

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM-V, MUMBAI BENCH**

CA (CAA) No. 90/MB/2021

In the matter of sections 230 to
232 and other applicable
provisions of the Companies Act
2013

AND

In the matter of scheme
amalgamation of Sterlite Grid 4
Limited with Sterlite Power
Transmission Limited and their
respective shareholders

Sterlite Grid 4 Limited, a)
company incorporated under)
the Companies Act, 2013,)
with CIN No.)
U29253PN2015PLC199555)
having its registered office at)
4th Floor, Godrej Millennium,)
9 Koregaon Road, Pune -)
411001

... First Applicant Company
/ Transferor Company

)
)
Sterlite Power Transmission)
Limited, a company)
incorporated under the)
Companies Act, 2013, with)
CIN No.
U74120PN2015PLC156643



having its registered office at) ... Second Applicant
4th Floor, Godrej Millennium,) Company/ Transferee
9 Koregaon Road, Pune - Company
411001

Order delivered on : 30.07.2021

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant Companies : Mr. Gaurav Joshi, Senior Advocate
a/w Mr. Haabil Vahanvaty, Mr.
Peshwan Jehangir, Mr. Mehul Shah,
Mr. Aman Yagnik, Mr. Rushabh Gala,
Mr. Jamsheed Dadachanji, Mr. Aamod
Modi i/b Khaitan & Co, Advocates for
the Applicant Companies

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. Sterlite Grid 4 Limited (hereinafter referred to as the "First Applicant Company" or "Transferor Company") and Sterlite Power Transmission Limited (hereinafter referred to as the "Second Applicant Company" or "Transferee Company") are entering into a scheme of amalgamation ("Scheme"). By the said Scheme, the First Applicant Company is amalgamating with the Second Applicant Company as a going concern. The Applicant Companies are part of the same corporate group. For the sake of convenience, the First Applicant Company and the Second Applicant Company may be collectively referred to as "Applicant Companies" wherever required.



2. The First Applicant Company is a wholly owned subsidiary of the Second Applicant Company. The registered offices of the Applicant Companies are situated in Pune, Maharashtra, and hence the subject matter of the Application is within the jurisdiction of the National Company Law Tribunal, Mumbai Bench.
3. Learned Counsel for the Applicant Companies submits that 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 extracted from the Scheme and stated below:

"For the purpose of carrying out construction of transmission system on BOOM basis, the Transferee Company had incorporated the Transferor Company which submitted bids for power transmission projects and had acquired special purpose vehicles established for the aforesaid purpose. The Transferee Company is currently desirous of consolidating the assets and liabilities of the Transferor Company pursuant to amalgamation. The Scheme provides for the amalgamation of the Transferor Company 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 Company within the Transferee Company;*
- (b) More efficient utilization of capital for enhanced development and growth of the consolidated business in one entity;*
- (c) Easier implementation of corporate actions through simplified compliance structure;*



- (d) Improve management oversight and bring in operational efficiencies;*
- (e) Cost savings through legal entity rationalisation and consolidation of various functions, business processes, elimination of duplicate expenses, etc.;*
- (f) Reduction of administrative responsibilities, multiplicity of records and legal & regulatory compliances;*
- (g) Efficient servicing/repayment of overall external debt;*
- (h) Stronger balance sheet and net worth of the Transferee Company entails scope for better facilitation terms with existing and potential lenders to meet capital needs for business purposes; and*
- (i) The increased asset base of the Transferee Company would benefit all the stakeholders including the creditors of both Transferor Company and the Transferee Company, who would continue to be associated with the Transferee Company.*

Thus, the amalgamation is in the interest of the shareholders, creditors and all other stakeholders of both the Transferor Company and the Transferee Company and is not prejudicial to or affecting the rights and interests of the concerned shareholders, creditors or the public at large."

4. The Appointed Date as mentioned in the Scheme is 1st April 2020.
5. Learned Counsel for the Applicant Companies submits that the consideration for the Scheme is as follows:



"The Transferor Company is a wholly owned subsidiary of the Transferee Company and therefore there shall be no issue of shares as consideration for the amalgamation of the Transferor Company with the Transferee Company.

Upon the Scheme becoming effective, all equity shares of the Transferor Company held by the Transferee Company along with its nominees, shall stand cancelled without any further application, act or deed."

6. The Learned Counsel for the First Applicant Company submitted that the First Applicant Company has received the consent affidavits from all its Equity Shareholders, whereby they have given their consent and approval to the Scheme. The Consent Affidavits of the Equity Shareholders of the First Applicant Company are annexed to the Company Application at Exhibit "A-12 colly" respectively. Accordingly, the requirement to hold meeting(s) of the Equity Shareholders of the First Applicant Company is dispensed with.
7. The Learned Counsel for the Applicant Companies submitted that the First Applicant Company is a wholly owned subsidiary of the Second Applicant Company, no shares are to be issued under the Scheme and thus the rights of the Shareholders of the Second Applicant Company are not adversely affected by the proposed Scheme. The present case is similar to the cases of *Mahaamba Investments Limited V/s. IDI Limited, (2001) 105 Company Cases page 16 to 18, Bon Limited dated March 12, 2010 in Company Scheme Petition No. 123 of 2010, In re Sharat Hardware Industries P. Ltd., reported at (1978) 48 Com Cas 23; In re Santhanalakshmi Investments (P) Ltd., reported at (2005) 129 Company Cases page 789 to 792, In re Nebula Motors Ltd., reported at 45 SCL 143 and Windermere Properties Private Ltd, Haddock Properties Private Ltd, Grandeur Properties Private*



Limited, Winchester Properties Private Limited and Pentagram Properties Private Limited with Housing Development Finance Corporation Limited, Company Scheme Application No. 243 of 2017 (order dated 4 September, 2017) and therefore, the Second Applicant Company is not required to convene a meeting or send any notices to its Equity Shareholders for approval of the Scheme. The Applicant Companies have submitted that they will file a company petition with the Tribunal seeking approval of the Scheme and will also issue notices to concerned regulatory authorities as stated in paragraph no. 14 of this Order.

8. The Learned Counsel submitted that the Applicant Companies do not have Preference Shareholders and therefore the question of convening and holding of a meeting of the preference shareholders of the Applicant Companies to consider and approve the Scheme does not arise. Accordingly, the requirement of convening meeting of the Preference Shareholders of the Applicant Companies is dispensed with.
9. The Learned Counsel submitted that as on 28 February 2021, the First Applicant Company has 6 Secured Creditors having an outstanding amounting to INR 1,323,79,85,390, details of which are annexed as Exhibit "A-14" to the Company Application of the Applicant Companies.
10. Further, the Learned Counsel submitted that as on 28 February 2021, the Second Applicant Company has 14 secured creditors having an outstanding amounting to INR 2123,84,42,244.38, details of which are annexed as Exhibit "A-15" to the Company Application of the Applicant Companies.
11. A meeting of the Secured Creditors of the First Applicant Company and the Second Applicant Company be convened and



held on 01st October 2021, at 11.00 am and 3.00 pm, respectively through video conferencing or other audio-visual means and not in physical presence of Secured Creditors, 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. The First Applicant Company and the Second Applicant Company shall provide facility of voting through electronic or digital means / email to each of their Secured Creditors to cast their vote at the said meeting. In addition to the above, the First Applicant Company and the Second Applicant Company, may also provide facility of remote e-voting to each of their Secured Creditors, at its discretion, to cast their vote.

12. At least 1 (One) month before the aforesaid meetings of the Secured Creditors of the First Applicant Company and the Second 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 Secured Creditors of the First Applicant Company / Second Applicant Company, as the case may be, by e-mail to their registered e-mail address as per the records of the First Applicant Company and the Second Applicant Company.
13. At least 30 (Thirty) days before the aforesaid meetings of the Secured Creditors of the First Applicant Company and the Second Applicant Company, a notice shall be given by the First Applicant Company and the Second Applicant Company, for convening the respective meetings, at the date and time aforesaid be published



each in 'Financial Express' in English having nation-wide circulation and 'Lok Satta' in Marathi having circulation in Maharashtra, 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 First Applicant Company / Second Applicant Company, as the case maybe, at secretarial.grid@sterlite.com.

14. The First Applicant Company and the Second Applicant Company undertakes to:

- (i) Issue notice convening meeting of the Secured Creditors 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.

15. Mr. Sachin Khandelwal, Assistant Vice President - Corporate Finance of the Second Applicant Company, failing whom, Mr. Amarendranath Tatimakula Reddy, Chief - Business & Regulatory, Policy and Business of the Second Applicant Company, is hereby appointed as the Chairperson for the meeting of the Secured Creditors of the First Applicant Company.

16. Mr. Vivek Goel, Senior Vice President of the Second Applicant Company, failing whom, Mr. Ramvir Pal - Assistant Vice President - Finance Risk Management Department & Treasury of the Second Applicant Company, is hereby appointed as the



Chairperson for the meeting of the Secured Creditors of the Second Applicant Company.

17. Mr. Kuldeep Ruchandani, of M/s. KPRC & Associates, Company Secretaries (Membership No.: 7971), and failing him, Ms. Mehak Gupta of M/s. Mehak Gupta & Associates, Company Secretaries (Membership No.: 10703) is hereby appointed as a Scrutinizer for the meeting of Secured Creditors of the First Applicant Company and the Second Applicant Company, respectively.
18. The respective Chairperson appointed for the aforesaid meeting of the First Applicant Company and the Second Applicant Company, to issue notice of the meeting of the Secured Creditors referred above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, as may be applicable for meeting of Secured Creditors convened and held through video conferencing or other audio-visual 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).
19. The quorum for the aforesaid meeting of the Secured Creditors of the First Applicant Company and the Second Applicant Company, shall be two Secured Creditors (in number) of the First Applicant Company and the Second Applicant Company, as the case may be, attending the meeting.
20. The value and number of the Secured Creditors shall be in accordance with the books/ records maintained by the First Applicant Company and the Second Applicant Company, as the



case may be, and where the entries in the books/ records are disputed, the Chairperson of the Meeting shall determine the value and number for the purpose of the aforesaid meeting and his decision in that behalf would be final. The voting by the Secured Creditors of the First Applicant Company and the Second Applicant Company, as the case may be, on the proposed Scheme shall be allowed by mechanism of voting through electronic or digital means / email by Secured Creditors or by their respective authorized representative(s). The voting by authorized representative, in case of a body corporate be permitted, provided that the authorization duly signed by the person entitled to attend and vote at the meeting is filed with the First Applicant Company / the Second Applicant Company, in physical or electronic mode, at its registered office, at least 48 (Forty Eight) hours before the aforesaid meetings, as required under Rule 10 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

21. The respective Chairperson shall file a compliance report not less than 7 (Seven) days before the date fixed for holding of the meeting of the Secured Creditors of the First Applicant Company and the Second Applicant Company and report to this Tribunal that the directions regarding the issue of notice and advertisement have been duly complied with, as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
22. The respective 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 Secured Creditors of the First Applicant Company / Second 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.

23. The Learned Counsel submitted that the First Applicant Company does not have any Unsecured Creditors and therefore the question of convening and holding of a meeting of the Unsecured Creditors of the First Applicant Company to consider and approve the Scheme does not arise. Accordingly, the requirement of convening meeting of the unsecured creditors of the First Applicant Company is dispensed with.
24. The Learned Counsel submitted that as on 28 February 2021, the Second Applicant Company has 859 unsecured creditors having an aggregate outstanding amounting to INR 667,83,58,499, details of which are annexed as Exhibit "A-16" to the Company Application of the Applicant Companies. As far as the rights of the Unsecured Creditors of the Second Applicant Company are concerned, they will not be affected by the proposed Scheme, since post Scheme, the assets of Second Applicant Company will be sufficient to discharge its liabilities. Further, the present case is similar to the facts in *CSA No. 243 of 2017 in the matter of Housing Development Finance Corporation Limited*, and therefore the Second Applicant Company is not required to hold / convene meeting of its Unsecured Creditors for approval of the Scheme. In view of this, the meeting of the Unsecured Creditors of the Second Applicant Company is not required to be convened. However, the Second Applicant Company shall send notice to its Unsecured Creditors having value INR 20,00,000/- and above inviting representations, if any, thereto by post/ courier/ email/ hand-delivery. Representations, if any, shall be filed before this Tribunal with a copy to the Second Applicant Company, within 30 (thirty) days from the date of receipt of such notice, failing



which, it shall be presumed that they have no objection to the proposed Scheme.

25. The Transferor Company will serve notice upon Official Liquidator, High Court, Bombay, pursuant to section 230(5) of the Companies Act, 2013 and as per rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal is appointing M/s. Bipin Shah & Associates, Chartered Accountants, having office at Unit No. 18, 3rd Floor, Hi Life Mall, P. M. Road, Santacruz (West), Mumbai- 400 054 and having email address as www.bipinshahassociates@gmail.com and Mobile No as 022-26487711/26487722, to assist the Official Liquidator to scrutinize the books of accounts of the said Transferor Company for the last five years and submit its report to the Tribunal. The First Applicant Company to pay fees of Rs. 1,00,000/- for this purpose. If no representation/response is received by the Tribunal from Official Liquidator, High Court, Bombay within a period of thirty days from the date of receipt of such notice, it will be presumed that he has no representation / objection to the proposed Scheme as per rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
26. 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 Pune; (iii) the Income Tax Authority at Circle 22(2), Delhi (for First Applicant Company having PAN No. AAVCS8805K) and at Circle 5, Pune (for the Second Applicant Company having PAN No. AAVCS7209P) within whose jurisdiction the respective Applicant Company's assessments are made, (iv) Goods & Service Tax authority at the Deputy Commissioner, State Delhi,



Zone-8, Ward-87 (for First Applicant Company) and at Deputy Commissioner, Vikroli-701, Division-Mulund, Zone-Mumbai South West, State-Maharashtra (for Second Applicant Company); (v) the Official Liquidator, High Court, Bombay (for First Applicant Company); and any other sectoral regulator, as 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 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.

27. 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 current COVID-19 pandemic situation prevailing now.

Sd/-

Chandra Bhan Singh
Member (Technical)

Sd/-

Suchitra Kanuparthi
Member(Judicial)

Certified True Copy
Copy Issued "free of cost"
On 30/08/2021

A.S. Sonawale
Deputy Registrar

National Company Law Tribunal Mumbai Bench
Government of India

