders of respective Companies to get the Scheme amended as proposed above. Accordingly, the conduct of meeting of Shareholders of respective Company to consider amendment in the Scheme is hereby ordered.

Sd/-
Rajesh Sharma
Member (Technical)

06.10.2021

Suresh Raut

Sd/-
Suchitra Kanuparthi
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH -IV**

CP (CAA) No. 42/MB-IV/2021

Connected With

CA (CAA) No. 1140/MB-IV/2020

In the matter

Of

Sections 230 to 232

Read with Section 52

AND

Other Applicable Provisions of

The Companies Act 2013

AND

In the matter of

The composite scheme of arrangement

between

COASTAL GUJARAT POWER

LIMITED

(Transferor Company)

AND

THE TATA POWER COMPANY

LIMITED

(Transferee Company)

AND

Their Respective Shareholders

Coastal Gujarat Power Limited

[CIN: U40102MH2006PLC182213]

...Transferor Company

The Tata Power Company Limited

[CIN: L28920MH1919PLC000567]

...*Transferee Company*

Order delivered on 06.10.2021

Coram:

Mr. Rajesh Sharma

Mrs. Suchitra Kanuparthi

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner Companies:

Mr. Gaurav Joshi, Senior Advocate
a/w Mr. Peshwan Jehangir, Mr.
Mehul Shah, Mr. Himanshu
Vidhani, Mr. Aman Yagnik, Mr.
Rushabh Gala, Mr. Jamsheed
Dadachanji and Ms. Roselin Alex
i/b Khaitan & Co, Advocates.

ORDER

Per: Suchitra Kanuparthi, Member (Judicial)

1. The Bench is convened by videoconference today.
2. Petition is admitted.
3. Petition fixed for hearing and final disposal on 09.11.2021.
4. The Learned Counsel for the Petitioner Companies submits that initially the Transferor Company, Tata Power Solar Systems Limited and the Transferee Company had entered into a composite scheme of arrangement. By the said composite scheme of arrangement it was proposed that, (i) Coastal Gujarat Power Limited, being the Transferor Company and Tata Power Solar Systems Limited, be amalgamated with the Transferee Company, being The Tata Power Company Limited; and (ii) capital of the Transferee Company was proposed to be reorganised ("Scheme").

The Transferor Company and Tata Power Solar Systems Limited are wholly owned subsidiaries of the Transferee Company.

5. The Learned Counsel for the Petitioner Companies submits that the Company Petition is filed in consonance with Section 230 to 232 read with Section 52 and other applicable provisions of the Companies Act, 2013 and the order dated 5th January 2021 read with corrigendum order dated 20th January 2021 passed in the CA (CAA) No. 1140/MB-IV/2020 (“said Order”), by this Tribunal.
6. The Learned Counsel for the Petitioner Companies submits that, as recorded in the said Order, this Tribunal had dispensed with the requirement of holding meetings of (i) the equity shareholders of the Transferor Company and Tata Power Solar Systems Limited; (ii) the Secured Creditors of the Transferor Company, Tata Power Solar Systems Limited and the Transferee Company; and (iii) Unsecured Creditors of the Transferor Company, Tata Power Solar Systems Limited and the Transferee Company, for the reasons more particularly mentioned in the said Order.
7. The Learned Counsel for the Petitioner Companies submits that, as directed by this Tribunal vide the said Order, the meeting of the equity shareholders of the Transferee Company was held on 16th February 2021. The Learned Counsel for the Petitioner Companies submits that the Transferee Company has filed a Chairman Report showing the conduct of the meeting as directed.
8. Subsequent to filing of the Company Petition, the Transferor Company, Tata Power Solar Systems Limited and the Transferee Company have filed their respective affidavits, all dated 9th July

2021, placing on record an amended Scheme, under which Tata Power Solar Systems Limited has been excluded from the Scheme, for the reasons more particularly set out in the joint affidavit dated 19th July 2021 filed by the Transferor Company, Tata Power Solar Systems Limited and the Transferee Company. The amended Scheme post exclusion of Tata Power Solar Systems Limited will comprise the amalgamation of the Transferor Company with the Transferee Company and consequential capital reorganisation of Transferee Company i.e. “Composite Scheme of Arrangement between Coastal Gujarat Power Limited and The Tata Power Company Limited and their respective shareholders” (“hereinafter referred to as the “Amended Scheme”). The board of directors of the Transferor Company and the Transferee Company have approved the Amended Scheme in their respective meetings, held on 1st July 2021. The Board of Directors of Tata Power Solar Systems Limited has also taken a note of the Amended Scheme in its board meeting held on 1st July 2021. The board resolution passed by the the Transferor Company, Tata Power Solar Systems Limited and the Transferee Company in their respective meetings have been placed on record.

9. The Learned Counsel for the Petitioner Companies submits that the Amended Scheme will not adversely impact the rights of the shareholders and creditors of the Transferor Company and the Transferee Company, since the Transferor Company is a wholly owned subsidiary of the Transferee Company, and no shares are being issued pursuant to the Amended Scheme upon the merger being effected. Also, Tata Power Solar Systems Limited would remain as a wholly owned subsidiary of the Transferee Company

and hence, the rights of shareholders remain unchanged. The Learned Counsel for the Petitioner Companies further submits that the rights of the creditors of the Transferor Company and the Transferee Company, respectively, will not be adversely impacted if the Amended Scheme is sanctioned, since the Transferor Company is a wholly owned subsidiary of the Transferee Company and there is no compromise or arrangement with the creditors contemplated under the Amended Scheme. Further, post the sanction of the Amended Scheme the Transferee Company net worth would continue to be positive and it would be well placed to make payment of dues of the creditors of the Transferor Company as well as itself, in the ordinary course of business. Since Tata Power Solar Systems Limited will now no longer be a part of the Amended Scheme, the rights of their shareholders and creditors will remain unimpacted.

10. Considering Tata Power Solar Systems Limited is no longer a part of the Amended Scheme, the Transferor Company, Tata Power Solar Systems Limited and the Transferee Company have also filed a joint Company Application, bearing COMP. APPL/239/2021 to amend the Company Scheme Petition No. 42 of 2021 to bring on record the Amended Scheme and carry out amendments as set out in the Schedule annexed thereto. Tata Power Solar Systems Limited is also to be dropped as a Petitioner Company. By a separate order we have allowed the Company Application.
11. After hearing the Learned Counsel of the Petitioner Companies and upon considering the Amended Scheme, the Transferor & the Transferee Company is hereby directed to seek approval of the Amended Scheme from its Equity Shareholders through Postal

Ballot in terms of Section 110 of the Companies Act, 2013 (the “Act”) (including any statutory modifications or re-enactment thereof for the time being in force) read with Rule 22 of the Companies (Management and Administration) Rules, 2014, as amended from time to time, read with General Circular No. 14/2020 dated 8th April 2020, General Circular No. 17/2020 dated 13th- April 2020 and General Circular No 10/2021 dated 23rd June 2021 in relation to “Clarification on passing of ordinary and special resolutions by companies under the Companies Act, 2013 and the rules made thereunder on account of the threat posed by Covid-19”, issued by the Ministry of Corporate Affairs, to the extent applicable. The Transferee Company to issue Postal Ballot Notice together with a copy of the Amended Scheme through email only to the Equity Shareholders whose e-mail addresses are available with the Transferee Company / Depositories / the Depository Participants / the Company’s Registrar and Share Transfer Agent. A copy of this Postal Ballot Notice will also be made available on the website of the Transferee Company: www.tatapower.com. The remote e-Voting facility shall be provided to the Equity Shareholders of the Transferee Company, to enable them to cast their votes electronically instead of submitting the physical Postal Ballot form.

12. The Transferee Company shall appoint the Scrutinizer as per the applicable provisions of the Act, for counting the votes in a fair and transparent manner.
13. Further, the Transferee Company shall report to this Tribunal, the result of the aforesaid Postal Ballot within 2 (Two) weeks of the conclusion of the Postal Ballot process.

14. The Learned Counsel of the Petitioner Companies submits that at the time of hearing of the Company Application, the Transferor Company and the Transferee Company had obtained consents of about (i) 83% of the unsecured creditors of the Transferor Company, and (ii) 64% of the unsecured creditors of the Transferee Company. The Learned Counsel for the Petitioner Companies further submits that Transferor Company and the Transferee Company have, as on date, obtained consents of (i) 91.67% of the unsecured creditors, and (ii) 74.01% of the unsecured creditors, respectively. The Transferor Company and the Transferee Company, respectively, have filed affidavits dated 29th April 2021 to place on record the abovementioned consents. The Transferor Company and the Transferee Company will continue to make efforts to obtain consents of the remaining unsecured creditors of the respective companies on or before the final hearing of this Company Petition and will file an Affidavit of the same if further consent is received. In view of the above, the condition of obtaining 90% of the unsecured creditors is waived off.
15. The Learned Counsel for the Petitioner Companies submits that as directed by this Tribunal vide the said Order, notices pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, have been served upon the Regulatory Authorities namely, (i) the concerned Income Tax Authority within whose jurisdiction the Transferor Company, Tata Power Solar Systems Limited and the Transferee Company, assessments are made, (ii) the Central Government through the office of the Regional Director, Western Region, Mumbai, (iii) Registrar of Companies, Mumbai,

(iv) the Official Liquidator, High Court, Bombay (in case of the Transferor Company and Tata Power Solar Systems Limited), (v) Securities and Exchange Board of India (in case of the Transferor Company and the Transferee Company), (vi) BSE Limited (in case of Transferee Company), (vii) National Stock Exchange of India Limited (in case of Transferor Company and the Transferee Company), (viii) concerned GST departments within whose jurisdiction the Transferor Company, Tata Power Solar Systems Limited and the Transferee Company, assessments are made and other sectoral regulators / authorities, as applicable. The Learned Counsel for the Petitioner Companies submits that the Transferor Company, Tata Power Solar Systems Limited and the Transferee Company, respectively, have filed Compliance Report showing service of the notices to aforesaid regulatory authorities, as applicable. Since, the Transferor Company, Tata Power Solar Systems Limited and the Transferee Company have placed on record the Amended Scheme, the Transferor Company, Tata Power Solar Systems Limited and the Transferee Company are directed to issue notices to the abovementioned authorities to inform them of the Amended Scheme and amendments to the Company Scheme Petition. All the above mentioned authorities to consider and act upon the Amended Scheme and amended Company Scheme Petition in terms of this order. Further, if no response is received by the Tribunal from such authorities within 30 (thirty) days of the date of receipt of the abovementioned notice, it will be presumed that they have no objection to the Amended Scheme.

16. The Transferor Company and the Transferee Company are directed to cause publication of the notice of hearing of Petition, at least 10

(ten) clear days before the date fixed for hearing, in the 'Indian Express' and translation thereof in Marathi language newspaper in 'Loksatta', both circulated in Mumbai, as per Rule 16(1) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

17. The Transferor Company and the Transferee Company shall file a report regarding compliance of all directions of this Tribunal, 3 (three) days before the date fixed for final hearing, in lieu of the customary affidavit of service, keeping in view the Covid-19 pandemic.

Sd/-

Rajesh Sharma
Member (Technical)
06.10.2021

Sd/-

Suchitra Kanuparthi
Member (Judicial)