

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (CAA) No.3997/MB.IV/2018

connected with

CA (CAA) No.707/MB.IV/2018

In the matter of

Sections 230 to 232 and other
applicable provisions of the
Companies Act 2013

and

In the matter of

Scheme of amalgamation
of

Sterlite Power Grid Ventures Limited
(Transferor Company)

With

Sterlite Power Transmission Limited
(Transferee Company)

and their respective shareholders

Sterlite Power Grid Ventures Limited
CIN: U33120PN2014PLC172393 ...

Petitioner No.1/
Transferor Company

Sterlite Power Transmission Limited
CIN: U74120PN2015PLC156643 ...

Petitioner No.2/
Transferee Company

Coram: Sh. Rajasekhar V.K., Hon'ble Member (J)
Sh. Ravikumar Duraisamy, Hon'ble Member (T)

Appearances: Mr. Gaurav Joshi, Senior Counsel, a/w Mr Himanshu Vidhani,
Ms Sraddha Kedia i/b Khaitan & Co, Advocates for the
Petitioner Companies

Ms. Rupa Sutar, Dy. Director in the office of Regional Director
(Western Region), Ministry of Corporate Affairs, Mumbai.



Order pronounced on 22.05.2020

ORDER

Per: Ravikumar Duraisamy, Member (Technical)

1. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Petitions nor has any party controverted any averments made in the Petitions.
2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, and other applicable provisions of Companies Act, 2013, to a scheme of amalgamation of Sterlite Power Grid Ventures Limited ("**First Petitioner Company / Transferor Company**") with Sterlite Power Transmission Limited ("**Second Petitioner Company / Transferee Company**") and their respective shareholders ("**Scheme**"). The First Petitioner Company and the Second Petitioner Company are collectively referred to as "**Petitioner Companies**".
3. The Petitioner Companies have approved the said Scheme by passing respective Board Resolutions and thereafter they have approached this Tribunal by the captioned Petition for sanction of the Scheme.
4. The First Petitioner Company is *inter alia* engaged in the business of a developer on Build Own Operate and Maintain ("**BOOM**") basis for designing, financing, construction and maintenance of power transmission systems for concession periods ranging from 25 to 35 years. The First Petitioner Company also undertakes the Engineering, Procurement and Construction contracts for construction of power transmission systems.



5. The Second Petitioner Company is *inter alia* primarily engaged in the business of power products including power transmission conductors, optical ground wire cables and power cable and related solutions.

6. The Petitioner Companies submits that the rationale of the Scheme is as under:

“...

The Transferor Company would be a wholly owned subsidiary of the Transferee Company and holds investments in various companies. It is desirous to consolidate the business activities undertaken by the Transferor Company and its investments of the Transferor Company in various entities into a single entity.

The Scheme provides for the amalgamation of the Transferor Company with the Transferee Company and will result in the following benefits:

- *Streamlining of the corporate structure and consolidation of investments within the Transferee Company;*
- *Pooling of resources of the Transferor Company with the resources of the Transferee Company resulting in stronger balance sheet to meet future investment requirements;*
- *Cost savings through legal entity rationalisation; and*
- *Reduction of administrative responsibilities, multiplicity of records and legal & regulatory compliances.*

Thus, the amalgamation is in the interest of the shareholders, creditors and all other stakeholders of the companies and is not prejudicial to the interests of the concerned shareholders, creditors or the public at large.”

7. The Petitioner Companies further submits that the Petition had been filed in consonance with the Order dated 14th September 2018 passed by this Tribunal in Company Application No. 707 of 2018.

8. The Petitioner Companies states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and have filed necessary Affidavits confirming compliance before this



Tribunal. Moreover, the Petitioner Companies, undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder whichever is applicable. The said undertaking given by the Petitioner Companies is hereby accepted.

9. The Petitioner Companies states that the shares of the Petitioner Companies are not listed on any stock exchange. However, the debentures of the Petitioner Companies are listed on BSE Limited.
10. The Official Liquidator has filed its report dated 24th July 2019 with this Tribunal, submitting that on a perusal of the Chartered Accountant's report and specifically the questionnaire relating to the same and the instant Company Scheme Petition, it is noticed that the affairs of the Transferor Company have been conducted in a proper manner.
11. The office of the Regional Director has also filed their Report dated 16th July 2019 ("**Report**") praying that the Tribunal may pass such orders as it thinks fit, save and except as stated in paragraphs IV (a) to (h). In paragraphs IV (a) to (h) of the said Report, wherein it has been stated that: -

"IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:

- (a) The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Amalgamation. Further, the approval of the scheme by this Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).*



- (b) *It is observed that the Petitioner companies have not submitted a Chairman's Report, admitted copy of the Petition, and Minutes of Order for admission of the Petition. In this regard, the Petitioner has to submit the same for the record of Regional Director.*
- (c) *The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.*
- (d) *In compliance of AS-14 (IND AS-103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc.*
- (e) *As per Clause 1.1 of the Definition of the Scheme, Appointed Date means the 1st day of April, 2017 or such other date as may be approved by the NCLT or such other competent authority as may be applicable. In this regard, it is submitted that Section 232(6) of the Companies Act, 2013 states that the scheme under this section 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 at a date subsequent to the appointed date. However, this aspect may be decided by the Tribunal taking into account its inherent powers.*
- (f) *Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the*



amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.

(g) It is submitted that as per list of shareholders as on 01.04.2017 both the Petitioner Companies has non – resident shareholder, in this regards, Petitioner Companies has to undertake to serve notice u/s. 230(5) of the Companies Act, 2013 to the Reserve Bank of India.

(h) It is submitted that, letter received from BSE dated 23.10.2018 with their observations / representation and requested Tribunal to take it on the record. Annexed herewith as "Exhibit E".

12. The Petitioner Companies states that the Petitioner Companies have filed an Affidavit dated 19th December 2019 wherein they have dealt with the observation of the Regional Director and a copy of this Affidavit was served on the office of the Regional Director. The Petitioner Companies have in Affidavit dated 19th December 2019, in response to the above observations of the Regional Director, inter alia, stated that:

a) As far as the observations made in paragraph IV (a) of the Report of the Regional Director is concerned, the Petitioner Companies submit that the Petitioner Companies have served notices to the authorities which are likely to be affected by the Compromise or Amalgamation or Arrangement in accordance with Section 230(5) of the Companies Act, 2013. The Petitioner Companies have filed their respective Affidavits both dated 8th October 2018, whereby they have put on record the acknowledgements so received and confirmed service on all concerned authorities. The Petitioner Companies have, pursuant to and in terms of the Order dated 22nd November 2019, also issued the notice to the



concerned authorities and have filed respective Affidavits both dated 17th December 2019 to this effect with this Tribunal. Further, Petitioner Companies undertake that the sanctioning of the Scheme shall not deter the authorities from raising any issues in accordance with applicable laws and the decision of such authorities shall be binding on the Petitioner Companies to the extent tenable under law.

- b) As far as the observations made in paragraph IV (b) of the Report of the Regional Director is concerned, the Petitioner Companies submit that the Petitioner Companies have already submitted the copy of the instant Company Scheme Petition with all its annexures (including the Chairman's Report at Exhibit A-12 thereto), and Order of admission dated 22nd November 2019 with the office of the Regional Director on 6th December 2019. The Petitioner Companies have placed on record, the acknowledgement of service of the abovementioned documents on the office of the Regional Director, *vide* its Affidavits dated 17th December 2019.
- c) As far as the observations made in paragraph IV (c) of the Report of the Regional Director is concerned, the Petitioner Companies confirm that the Scheme enclosed with the Company Application and the instant Company Scheme Petition are one and the same and that there is no discrepancy or deviation whatsoever.
- d) As far as the observations made in paragraph IV (d) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the Petitioner Companies undertake to pass such accounting entries which are necessary in connection with the



Scheme to comply with such accounting standards notified under Section 133 of the Companies Act, 2013 as may be applicable to the Petitioner Companies (including Ind AS 103 and Ind AS-8).

- e) As far as the observations made in paragraph IV (e) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the Appointed Date for Part II of the Scheme shall be 1st April 2017. The Petitioner Companies confirms that the Scheme will take effect from the Appointed Date as per Section 232(6) of the Companies Act, 2013.
- f) As far as the observations made in paragraph IV (f) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the fees payable by the Transferee Company on clubbing of authorized share capital of the Transferor Company be set off against the fees already paid by the Transferor Company for its authorized share capital in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.
- g) As far as the observations made in paragraph IV(g) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the Petitioner Companies have served a copy of the notice on the Reserve Bank of India on 19th December 2019. Further the Petitioner Companies undertake to comply with the applicable provisions of Foreign Exchange Management Act, 1999 and other applicable regulations. The letter addressed to the Reserve Bank of India has been annexed as Exhibit "A-2" to the Affidavit in response dated 19th December 2019.
- h) As far as the observations made in paragraph IV (h) of the Report of the Regional Director is concerned, the Petitioner Companies



submit that they have applied for and have received an in-principle approval from BSE Limited on 27th September 2019. The letter dated 27th September 2019 of BSE Limited has been annexed and marked as Exhibit "A-3" to the Affidavit in response dated 19th December 2019.

13. The office of the Regional Director on being satisfied with the Affidavit dated 19th December 2019, has filed a supplementary report dated 30th December 2019, wherein they have clearly mentioned that the reply of the Petitioner Companies to each of their observation was satisfactory and have requested that appropriate orders may be passed by this Tribunal.
14. From the material on record, the Scheme annexed as Exhibit A-1 to Company Scheme Petition No. 3997 of 2018 appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
15. Since all the requisite statutory compliances have been fulfilled, the Scheme annexed as Exhibit A-1 to Company Scheme Petition No. 3997 of 2018 is sanctioned and Company Scheme Petition No. 3997 of 2018 is made absolute in terms of the prayer clauses 38 (a) to (h) in the said Company Scheme Petition.
16. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy within 30 days from the date of issuance of the Order by the Registry.



17. The Petitioner Companies are to lodge a copy of this order duly certified by the Deputy Registrar , National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the certified copy of the Order along with the scheme.
18. The Petitioner Companies are to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The costs are to be paid within four weeks from the date of the receipt of the duly certified copy of this Order.
19. The First Petitioner Company, being the Transferor Company, to pay costs of Rs. 25,000/- to the Official Liquidator. Costs to be paid within four weeks from the date of the receipt of the duly certified copy of this order.
20. All concerned regulatory authorities to act on a copy of this Order duly certified by the Deputy Registrar , National Company Law Tribunal, Mumbai Bench along with the scheme.
21. Any person interested is at liberty to apply to the Tribunal in the above matters for any directions that may be necessary.
22. All concerned Authorities are at liberty to approach this Tribunal for any further clarification after sanctioning of the Scheme.
23. The Scheme is sanctioned, and the appointed date of the Scheme is fixed as 1st April 2017.

Sd/-

Ravikumar Duraisamy
Member(Technical)

Sd/-

Rajasekhar V.K.
Member (Judicial)

Verified True Copy
Date of Application 27-05-2020
Number of Pages 10
Fee Paid Rs. 50
Applicant called for collection copy on 21/10/2020
Copy prepared on 21/10/2020
Copy Issued on 21/10/2020

H. Chandekar
For Assistant Registrar
National Company Law Tribunal, Mumbai Bench

