

IN THE NATIONAL COMPANY LAW TRIBUNAL,

COURT IV, MUMBAI BENCH

CA (CAA) NO.1140/MB/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
AMONGST COASTAL GUJARAT
POWER LIMITED AND TATA POWER
SOLAR SYSTEMS LIMITED AND THE
TATA POWER COMPANY LIMITED
AND THEIR RESPECTIVE
SHAREHOLDERS

Coastal Gujarat Power Limited, a)
company incorporated under the)
provisions of the Companies Act,)
1956, having corporate identity)
number)
U40102MH2006PLC182213 and)
its registered office at Corporate)
Centre B, 34 SantTukaram Road,) **...First Applicant Company/**
Carnac Bunder, Mumbai - 400 009,) **Transferor Company 1**
Maharashtra, India)

)

Tata Power Solar Systems)
Limited, a company incorporated)
under the provisions of the)
Companies Act, 1956, having)
corporate identitynumber)
U40106MH1989PLC330738 and)
its registered office at Corporate) **... Second Applicant Company/**
Centre B, 34 SantTukaram Road,) **Transferor Company 2**
Carnac Bunder, Mumbai - 400 009,
Maharashtra, India)
)
The Tata Power Company)
Limited, a company incorporated)
under the Indian Companies Act,)
VII of 1913 having company)
identitynumber:) **...Third Applicant Company/**
L28920MH1919PLC000567 and its) **Transferee Company**
registered office at Bombay House,
24 HomiMody Street, Mumbai -
400001, Maharashtra, India

Order delivered on 5th day of January, 2021

Coram:

Ms. SuchitraKanuparthi : Member (Judicial)
Mr. Rajesh Sharma : Member (Technical)

Appearances (via videoconferencing) :

For the Applicant Companies : Mr Gaurav Joshi, Senior Advocate a/w
Mr PeshwanJehangir, Mr Mehul Shah,
MsPriyanka Desai, Mr AmanYagnik, Mr
Rushabh Gala, Mr JamsheedDadachanji,
Ms Roselin Alexi/b Khaitan& Co,
Advocates for the Applicant Companies

Per: Ms. SuchitraKanuparthi, Member (Judicial)

1. The Bench is convened by videoconference on 5th January, 2021.
2. The First Applicant Company and Second Applicant Company and the Third Applicant Company/ Transferee Company are entering into a composite scheme of arrangement. By the said composite scheme, (i) Coastal Gujarat Power Limited, the First Applicant Company/ Transferor Company 1 and Tata Power Solar Systems Limited, the Second Applicant Company/ Transferor Company 2 are amalgamating with the Third Applicant Company/ Transferee Company, being The Tata Power Company Limited; (ii) capital of the Transferee Company is proposed to be reorganised (“**Scheme**”). The First Applicant Company and Second Applicant Company are wholly owned subsidiaries of the Third Applicant Company/ Transferee Company. For ease of reference, the First Applicant Company, Second Applicant Company and Third Applicant Company are collectively referred to as the “**Applicant Companies**”.
3. The Board of Directors of the First Applicant Company vide resolution dated 12th August 2020 has approved the said scheme. By the aforesaid Board Resolution, Mr. Vijay V. Namjoshi, Director, inter alia, has been authorized by and on behalf of the First Applicant Company to file the present Application. The Board of Directors of the

Second Applicant Company vide resolution dated 11th August 2020 has approved the said Scheme. By the aforesaid Board Resolution, Mr. Jeraz E. Mahemosh, Company Secretary, inter alia has been authorized by and on behalf of the Second Applicant Company to file the present Application. The Board of Directors of the Third Applicant Company vide resolution dated 12th August 2020, has approved the said Scheme. By the aforesaid Board Resolution, Mr. Hanoz M. Mistry, Company Secretary, inter alia, has been authorized by and on behalf of the Third Applicant Company to file the present Application. The Scheme, as approved by the Applicant Companies, is annexed to the application and marked as Exhibit "O".

4. Rationale of the Scheme

The circumstances and/or reasons and/or grounds that have necessitated and/or justified the Scheme and some of the major benefits which would accrue from the Scheme are briefly stated below:

The Transferee Company is desirous of consolidating the assets and liabilities of the Transferor Companies (as defined in the scheme) pursuant to amalgamation. The Scheme provides for the amalgamation of the Transferor Companies with the Transferee Company and will result in the following benefits:

- (a) Streamlining of the corporate structure and consolidation of assets and liabilities of the Transferor Companies within the Transferee Company;
- (b) Availing easier financial support for the businesses of the Transferor Companies;

- (c) More efficient utilization of capital for enhanced development and growth of the consolidated business is one entity;
- (d) Enabling opportunities for employees of the Parties (as defined hereinafter) to grow by bringing them in a common pool;
- (e) Easier implementation of corporate actions through simplified compliance structure;
- (f) Improve management oversight and bring in operational efficiencies;
- (g) Cost savings through legal entity rationalization and consolidation of support functions, business processes, elimination of duplicate expenses, etc.; and
- (h) Reduction of administrative responsibilities, multiplicity of records and legal & regulatory compliance.

The Transferee Company is one of the largest power generation, distribution and transmission companies, in India having emergency spanning over 100 (hundred) years. The Transferee Company, has been quite instrumented in serving the power consumption needs of the Indian population.

The Transferee Company has built up significant reserves from its retained profits over the years by transferring the same to its General Reserves (as defined in the scheme). With robust business practices in place, the Transferee Company expects that it will continue its growth trajectory and its business operations will keep generating incremental cash flow over the coming years.

The Transferee Company is of the view of that the funds represented by the General Reserves are in excess of the Transferee Company's current anticipated operational and business needs in the foreseeable future, thus, these excess funds can be distributed to its shareholders in such manner and to such extent. As the Board (as defined in the scheme) of the Transferee Company in its sole discretion, may decide, from time to time and in accordance with the provisions of the Act (as defined in the scheme) and other Applicable Law (as defined in the scheme).

The Scheme is in the interest of the shareholders, creditors and all other stakeholders of the Parties and is not prejudicial to the interests of the concerned shareholders, creditors of the Parties or the public at large.

5. The Learned Senior Counsel for the Applicant Companies submits that as on 20 October, 2020, the First Applicant Company have 7 equity shareholders holding 800,04,20,000 equity shares, a meeting of the equity shareholders of First Applicant Company may not be held to consider, and if thought fit, to approve the Scheme, with or without modification. This is due to the fact that the First Applicant Company has received consent affidavits from all of its equity shareholders, approving the Scheme. Copies of these consent Affidavits are annexed to the Company Petition as **Exhibit "R1"** to **"R7"**.
6. The Learned Senior Counsel for the Applicant Companies submits that as on 20 October, 2020, the Second Applicant Company has 7 equity shareholders holding 229,77,567 equity shares, a meeting of the equity shareholders of the Second Applicant Company may not be held to consider, and if thought fit, to approve the Scheme, with or without modification. This is due to the fact that the Second Applicant Company has received consent affidavits from all of its equity shareholders,

approving the Scheme. Copies of these consent Affidavits are annexed to the Company Petition as **Exhibit “T1”** to **“T7”**.

7. As on 30 September, 2020, the third Applicant Company has 497,342 equity shareholders holding 319,53,39,547 equity shares. A meeting of the Equity Shareholders of the Third Applicant Company be convened and held on Tuesday, 16th February, 2021 at 3.00 p.m. through video conferencing or other audio-visual means and not in physical presence of shareholders, as the same shall not be feasible and safe, due to the on-going COVID-19 pandemic and related social distancing norms, for the purpose of considering, and, if thought fit, approving, with or without modification(s), the proposed Scheme.
8. At least 30 (Thirty) clear days before the said meeting of the Equity Shareholders of the Third Applicant Company to be held as aforesaid, a notice convening the said meeting at the day, date and time as aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under section 230(3) of the Companies Act, 2013 read with rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, shall be sent to the Equity Shareholders of the Third Applicant Company by e-mail to their registered e-mail address as per the records of the Third Applicant Company/Depositories.
9. At least 30 (Thirty) days before the meeting of the Equity Shareholders of the Third Applicant Company to be held as aforesaid, a notice convening the said meeting, at the date and time aforesaid be published once each in ‘Indian Express’ in English and ‘Loksatta’ in Marathi, both having wide circulation in the State of Maharashtra, and stating that copies of the Scheme and the said statement required to be furnished pursuant to section 230(3) of the Companies Act, 2013 can be obtained

free of charge by emailing the Third Applicant Company attatapower@tatapower.com.

10. The Third Applicant Company undertakes to:
- (i) Issue notice convening meeting of the equity shareholders as per Form No CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
 - (ii) Issue statement containing all the particulars as per Section 230 of the Companies Act, 2013; and
 - (iii) Advertise the notice convening meeting as per Form No. CAA.2 (Rule 7) of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

The undertaking is accepted.

11. Mr. N. Chandrasekaran, failing whom, Mr. Ashok Sinha, the Directors of the Third Applicant Company, is hereby appointed as the Chairperson for the meeting of the Equity Shareholders of the Third Applicant Company.
12. Mr. P. N. Parikh (Membership No.: FCS 327) and failing him, Mr. Mitesh Dhabliwala (Membership No.: FCS 8331) of M/s. Parikh and Associates, Practicing Company Secretaries is hereby appointed as a Scrutinizer of the meeting of Equity Shareholders of the Third Applicant Company.
13. The Chairperson appointed for the aforesaid meeting of the Third Applicant Company is to issue notices of the Meeting of the Equity Shareholders referred to above. The Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, as may be applicable for meeting of

shareholders through video conferencing or other audio-visual means mode, in relation to the conduct of the meeting including for deciding procedural questions that may arise at the meeting or at any adjournment thereof or any other matter including, an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).

14. The quorum for the aforesaid meeting of the Equity Shareholders of the ThirdApplicant Company shall be as prescribed under Section 103 of the Companies Act, 2013.
15. The value and number of the equity shares of each member shall be in accordance with the books/register of the ThirdApplicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairperson of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
16. The Chairperson shall file a compliance report not less than 7 (Seven) days before the date fixed for holding of the meeting of the ThirdApplicant Company and report to this Tribunal that the directions regarding the issue of notices and advertisements have been duly complied with, as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
17. The Chairperson shall report to this Tribunal, the result of the aforesaid meeting within 30 (Thirty) days of the conclusion of the said Meeting of the Equity Shareholders of the Third Applicant Company, and the said report shall be verified by his undertaking as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The Learned Senior Counsel for the Applicant Companies submits that there are no Preference Shareholders of the Applicant Companies as on date of hearing of the present Company Application; and therefore, the question of convening and holding the meeting of the Preference Shareholders of the Applicant Companies does not arise.
19. The First Applicant company has filed additional affidavit on 14.12.2020, stating that the First Applicant Company had 9 Secured Creditors having an aggregate value of Rs4147,16,78,501/ and has 477 unsecured creditors having an aggregate value of Rs13629,39,94,898/-. Out of the 9 Secured Creditors, IIFL, HDFC, Indian Bank(erstwhile Allahabad Bank), Punjab National Bank, Bank of Maharashtra, Bank of Baroda(erstwhile Vijaya Bank), Axis Bank, Canara Bank(erstwhile Syndicate Bank) having an outstanding value of Rs2906,01,08,827/ have been fully paid. One secured creditor, namely SBI has been paid to the extent of Rs 1242,15,69,674/-. The CA certificate confirming payment of Rs4159 crore is filed. SBI and ICICI Bank having an aggregate outstanding balance of Rs26,33,80,863/ as on 30.09.2020, one secured creditor namely ICICI Bank aggregating 31% of total outstanding balance has provided consent to the scheme. Further SBI has also provided in-principle approval to the scheme and subject to final approval by SBI, this constitutes 100% of consent by secured creditors. Out of 477 unsecured creditors, one unsecured creditor namely Power Trust having outstanding balance of Rs310,85,31,904/ has provided No Dues certificate, 15 other unsecured creditors having aggregate outstanding balance of Rs11161,04,30,21 being 83% have provided consent and no objection to the scheme.
20. The Second Applicant company has filed additional affidavit on 14.12.2020, stating that the Second Applicant Company have 5 secured creditors having aggregate value of Rs214,59,00,000/ and out of that

Unsecured creditors having aggregate value of Rs200,20,00,000/ being over 93% of outstanding secured creditor of second applicant company have provided with consent to the scheme and granted no objection for dispensation of meeting. The Second Applicant company having 1937 unsecured creditors having an aggregate value of Rs1220,88,64,519/ as on 30 september, 2020. 17 unsecured creditors having aggregate value of Rs488,81,39,006/ being over 40% total outstanding have provided their consent to the scheme and no objection for dispensation of meeting.

21. The Third Applicant company has filed additional affidavit on 14/12/2020, stating that the third Applicant Company has 26 secured creditors having an aggregate value of Rs5557,62,95,012/ and out of that 12 secured creditors having value of Rs3956,18,92,234/ being over 71% of outstanding, have provided consent and no objection to dispensation of meeting. SBI has provided in principle consent and that constitutes 94% of consent. The third Applicant Company has 5203 unsecured creditors having an aggregate value of Rs14,396,01,29,275/. One unsecured creditor namely Maithon Power Ltd. having outstanding of Rs275,00,00,000/ has provided no dues certificate. Further 28 unsecured creditors being aggregate outstanding balance of Rs8052,92,61,857/ being over 57% have granted consent and no objection for dispensation of meeting. SBI being unsecured creditor has given In-principle approval to the scheme, subject to final approval by SBI, this constitutes more than 64% approval from its unsecured creditors.
22. The Learned Senior Counsel for the Applicant Companies submits that upon the Scheme coming into effect, the Third Applicant Company will be in sound financial health and will be able to discharge the liabilities towards all the creditors in the ordinary course of business and the rights

of creditors of the Applicant Companies will not be adversely affected and their interests will be protected; and, therefore, only a meeting of the Equity Shareholders of the Third Applicant Company is proposed to be held in accordance with the provisions of section 230(1)(b) of the Companies Act, 2013. The Bench hereby directs that:

- a. The meeting of equity shareholders of First applicant company is dispensed with, in view of their consent affidavits and wholly owned subsidiary of Third applicant Company
- b. The meeting of equity shareholders of Second applicant company is dispensed with, in view of their consent affidavits and wholly owned subsidiary of Third applicant Company.
- c. The meetings of equity shareholders of Third applicant Company is ordered to be held on 16 February, 2020.
- d. the meeting of the secured creditors of the Applicant Companies is not required to be convened in view of consents received from more than 90% (in value) of the secured creditors of the Applicant Companies;
- e. the Applicant Companies to issue notice seeking objections by way of registered post and electronic mail to its respective unsecured creditors, having a value of Rs. 50,00,000/- and above, whose registered physical addresses and e-mail address, respectively are available with the Applicant Companies, with a direction that they may submit their objections, if any, within 30 days from the date of the notice, to the Tribunal and copy of such objections shall simultaneously be served upon the First Applicant Company, the Second Applicant Company, the Third Applicant Company, as the case may be, will shall obtain 90% consent of unsecured creditors and submit the same in due course to this bench.

23. The Applicant Companies to serve notices upon (i) the Central Government through the Regional Director, Western Region, Ministry of Corporate Affairs; (ii) the Registrar of Companies at Mumbai; (iii) the Income Tax Authority for (a) First Applicant Company having PAN No. AADCC1347A, at Circle 6(2)(1), Mumbai (b) Second Applicant Company having PAN No. AA ACT4660J at Circle 7(1)(1), Bangalore, and (c) Third Applicant Company having PAN No. AA CT0054A at Circle 2(3)(1), Mumbai; and the (iv) concerned GST Department within whose jurisdiction the respective Applicant Companies fall, pursuant to section 230(5) of the Companies Act, 2013 read with rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and vi to SEBI and NSE. If no response is received by the Tribunal from such authorities within 30 (thirty) days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.
24. Additionally, the First Applicant Company and Second Applicant Company are directed to serve notice along with a copy of the Scheme upon the Official Liquidator, High Court, Bombay, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Official Liquidator shall submit his Report to the Tribunal within 30 (Thirty) days of the date of receipt of such notice, failing which it shall be presumed that the Official Liquidator has no objection to the proposed Scheme. A copy of the Report shall simultaneously be served upon the Transferor Company.
25. Additionally, the Third Applicant Company to service notice upon BSE Limited, pursuant to section 230(5) of the Companies Act, 2013 read with rule 8 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016. If no response is received by the Tribunal

from BSE Limited within thirty days of the date of receipt of the notice, it will be presumed that the BSE Limited has no objection to the proposed Scheme. Further, the Third Applicant Company will serve notices to Securities and Exchange Board of India and National Stock Exchange of India Limited, pursuant to section 230(5) of the Companies Act, 2013 read with rule 8 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

26. The Applicant Companies to service notices upon any other sectoral authorities, as may be applicable, pursuant to section 230(5) of the Companies Act, 2013 read with rule 8 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the sectoral authorities concerned within thirty days of the date of receipt of the notice, it will be presumed that the concerned sectoral regulators or authorities have no objection to the proposed Scheme.
27. With a view to provide notice convening meeting or notice seeking representations from shareholders and creditors whose email addresses are not available with the respective Applicant Companies as mentioned above, or who have not received notice convening meeting or notice seeking representations, as the case may be, due to non-functionality of delivery or post services in current COVID-19 pandemic, the Third Applicant Company shall host such notices on its website.
28. The Applicant Companies shall file a compliance report with the Registry in regard to the directions given in this Order in lieu of the customary affidavit of service, due to the lockdown situation prevailing now.

29. Ordered accordingly.

Sd/-
Mr. Rajesh Sharma
Hon'ble member (T)
05.01.2021

Sd/-
Ms. Suchitra Kanuparthi
Hon'ble member (J)