(2022) 08 NCLT CK 0038

In the National Company Law Tribunal

Case No : CA(CAA)/201/MB-IV/2021

Energair Windfarms Private Limited Vs

Date of Decision : 30-08-2022

Acts Referred:

Companies Act, 2013 — Section 103, 230(1)(a), 230(1)(b), 230(3), 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 — Rule 6, 7, 8, 12

Citation : (2022) 08 NCLT CK 0038

Hon'ble Judges : Kishore Vemulapalli, Member (J);Manoj Kumar Dubey, Member (T)

Bench : Division Bench

Advocate : Ajit Singh Tawar

Final Decision : Disposed Of

Judgement

Kishore Vemulapalli, Member (Judicial)

1. The Bench is convened by videoconference today.

2. The Learned Counsel for the Applicant Companies states that the present Scheme is Composite Scheme of Amalgamation and Arrangement Amongst Energair Windfarms Private Limited ("EWPL" or "Transferor Company 1") and Primeair Windfarms Limited ("PWL" or "Transferor Company 2") and Soverign Windfarms Private Limited ("SWPL" or "Transferor Company 3") and Vespower Windfarm Private Limited ("VWPL" or "Transferor Company 4") and Windeon Windfarms Private Limited ("WWPL" or "Transferor Company 5") and Powerica Sales And Services Private Limited ("PSSPL" or "Transferor Company 6") and Empower Gensets Private Limited ("Empower" or "Transferor Company 7") and Everest Industrial Gases Private Limited ("EIGPL" or "Transferor Company 8") with Powerica Limited ("Powerica" or "Transferee Company") and their respective shareholders ("the Scheme").

3. The Counsel for the Applicant Companies further submits that the Applicant Company 1 is engaged in the business of development and construction of wind power projects, wind park, wind power generation and all other allied activities

relating to setting up and operation of wind parks or wind power projects. The Applicant Company 2 is engaged in the business of undertaking, layout, develop, construct, build, erect, demolish, re-erect, alter, repair, re-model or sale or deal in any manner, on behalf of its clients as well as on its own in connection with wind power projects, windfarms or wind parks or any infrastructure development related to wind power projects, windfarms or wind parks. The Applicant Company 3 is engaged in the business of organizing, undertaking, layout, develop, construct, build, erect, demolish, re-erect, alter, repair, re-model, wind projects in India on behalf of clients as well as on its own in connection with any infrastructure development. The Applicant Company 4 is engaged in the business of organizing, undertaking, layout, develop, construct, build, erect, demolish, re-erect, alter, repair, re-model on behalf of clients as well as on its own in connection with any infrastructure development. The Applicant Company 5 is engaged in the business of organizing, undertaking, layout, develop, construct, build, erect, demolish, re-erect, alter, repair, re-model, wind projects in India on behalf of clients as well as on its own in connection with any infrastructure development. The Applicant Company 6 was incorporated to carry on the business of dealing in electric power generating sets of all types, its spares, accessories, etc. and hiring of electric power generating set. Currently, Applicant Company 6 has no business operations. The Applicant Company 7 is engaged in the business of manufacturing, trading and other services related to diesel generating sets. The Applicant Company 8 was incorporated to carry on the business of manufacture, sell and carry on business of industrial gases. Currently, Applicant Company 8 has no business operations. The Applicant Company 9 is engaged in the business of manufacturing, trading and other services related to diesel generating sets and generation of electricity from Wind Turbine Generators.

4. The Counsel for the Applicant Companies further submits that the Rationale for the Composite Scheme of Amalgamation and Arrangement amongst the Applicant Companies is as follows:

a. EWPL, PWL, SWPL, VWPL, WWPL, PSSPL, Empower, EIGPL, and Powerica are part of the same group with similar set of shareholders. Management of all the companies believe that it is in the best interest of all the stakeholders to consolidate all the group companies with Powerica.

b. As a result of Amalgamation of EWPL, PWL, SWPL, VWPL, WWPL, PSSPL, Empower and EIGPL with Powerica the following benefits will accrue to the Group:

i. Consolidation of businesses of the Group;

ii. Reduction in number of companies and regulatory compliances thereof;

iii. Streamlining the holding structure;

iv. Ease of management;

v. Reduction of operating and administrative costs; and

vi. Leveraging on synergies on consolidation.

5. The Counsel for the Applicant Companies state that as per the valuation report dated 19th July 2021 issued by Aashay Hasmukh Dedhia, Registered Valuer, determining the share entitlement and share exchange ratio pursuant to the Composite Scheme of Amalgamation and Arrangement the consideration proposed is as under:

a. Upon this Scheme becoming effective and upon amalgamation of PSSPL with Powerica in terms of this Scheme, Powerica shall, without any application or deed, issue and allot its Redeemable Preference Shares as per terms mentioned in Schedule 1, credited as fully paid up, to the extent indicated below, to the shareholders of PSSPL (other than shares held by Powerica in PSSPL, if any) whose names appear in the register of members of PSSPL, on the Record Date or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of Powerica in the following proportion viz.:

“272 (Two Hundred Seventy-Two) 0.001% Non-Convertible, Non-Cumulative, Redeemable Preference Shares of Rs 10 each fully paid-up issued by Powerica Limited in exchange for every 10 (Ten) equity shares of Rs 10 each fully paid-up held by the shareholders in Powerica Sales and Services Private Limited”

b. Upon this Scheme becoming effective and upon amalgamation of Empower with Powerica in terms of this Scheme, Powerica shall, without any application or deed, issue and allot its RPS as per terms mentioned in Schedule 1, credited as fully paid up, to the extent indicated below, to the shareholders of Empower (other than shares held by Powerica in Empower, if any) whose names appear in the register of members of Empower, on the Record Date or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of Powerica in the following proportion viz.:

“1 (One) 0.001% Non-Convertible, Non-Cumulative, Redeemable Preference Share of Rs 10 each fully paid-up issued by Powerica Limited in exchange for every 1 (One) equity share of Rs 10 each fully paid-up held by the shareholders in Empower Gensets Private Limited”

c. Upon this Scheme becoming effective and upon amalgamation of EIGPL with Powerica in terms of this Scheme, Powerica shall, without any application or deed, issue and allot its RPS as per terms mentioned in Schedule 1, credited as fully paid up, to the extent indicated below, to the shareholders of EIGPL (other than shares held by Powerica in EIGPL, if any) whose names appear in the register of members of EIGPL, on the Record Date or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of Powerica in the following proportion viz.:

“495 (Four Hundred Ninety-Five) 0.001% Non-Convertible, Non-Cumulative, Redeemable Preference Shares of Rs 10 each fully paid-up issued by Powerica Limited in exchange for every 100 (One Hundred) equity shares of Rs 10 each fully paid-up held by the shareholders in Everest Industrial Gases Private Limited”

d. EWPL, PWL, SWPL, VWPL, WWPL are wholly owned subsidiaries of Transferee Company. Accordingly, upon the Scheme becoming effective, no consideration shall be payable by the Transferee Company and the shares of the respective wholly owned subsidiary held by Transferee Company will stand cancelled, without any further act, instrument or deed and, pursuant to merger.

6. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Transferor Company No.1 as on 31st March 2021 is as under:

Particulars

Amount (in Rs.)

Authorized Share Capital

1,00,000 Equity Shares of Rs. 10/- each

10,00,000/-

Total

10,00,000/-

Issued, Subscribed and Paid-up

19,000 Equity Shares of Rs. 10/-

each

1,90,000/-

Total

1,90,000/-

7. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Transferor Company No.2 as on 31st March 2021 is as under:

Particulars

Amount (in Rs.)

Authorized Share Capital

1,00,00,000 Equity Shares of

Rs.10/- each

10,00,00,000/-

Total

10,00,00,000/-

Issued, Subscribed and paid up;

22,00,000 Equity Shares of Rs.

10/- each

2,20,00,000/-

Total

2,20,00,000/-

8. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Transferor Company No.3 as on 31st March 2021 is as under:

Particulars

Amount (in Rs.)

Authorized Share Capital

4,60,000 Equity Shares of Rs.10/- each

46,00,000/-

Total

46,00,000/-

Issued, Subscribed and paid up;

4,60,000 Equity Shares of

Rs.10/- each

46,00,000/-

Total

46,00,000/-

9. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Transferor Company No.4 as on 31st March 2021 is as under:

Particulars

Amount (in Rs.)

Authorized Share Capital

2,00,000 Equity Shares of Rs.10/- each

20,00,000/-

Total

20,00,000/-

Issued, Subscribed and paid up;

2,00,000 Equity Shares of

Rs.10/- each

20,00,000/-

Total

20,00,000/-

10. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Transferor Company No.5 as on 31st March 2021 is as under:

Particulars

Amount (in Rs.)

Authorized Share Capital

2,50,000 Equity Shares of Rs.10/- each

25,00,000/-

Total

25,00,000/-

Issued, Subscribed and paid up;

2,50,000 Equity Shares of

Rs.10/- each

25,00,000/-

Total

25,00,000/-

11. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Transferor Company No.6 as on 31st March 2021 is as under:

Particulars

Amount (in Rs.)

Authorized Share Capital

5,00,000 Equity Shares of Rs.10/- each

50,00,000/-

Total

50,00,000/-

Issued, Subscribed and paid up;

3,64,334 Equity Shares of

Rs.10/- each

36,43,340/-

Total

36,43,340/-

12. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Transferor Company No.7 as on 31st March 2021 is as under:

Particulars

Amount (in Rs.)

Authorized Share Capital

50,00,000 Equity Shares of Rs.10/- each

5,00,00,000/-

Total

5,00,00,000/-

Issued, Subscribed and paid up;

49,89,364 Equity Shares of

Rs.10/- each

4,98,93,640/-

Total

4,98,93,640/-

13. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Transferor Company No.8 as on 31st March 2021 is as under:

Particulars

Amount (in Rs.)

Authorized Share Capital

35,00,000 Equity Shares of Rs.10/- each

3,50,00,000/-

Total

3,50,00,000/-

Issued, Subscribed and paid up;

3,22,00,000 Equity Shares of

Rs.10/- each

32,20,00,000/-

Total

32,20,00,000/-

14. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Transferee Company No.9 as on 31st March 2021 is as under:

Particulars

Amount (in Rs.)

Authorized Share Capital

5,00,00,000 Equity Shares of

Rs.5/- each

25,00,00,000/-

Total

25,00,00,000/-

Issued, Subscribed and paid up;

3,44,89,151 Equity Shares of Rs.5/- each

17,24,45,755/-

Total

17,24,45,755/-

15. The Financial details/ summary of the First Applicant Company as on 31st March, 2021

Year

Revenue

Profit/(Loss)

2019 – 2020

Nil

(80,475)

2020 – 2021

Nil

(97,237)

16. The Financial details/ summary of the Second Applicant Company as on 31st March, 2021

Year

Revenue

Profit/Loss

2019 – 2020

75,25,569

11,24,050

2020 – 2021

71,70,000

5,69,130

17. The Financial details/ summary of the Third Applicant Company as on 31st March, 2021

Year

Revenue

Profit/Loss

2019 – 2020

40

(6,04,491)

2020 – 2021

00.00

(2,28,891)

18. The Financial details/ summary of the Fourth Applicant Company as on 31st March, 2021.

Year

Revenue

Profit/Loss

2019 – 2020

27,409

(356,488)

2020 – 2021

9,163

(12,75,296)

19. The Financial details/ summary of the Fifth Applicant Company as on 31st March, 2021

Year

Revenue

Profit/Loss

2019 – 2020

30,216

(3,27,468)

2020 – 2021

63,246

(1,43,882)

20. The Financial details/ summary of the Sixth Applicant Company as on 31st March, 2021.

Year

Revenue

Profit/Loss

2019 – 2020

50,82,434

31,80,588

2020 – 2021

6,91,630

(1,10,37,857)

21. The Financial details/ summary of the Seventh Applicant Company as on 31st March, 2021.

Year

Revenue

Profit/Loss

2019 – 2020

3,94,72,160

(82,86,356)

2020 – 2021

7,62,68,541

(21,98,329)

22. The Financial details/ summary of the Eighth Applicant Company as on 31st March, 2021.

Year

Revenue

Profit/Loss

2019 – 2020

20,72,000

16,54,290

2020 – 2021

10,77,561

6,70,193

23. The Financial details/ summary of the Ninth Applicant Company as on 31st March, 2021.

Year

Revenue

(in Million)

Profit/Loss

(in Million)

2019 – 2020

12,731.63

625.10

2020 – 2021

9,276.27

(149.62)

24. The Counsel for the Applicant Companies states that the Scheme has been approved by the Board of Directors of the Applicant Companies in their respective meetings held on 19th day of July, 2021.

25. The Counsel for the Applicant Companies states that the Appointed Date: -

a. In relation to amalgamation of Applicant Company 1, Applicant Company 2, Applicant Company 3, Applicant Company 4, Applicant Company 5 and Applicant Company 6 with Applicant Company 9 is the opening business hours of the 1st day of April, 2021.

b. In relation to amalgamation of Applicant Company 7 with Applicant Company 9 is opening business hours of the 2nd day of April, 2021.

c. In relation to amalgamation of Applicant Company 8 with Applicant Company 9 is opening business hours of the 1st day of August, 2021.

26. The Learned Counsel for the Applicant Companies submits that:

(i) In the First Applicant Company there are 2 (two) Equity Shareholders. The list of Equity Shareholders of the Applicant Company 1 is annexed as "Annexure F" to the Company Scheme Application. The consent affidavit of Equity Shareholders of the Applicant Company 1 is annexed as "Annexure F1 and F2" to the Company Scheme Application the meeting of the Equity Shareholders of the Applicant Company 1 is not required to be convened;

(ii) In the Second Applicant Company, there are 7 (seven) Equity Shareholders.The list of Equity Shareholders of the Applicant Company 2 is annexed as "Annexure G" to the Company Scheme Application. The consent affidavit of Equity Shareholders of the Applicant Company 2 is annexed as "Annexure G1 and G6" to the Company Scheme Application the meeting of the Equity Shareholders of the Applicant Company 2 is not required to be convened;

(iii) In the Third Applicant Company, there are 2 (two) Equity Shareholders.The list of Equity Shareholders of the Applicant Company 3 is annexed as "Annexure H" to the Company Scheme Application. The consent affidavit of Equity Shareholders of the Applicant Company 3 is annexed as "Annexure H1 and H2" to the Company Scheme Application the meeting of the Equity Shareholders of the Applicant Company 3 is not required to be convened;

(iv) In the Fourth Applicant Company, there are 2 (two) Equity Shareholders.The list of Equity Shareholders of the Applicant Company 4 is annexed as "Annexure I" to the Company Scheme Application. The consent affidavit of Equity Shareholders of the Applicant Company 4 is annexed as "Annexure I1 and I2" to the Company Scheme Application the meeting of the Equity Shareholders of the Applicant Company 4 is not required to be convened;

(v) In the Fifth Applicant Company, there are 2 (two) Equity Shareholders. The list of Equity Shareholders of the Applicant Company 5 is annexed as "Annexure J" to the Company Scheme Application. The consent affidavit of Equity Shareholders of the Applicant Company 5 is annexed as "Annexure J1 and J2" to the Company Scheme Application the meeting of the Equity Shareholders of the Applicant Company 5 is not required to be convened;

(vi) In the Sixth Applicant Company, there are 2 (two) Equity Shareholders. The list of Equity Shareholders of the Applicant Company 6 is annexed as "Annexure K" to the Company Scheme Application. The consent affidavit of Equity Shareholders of the Applicant Company 6 is annexed as "Annexure K1 and K2" to the Company Scheme Application the meeting of the Equity Shareholders of the Applicant Company 6 is not required to be convened;

(vii) In the Eighth Applicant Company, there are 2 (two) Equity Shareholders. The list of Equity Shareholders of the Applicant Company 8 is annexed as "Annexure M" to the Company Scheme Application. The consent affidavit of Equity Shareholders of the Applicant Company 8 is annexed as "Annexure M1 and M2" to the Company Scheme Application the meeting of the Equity Shareholders of the Applicant Company 8 is not required to be convened;

(viii) In the Ninth Applicant Company, there are 7 (two) Equity shareholders. The list of Equity Shareholders of the Applicant Company 9 is annexed as "Annexure N" to the Company Scheme Application. The consent affidavit of Equity Shareholders of the Applicant Company 9 is annexed as "Annexure N1 and N6" to the Company Scheme Application the meeting of the Equity Shareholders of the Applicant Company 9 is not required to be convened.

27. The Counsel for the Applicant Companies submits that there are 6 (Six) Equity Shareholders in the Applicant Company 7 and that the Applicant Company 7 has procured the consent affidavits, in writing agreeing to the Scheme from 4 out of 6 Equity Shareholders holding 99.80% of the issued, subscribed and paid-up Share Capital of the Applicant Company 7. The list of Equity Shareholders of the Applicant Company 7 is annexed as "Annexure L" to the Company Scheme Application. The consent affidavits of Equity Shareholders of the Applicant Company 7 are annexed as "Annexure L1 – L4" to the Company Scheme Application.

28. That the meeting of the Equity Shareholders of the Applicant Company 7 be convened and held through Video Conferencing on 11.10.2022 at 11.00 A.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme.

29. That the Applicant Company 7 to comply with the General Circular No. 10/2021 dated 23rd day of June, 2021 clarifying the passing of ordinary and special resolutions by companies under the Companies Act, 2013 read with rules made thereunder on account of COVID-19. The Applicant Company 7 to conduct the meeting of shareholders through Video Conferencing or Other Audio-Visual Means (VC/OAVM) and to report this Tribunal about the compliance of the same.

30. That at least one month before the said meetings of the Equity shareholders of the Applicant Company 7 to be held as aforesaid, a notice convening the said meeting of the Equity Shareholders indicating the day, date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 shall be sent through email to each of the Equity Shareholder of the Applicant Company 7, at their email addresses as per the records of the Applicant Company 7, as on cut-off date determined by the Board of Directors of the Applicant Company 7.

31. That at least one month before the meeting of the Equity shareholders of the Applicant Company 7 to be held as aforesaid, a notice convening the said meeting, indicating the day, date and time of meeting as aforesaid be published and advertised in two local newspapers viz. “Business Standard” in English and translation thereof in “Navshakti” in Marathi, both circulated in Mumbai, Maharashtra. The Applicant Company 7 may publish notices online in the respective e-newspaper editions.

32. The Applicant Company 7 undertake to:

i. Issue Notice convening meeting of the Equity Shareholders of the Applicant Company 7 in Form No. CAA.2 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

ii. Issue Statement containing all the particulars as per Section 230(3) of the Companies Act, 2013; and

iii. Advertise the composite Notice convening meeting(s) in Form No. CAA.2 as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

33. That, Mr. Yashwant S Joshi failing whom Mr. Madhur Prabhu, directors of the Applicant Company 7 are hereby appointed as the Chairperson of the meeting of the Equity Shareholders of the Applicant Company 7 to be held as aforesaid or any adjournment or adjournments thereof.

34. The Scrutinizer for the aforesaid meeting shall be Kety P. Mistry, Practicing Company Secretary. The fee of the Scrutinizer is fixed at Rs. 25,000/- for the services rendered for the meeting of the Equity Shareholders of the Applicant Company 7.

35. The Chairperson appointed for the aforesaid meeting of the Equity Shareholders of the Applicant Company 7 to issue the advertisement and send out the notices of the meeting of the Equity Shareholders referred to above. The Chairperson of the meeting shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including the decision on the procedural questions that may arise at the aforesaid meeting or at any adjournment thereof or any other matter including

any amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).The quorum for the aforesaid meeting of the Equity Shareholders of the Applicant Company 7 shall be as prescribed under Section 103 of the Companies Act, 2013, present either in person or by authorized representative, no proxies would be allowed as appointment of Proxy by members is not required as physical attendance of members in any case has been dispensed with as per General Circular No.14/2020 dated April 8, 2020 issued by the Ministry of Corporate Affairs. If the quorum is not present within half an hour from the time appointed for the holding of the meeting, the members present shall be the quorum and the meeting shall be held.

36. The voting by authorized representative in case of body corporate be permitted, provided that authorization duly signed by the Director of a body corporate entitled to attend and vote at the meeting, is filed with the Applicant Company 7 at its Registered Offices not later than 48 hours before the aforesaid meeting.

37. The value and number of the equity shares of each member of the Applicant Company 7 shall be in accordance with the books / register of the Applicant Company 7 and where the entries in the books / register 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.

38. The Chairperson shall file a Compliance Report not less than (7) seven days before the date fixed for the holding of the meeting of the Equity Shareholders of the Applicant Company 7 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 (Compromise, Arrangements and Amalgamations) Rules, 2016.

39. The Chairperson shall report to this Tribunal, the results of the aforesaid meeting within the period of 30 (Thirty) days after the conclusion of the meeting of the Equity Shareholders of the Applicant Company 7.

40. The Counsel for the Applicant Companies submits that there are no Secured Creditors in the Applicant Company 1, 2, 3, 4, 5 and 8. Therefore, the question of convening and holding of the meeting of Secured Creditors of the aforesaid Applicant Companies does not arise. The certificate from the Chartered Accountant certifying the details of Secured Creditors of the Applicant Company 1, 2, 3, 4, 5 and 8 are annexed as "Annexure B1", "Annexure B2", "Annexure B3", "Annexure B4", "Annexure B5" and "Annexure B8" to the additional affidavit dated 20th August 2021, respectively.

41. The Counsel for the Applicant Companies submits that the Applicant Company 6 has 1 (one) Secured Creditor having an aggregate value of Rs. 75,00,00,000/-, the Applicant Company 7 has 1 (one) Secured Creditor having an aggregate value of Rs. 3,40,83,094.46/- and the Applicant Company 9 has 4 (Four) Secured Creditors having an aggregate value of Rs. 5,31,65,53,897.17/-.

The Counsel for the Applicant Companies submits that the Applicant Companies 6, 7 and 9 have procured the consent from all the Secured Creditors annexed as "Annexure A1-A5" to Additional Affidavit dated 11th November 2021. In view of the Fact that all the Secured Creditors of Applicant Companies 6, 7 and 9 have given their consent affidavits, the meeting of the Secured Creditors of the Applicant Companies 6, 7 and 9 is not required to be convened.

42. The Counsel for the Applicant Companies submits that the Applicant Companies has filed an additional affidavit on 30th day of August, 2021 stating that as on 31st March, 2021 the Applicant Company 1 has 2 (Two) Unsecured Creditors having an aggregate value of Rs. 10,000/- (including provisions), the Applicant Company 2 has 7 (Seven) Unsecured Creditors having an aggregate value of Rs. 2,97,857/- (including provisions), the Applicant Company 3 has 6 (Six) Unsecured Creditors having an aggregate value of Rs. 7,14,902/-(including provisions), the Applicant Company 4 has 2 (Two) Unsecured Creditors having an aggregate value of Rs.25,750/- (including provisions), the Applicant Company 5 has 3 (Three) Unsecured Creditors having an aggregate value of Rs.30,375/- (including provisions), the Applicant Company 6 has 4 (Four) Unsecured Creditors having an aggregate value of Rs. 70,93,67,191/- (including provisions), the Applicant Company 7 has 58 (Fifty-Eight) Unsecured Creditors having an aggregate value of Rs. 6,93,25,787/- (including provisions), the Applicant Company 8 has 1 (One) Unsecured Creditor having an aggregate value of Rs. 30,000/- and the Applicant Company 9 has 2005 (Two thousand five) Unsecured Creditors having an aggregate value of Rs. 572,87,74,899/-. The certificate from the chartered accountant certifying the details of Unsecured Creditors of the Applicant Company 1, 2, 3, 4, 5, 6, 7, 8 and 9 are annexed as "Annexure B1", "Annexure B2", "Annexure B3", "Annexure B4", "Annexure B5", "Annexure B6", "Annexure B7", "Annexure B8" and "Annexure B9" to the additional affidavit, respectively.

43. The Counsel for the Applicant Companies submits that the present Scheme is an arrangement between the Applicant Companies and its Shareholders as contemplated under Section 230(1) (b) and not in accordance with the provisions of Section 230 (1) (a) of the Companies Act 2013, as there is no compromise and/or arrangement with the creditors, as no sacrifice is called for. The rights of the creditors will not be affected as the assets of the Applicant Company 9 / Transferee Company post sanctioning the Scheme will be sufficient to pay off all the creditors in the ordinary course of business, the meeting of the Unsecured Creditors of the Applicant Companies is dispensed with. Further, this Bench hereby directs that:

a. The Applicant Company 1, 2, 3, 4, 5, 6, 7 and 8 to issue notice to their respective concerned Unsecured Creditors, with the direction that they may submit their representation, if any, to the Tribunal and copies of such representation shall simultaneously be served upon the respective Applicant Company, as the case may be. The notice to be sent by Registered -AD/ Speed

Post & Hand Delivery and also by E-mails (whose mail -Ids are available with the Applicant Company.)

b. The Applicant Company 9 to issue notice to their Unsecured Creditors having a value of Rs.5,00,000/- and above, with the direction that they may submit their representation, if any, to the Tribunal and copies of such representation shall simultaneously be served upon the Applicant Company 9. The notice to be sent by Registered -AD/ Speed Post and also by E-mails (whose mail -Ids are available with the Applicant Company.)

44. The Applicant Companies shall submit Audited Financial Statement for Financial Year 2020-21 along with Audited/Unaudited Financial statement for the Financial Year 2021-22 at the time of submitting the Company Petition.

45. The Applicant Companies shall submit list of pending IBC cases, if any, along with all other litigation pending against the Applicant Companies having material impact on the proposed Scheme.

46. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any.

47. The Counsel for the Applicant Companies states that there are no Corporate Guarantee, Bank Guarantee and Performance Guarantee as on 28th July 2022, in any of the Applicant Companies except for Applicant Company 2, 7 and 9 as mentioned herein below:

Corporate Guarantee

Particulars

Number

Amount (in Rs.)

Primeair Windfarms Limited (Applicant

Company 2)

1

2,42,25,000

Powerica Limited

(Applicant Company 9)

1

50,000,000

Bank Guarantee

Particulars

Number

Amount (in Rs.)

Empower Gensets

Private Limited (Applicant Company 7)

1

2,072,000

Powerica Limited

(Applicant Company 9)

213

2,632,396,684

Performance Guarantee

Particulars

Number

Amount (in Rs.)

Empower Gensets

Private Limited (Applicant Company 7)

5

87,83,068

Powerica Limited

(Applicant Company 9)

3

199,085,640

The respective Applicant Companies thus undertake to serve notices to the aforesaid by Registered -AD/ Speed Post & also by E-mail (whose mail-Ids are available with the Applicant Companies).

48. The Counsel for the Applicant Companies states that the Applicant Company 9 provides electricity to the following entities:

Sr.

No

Name of the Government

Bodies/DISCOMS/Agency

Address

1.

Gujarat Urja Vikas Nigam Limited (GUVNL)

Sardar Patel Vidyut Bhavan, Race Course, Vadodara 390 007.

2.

Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)

MPQ7, J98, 3rd St, Tirunelveli, Tamil Nadu 627005 (Tirunelveli)

3.

Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)

2F7J, PF2, Power House Rd, NRT Nagar, Theni Allinagaram, Tamil Nadu 625531 - (Theni)

4.

Solar Energy Corporation of India Limited (SECI)

6th Floor, Plate-B, NBCC Office Block Tower-2, East Kidwai Nagar, New Delhi- 110023 , India

5.

Indian Renewable Energy Development Agency Limited

(IREDA)

GS1 India - August Kranti Bhavan, 3rd Floor, Bhikaji Cama Place, Delhi 110066

The Applicant Company 9 thus undertakes to serve notices to the aforesaid by Registered -AD/ Speed Post & also by E-mail (whose mail-Ids are available with the Applicant Companies).

49. The Applicant Companies are directed to serve notices by Registered -AD/ Speed Post & Hand Delivery also by E-mail (whose mail-Ids are available with the Applicant Companies) along with copy of Scheme upon:

(i) Income Tax Authorities with in whose jurisdiction the said Applicant Companies assessments are made, details of Income Tax are as follows:

Applicant

Company

PAN Number

Address of

Authority

Income tax

Energair Windfarms Private

Limited

AAFCE5494E

WARD

MUMBAI

6(2)(1),

Primeair Windfarms Limited

AAECN8881F

WARD

MUMBAI

7(2)(3),

Soverign Windfarms Private

Limited

AAYCS7555H

WARD

MUMBAI

8(2)(3),

Vespower Windfarm Private

Limited

AAGCV0428C

WARD

MUMBAI

8(2)(3),

Windeon Windfarms Private

Limited

AAHCG0666N

CIRCLE

MUMBAI

7(1)(1),

Powerica Sales and Services

Private Limited

AAACP4047M

WARD

MUMBAI

3(2)(4),

Empower

Limited

Gensets

Private

AABCE6945J

PNE C522

Everest Industrial Gases

Private Limited

AAACE0926E

WARD

MUMBAI

3(1)(3),

Powerica Limited

AAACP3812E

LTU CIRCLE 1,

MUMBAI

(ii) Central Government through the office of Regional Director, Western region, Mumbai,

(iii) Registrar of Companies,

(iv) Ministry of Corporate Affairs;

(v) Office of the Principal Chief Commissioner (CGST & Central Excise), Mumbai Zone, under the Central Board of Indirect Taxes & Customs (CBIC) the details of GST are as follows:

Applicant Company

GSTIN

Jurisdiction

Energair Windfarms

Private Limited

N.A.

N.A.

Primeair Windfarms Limited

27AAECN8881F1Z2

State - Maharashtra Zone -

MUMBAI_NORT H_WEST

Division -

GHATKOPAR

Charge - SION- CHUNABHATTI_ 702

Soverign Windfarms Private Limited

24AAYCS7555H1ZM

State - Gujarat

Division - Division - 1

Range - Range - 3

Unit - Ghatak 9 (Ahmedabad)

Vespower Windfarm Private Limited

37AAGCV0428C2ZL

Commissionerate - TIRUPATI

Division -

ANANTAPUR

Range -

ANANTAPUR - 1 RANGE

Windeon Windfarms Private Limited

24AAHCG0666N1ZC

State - Gujarat Division - Division - 1

Range - Range - 3 Unit - Ghatak 9

(Ahmedabad)

Powerica Sales and Services Private Limited

27AAACP4047M1Z7

State - Maharashtra Zone -

MUMBAI_SOUTH

_EAST

Division -

NARIMAN POINT

Charge -

NARIMAN- POINT_701

Empower Gensets Private

Limited

27AABCE6945J1ZC

Commissionerate -

PUNE - II

Division -

DIVISION-VI HADAPSAR

Range - RANGE-II

Everest Industrial Gases

Private Limited

N.A.

N.A.

Powerica Limited

27AAACP3812E1ZT

Commissionerate - MUMBAI-SOUTH

Division -

DIVISION VIII Range - RANGE-IV

and to any other applicable Regulatory Authority with a direction that they may submit their representations, if any, if no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice it will be presumed that they have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

50. The Applicant Companies to serve notice by Registered -AD/Speed Post and Hand Delivery upon the Official Liquidator, High Court, Bombay at Mumbai pursuant to Section 230(5) of the Companies Act, 2013. The Tribunal is appointing M/s M.A. SHAH & COMPANY Chartered Accountants, having their office at 101-B/101-C, Jolly Bhavan, New Marine Lines, Mumbai-400069 Email: -mayur@mashahca.com, to assist the Official Liquidator to scrutinize books of Accounts of the Applicant Companies for the last five years on a remuneration of Rs. 2,00,000/- If no response is received by the concerned Tribunal from Official Liquidator within 30 days it may be presumed that Official Liquidator, High Court, Bombay at Mumbai has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

51. The Applicant Companies shall host the notices directed herein, on their respective websites, if any.

52. The Applicant Companies to file an Affidavit of Service and Compliance Report within 10 working days after serving to notice to all the Regulatory Authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.