

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

COMPANY SCHEME PETITION NO. 4655 (MAH) OF 2018

IN

COMPANY SCHEME APPLICATION NO. 785 OF 2018

In the matter of the Petition
under Sections 230 to 232 of the
Companies Act, 2013 read with
the Companies (Compromises,
Arrangements and
Amalgamations) Rules, 2016

AND

In the matter of Scheme of
Arrangement between The Tata
Power Company [CIN:
L28920MH1919PLC000567]
Limited ("Transferor Company")
and Tata Advanced Systems
Limited ("Transferee Company")
(CIN U72900TG2006PLC077939)
and their respective
shareholders and creditors.

The Tata Power Company Limited [CIN:)
L28920MH1919PLC000567], a company)
incorporated under the provisions of the)
Indian Companies Act, VII of 1913, and)
having its registered office at Bombay)
House, 24, Homi Mody Street, Mumbai)
400 001, Maharashtra)

...Petitioner Company /
Transferor Company

Order Delivered on: 12.12.2019

Coram:

Hon'ble M. K. Shrawat Hon'ble Member (J)

Hon'ble Chandra Bhang Singh, Hon'ble Member (T)

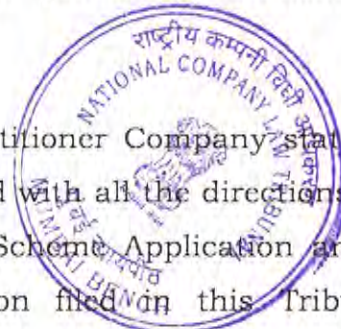
For the Petitioner Company: Senior Counsel Mr. Ravi Kadam, Counsel Mr. Zal Andhyarujina and Counsel Mr. Karan Bhide alongwith Advocate Ms. Faranaaz Karbhari and Advocate Mr. Rahul Jain i/b HSA Advocates, Advocates for the Petitioner Company

For the Regional Director: Mrs. Rupa N. Sutar, Assistant Director, in the office of Regional Director

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. Heard the learned counsel for the parties. No objections have come before this Tribunal to oppose the Scheme and no party has controverted any averments made in the Petition.
2. The Learned Counsel appearing for the Petitioner Company states that the Petition has been filed to seek sanction of this Hon'ble Tribunal to the Scheme of Arrangement between The Tata Power Company Limited ("**Transferor Company**") and Tata Advanced Systems Limited ("**Transferee Company**") pursuant to the provisions of Sections 230 - 232 of the Companies Act, 2013 ("**Act**").
3. The rationale for the Scheme is to enable the Applicant Company exit its non-core defence electronics business by transferring the said defence electronics business of the Applicant Company to the Transferee Company, as a going concern on a slump sale basis with effect from the Effective Date, so as to enable the management to focus on the core business of generation, transmission and distribution of electricity.
4. The Learned Counsel for the Petitioner Company states that the Petitioner Company has complied with all the directions passed by this Tribunal in the Company Scheme Application and that the above Company Scheme Petition filed on this Tribunal is in

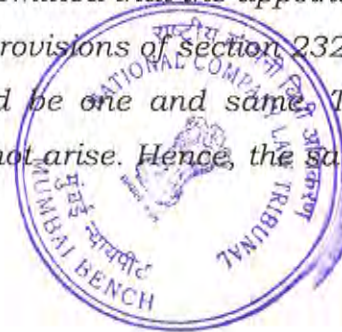


consonance with the order passed in the Company Scheme Application.

5. The Learned Counsel appearing for the Petitioner Company has stated that the Petitioner Company has complied with all the requirements as per the directions of this Tribunal and has filed necessary Affidavits of compliance with this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Act and the Rules made thereunder. The said undertaking is accepted.
6. Through an affidavit filed by the petitioner company, this Bench has noted that the Transferee Company, Tata Advanced System Limited is situated in the state of Andhra Pradesh and therefore it falls in the jurisdiction of NCLT Hyderabad. In this regard, an Order has already been pronounced on 21.01.2019 by NCLT Hyderabad Bench admitting the Company Application of the Transferee Company.
7. The Regional Director, Western Region, has filed its Report on the above Scheme on 15th April 2019 ("**RD Report**"), stating therein that this Tribunal may consider the observations made between paragraph number IV (i)- IV (xvii) of the said RD Report. The Petitioner Company has submitted reply to the RD Report through affidavit on 18th April 2019. A copy of the said affidavit has also been served to Regional Director, Western Region on 18th April 2019.
8. With respect to the RD Report, the following are the observations made by the Regional Director in the RD Report:
 - (i) *The Registered Office of Tata Advanced Systems Limited (Transferee Company) is situated in the State of Hyderabad, is outside the jurisdiction of this Hon'ble Tribunal and falls within the jurisdiction of Hon'ble NCLT, at Hyderabad. Accordingly, similar approval be obtained by the Transferee Company from Hon'ble NCLT, at Hyderabad;*
 - (ii) *As per Part-1- General, Clause-1(a) of the scheme. "Appointed Date" means the Effective Date; in this regard it is submitted that as per provisions of section 232(b) of the Companies Act, 2013 the scheme shall clearly indicate an "Appointed Date"*

from which it shall be effective and the scheme shall be deemed to be effective from such date and not a date subsequent to the appointed date. In the absence of not indicating any appointed date (Calendar Date), the scheme deserves to be rejected;

- (iii) *As per Part - I - Definition & Interpretation Clause (a) of the Scheme contemplates "Commencement Date" accordingly it means 26th April 2018. In this regard it is submitted that the petitioner be directed to clarify its meaning, relevancy of Commencement Date to the Appointed Date. Effective date and the scheme as a whole;*
- (iv) *As per Part -1 - Definition & Interpretation Clause (a) of the Scheme. "Contracts" means "all contracts, memorandum of understanding, bids, engagements, licences, guarantees, agreements and other commitments, whether written or unwritten, entered into by or on behalf of or the benefit of which is held in trust for or has been assigned to, the Transferor Company prior to the Effective Date, each of which belongs to is utilised in or for the benefit of, or pertains to the SED Undertaking, and includes those items described in Annexure C, but does not include the Excluded Contracts"; In this regard it is submitted that large number of contracts involves the transactions relating to Ministry of Defence, which needs utmost secrecy to be maintained regarding specifications, special needs, drawings etc., NOC of Ministry of Defence is a condition precedent. Hence, notice may please be given to Ministry of Defence to file their objections/comments/on the scheme;*
- (v) *As per Part -I - Definition & Interpretation Clause (a) of the Scheme contemplates "Implementation Period" Accordingly it means "the period intervening tin commencement date and the Effective date". In this regard it is submitted that the appointed date and Effective date in terms of provisions of section 232(6) of the Companies Act, 2013 should be one and same. The question of intervening period does not arise. Hence, the same needs to be deleted.*



- (vi) *As per Part - I - Definition & Interpretation Clause (a) of the Scheme contemplates "Testing Date" As per Scheme it means "30th September and 30th March of each year starting from effective date It is submitted that the scheme does not indicate appointed date in in terms of provisions of section 232(6) of the Companies Act, 2013 keeping the scheme open for an unknown period and to monitor the same by Hon'ble NCLT is not possible. In this regard it is submitted that the petitioner be directed to clarify its meaning, relevancy to the Appointed Date, Effective date and the scheme as a whole;*
- (vii) *As per Part-II- Section - 2 – "Conduct of business" - Clause-11 of the scheme. It is observed that the said clause of the Scheme contains several future obligations and transactions breach of any of the contract/conditions stipulated in the said clause needs to be settled in a court of competent jurisdiction, it is not possible to this bench to supervise the implementation of the scheme. The order sanctioning the scheme is based on facts and figures made available as on the appointed ate. Hence, the said clause needs to be deleted.*
- (viii) *As per Part-U- Section - 3 - Clause-14- "Effective Date and Post Effective date Adjustment, sub clause 14.1(a) it is stated that" At least 5 (five) Business Days prior to the Effective Date, the Transferor Company shall provide to the Transferee Company with: (i) a net worth statement calculated based on the format set out at Part B of Annexure A ("Effective Date Target Assets"), and (ii) a statement reflecting the Unrealised Current Assets as at the Effective Date based on the format set out in Part E of Annexure A ("Effective Date Unrealised Current Assets"). In this regard it is submitted that since the issues are not crystallised as on appointed date, such kind of arrangement is outside the scope of provisions of section 230 to 232 of the Companies Act, Accordingly, the said clause needs to be deleted,*
- (ix) *As per Part-II- Section - 3 - Clause-14- "Effective Date and Post Effective date Adjustment, sub clause 14.2(a) to (e) it is submitted that since the issues are not crystallised as on appointed date, such kind of arrangement is outside the scope*

of provisions of section 230 to 232 of the Companies Act, Accordingly, the said clause needs to be deleted;

- (x) *As per Part-II- Section - 3 - Slump Sale- Clause-15 (“Earn-Out consideration”) of the scheme. It is observed that the said clause of the Scheme contains several transactions pertaining to future obligations. These are the contracts entered in to between two entities which s outside the scope of provisions of section 230-232 of Companies Act, 2013. Breach of any contract needs to be settled in a court of competent jurisdiction; it is not possible to this bench to supervise the implementation of the scheme. Hence, the said clause needs to be deleted*
- (xi) *As per Part-III - General Terms and Conditions - Clause -17 (a) (vii) of the Scheme (Conditions Precedent) the effectiveness of the Scheme is conditional upon and subject to: “receipt of approvals of applicable third parties, Government of the United States of America and any applicable Governmental Authority including but not limited to the MoD” NOC of Government of the United States of America is a condition precedent. Hence, notice may please be given to US Government to file their objections/ comments/ on the scheme;*
- (xii) *The assets and liabilities to be transferred on demerger has to be crystalised on an appointed Date; it cannot be a future date and cannot be kept open, to be decided by the Board of directors of both the companies, subsequent to the date of sanction of scheme; Hence, the Scheme deserves to be rejected;*
- (xiii) *The scheme approved by the shareholders of both the petitioner companies does not indicate any remaining business. Under the scheme of demerger, Tata Power Company Limited, the Transferor Company has to indicate distinctively and elaborately “the remaining business” in the Scheme. As the same is not indicted the scheme deserves to be rejected;*
- (xiv) *ROC Mumbai, in his report/letter No. ROC/JTA (N)/000567/230-232/1499 dated 09.01.2019 has made few observations, the said observations are mentioned at para 21 above. In view*

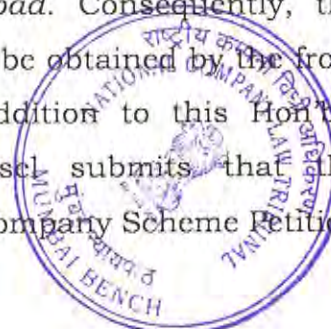


of the objections raised by ROC Mumbai, Hon'ble NCLT may pass appropriate orders/orders as deem fit;

- (xv) *ROC Mumbai, in his report/letter No. ROC/JTA (N)/000567/230-232/1499 dated 09.01.2019 has an observation at para 25 that "as per complaint section of this office 6 complaint pending against the transferor company out of 5 complaint is system closed. One complaint is open as per MCA system copy of the complaint is enclosed herewith". In view of the observation made by ROC Mumbai, Hon'ble NCLT may pass appropriate orders/ orders as deem fit;*
- (xvi) *Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy / any change / changes are made, for changes if any, liberty be given to Central Government to file further report if any required.*
- (xvii) *It is humbly submitted that in view of the above-mentioned observations liberty may be given to the Regional Director to file additional report if so required.*

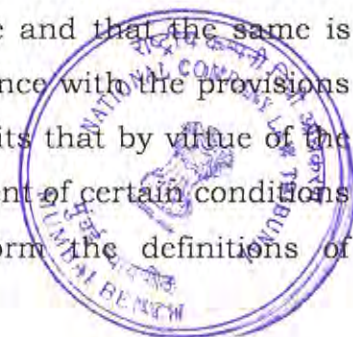
9. With respect to RD observations, the Petitioner Company through the Learned Senior Counsel submits as under:

- (i) As regards observation in paragraph IV (i) of the RD Report is concerned, the Petitioner Company through the Learned Senior Counsel submits that clause No. 17 (a) (v) of the Scheme stipulates that receipt of the NCLT order approving the Scheme is one of the conditions precedents to the Scheme becoming effective. In this regard, the Scheme defines 'NCLT' in 'Part I-General, 1. Definitions and Interpretation' as *the Hon'ble NCLT having its bench at Mumbai and the Hon'ble NCLT having its bench at Hyderabad. Consequently, the Scheme provides that approval shall be obtained by the from the NCLT, Hyderabad Bench in addition to this Hon'ble Tribunal. Further, Ld. Sr. Counsel submits that the Transferee Company has duly filed Company Scheme Petition*

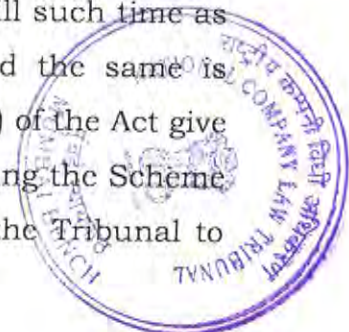


bearing number CP (CAA) No. 148/230/HDB/2019 before the NCLT, Hyderabad Bench, seeking its approval to the proposed Scheme and that the same is at the stage of final hearing. Ld. Sr. Counsel therefore submits that this objection of the RD may be disposed off accordingly.

- (ii) As regards observation in paragraph IV (ii) of the RD Report is concerned, at the outset, the Petitioner Company, through the Learned Sr. Counsel submits that the issue of fixing of a fixed calendar date as the 'Appointed Date' is an issue which is no longer *res integra* and that an event-based date can also be fixed as the 'Appointed Date' for a scheme of arrangement under the provisions of the Act. Ld. Sr. Counsel submits that the Government of India, through the Ministry of Corporate Affairs has issued a Circular dated 21.08.2019, bearing ref. no. F. No. 7/12/2019/CL-I whereby the Ministry has sufficiently clarified the provisions of Section 232 (6) of the Act and permitted an 'Appointed Date' which is not linked to any specific calendar date, but is a date based on completion/satisfaction of certain conditions, subject to which, the Scheme is to become effective and operational. The Ld. Sr. Counsel submits that for the purposes of Section 232 (6) of the Act, the 'Appointed Date' can be a floating date and need not be a fixed date. Relying upon the said MCA Circular dated 21.08.2019, bearing ref. no. F. No. 7/12/2019/CL-I, Ld. Sr. Counsel further submits that the provision of Section 232 (6) of the Act enables the companies in question to choose and state in the scheme an 'Appointed Date'. This date may be a specific calendar date or may be tied to the occurrence of an event, such as grant of license by a Competent Authority or fulfilment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, etc., which are relevant to the scheme. The Ld. Sr. Counsel accordingly submits that the 'Appointed Date' has been clearly indicated in the Scheme and that the same is capable of being identified in accordance with the provisions of the Act. The Ld. Sr. Counsel submits that by virtue of the stipulations in the Scheme for fulfilment of certain conditions precedent, it is necessary to conform the definitions of



'Appointed Date' and 'Effective Date'. The scope of the 'Appointed Date' and 'Effective Date' are set forth in the Scheme. The Scheme defines the 'Appointed Date' as meaning the 'Effective Date'. The 'Effective Date' is defined to mean "*the last of the dates on which all the conditions and matters referred to in Clause 17 of the Scheme occur or have been fulfilled or waived in accordance with the Scheme...*". This Scheme is a case, wherein the implementation of the Scheme is conditional upon and subject to approvals set out in clause 17 of the Scheme. The date on which all approvals set out in clause 17 of the Scheme, including without limitation the receipt of the NOC/ Approval of the Ministry of Defence ("MoD") will be the Effective Date as defined in the Scheme. Ld. Sr. Counsel further submits that in terms of the Defence Procurement Procedure (2013 Amendment), the approval of this Hon'ble Tribunal to the proposed Scheme of Arrangement is a pre-condition for the approval by the MoD for transfer/ assignment of contracts entered into by the Petitioner Company with the MoD. The Sr. Counsel submits that the Transferor/ Petitioner Company is not permitted to assign contracts entered into by it with the MoD, without the prior consent of the MoD in cases involving merger, amalgamation, consolidation, acquisition, change in control or similar transaction and therefore the current Scheme which contemplates the transfer of the Defence Undertaking as a going concern on a slump sale basis cannot be given effect to without the prior approval of the governmental authorities including the MoD as set out in Clause 17. The provisions of Section 232(6) have been substantially complied with in the Scheme. In this case, the 'Appointed Date' and 'Effective Date' are prospective in nature. Further, there is no legal impediment in accepting the tenability of the provisions incorporated in the Scheme. Ld. Sr. Counsel also submits that while a Scheme can be sanctioned by the Tribunal, the actual date of its coming into effect can be delayed till such time as the necessary preconditions are fulfilled and the same is permissible. Sections 232 (3) (d) and 232 (3) (j) of the Act give the Tribunal such leeway. Moreover, sanctioning the Scheme does not in any manner fetter the power of the Tribunal to

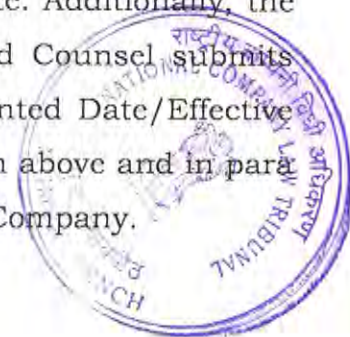


delay the date of coming into effect of the Scheme. In addition to the MCA Circular dated 21.08.2019, bearing ref. no. F. No. 7/12/2019/CL-I, the Transferor Company has also relied upon the following judgments in support of the above submission:

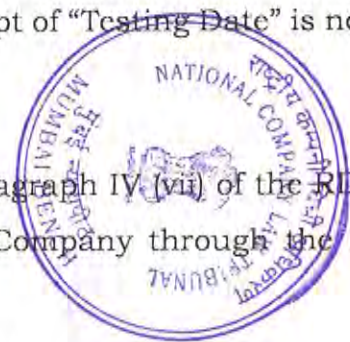
- a. Vodafone Mobile Services Limited and Vodafone India Limited and Idea Cellular Limited (Judgment delivered on December 21, 2017 Company Scheme Petition No. 1012 of 2017, NCLT, Mumbai);
- b. In Re: SCIL Ventures Limited and Ors. (Judgment delivered on August 9, 2017, TCSP No. 158, 159 and 160 of 2017, NCLT, Mumbai);
- c. Sistema Shyam Teleservices Limited and Ors. v. Reliance Communication Limited [[2017]136C LA11 (Raj.)];
- d. In Re. Equitas Finance Limited & Ors. [Judgment delivered on 06.06.2016, passed in CP Nos. 119 – 121 of 2016, High Court of Judicature at Madras]; and
- e. Airtel Broadband Services Private Limited [Judgment delivered on 11.04.2014 in CSP No. 91 of 2014, High Court of Judicature at Bombay]

Ld. Sr. Counsel therefore submits that this objection of the Ld. RD be decided accordingly.

- (iii) As regards observation in paragraph IV (iii) of the RD Report is concerned, the Petitioner Company through the Learned Counsel submits that the Commencement Date has been defined as 26th April 2018. Further, the Appointed Date in the Scheme is equal to the Effective Date, which requires completion of certain conditions precedents, as stipulated in clause 17 of the Scheme. There is a time period stipulated for satisfaction of the above condition precedents, and it is in this context that there is a linkage of the Commencement Date to the Appointed Date and the Effective Date. Additionally, the Petitioner Company through the Learned Counsel submits that the point with respect to the Appointed Date/Effective Date has been comprehensively dealt with above and in para 4.2 of the Affidavit filed by the Petitioner Company.



- (iv) As regards observation in paragraph IV (iv) of the RD Report is concerned, the Petitioner Company through the Learned Counsel submits that clause No. 17 (a) (vii) of the Scheme clearly stipulates that, *inter alia*, receipt of approval from the MoD is one of the conditions precedents to the Scheme becoming effective. Accordingly, issuing a notice at this stage to the MoD does not arise as the MoD shall review the Scheme prior to giving its approval.
- (v) As regards observation in paragraph IV (v) of the RD Report is concerned, the Petitioner Company through the Learned Counsel submits that Implementation Period has been defined as the period intervening the Commencement Date and the Effective Date in the Scheme. Further, the Commencement Date and Effective Date has also been defined in the Scheme. The relevance of the Implementation Period can be deciphered from clauses 5 (b) and 11 of the Scheme. Accordingly, the Implementation Period needs to be retained.
- (vi) As regards observation in paragraph IV (vi) of the RD Report is concerned, the Petitioner Company through the Learned Counsel submits that the concept of "Testing Date" is not open ended or for an indefinite period. The "Testing Date" reference is used in clause 14.2 (e) (ii) of the Scheme which in turn ceases to be applicable in terms of clause 14.2 (e) (iii) of the Scheme. The "Testing Date" reference is with respect to an obligation on the Transferee Company to provide a statement of Actual Unrealised Current Assets within a specified time period of the "Testing Date". However, once all the Actual Unrealised Current Assets are received by the Transferee Company and paid to the Transferor Company in accordance with clause 14.2 (e) (i) of the Scheme, the Transferee Company's obligations in terms of Clause 14.2 (e) (ii) comes to an end and correspondingly the applicability of the "Testing Date" ceases. Thus, the concept of "Testing Date" is not for an indefinite period.
- (vii) As regards observation in paragraph IV (vii) of the RD Report is concerned, the Petitioner Company through the Learned

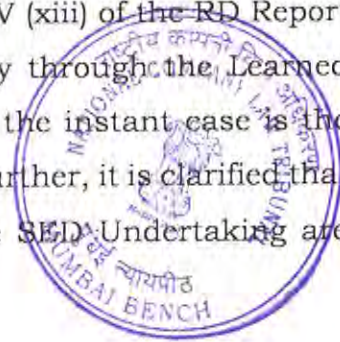


Counsel submits that the Court has the power to supervise the Scheme in terms of Section 231 (a) of the Act. Accordingly, clause 11 of the Scheme should be retained. Further, the compliance of clause 11 of the Scheme precedes the Appointed Date which is the same as the Effective Date. Accordingly, the compliances cannot be said to be in the nature of future obligations. Further, clause 11 of the Scheme provides for the control of the conduct of the Petitioner Company with respect to certain actions during the Implementation Period. Further, the Petitioner Company through the Learned Counsel submits that the above control concept has been approved by the NCLT, Mumbai in various judgments including in the scheme of arrangement between *inter alia* the Tata Chemicals Limited and Yara Fertilizers India Private Limited (Judgment delivered on 7 December 2017, CSP Nos. 458 and 484 of 2017, NCLT, Mumbai Bench).

- (viii) As regards observation in paragraph IV (viii)- (ix) of the RD Report is concerned, the Petitioner Company through the Learned Counsel submits that there is nothing in the Act which restricts adjustments in consideration at Effective Date. Further, this is the commercial arrangement between the parties and there is no impact of fixing an Appointed Date. Accordingly, it is open to the Petitioner Company to have a time period as opposed to a particular date for the purpose of calculating the consideration to be paid to it for transferring the SED Undertaking.
- (ix) As regards observation in paragraph IV (x) of the RD Report is concerned, the Petitioner Company through the Learned Counsel submits that there is no question of any supervision by the Hon'ble NCLT with respect to computation of the Earn-Out consideration. The computation of the Earn-Out consideration is clearly mentioned in clause 15 of the Scheme and is entirely capable of being deciphered in accordance with the conditions and milestones prescribed therein. Further, the Learned Counsel submits that the Hon'ble NCLT approving the payment of this potential amount is no different from the Hon'ble NCLT approving the payment of consideration under

Clause 13 of the Scheme. Additionally, even otherwise, the Hon'ble NCLT is clearly empowered under Section 231(1) of the Act, to supervise the implementation of the Scheme. As clause 15 forms an integral part of the Scheme, the question of this being deleted does not arise.

- (x) As regards observation in paragraph IV (xi) of the RD Report is concerned, the Petitioner Company through the Learned Counsel submits that clause No. 17 (a) (vii) of the Scheme clearly stipulates that receipt of approvals of applicable third parties, Government of the United States of America and any applicable Governmental Authority including but not limited to the MoD is one of the conditions precedents to the Scheme becoming effective. Accordingly, issuing a notice at this stage to the above entities does not arise as the Government of the United States of America shall review the Scheme prior to giving its approval.
- (xi) As regards observation in paragraph IV (xii) of the RD Report is concerned, the Petitioner Company through the Learned Counsel submits that the Scheme in the instant case is a Scheme of arrangement whereby the SED Undertaking is being transferred by the Transferor Company to the Transferee Company vide a slump sale. Further, the Appointed Date has been clearly identified and it is from this date that the SED Undertaking shall be deemed to have been transferred to the Transferee Company. Further, the Proposed Scheme is clear as to the assets and liabilities forming the said SED Undertaking which will be transferred to the Transferee Company as part of the Proposed Scheme. Moreover, clarity with respect to the Appointed Date has been comprehensively dealt with in para 4.2 of the Affidavit filed by the Petitioner Company.
- (xii) As regards observation in paragraph IV (xiii) of the RD Report is concerned, the Petitioner Company through the Learned Counsel submits that the Scheme in the instant case is the slump sale of the SED Undertaking. Further, it is clarified that all of the assets and liabilities of the SED Undertaking are



being transferred to the Transferee Company. The SED Undertaking has been defined under clause 1(a) of the Scheme. Post the transfer of the SED Undertaking, the following businesses shall continue to vest in the Petitioner Company:

- Generation, transmission and distribution-cum-retail of power
- Trading of power
- Providing services in power business
- Coal mines and logistics
- Solar photovoltaic (PV) manufacturing
- Engineering, procurement and construction (EPC) services

Here it may be noted that although at para xiii(a) The Learned Counsel of the petitioner mentions that there is no requirement to mention the share capital of the companies in the scheme. However, a perusal of the Order of Hon'ble NCLT Hyderabad brings the following pattern of shareholding in respect of Transferor and Transferee companies.

I) In respect of Transferee Company:

The Authorised Share Capital of the Applicant/Transferee Company as on 30.06.2018 is ₹2500,00,00,000/- divided into 250,00,00,000 equity shares of ₹10 each. The Issued, subscribed and paid-up equity share capital is ₹548,17,11,570/- divided into 54,81,71,157 equity shares of ₹10 each.

II) In respect of Transferor Company

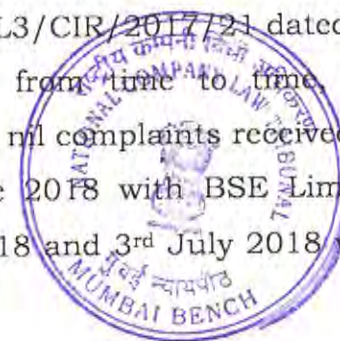
The Authorised Share Capital of the Transferor Company i.e. Tata Power Company Limited as on 30.06.2018 is ₹529,00,00,000/-(divided into 300,00,00,000 equity shares of ₹1/- each and 2,29,00,000 Cumulative Redeemable Preference Shares of ₹100/- each) The Paid up equity share capital is ₹270,50,03,690/-

(xiii) As regards observation in paragraph IV(xiv), which references



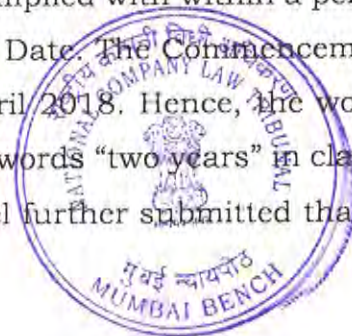
para III 21 of the RD Report that identifies the observations of the ROC Mumbai *vide* his report/letter dated 9th January 2019 of the RD Report is concerned, the Petitioner Company through the Learned Counsel submits as follows:

- a. With respect to para III 21 1. of the RD Report, the details of the Authorised/ paid up capital of the Transferor Company has already mentioned in clause number 6 of the Company Petition filed by the Petitioner Company. Insofar as the Transferee Company is concerned, clause number 9 and 14 of the Company Petition filed by the Transferee Company before NCLT, Hyderabad bench provides them. The Hon'ble NCLT may also note that there is no requirement to mention the share capital of the companies in the Scheme and the consideration for the business transfer is being paid in cash and not by way of issue of shares of the Transferee Company.
- b. With respect to para III 21 2. of the RD Report, the clarity with respect to the Appointed Date has been comprehensively dealt with in para 4.2 of the Affidavit filed by the Petitioner Company.
- c. With respect to para III 21 3. of the RD Report, the Rationale of the Scheme is provided in clause numbers 13 and 14 of the Company Petition filed by the Transferor Company and the Benefits of the Scheme is provided in clause number 15 of the above Company Petition.
- d. With respect to para III 21 4. of the RD Report, the Petitioner Company has not received any complaints in connection with the Scheme. In terms of the provisions of SEBI Circular No CFD/DIL3/CIR/2017/21 dated 10 March 2017, as amended from time to time, the Company has filed report on nil complaints received by the Company on 19th June 2018 with BSE Limited (BSE) and on 19th June 2018 and 3rd July 2018 with



National Stock Exchange of India Limited (NSE). This has been stated in clause 11 of the Company Petition. Insofar as any proceedings/ investigations pending against the Petitioner Company under Sections 210, 217, 219, 220, 223, 224, 225, 226 and 227 of the Act are concerned, we understand that there has been a complaint filed with the MCA. However, the Petitioner Company has not been provided with a copy of the said complaint for its review. Upon receipt and further review of the complaint, the Petitioner Company undertakes to take necessary steps to rectify and resolve the issue, if any.

- (xiv) As regards observation in paragraph IV (xv) of the RD Report is concerned, the Petitioner Company through the Learned Counsel submits that the response thereto has been provided in clause 4.13.4 of the Affidavit filed by the Petitioner Company.
- (xv) As regards observation in paragraph IV (xvi) of the RD Report is concerned, the Petitioner Company through the Learned Counsel submits that the Scheme enclosed to the Company Application and the Company Petition of the Transferor Company are the one and the same.
- (xvi) As regards observation in paragraph IV (xvii) of the RD Report is concerned, the Petitioner Company through the Learned Counsel submits that the question of dealing with the same does not arise.
10. On 22nd April 2019, the Ld. Sr. Counsel for the Petitioner Company had sought time to amend clause 17(b) of the Scheme. The Ld. Sr. Counsel for the Petitioner Company submitted that in terms of clause 17(b) of the Scheme, the conditions precedent, as mentioned under clause 17(a), are required to be complied with within a period of 1 (one) year from the Commencement Date. The Commencement Date in terms of the Scheme is 26th April 2018. Hence, the words "one year" need to be substituted by the words "two years" in clause 17(b) of the Scheme. The Ld. Sr. Counsel further submitted that in



the event such change is not made, the Scheme will not become effective inasmuch as the said period of one year is due to expire on 26th April 2019. This Tribunal, vide its order dated 22nd April 2019, granted time to amend the Scheme.

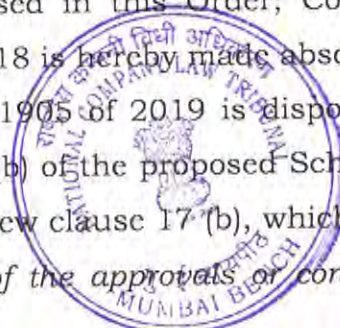
11. Accordingly, the Board of Directors of the Petitioner Company, vide its resolution dated 2nd May 2019, has amended clause 17(b) of the Scheme subject to the approval of the Tribunal. Accordingly, upon modification of the Scheme, clause 17 (b) shall read as follow:

“In the event any of the approvals or conditions enumerated in Clause 17(a) are not obtained or complied within two years from the Commencement Date or such other date as the Transferor Company and the Transferee Company or their Boards of Directors may agree in writing, or if for any other reason, this Scheme cannot be implemented, then the Board of Directors of the Transferee Company may waive the condition set out in Clause 17(a)(vii) to the extent permitted under Applicable Laws. In the event the condition set out in Clause 17(a) is not satisfied or waived in accordance with this Clause 17(b), the Scheme shall become null and void, and in that event, no rights and liabilities shall accrue to or be incurred between the Transferor Company and the Transferee Company or their shareholders or creditors or employees or any other person.”

12. The Petitioner Company has filed Miscellaneous Application before this Tribunal on 27th May 2019 for the said modification to the Scheme. A copy of the said Miscellaneous Application has also been served to Regional Director, Western Region on 28th May 2019.

13. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. Accordingly, this Bench, to the Petitioner Company, do Order that:

1. Since all requisite statutory compliances have been fulfilled, and for all the directions passed in this Order, Company Scheme Petition No. 4655 of 2018 is hereby made absolute.
2. Miscellaneous Application No. 1905 of 2019 is disposed off with the Order that Clause 17 (b) of the proposed Scheme of Arrangement is modified with new clause 17 (b), which reads as follows: *“In the event any of the approvals or conditions*



enumerated in Clause 17 (a) are not obtained or complied within two years from the Commencement Date or such other date as the Transferor Company and the Transferee Company or their Boards of Directors may agree in writing, or if for any other reason, this Scheme cannot be implemented, then the Board of Directors of the Transferee Company may waive the condition set out in Clause 17 (a) (vii) to the extent permitted under Applicable Laws. In the event the condition set out in Clause 17 (a) is not satisfied or waived in accordance with this Clause 17 (b), the Scheme shall become null and void, and in that event, no rights and liabilities shall accrue to or be incurred between the Transferor Company and the Transferee Company or their shareholders or creditors or employees or any other person.”

3. The Petitioner Company is directed to lodge a copy of this Order along with an amended copy of the Scheme of Amalgamation 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. Additionally, in compliance with Clause 6 (d) of the MCA Circular dated 21.08.2019, bearing ref. no. F. No. 7/12/2019/CL-I and since the appointed date is an event based date, which may be a date subsequent to the date of lodging of the order with the Registrar of Companies, the Petitioner Company is directed to intimate the office of the concerned Registrar of Companies within 30 days of completion of last of the conditions precedent set out in Clause 17(a) of the proposed Scheme of Arrangement.
4. The Petitioner Company to lodge a copy of this Order and the amended Scheme duly certified by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the order, if any.
5. All concerned authorities to act on certified copy of this order along with the sanctioned Scheme, duly certified by Registrar

/ Officer of the National Company Law Tribunal, Mumbai Bench.

6. Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modifications that may be necessary.

7. Ordered accordingly. To be consigned to Records.

Sd/-

Sd/-

Chandra Bhan Singh, Member (T)

M. K. Shrawat, Member (J)

Dated: 12.12.2019

Certified True Copy
Date of Application 12.12.2019
Number of Pages 19
Fee Paid Rs. 95
Applicant called for collection copy on 13.12.2019
Copy prepared on 13.12.2019
Copy issued on 13.12.2019



Assistant Registrar

National Company Law Tribunal, Mumbai Bench



BEFORE THE NATIONAL COMPANY
LAW TRIBUNAL,
BENCH, AT MUMBAI

COMPANY SCHEME PETITION NO. 4655
(MAH) OF 2018

IN

COMPANY SCHEME APPLICATION NO.
785 OF 2018

In the matter of the
Petition under Sections
230 to 232 of the
Companies Act, 2013 read
with the Companies
(Compromises,
Arrangements and
Amalgamations) Rules,
2016

AND

In the matter of Scheme of
Arrangement between The
Tata Power Company
Limited ("Transferor
Company") and Tata
Advanced Systems Limited
("Transferee Company")
and their respective
shareholders and
creditors.



The Tata Power Company Limited
... Petitioner Company /
Transferor Company

=====
MINUTES OF ORDER
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Dated this 10th day of December, 2019

HSA Advocates
Advocates for the Petitioner Company/
Transferor Company
5th Floor, Construction House,
Walchand Hirachand Marg,