

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-IV

*CP (CAA)/181/MB-IV/2021 IN
CA (CAA)/133/MB-IV/2021*

In the matter of

The Companies Act, 2013

AND

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

Solantra Private Limited,

the First Transferor Company;

Heliocore Private Limited,

Second Transferor Company;

Insolexo Private Limited

Third Transferor Company;

RFE Solar Private Limited;

Fourth Transferor Company

With

Rays Power Infra Private Limited,

The Transferee Company.

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Solantra Private Limited

[CIN: U40107MH2016PTC353455]

...Petitioner Company 1/
First Transferor Company

Heliocore Private Limited

[CIN: U40300MH2016PTC353453]

...Petitioner Company 2/
Second Transferor Company.

Insolexo Private Limited

[CIN: U40100MH2016PTC355037]

...Petitioner Company 3/
Third Transferor Company

RFE Solar Private Limited

[CIN: U40300MH2017PTC350212]

...Petitioner Company 4/
Fourth Transferor Company.

Rays Power Infra Private Limited,

[CIN: U40106MH2011PTC267684]

...Petitioner Company 5/
The Transferee Company

Order Deliver On: 28.11.2022

Coram:

Mr. Manoj Kumar Dubey

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioners

:

Mr. Ashish O. Lalpuria, PCS a/w
Mr. Kamal Lahoty, PCS.

For the Regional Director

:

Ms. Rupa Sutar, Deputy Director
Office of the Regional Director,
WR, MCA.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. The Bench is convened by videoconference today.
2. The sanction of the Tribunal is sought under sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (the Act) to the Scheme of Amalgamation of Solantra Private Limited, the First Transferor Company; Heliocore Private Limited, the Second Transferor Company; Insolexo Private Limited; the Third Transferor Company; RFE Solar Private Limited; the Fourth Transferor Company with Rays Power Infra Private Limited, the Transferee Company and their respective Shareholders.
3. The Scheme envisages Amalgamation of Solantra Private Limited, the First Transferor Company; Heliocore Private Limited, the Second Transferor Company; Insolexo Private Limited; the Third Transferor Company; RFE Solar Private Limited; the Fourth Transferor Company with Rays Power Infra Private Limited, the Transferee Company.
4. We have heard the Learned Authorised Representative for the Petitioner Companies and the Deputy Director, WR, MCA. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.
5. Learned Authorized Representative for the Petitioner Companies further submits that the Transferor Companies are engaged in the business of Sale and Supply of Electricity and the Transferee

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Company is engaged in the business of Engineering, procurement and construction of Solar Power Generating Systems.

6. The Board of Directors of Petitioner Companies have approved the scheme at their respective Board Meetings conducted on 22nd March 2021 respectively. The Appointed Date of the scheme is 1st January 2021.
7. The learned Counsel for the Petitioner Companies further submitted the following rationale for the Scheme:
 - a) The Transferor Companies and the Transferee Company are owned and controlled by the same management as the transferee company is the ultimate parent company of all the transferor companies.
 - b) The Transferor and Transferee Companies are willing to merge into a single entity to eliminate and cancellation of the cross holding of shares, and other securities within the entities and also to eliminate the Inter-corporate loans given by the Transferee Company to the Transferor Companies.
 - c) The Transferor Companies do not have significant plant capacity and the receivable collection time is also long due to which transferee company has to support to Transferor Company in meeting their operational and financial costs. The amalgamation will make the things easy for lender too as transferee company has given corporate guarantee to the transferor company lenders.
 - d) The amalgamation of all the Transferor Companies into the Transferee Company shall facilitate consolidation of all the

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undertakings enabling effective management and unified control of operations. This would enable streamlining the activities and consequently reducing managerial overlaps by reducing the number of companies under the same Management and thus lead to reduction in administration efforts.

- e) It would be advantageous to combine the activities and operations of all the Four Companies into a single Company for leveraging financial and operational resources and reflecting stronger financial position and for the benefit of lesser compliance issues as the Companies are engaged in similar businesses thereby reduction in Statutory Compliance and other related cost of the combined entity.
8. The Company Petition is filed in consonance with Sections 230 to 232 of the Act along with the order dated 18th August 2021 passed in CA (CAA) No. 133/MB/2021 of this Tribunal. Accordingly, the meetings of the Equity Shareholders, Secured Creditors and the Unsecured Creditors is dispensed with.
9. The Learned Authorized Representative appearing on behalf of the Petitioner Companies submits that upon this Scheme becoming effective, the Transferee Company shall, issue and allot equity shares to the extent indicated below, to the members of the Transferor Companies holding fully paid-up equity shares in the following ratio:

To the shareholders of First Transferor Company:

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3.6255 (Three Point Six Two Five Five) Equity Share of Rs. 10/- each for every 1 (One) Equity Share of the Face Value Rs. 10/- each held in the First Transferor Company.

To the shareholders of Second Transferor Company:

5.9093 (Five Point Nine Zero Nine Three) Equity Share of Rs. 10/- each for every 1 (One) Equity Share of the Face Value Rs. 10/- each held in the Second Transferor Company.

To the shareholders of Third Transferor Company:

2.7100 (Two Point Seven One Zero Zero) Equity Share of Rs. 10/- each for every 1 (One) Equity Share of the Face Value Rs. 10/- each held in the Third Transferor Company

10. The Learned Authorised Representative of the Petitioners submits that the Appointed date for the Scheme of Amalgamation is 1st January 2021 and accordingly the Petitioner Companies would prepare Audited Balance Sheets as on 31st December 2020 in order to consolidate the accounts as per the Appointed date.
11. The Learned Authorized Representative appearing on behalf of the Petitioner Companies stated that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and have filed necessary affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory/regulatory requirements, if any, as required under the Act and the Rules made thereunder. The undertaking given by the Petitioner Companies is accepted.

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12. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed its Report dated 21st December, 2021 inter alia stating therein its observations on the Scheme as stated in para IV (a) to (f) & (h) of the Report. In response to the observations made by the Regional Director, the Petitioner Companies filed an Affidavit in Rejoinder and have given necessary clarifications and undertakings. The Regional Director has also filed a Supplementary Report dated 17th January, 2022. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

<i>Sr. No. Para a (IV)</i>	<i>RD Report / Observation Dated 21st December, 2021</i>	<i>Response of the Petitioner Companies</i>	<i>RD Supplementary Report dated 2nd November, 2021</i>
<i>a)</i>	<i>In compliance of AS-1.4 (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.;</i>	<i>Apropos observation made in paragraph IV (a) of the report of Regional Director is concerned, the Petitioner Companies undertake to comply with AS-14 (IND AS-103) and such applicable accounting standards for Amalgamation and as per other applicable provisions of the Companies Act, 2013 while passing necessary entries in connection with the Scheme.</i>	<i>The reply of the petitioner Companies appears to be satisfactory.</i>
<i>b)</i>	<i>The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to</i>	<i>Apropos observation made in paragraph IV (b) of the report of Regional Director is concerned, the Petitioner Companies submits that</i>	<i>The reply of the petitioner Companies appears to be satisfactory.</i>

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	<p><i>be affected by Compromise or arrangement. Further, the approval of the scheme by this Hon'ble 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).</i></p>	<p>notices were served to the concerned regulatory authorities in accordance with the provisions of section 230(5) of the Companies Act, 2013. The Petitioners further submits that approval of the scheme by this Hon'ble 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 shall be binding on the Petitioner Companies</p>	
c)	<p><i>The Hon'ble NCLT may kindly direct the Petitioners to file an undertaking to the extent that the Scheme enclosed to Company Application & the scheme, enclosed to the Company Petition are one and same and there is no discrepancy or deviation;</i></p>	<p>Apropos observation made in paragraph IV (c) of the Report of the Regional Director is concerned, the Petitioner Companies submits that Scheme enclosed to the Company Application and the Scheme enclosed to the Company's Petition are one and the same and there is no discrepancy or deviation.</p>	<p><i>The reply of the petitioner Companies appears to be satisfactory.</i></p>
d)	<p><i>As per Definitions of the Scheme. "The Appointed Date" means 1st January, 2021 or such other date as the National Company Law Tribunal (Tribunal) or other competent authority may otherwise direct/fix; "The Effective Date" means the dates on which the certified copies of the Order(s) of the National Company Law Tribunal (Tribunal) vesting</i></p>	<p>Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of his report concerned, the Petitioners confirm that the definition "Appointed Date" means 1st January 2021. Further, Clause 4.7 of the Scheme specifies that the appointed date shall be 1st January 2021. Further, the Petitioners confirm that the "Effective Date" shall be the</p>	<p><i>The reply of the petitioner Companies appears to be satisfactory.</i></p>

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	<p><i>the assets, properties, liabilities, rights, duties, obligations and the like of the Transferor Companies in the Transferee Company are filed with the Registrar of Companies, Maharashtra, Mumbai, after obtaining the necessary consents, approvals, permissions, resolutions, agreements, sanctions and orders in this regard. Further, the Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No.7/12/201-9/cL-7 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>	<p>dates on which the certified copies of the order(s) of the National Company Law Tribunal (Tribunal) vesting the assets, properties, liabilities, rights, duties, obligations and the like of the Transferor Companies in the Transferee Company are filed with the Registrar of Companies, Maharashtra, Mumbai, after obtaining the necessary consents, approvals, permissions, resolutions, agreements, sanctions and orders in this regard. The Petitioner Companies further undertake to comply with the Circular No. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs. The Petitioner Companies clarify that the amalgamation as embodied in the Scheme shall take effect from the Appointed Date i.e. 1st January, 2021.</p>	
<p>e)</p>	<p><i>Petitioner Company have to undertake to comply with section 232(3)(i) of the Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set-off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation and therefore,</i></p>	<p>Apropos observation made in paragraph IV (e) of the report of Regional Director is concerned, the Petitioner Companies undertake to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013.</p>	<p><i>The reply of the petitioner Companies appears to be satisfactory.</i></p>

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	<i>petitioners to affirm that they comply the provisions of the section.</i>		
f)	<p><i>As per clause 12 of the scheme, The Difference between the value of assets over liabilities recorded by the Transferee Company pursuant to clause 12.2 and after making adjustment pursuant to clause 12.3 shall be credited to capital reserve, and in case of shortfall shall be debited to Goodwill Account.</i></p> <p><i>If considered appropriate for the purpose of application of uniform accounting methods and policies between the transferor Companies and the Transferee Company, the Transferee Company may make suitable adjustments and reflect the effect thereof in the capital reserve of the Transferee Company.</i></p> <p><i>Petitioner Companies have to undertake that the surplus shall be credited to Capital Reserve Account arising out of amalgamation and deficits shall be debited to Goodwill Account.</i></p> <p><i>Further the Petitioner Companies have to undertake that reserves shall not be available for distribution of dividend.</i></p>	<p>Apropos observation made in paragraph IV (f) of the report of Regional Director is concerned, the Transferee Company undertakes that the difference, if any, arising out of Amalgamation shall be credited to “Capital Reserve arising out of Amalgamation” and deficits, if any shall be debited to Goodwill Account and shall not be available for distribution of dividend and other similar purposes.</p>	<p><i>The reply of the petitioner Companies appears to be satisfactory.</i></p>
h)	<p><u>STATUS OF ROC REPORT:-</u> <i>ROC, Mumbai Report dated 02.12.2021 has interalia mentioned that there are no</i></p>	<p>Apropos observation made in paragraph IV (h) of the report of Regional Director is concerned, the Petitioner Companies submits that:</p>	<p><i>The reply of the petitioner Companies appears to be satisfactory.</i></p>

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<p><i>prosecution, no technical scrutiny, no inquiry, no inspection and no complaints pending against Petitioner Companies.</i></p> <p><i>Further mentioned that:-</i></p> <p><i>1. Transferor Company No. 1, 2 and 3 have one of open charge each.</i></p> <p><i>2. Transferee Company having huge no. of open charges.</i></p> <p><i>3. Interest of the Creditors should be protected.</i></p> <p><i>Hon'ble Tribunal may consider the observations pointed out by RoC Mumbai, in their report and decide the matter on merits;</i></p>	<p>1. As per the Observation of ROC the open charge of the Transferor Company 1, 2 and 3 pertains to State Bank of India (SBI). The Transferor Company 1, 2 and 3 undertakes to obtain NOC from SBI before the final hearing.</p> <p>2. The amalgamation shall not have effect on the open charge against the Transferee Company, since the transferee company shall continue to operate as a going concern even after the amalgamation.</p> <p>3. The Petitioner Companies confirms that interest of creditors will be protected at all times.</p>	
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13. The Learned Authorised representative further submits that all the Secured Creditors of the Transferor Companies and Secured Creditors of the Transferee Company constituting 98.93% of the total value of secured debt have given their consent to the Scheme and placed on record the Additional Affidavit filed vide diary no. 2544 dated 22nd February, 2022.
14. The Official Liquidator has filed his report on 22nd November, 2022, inter alia stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that his representation may be taken on record.

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15. From the material on record, the Scheme appears to be fair, reasonable and is not in violation to any provisions of law nor is contrary to public interest/policy.
16. Since all the requisite statutory compliances have been fulfilled, CP (CAA) No.181/MB-IV/2021 is made absolute in terms of prayer clauses 48 (a) to (e) of the Company Petition. Hence Ordered.

ORDER

The Petition is allowed subject to the following.

- (i) The Scheme, with the Appointed Date fixed as 1st January 2021 placed as Exhibit – A of the Company Petition, is hereby sanctioned. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Unsecured Creditors/Trade Creditors and Employees.
- (ii) Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 181 of 2021 is made absolute in terms of the prayer clauses of the Company Petition. Hence Ordered. The First Petitioner Company, Second Petitioner Company, Third Petitioner Company and Fourth Petitioner Company be dissolved without winding up.
- (iii) The Registrar of this Tribunal shall issue the certified copy of this Order along with the Scheme forthwith. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme with the Registrar of

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Companies concerned, electronically in E-form INC-28 within 30 days from the date of receipt of the Order from the Registry.

- (iv) The Petitioner Companies shall lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar of this Tribunal with the Superintendent of Stamps concerned, within 60 working days from the date of the receipt of the Order, for the purpose of adjudication of stamp duty, if any, payable.
- (v) The Petitioner Companies shall comply with all the undertakings given by them.
- (vi) The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.
- (vii) All concerned shall act on a copy of this Order along with the Scheme duly authenticated by the Deputy Registrar of this Tribunal.
- (viii) Any person interested in the above matter shall be at liberty to apply to the Tribunal for any directions that may be necessary.
- (ix) Ordered accordingly. Files to be consigned to records.

Sd/-

Manoj Kumar Dubey
Member (Technical)
28.11.2022

Sd/-

Kishore Vemulapalli
Member (Judicial)