

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 94 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 83 OF 2014

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation of
Reliance Clean Power Private Limited
with
Reliance Power Limited
and
their respective shareholders

RELIANCE CLEAN POWER PRIVATE LIMITED

..... Petitioner Company

Called for Hearing

Ms. Alpana Ghone and Mr. Rajesh Shah with Mr. Chandrakant Mhadeshwar i/b Rajesh Shah & Co., Advocates for the Petitioner in the Petition.

Mr. R. D. Gupta Dy. Official Liquidator present.

Mr. C. J. Joy i/b Mr. H.P. Chaturvedi for Regional Director.

CORAM: G. S. Patel, J.

DATE: 9th May, 2014

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petition.
2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Amalgamation of

Reliance Clean Power Private Limited with Reliance Power Limited and their respective shareholders.

3. Learned Counsel for the Petitioner states that the Petitioner in Company Scheme Petition No. 94 of 2014 is engaged in the business of transmission and distribution of power and the Transferee Company is engaged in the development, construction and operation of power generation projects and has the largest portfolio of private power generation assets under development in India. The rationale for the Scheme is to reduce managerial overlaps, which are necessarily involved in running multiple entities, reduce administrative cost, remove multiple layer inefficiencies and achieving operational and management efficiency. The Petitioner Company and the Transferee Company approved the said Scheme by passing Board Resolutions which are annexed to the Company Scheme Petitions.
4. Learned Counsel for the Petitioner further states that since the Petitioner Company is a wholly owned subsidiary of the Transferee Company and all the shares of the Petitioner Company are presently held by the Transferee Company, Reliance Power Limited along with its nominees and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Petitioner Company by the Transferee Company and there would be no reorganization of the Share Capital in the Transferee Company and also in view of the judgment of this Court in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases, filing of a separate Company Summons for Direction and Company Scheme Petition by Reliance Power Limited, the Transferee Company was dispensed with, by order dated 14th February, 2014 passed in CSD NO. 83 of 2014.

5. The learned Counsel for the Petitioner further states that, Petitioner company have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Company Summons for Direction.
6. The learned counsel appearing on behalf of the Petitioner has stated that the Petitioner has complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under which are applicable. The said undertaking is accepted.
7. The Regional Director has filed an affidavit on 02/05/2014 stating therein that save and except as stated in paragraph 6 (a) and (b) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said affidavit it is stated that:

a) *Clause 2.3 of the scheme provides of accounting treatment and clause 2.3.3. of the scheme further provides that the excess arising on transfer of assets and liabilities as per clause 2.3.1 and after giving effect to clause 2.3.2 of the scheme would be considered to form part of the Capital Reserve of the Transferee Company, such capital reserve shall be a reserve which arises pursuant to this scheme and shall not for any purpose, be considered to be reserve created by the Transferee Company. In this regard it is submitted that such reserve shall not form part of free reserve of Transferee Company.*

b) *Clause 2.3 of the scheme provides for accounting treatment. In this regard, it is further submitted that in addition to compliance of AS 14 Transferee Company shall pass such accounting entries as may be necessary in connection with the scheme to comply with other applicable accounting standards."*

8. As far as observation made in paragraph 6(a) of the Affidavit of the Regional Director, the Petitioner Company/Transferee Company through their counsel undertakes that the capital reserve created pursuant to the merger will not form part of free reserve of the Transferee Company.
9. In so far as observations made in paragraph 6(b) of the Affidavit of the Regional Director, the Petitioner Company/Transferee Company through their counsel undertakes to follow the accounting treatment provided in the Scheme and to comply with the requirements of the relevant applicable accounting standards.
10. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai have not raised any further objections to the submissions made by the Petitioner Company. The said submissions and undertakings of the Petitioner Company are accepted.
11. The Official Liquidator has filed his report on 22/04/2014 in the Company Scheme Petition stating therein that the affairs of the Petitioner Company have been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved by this Court.
12. From the material on record, the Scheme 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 has come forward to oppose the Scheme.
13. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition filed by the Petitioner Company are made absolute in terms of prayer clauses (a), (c) & (d).

14. The Petitioner Company to lodge a copy of this order and the Scheme, duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the Order.
15. Petitioner is 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 21 / E-Form INC-28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956 / 2013.
16. The Petitioner Company in the Company Scheme Petition to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.
17. Filing and issuance of the drawn up order is dispensed with.
18. All concerned authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay

(G. S. Patel, J)

TRUE-COPY
15/05/2014
Mrs. K. M. RANE
COMPANY REGISTRAR
HIGH COURT (O.S.)
BOMBAY

TRUE COPY
15-5-2014
Section Officer
High Court, Appellate Side
Bombay

SCHEME OF AMALGAMATION

OF

RELIANCE CLEAN POWER PRIVATE : TRANSFEROR COMPANY
LIMITED

WITH

RELIANCE POWER LIMITED : TRANSFEREE COMPANY

AND THEIR RESPECTIVE SHAREHOLDERS

PREAMBLE

(A) Purpose of the Scheme

This Scheme of Amalgamation is presented under Sections 391 to 394 of the Companies Act, 1956 for merger of Reliance Clean Power Private Limited ("RCPPL" or "the Transferor Company") with Reliance Power Limited ("the Transferee Company or "RPower").

(B) Rationale

1. RPower and RCPPL are part of Reliance Power Group ("the Group"). RCPPL is a step-down wholly subsidiary of RPower held through Reliance CleanGen Limited and itself.
2. Reliance Power Limited ('RPower') is engaged in the development, construction and operation of power generation projects and has a large portfolio of private power generation assets under development in India. RCPPL is establishing a 45MW wind based power project at Vashpet village, Sangli, Maharashtra.
3. The merger of RCPPL with RPower is with a view to :
 - a. Reduce managerial overlaps, which are necessarily involved in running multiple entities;
 - b. Reduce administrative cost;

- c. Remove multiple layer inefficiencies; and
- d. Achieving operational and management efficiency.

(C) Parts of the Scheme

The Scheme is divided into the following parts:

- (a) **PART 1** deals with the Definitions and Share Capital;
- (b) **PART 2** deals with the merger of the Transferor Company into the Transferee Company;
- (c) **PART 3** deals with Other Terms and Conditions.

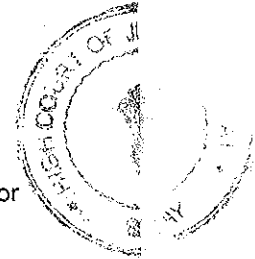
PART 1

DEFINITIONS AND SHARE CAPITAL

1.1. DEFINITIONS

In this Scheme of Amalgamation, unless inconsistent with the subject or context, the following expressions shall have the following meaning:

- 1.1.1. **"Act" or "the Act"** means the Companies Act, 1956, or any statutory modification(s) or re-enactment(s) thereof for the time being in force;
- 1.1.2. **"Appointed Date"** means April 1, 2012 or such other date as may be decided by the High Court;
- 1.1.3. **"Board of Directors"** means the Board of Directors of the Transferee Company or the Transferor Company or both as the context may require and includes a committee thereof.
- 1.1.4. **"Court" or "High Court"** means the High Court of Judicature at Bombay and shall include the National Company Law Tribunal, if applicable;
- 1.1.5. **"Effective Date"** means the last of the dates on which the certified copies of the Order of the High Court of Judicature at Bombay sanctioning the Scheme of Amalgamation is filed with the Registrar of Companies, Maharashtra, Mumbai by the Transferor Company and the Transferee Company. References in this



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Scheme to date of "coming into effect of this Scheme" or "upon the Scheme becoming effective" and other similar expressions shall mean the Effective Date;

1.1.6. "RCPPL" or "the Transferor Company" means Reliance Clean Power Private Limited, a company incorporated under the Companies Act, 1956, and having its registered office at H Block, 1st Floor, Dhirubhai Ambani Knowledge City, Navi Mumbai - 400710;

1.1.7. "RPower" or "the Transferee Company" means Reliance Power Limited, a company incorporated under the Companies Act, 1956, and having its registered office at H Block, 1st Floor, Dhirubhai Ambani Knowledge City, Navi Mumbai - 400710;

1.1.8. "Scheme" or "the Scheme" or "this Scheme" means this Scheme of Amalgamation in its present form as submitted to the Honorable High Court of Judicature at Bombay or this Scheme with such modification(s), if any made;

All terms and words not defined in this Scheme shall, unless repugnant or contrary to the context or meaning thereof, have the same meaning ascribed to them under the Act, the Securities Contract Regulation Act, 1956, the Depositories Act, 1996 and other applicable laws, rules, regulations, bye-laws, as the case may be or any statutory modification or re-enactment thereof from time to time.

1.2. SHARE CAPITAL

1.2.1. The authorized, issued, subscribed and paid-up share capital of the Transferor Company as on March 31, 2013 was as under:

	Rupees
Authorised Capital	
10,00,000 equity shares of Rs 10 each	1,00,00,000
10,00,000 preference shares of Rs 10 each	1,00,00,000
Total	2,00,00,000

Issued, Subscribed & Paid Up Capital	
5,23,000 equity shares of Rs 10 each fully paid up	52,30,000
5,13,000 7.5% Non-cumulative non-convertible redeemable preference shares of Rs 10 each fully paid up	51,30,000
Total	1,03,60,000

There has been no change in the capital structure of the Transferor Company subsequent to March 31, 2013.

- 1.2.2. The authorized, issued, subscribed and paid-up share capital of the Transferee Company as on March 31, 2013 was as under:

Authorised Capital	Rupees
11,000,000,000 Equity Shares of Rs. 10 each	11,000,00,00,000
5,000,000,000 Preference Shares of Rs. 10 each	5,000,00,00,000
Total	16,000,00,00,000
Issued, Subscribed & Paid up Capital	
2,805,126,466 Equity Shares of Rs. 10 each fully paid-up	2,805,12,64,660
Total	2,805,12,64,660

There has been no change in the capital structure of the Transferee Company subsequent to March 31, 2013.

1.3. DATE OF TAKING EFFECT AND OPERATIVE DATE

The Scheme, set out herein in its present form or with any modifications(s) shall be effective from the Appointed Date unless the context requires otherwise.

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PART 2

MERGER OF THE TRANSFEROR COMPANY INTO THE TRANSFEREE COMPANY

2.1. TRANSFER AND VESTING OF UNDERTAKING

2.1.1. With effect from the opening of the business as on the Appointed Date, the entire business and whole of the undertakings of the Transferor Company including all its properties and assets (whether movable or immovable, tangible or intangible) of whatsoever nature such as investments, licenses, permits, quotas, approvals, lease, tenancy rights, permissions, incentives if any, and all other rights, title, interest, contracts, consents, approvals or powers of every kind, nature and description whatsoever shall under the provisions of Sections 391 to 394 of the Act and pursuant to the orders of the High Court of Judicature at Bombay or any other appropriate authority sanctioning this Scheme and without further act, instrument or deed, stand transferred and/or deemed to be transferred to and vested in the Transferee Company so as to become the properties and assets of the Transferee Company.

2.1.2. The liabilities shall also, without any further act, instrument or deed be transferred to and vested in and assumed by and/or deemed to be transferred to and vested in and assumed by the Transferee Company pursuant to the provisions of Sections 391 to 394 of the Act, so as to become the liabilities of the Transferee Company and further that it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such liabilities have arisen, in order to give effect to the provisions of this Clause.

2.2. CANCELLATION OF SHARE CAPITAL OF THE TRANSFEROR COMPANY

2.2.1. The entire issued, subscribed and paid-up share capital of the Transferor Company is or will be held by the Transferee Company. Upon the Scheme becoming effective, no shares of the Transferee Company shall be allotted in lieu or exchange of its holding in the Transferor Company and the share capital

including authorized share capital, issued, subscribed and paid-up share capital of the Transferor Company shall stand cancelled.

(b)

2.2.2. Upon the coming into effect of this Scheme, the share certificates, if any, and/or the shares / depository receipts in electronic form representing the shares held by the Transferee Company or by its wholly owned subsidiary in the Transferor Company shall be deemed to be cancelled without any further act or deed for cancellation thereof by the Transferee Company or its wholly owned subsidiary.

(c)

2.3. ACCOUNTING TREATMENT

2.3.1. All assets and liabilities of the Transferor Company shall be recorded in the books of the Transferee Company at their respective fair values;

2.3.2. Intercompany investments, balances and transactions, if any, shall be cancelled.

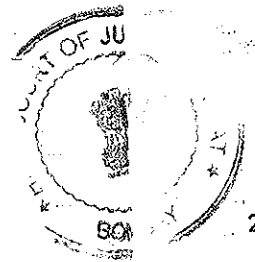
2.3.3. The excess arising on transfer of assets and liabilities as per Clause 2.3.1 and after giving effect to clause 2.3.2 above would be considered to form part of the 'Capital Reserve' of the Transferee Company. Such Capital Reserve shall be a reserve which arises pursuant to this Scheme and shall not be, for any purpose, be considered to be a reserve created by the Transferee Company.

2.3.4. If considered appropriate for the purpose of application of uniform accounting methods and policies between the Transferor Company and the Transferee Company, the Transferee Company may make suitable adjustments and reflect the effect thereof in its Capital Reserve.

2.4. BUSINESS AND PROPERTY IN TRUST FOR THE TRANSFEE COMPANY

2.4.1. During the period between the Appointed Date and the Effective Date,

(a) The Transferor Company shall carry on and deemed to have carried on its business and activities and shall stand possessed of their entire



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business and undertakings, in trust for the Transferee Company and shall account for the same to the Transferee Company.

- (b) All the income or profits accruing or arising to the Transferor Company and all costs, charges, expenses or losses incurred by the Transferor Company shall for all purposes be treated the income, profits, costs, charges, expenses and losses as the case may be of the Transferee Company.
- (c) The Transferor Company shall carry on their business and activities with reasonable diligence and business prudence and shall not alter or diversify their respective businesses nor venture into any new businesses, nor alienate, charge, mortgage, encumber or otherwise deal with the assets or any part thereof except in the ordinary course of business without the prior consent of the Transferee Company or pursuant to any pre-existing obligation undertaken prior to the date of acceptance of the Scheme by the respective Boards of Directors of the Transferor Company and the Transferee Company.

2.4.2. The Transferor Company shall not utilise the profits or income for the purpose of declaring or paying any dividend or for any other purpose in respect of the period falling on and after the Appointed Date, without the prior written consent of the Transferee Company.

2.4.3. The Transferee Company shall be entitled, pending the sanction of the Scheme, to apply to the Central/State Government(s) and all other agencies, departments and authorities concerned as are necessary under any law for such consents, approvals and sanctions which the Transferee Company may require to carry on the business of the Transferor Company.

2.5. PENDING SUITS, ETC.

2.5.1. If any suit, appeal or other proceeding of whatever nature by or against the Transferor Company is pending, the same shall not abate or be discontinued or be in any way prejudicially affected by reason of the amalgamation by anything

contained in this Scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Company as if this Scheme had not been made.

2.6. CONTRACTS, DEEDS AND OTHER INSTRUMENTS

2.6.1. Subject to the other provisions contained in this Scheme, all contracts, deeds, bonds, agreements and other instruments of whatever nature to which, the Transferor Company is a party subsisting or having effect immediately before the Scheme coming into effect shall be in full force and effect against or in favour of the Transferee Company, and may be enforced by or against the Transferee Company as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party thereto.



2.7. SAVING OF CONCLUDED TRANSACTIONS

2.7.1. The transfer of properties and liabilities under Clause 2.1 above and the continuance of proceedings by or against the Transferee Company under Clause 2.5 above shall not affect any transaction or proceedings already concluded by the Transferor Company on or after the Appointed Date till the Effective Date, to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things done and executed by the Transferor Company in respect thereto as done and executed on behalf of itself.

2.8. STAFF, WORKMEN & EMPLOYEES

2.8.1. On the Scheme becoming operative, all staff, workmen and employees of the Transferor Company in service on the Effective Date shall be deemed to have become staff, workmen and employees of the Transferee Company without any break in their service and on the basis of continuity of service, and the terms and conditions of their employment with the Transferee Company shall not be

less favourable than those applicable to them with reference to the Transferor Company on the Effective Date.

2.8.2. It is expressly provided that, on the Scheme becoming effective, the Provident Fund, Gratuity Fund, Superannuation Fund or any other Special Fund or Trusts created or existing for the benefit of the staff, workmen and employees of the Transferor Company shall become the trusts/ funds of the Transferee Company for all purposes whatsoever in relation to the administration or operation of such Fund or Funds or in relation to the obligation to make contributions to the said Fund or Funds in accordance with the provisions thereof as per the terms provided in the respective Trust Deeds, if any, to the end and intent that all rights, duties, powers and obligations of the Transferor Company in relation to such Fund or Funds shall become those of the Transferee Company. It is clarified that the services of the staff, workmen and employees of the Transferor Company will be treated as having been continuous for the purpose of the said Fund or Funds.

2.9. WINDING UP

2.9.1. On the Scheme becoming effective, the Transferor Company shall stand dissolved without being wound up.

PART 3

OTHER TERMS AND CONDITIONS

3.1. APPLICATION TO HIGH COURT

3.1.1. The Transferor Company and the Transferee Company shall as may be required make applications and/or petitions under Sections 391 to 394 of the Act and other applicable provisions of the Act to the High Court of Judicature at Bombay for sanction of this Scheme and all matters ancillary or incidental thereto.

3.4.
3.4.

3.2. MODIFICATION OR AMENDMENTS TO THE SCHEME

3.2.1. The Transferor Company and the Transferee Company by their respective Board of Directors may assent to any modifications/amendments to the Scheme or to any conditions or limitations that the Court and/or any other authority may deem fit to direct or impose or which may otherwise be considered necessary, desirable or appropriate by them (i.e. the Board of Directors) subject to, where applicable, the approval of the Hon'ble High Court or any other authorities under applicable law. The Transferor Company and the Transferee Company by their respective Board of Directors be and are hereby authorized to take all such steps as may be necessary, desirable or proper to resolve any doubts, difficulties or questions whether by reason of any directive or orders of any other authorities or otherwise howsoever arising out of or under or by virtue of the Scheme and/or any matter concerned or connected therewith.



3.3. CONDITIONALITY OF THE SCHEME

This Scheme is and shall be conditional upon and subject to:

- 3.3.1. The entire shareholding of the Transferor Company being transferred to the Transferee Company and its nominees.
- 3.3.2. The Scheme being approved by the requisite majorities in number and value of such classes of persons including the members and / or creditors of the Transferor Company as may be directed by the Hon'ble High Court of Judicature at Bombay or any other competent authority, as may be applicable.
- 3.3.3. The Scheme being sanctioned by the High Court of Judicature at Bombay or any other authority under Sections 391 to 394 of the Act.
- 3.3.4. Certified copies of the Orders of the High Court of Judicature at Bombay sanctioning the Scheme being filed with the Registrar of Companies, Maharashtra, at Mumbai by the Transferor Company and the Transferee Company.

3.4. EFFECT OF NON-RECEIPT OF APPROVALS

3.4.1. In the event of any of the said sanctions and approvals referred to in the preceding clause not being obtained and/ or the Scheme not being sanctioned by the Bombay High Court or such other competent authority and / or the Order not being passed as aforesaid before March 31, 2014 or within such further period or periods as may be agreed upon between the Transferor Company and the Transferee Company by their Boards of Directors (and which the Boards of Directors of the companies are hereby empowered and authorised to agree to and extend the Scheme from time to time without any limitation), this Scheme shall stand revoked, cancelled and be of no effect, save and except in respect of any act or deed done prior thereto as is contemplated hereunder or as to any rights and/ or liabilities which might have arisen or accrued pursuant thereto and which shall be governed and be preserved or worked out as is specifically provided in the Scheme or as may otherwise arise in law.

3.5. COSTS, CHARGES & EXPENSES

3.5.1. All costs, charges, taxes including duties, levies and all other expenses, if any (save as expressly otherwise agreed) arising out of, or incurred in carrying out and implementing this Scheme and matters incidental thereto, shall be borne by the Transferee Company.

TRUE-COPY
15/05/2014
Mrs. K. M. RANE
COMPANY REGISTRAR
HIGH COURT (O.S.)
BOMBAY

Certified to be TRUE COPY
For RAJESH SHAH & CO.
Rajesh Shah
Advocate for the Petitioner/Applicant

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 94 OF 2014

CONNECTED WITH
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In the matter of Companies Act, 1956 (1 of 1956);

AND
In the matter of Sections 391 to 394 of the Companies Act,
1956;

AND
In the matter of Scheme of Amalgamation
of
Reliance Clean Power Private Limited
with
Reliance Power Limited

and
their respective shareholders

RELIANCE CLEAN POWER PRIVATE LIMITED
..... Petitioner Company

Authenticated Copy of the Minutes of Order dated 9th
May, 2014 along with Scheme of Amalgamation.

Deposited on 13/05/2014
Impressed on 15/05/2014
Section Writer
Folio
Examined by (Signature)
Compared with (Signature)
Ready on 15/05/2014
Filed on 16/05/2014

M/S RAJESH SHAH & CO
Advocates for the Petitioner
16, Oriental Building
30, Nagindas Master Road
Flora Fountain, Mumbai – 400 001

