

**NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**SPECIAL BENCH (COURT-II)**

**CA-243/2023**

**IN**

**(CAA)-33(ND)/2023**

**CONNECTED WITH**

**COMPANY APPLICATION NO. CA (CAA)-07(ND)/2023**

**GE India Industries Private Limited**

**... Petitioner No.1/  
Demerged Company**

**WITH**

**GE Renewable Energy Technologies  
Private Limited**

**...Petitioner No.2/  
Resulting Company**

**AND**

**THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS**

**Order Delivered on 10.11.2023**

**Section: 230 to 232 of the Companies Act, 2013**

**CORAM**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. ATUL CHATURVEDI, HON'BLE MEMBER (T)**

**PRESENT**

**For the Applicant** : Adv. Pawan Sharma, Adv. Anuj Shah  
**For the RD** : Adv. Shankari Mishra, Adv. Niharika  
Tanwar  
**For the IT Deptt.** : Adv. Abhishek Maratha, Adv. Parth Semwal  
St. Counsel with Adv. Utkarsh

## **ORDER**

### **PER: SH. ASHOK KUMAR BHARDWAJ MEMBER (J)**

This Petition is jointly preferred by the Demerged Company and the Resulting Company under Section 230 to 232 of Companies Act, 2013 read with the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 for approval of the Scheme of Arrangement/Demerger (hereinafter referred to as '**Scheme**' for brevity), as contemplated between the Companies, its Shareholders and Creditors. The copy of the Scheme has been placed on record.

2. GE India Industrial Private Limited (hereinafter referred to as "the Petitioner No. 1/Demerged Company") having CIN U31500DL1992PTC194724 is a company incorporated on 07.01.2011 under the Companies Act, 1956. The registered office of the Demerged Company is situated at A-18, First Floor Okhla Industrial Area Phase II New Delhi

3. GE Renewable Energy Technologies Private Limited (hereinafter referred to as the "Petitioner No. 2/Resulting Company") having CIN U31905DL2018PTC339014 is a Company incorporated under the provisions of the Companies Act, 2013 on 13.09.2018, the Resulting Company is having its registered office at A-18, First Floor, Okhla Industrial Area Phase-II New Delhi.

4. The present Petition has been filed jointly by both Demerged and Resulting Company. **Both the Companies together are called 'Petitioner**

**Companies' hereinafter.** The Registered offices of both the Companies being in Delhi, the jurisdiction lies with this Bench.

5. From the records, it is seen that the First Motion petition was filed by the Petitioner Companies seeking direction for convening the meetings of Equity Shareholders and Unsecured Creditors of both the Company. This Tribunal in the First Motion Application bearing No. CO. APPL. (CAA) 07/ND/2023, passed the Order dated 02.03.2023, directing to convene the meetings of the equity shareholders, and unsecured creditors of the Petitioner Companies. Since there were no secured Creditors qua any of the Petitioner Companies, the question of convening their meeting did not arise.

6. Subsequently, the Second Motion petition was moved by the Petitioner Companies in connection with the scheme of Arrangement/Demerger for issuance of notices to the Central Government, Registrar of Company NCT of Delhi & Haryana, Regional Director (Northern Region) MCA, Income Tax Authorities, and to such other Objector(s), if any, and also for publication of the said Scheme. Directions were issued, in terms of the Order dated 09.01.2023, passed by this Tribunal, requiring the Petitioner Companies to carry out necessary publication with regard to the Scheme, in Financial Express (English) and Jansatta (Hindi) Edition newspapers.

7. Thereafter, the Petitioner companies filed CA-165/2023 seeking modification of the Scheme. In the wake, this Tribunal directed the Petitioner Companies to make the necessary publication and submit the amended scheme to the shareholders and unsecured creditors, for

obtaining their approval by convening their meetings. In this context, a Chairman and a Scrutinizer were appointed and the Chairman was directed to submit his report.

8. In compliance of the aforesaid directions the Chairman has submitted his Reports dated 21.07.2023 stating that the modified scheme has been approved with by the Shareholders and Unsecured Creditors of the Petitioner Companies with requisite majority.

9. Thereafter, CA-243/2023 was moved by the Petitioner Companies in connection with the modified scheme of Arrangement/Demerger for issuance of notices to the Central Government, Registrar of Company NCT of Delhi & Haryana, Regional Director (Northern Region) MCA, Income Tax Authorities, and to other Objector(s) and also for publication of the Scheme. Directions were issued, by this Tribunal, in terms of the Order dated 28.07.2023, requiring the Petitioner Companies to carry out necessary publication with regard to the Scheme in Financial Express (English) and Jansatta (Hindi) Edition newspapers.

10. In compliance of the aforesaid directions the Petitioner Companies filed their Affidavit of Service dated 19.08.2023 confirming that the aforesaid Notices qua the present Company Petition were published in the Financial Express (English) and Jansatta (Hindi) on 09.08.2023.

11. Accordingly, RD filed its report dated 09.10.2023, wherein no objectionable point was raised by it.

12. Income Tax Department also filed its reports dated 12.10.2023 in respect of the Petitioner Companies, stating that it has no objection to the present scheme of Demerger being approved by this Tribunal, subject to the

fact that the Demerged Company and Resulting Company shall continue to be liable for the demands (if any) outstanding against them.

13. Both the Petitioner Companies have filed their separate Affidavits dated 11.10.2023, undertaking that upon the Scheme of Demerger becoming effective, the Demerged Company and Resulting Company, shall meet the income tax demand, pending or payable (existing or future) in accordance with law.

14. During the course of hearing on 13.10.2023, the Ld. Counsel appearing for Jurisdictional Assessment Officer (ITO) submitted that the authority has no objection to the approval of the scheme.

15. Since it is a case of demerger and the Demerged Company will not be dissolved without going into the process of Winding up, no notice was issued to the Official Liquidator.

16. It is submitted by the Petitioner Companies that the Appointed Date shall be the Effective date, in terms of Clause 1.2 of the modified scheme. Further as per clause 1.7 of the scheme, Effective date means the date on which the certified copies of the orders of the Tribunal sanctioning this Scheme is last filed by the Demerged Company and the Resulting Company with the RoC, as per the provisions of the Act. RD in Para 5 of its report dated 09.10.2023, has stated that the stipulation of effective date as appointed date is in accordance with Section 232(6) of the Companies Act, 2013 read with Para 6(a)/(d) of Circular No. 9/2019.

17. In view of the foregoing facts and discussion and upon considering the approval accorded by the Members and Creditors of both the Petitioner

Companies to the proposed Scheme and no sustainable objections being raised by the Office of the, Regional Director (North), Income Tax Department or any other interested party, there does not appear to be any impediment in granting sanction to the Scheme. **Accordingly, the sanction is hereby granted to the Scheme of Arrangement/Demerger annexed with CA- 243/2023, proposed by the Petitioner Companies under Section 230 to 232 of the Companies Act, 2013.** The sanctioned Scheme of Arrangement/ Demerger shall be binding on the Demerged Company and Resulting Company (Petitioner Companies) and their Shareholders and Creditors. The Petitioner Companies shall remain bound to comply with the statutory requirements in accordance with law.

18. Notwithstanding the above, if there is any deficiency found or violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Authority to the Scheme will not come in the way of action to be taken, albeit, in accordance with law, against the concerned persons, Directors and Officials of the Petitioner Companies.

19. While approving the Scheme as above, it is clarified that this Order should not be construed as an order in any way granting exemption from payment of Stamp Duty, Taxes or other statutory dues, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement, which may be specifically required under any law. Further the approval of the Scheme would in no manner affect the tax treatment of the transactions under the Income Tax Act, 1961 or serve as any exemption or defence for the Petitioner Companies against tax

treatment in accordance with the provisions of Income Tax Act, 1961 and the rules and regulations made thereunder.

**20. In the wake, we issue following directions qua the Applicant**

**Companies: -**

- (i) The scheme shall be effective from the appointed date, which as per Clause 1.2 read with Clause 1.7 of the Scheme, is the date on which the certified copies of the orders of the Tribunal sanctioning this Scheme will be last filed by the Demerged Company and/or the Resulting Company with the RoC.
- (ii) On scheme being effective the following 05 undertakings mentioned in Clause B(ii) of the modified scheme will be transferred from the Demerged Company to the Resulting Company: -
  - A) Hyderabad Technology Centre (HTC) Undertaking
  - B) JFWTC Power & Renewable Energy Undertaking
  - C) Energy Applications and Systems Engineering (EASE) Undertaking
  - D) Grid Centre of Excellence Undertaking
  - E) Energy Undertaking
- (iii) All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Demerged Company is entitled to in respect to the aforesaid 05 undertakings, including under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/ deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred

to and be available to the Resulting Company as if the Resulting Company was originally entitled to all such benefits, entitlements, incentives and concessions;

- (iv) All contracts of the Demerged Company in respect of the aforesaid 05 Undertakings, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Resulting Company and be in full force and effect in favor of the Resulting Company and may be enforced by or against it as fully and effectually as if, instead of the Demerged Company, the Resulting Company had been a party or beneficiary or obliged thereto;
- (v) All the employees of the Demerged Company with respect to the aforesaid 05 Undertakings shall be deemed to have become the employees and the staff of the Resulting Company with effect from the Appointed Date, and shall stand transferred to the Resulting Company without any interruption of service and on the terms and conditions no less favorable than those on which they are engaged by the Demerged Company, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;
- (vi) All liabilities of the Demerged Company, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Company Act, 2013, to the extent they are outstanding as on the Effective Date, with respect to the aforesaid 05 undertakings, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Resulting Company and shall be exercised by or against the Resulting Company, as if it had incurred such liabilities.



(vii) All proceedings now pending by or against the Demerged Company with respect to the aforesaid 05 undertakings be continued by or against the Resulting Company.

(viii) The Income Tax department is permitted to retain its recourse for recovery in respect of demand and any other future liabilities of the Demerged Company and the Resulting company, in respect of the assets sought to be transferred under the proposed scheme.

(ix) That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

21. The Petitioner Companies shall within thirty days of the date of the receipt of this Order or on sanction of the Scheme with respect to the Resulting Company, whichever is later, cause a Certified Copy of this Order to be delivered to the Registrar of Company for registration and on such Certified Copy being so delivered, the 05 Undertakings of Demerged Company shall be transferred to the Resulting Company. The Registrar of Company shall place all documents relating to the Demerged Company on the file kept by him in relation to the Resulting Company and the files relating to both the Petitioner Companies shall be consolidated accordingly.

22. **The CA-243/ND/2023 and CAA-23/ND/2023 stands disposed of accordingly.**

**Sd/-**  
**(ATUL CHATURVEDI)**  
**MEMBER (T)**

**Sd/-**  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**