

IN THE NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH

COURT NO. 1

ITEM No.208

CA(CAA)/3(MP)2023

Proceedings under Section 230-232

IN THE MATTER OF:

Essar Power Transmission Company Ltd

.....Applicant

Order delivered on 06/07/2023

Coram:

Mahendra Khandelwal, Hon'ble Member(J)

Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

A. Bhadauria

-SD-

**MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)**

**BEFORE THE NATIONAL COMPANY LAW
TRIBUNAL, INDORE BENCH**

CA(CAA) 3 OF 2023

[An Application filed under Section 230 and 232 and other applicable provisions of the Companies Act, 2013 for (Compromises, Arrangements and Amalgamations)]

In the matter of:

Essar Power Transmission Company Limited

A company incorporated under the Companies Act, 1956,
and existing under the Companies Act, 2013,

Having its registered office at:

Essar Power MP Limited,
Power Plant, Village Bandhaura,
Post Karsulal Singrauli,
Madhya Pradesh – 486886

CIN: U99999MP2005PLC052837

...Applicant Company

Order Pronounced on: 06.07.2023

Appearance: Ld. Sr. Adv. Mr. Sourabh Soparkar a.w.

Ld. Adv. Mr. Devang Nanavati a.w.

Ld. Adv. Mr. Raheel Patel a.w.

Ld. Adv. Mr. Aalay Shah.

Coram: Mahendra Khandelwal - Member (Judicial)

Kaushalendra Kumar Singh – Member (Technical)

ORDER

1. The present application is filed under Sections 230 and 232 and other relevant provisions of the Companies Act, 2013 (hereinafter referred to as the “**Act**”) and read with Companies (Compromise, Arrangements and Amalgamations) Rules, 2016,

seeking directions for convening and holding the meetings of the Equity Shareholders, Secure Creditors and Unsecured Creditors of the Applicant Company in respect of the proposed Scheme of Arrangement (“**Scheme**”) of Essar Power Transmission Company Limited (“**Applicant Company**”) with Essar Transco Limited (“**Resulting Company**”) with effect from the Appointed Date, i.e. 01.04.2023, as mentioned in the Scheme.

2. An Affidavit has been sworn by Mr. Sanjay Shah on behalf of the Applicant Company who is the authorized representative of the Applicant, and the same has been authorized vide Board Resolution dated 15.05.2023 of the Applicant Company.

3. The submissions made by the Applicant Companies are summarized as under:

i. The Board of Directors of Applicant Company vide resolution dated 15.05.2023, has approved the said Scheme. The Board of Directors of Resulting Company vide resolution dated 12.05.2023, has approved the Scheme.

ii. The registered office of the Applicant Company is situated in the State of Madhya Pradesh and is under the jurisdiction of the National Company Law Tribunal, Bench at Indore.

iii. The Resulting Company has its registered office in Mumbai and shall be separately filing the Application under Section 230-232 of the Act seeking suitable orders/ directions in relation to the Scheme.

iv. The Applicant Essar Power Transmission Company Limited, is a public limited company incorporated on 07.12.2005, with

CIN U99999MP2005PLC052837, under the provisions of the Companies Act, 1956, existing under the Companies Act, 2013, and having its registered office at Essar Power MP Limited, Power Plant, Village Bandhaura, Post Karsulal Singrauli, Singrauli, Madhya Pradesh – 486886. The Applicant was originally incorporated with its registered office in Maharashtra, which was transferred to Delhi on 30.09.2010, pursuant to an order passed by the Company Law Board on 25.08.2010. Subsequently, the Applicant's registered office was changed to its current registered office in the State of Madhya Pradesh with effect from 24.08.2020 pursuant to an order passed by the Regional Director on 16.06.2020.

v. The Applicant is primarily engaged in planning, promoting and developing an integrated and efficient power transmission system network and is an "Interstate Transmission Licensee" under the Electricity Act, 2003. The securities of the Applicant are not listed on any stock exchanges in India. The total paid-up share capital of the Applicant is Rs. 5,97,03,60,000/- comprising of 59,70,36,000 equity shares of face value of Rs.10/- each. The equity shares of the Applicant are held amongst 7 (seven) shareholders.

vi. The Resulting Company, Essar Transco Limited, is a public limited company incorporated on 20.12.2022, under the provisions of the Act with CIN U40106MH2022PLC395692 currently having its registered office at Essar House, 11 K.K. (Keshavrao

Khadye) Marg, Mahalaxmi, Mumbai, Maharashtra, 400034.

vii. Resulting Company has been incorporated with the object of carrying on the business of planning, promoting and developing integrated and efficient power transmission system networks. The Resulting Company is a wholly owned subsidiary of the Applicant. The securities of the Resulting Company are not listed on any stock exchanges in India. The total paid-up share capital of the Resulting Company is Rs. 5,00,000/- comprising of 50,000 equity shares having a face value of Rs.10/- each.

viii. It is further submitted that the Resulting Company will be issuing compulsorily convertible cumulative participating preference shares ("CCCPPS") to the shareholders of the Applicant Company in terms of Clauses 24 to 30 of the Scheme. It is submitted that no approval of the Reserve Bank of India is required for the Scheme since both the Applicant and the Resulting Company are engaged in sectors where 100% foreign direct investment (automatic route) is permitted.

ix. The Applicant Company has filed its Memorandum and Articles of Association *inter alia* delineating its object clauses, along with their audited financial statement for the financial year ending on 31.03.2022. The Applicant Company has also annexed its unaudited financial statements for the financial year ending on 31.03.2023.

x. It is further submitted that no approval of the

Competition Commission of India (“CCI”) is required for the Scheme as the Resulting Company is a wholly-owned subsidiary of the Applicant Company, and the said companies form a part of the same group. Further, pursuant to Notification S.O. 988(E) dated 27.03.2017 and Notification S.O. 1192(E) dated 16.03.2022 issued by the Ministry of Corporate Affairs, Government of India the Scheme is also exempted from any requirement to obtain approval of the CCI as the turnover of the Applicant for Financial Year 2021-22 is less than Rupees 1,000 Crore. Therefore, the CCI will not be regulatory authority for the purpose of the present Scheme.

xi. It is submitted that as an Inter-state Transmission license holder, the Applicant is regulated by its sectoral regulator, the Central Electricity Regulatory Commission. Further, the Stage II Transmission Undertaking i.e., business undertaking to be transferred to the Resulting Company pursuant to the Scheme, is also regulated by the Central Electricity Regulatory Commission and to the extent of the proposed Scheme, the Resulting Company would also be regulated by the Central Electricity Regulatory Commission. Therefore, a notification of the Scheme may need to be issued under Section 230(5) of the Companies Act, 2013 to the Central Electricity Regulatory Commission as the relevant sectoral regulator.

xii. It is submitted by the Applicant Company that the accounting treatment specified in the Scheme is in

conformity with the accounting standards prescribed in the Companies Act, 2013 and certificates of the statutory auditors of the Applicant Company and the Resulting Company issued under Section 133 of the Companies Act, 2013 are filed respectively with the application as Annexure – P-16.

xiii. The Scheme provides for the proposed share exchange ratio to be implemented once the Scheme is sanctioned. The Applicant Company has also placed on record the report recommending a fair share entitlement ratio dated 12.05.2023 issued by Mr. Niranjana Kumar, Registered Valuer – Securities or Financial Assets IBBI Registration No. IBBI/RV/06/2018/10137.

xiv. It is further submitted by the Applicant Company that no investigation or proceedings under the Companies Act, 2013 have been instituted or are pending in relation to the Applicant Company and the Resulting Company.

xv. It is submitted that as on 09.05.2023, the Applicant Company has 7 (seven) Equity Shareholders holding 59,70,36,000 equity shares issued by the Applicant Company. The Chartered Accountant, viz., Gaurav Mehta & Co., has issued a certificate dated 12.05.2023 certifying the number and value of shares held by the Equity Shareholders of the Applicant Company. The Applicant Company is seeking appropriate directions for holding and convening physical meeting of the Equity Shareholders to consider and, if thought fit, to approve the Scheme, with or without modification(s), through physical meetings.

xvi. It is further submitted that the Applicant Company has 3 (three) Secured Creditors having an outstanding amount of Rs 1322,86,40,842/-. The Chartered Accountants, viz. Gaurav Mehta & Co., has issued a certificate dated 15.05.2023 certifying the number and value of Secured Creditors. The said certificate is filed and produced in Annexure – P-13. The Applicant Company is seeking appropriate directions for holding and convening physical meetings of the Secured Creditors to consider and, if thought fit, to approve the Scheme, with or without modification(s), through physical meetings.

xvii. The Applicant Company also has 58 (fifty-eight) Unsecured Creditors having an outstanding amount of Rs. 42,39,18,181/-. The Chartered Accountants, viz. Gaurav Mehta & Co., has issued a certificate dated 15.05.2023 certifying the number and value of Unsecured Creditors of the Transferor Company. The said certificate is filed and produced at Annexure-P-14 and has been separately filed by the Applicant as an additional document on 18.05.2023. The Applicant Company is seeking appropriate directions for holding and convening physical meetings of the Unsecured Creditors to consider and, if thought fit, to approve the Scheme, with or without modification(s), through physical meetings.

xviii. Lastly, it is also submitted that the Scheme does not contemplate a corporate debt restructuring, and no liabilities of Secured Creditors or Unsecured Creditors of the Applicant Company will be reduced or extinguished

as a result of the Scheme.

4. The rationale for the Scheme of Arrangement as stated in Clause-3 of the Scheme is as under:

“3. RATIONALE

3.1 *This Scheme is intended for the segregation of the Remaining Business (as defined hereinafter) and Stage II Transmission Undertaking of the Demerged Company, in accordance with Sections 230 to 232 and other relevant provisions of the Act (as may be applicable) read with Section 2(19AA) and other relevant provisions of the IT Act (as defined hereinafter) (as may be applicable), whereby the business of owning, operating and maintaining the Stage II Transmission Undertaking shall be vested in and to the Resulting Company and the Demerged Company shall continue to own, operate and maintain the Remaining Business.*

3.2 *The Scheme is intended to achieve, inter alia, greater efficiency in operations, and increased focus and attention to the Stage II Transmission network in a manner that is compliant with all the statutory and regulatory requirements. The Scheme will also create separate management platforms for the distinct and standalone Stage I Transmission network and Stage II Transmission network, which will enable the achievement of the long-term objective of strengthening the operations and financials of the Remaining Business and Stage II Transmission Undertaking, and enable suitable investments to be made in Remaining Business and Stage II*

Transmission Undertaking, respectively, by potentially interested investors. In view of the long-term objectives and plans set forth by the Demerged Company and Resulting Company, it is considered desirable and expedient to reorganise and reconstruct the Demerged Company by demerging the Stage II Transmission Undertaking into the Resulting Company in the manner and on the terms and conditions contained in this Scheme.

5. We have heard Learned Senior Counsels Mr. Sourabh Soparkar and Devang Nanavati, Learned Senior Counsels for the Applicant Company and perused the supporting affidavits and documents annexed with the application, including additional documents filed on 18.05.2023. It appears that the present application complies with all provisions of Sections 230-232 of the Companies Act and Rules provided thereunder. Hence, we allow the present application with the following directions:

i. The Applicant Company is directed to convene and hold the physical meeting of the Equity Shareholders on 16.08.2023, at 10:30 AM at 21, Feroz Gandhi Road, Lajpat Nagar Phase III, Opposite Apollo Pharmacy, New Delhi-110024, for the purpose of considering, and, if thought fit, approving, with or without modification(s), the proposed Scheme, wherein the Equity Shareholders will be able to cast their votes physically.

ii. The Applicant Company is directed to convene and hold the meeting of the Secured Creditors on 16.08.2023, at 11:30 AM, 21, Feroz Gandhi Road, Lajpat Nagar Phase III, Opposite Apollo Pharmacy, New Delhi-110024, for the

purpose of considering, and, if thought fit, approving, with or without modification(s), the proposed Scheme, wherein the Secured Creditors will be able to cast their votes physically.

iii. The Applicant Company is directed to convene a physical meeting of the Unsecured Creditors on 16.08.2023, at 2:00 PM at 21, Feroz Gandhi Road, Lajpat Nagar Phase III, Opposite Apollo Pharmacy, New Delhi-110024, for the purpose of considering, and, if thought fit, approving, with or without modification(s), the proposed Scheme, wherein the Secured Creditors will be able to cast their votes physically.

iv. At least one month before the said meetings of the respective Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company to be held as aforesaid, a notice convening the said meeting at the day, date, and time as fixed in accordance with paragraph no. 41 (i), (ii) and (iii) above, together with a copy of the Scheme, a copy of the Explanatory Statement required to be furnished under Section 102 read with Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016, shall be sent to the respective Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company by registered post or speed post or by courier or by hand delivery or electronic mail to their registered e-mail address.

v. At least 30 (Thirty) days before the meetings of the Equity Shareholders, Unsecured Creditors, and Secured

Creditors of the Applicant Company to be held as aforesaid, a notice convening the said meeting, at the date and time fixed in accordance with para no. 41(i), (ii) and (iii) above be published each in the newspaper Dainik Bhaskar (Hindi edition) and Times of India (English edition), stating that copies of the Scheme and the said statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 can be obtained free of charge from the registered office of the Applicant Company. The publication shall also include the statement required to be furnished according to Section 102 of the Act read with Sections 230 to 232 of the Act.

vi. The notices shall be sent to the equity shareholders with reference to the list of the persons appearing on the record of the company as of 09.05.2023. The notices shall be sent to the unsecured creditors and secured creditors with reference to the list of the persons appearing on the record of the Applicant Company as of 31.03.2023.

vii. Since the meetings are being held in physical mode, physical attendance of Equity Shareholders, Unsecured Creditors, and Secured Creditors of the Applicant Company is mandatory. Accordingly, the facility for the appointment of proxies shall be available for the meetings and hence the requirement to send the proxy form and attendance slip along with the notice of the said meetings may be adopted.

viii. Mr. V S Verma, Director of the Applicant Company, is hereby appointed as the Chairperson for the respective meetings of the Equity Shareholders, Unsecured Creditors and Secured Creditors of the Applicant Company.

ix. Dr R C Mohanty, Director of the Applicant Company or failing him Mr. Kush, Director of the Applicant Company or failing him Mr. Kapil Singla, Whole Time Director of the Applicant Company is hereby appointed as the Alternate Chairperson for the respective meetings of the Equity Shareholders, Unsecured Creditors and Secured Creditors of the Applicant Company.

x. Mr. Sunil Zore, Company Secretary in Practice (membership No. 2214/ COP NO. 11837) is hereby appointed as the scrutinizer for the meetings of the Equity Shareholders, Secured Creditors, and Unsecured Creditors of the Applicant Company.

xi. The Chairperson appointed for the aforesaid meetings of the Applicant Company and any authorized representative of the Applicant Company are hereby severally authorized to issue a notice of the respective meetings of the Equity Shareholders, Secured Creditors, and Unsecured Creditors referred above.

xii. The quorum for the meeting of the Equity Shareholders, Secured Creditors, and Unsecured Creditors shall be as prescribed under section 103 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

xiii. The Chairperson shall file an affidavit not less than 7 (seven) days before the date fixed for holding the aforesaid meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisements of the aforesaid meetings have been duly complied with as per Rule

12 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

xiv. It is further ordered that the Chairperson of the aforesaid meetings shall report to this Tribunal on the results of the meetings, verified by his affidavit, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, within 7 (seven) days of the conclusion of the aforesaid meetings.

xv. We direct the applicants to pay the Chairperson a sum of Rs 50,000/- and to the Scrutinizer a sum of Rs 25,000/- as their fees.

xvi. In compliance with Section 230(5) of the Act and Rule 8 of the Companies (Compromise, Arrangements, and Amalgamations) Rules, 2016, the Applicant Company shall serve the notice on the following Authorities namely, (i) to the Central Government through the Regional Director, North Western Region, Ministry of Corporate Affairs; (ii) to the Registrar of Companies, Gwalior, (iii) to the Income Tax Department along with full details of assessing officer and PAN number of the Applicant Company with the copy also to the Chief Commissioner of Income Tax Office; (iv) Central Electricity Regulatory Commission, and to such other Sectoral Regulatory Authorities who may govern the working of the respective companies involved in the Scheme, so that timely and proper reply may be filed. Representations, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice, and a copy of such representation shall simultaneously be sent

to the concerned company, failing which, it shall be presumed that they have no objection to the proposed Scheme.

6. All the aforesaid directions are to be complied with strictly in accordance with the applicable laws including forms and formats contained in the Companies (Compromise, Arrangements, and Amalgamations) Rules, 2016 as well as the provisions of the Act, by the Applicant Company.

7. With the aforesaid directions, this First Motion Application CA(CAA)3 OF 2023 is allowed and stands disposed of. A copy of this order be supplied to the learned Counsel for the Applicant Company, who in turn shall supply a copy of the same to the Chairperson and the Scrutinizer.

8. List the matter on 24.08.2023 for filing of report by the chairman.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)

Surbhi Rathore/LRA