

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CA.239/2021  
IN  
CP.CAA.42/2021  
IN  
CA(CAA)1140/2020**

Under Rule 11 Read with Rule 155 of the  
NCLT Rules, 2016

*In the matter of*

**Coastal Gujrat Power Limited**

(First Applicant Company)

**The Tata Power Solar Systems Limited**

(Second Applicant Company)

**The Tata Power Solar Company Limited**

(Third Applicant Company)

Order Delivered on: 06.10.2021

*Coram:*

Mr. Rajesh Sharma  
Hon'ble Member (Technical)

Mrs. Suchitra Kanuparthi  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner: Mr. Gaurav Joshi, Ld. Senior Counsel a/w Mr. Himanshu  
Vidhani, Advocate.

**ORDER**

*Per: Suchitra Kanuparthi, Member (Judicial)*

1. The Bench is convened by videoconference today.

2. The Applicant Companies have filed the present Application seeking an order from this Hon'ble Tribunal, *inter alia*, to allow the amendment to the Company Scheme Petition to *inter alia*, delete the Second Petitioner Company viz. Tata Power Solar Systems Limited from the array of parties to the Company Scheme Petition and to place on record the Amended Composite Scheme of Arrangement and make consequential changes to the Company Scheme Petition as more particular set out in the Schedule annexed hereto.
3. The Applicant Companies had preferred a Company Application being CA (CAA) No. 1140/MB-IV/2020, seeking various directions regarding holding/dispensation of meetings of creditors and shareholders. The said Company Application was allowed by this Hon'ble Tribunal and appropriate directions were passed by an order dated 5<sup>th</sup> January 2021 read with corrigendum order dated 20<sup>th</sup> January 2021 ("said Order"). The Applicant Companies have complied with the said Order and filed appropriate Affidavits evidencing compliance in this regard. Thereafter, the Company Scheme Petition was filed.
4. The Board of Directors of the Applicant Companies decided to amend the Original Composite Scheme, *inter alia*, on the basis of developments in the global power sector particularly in the renewables energy markets. It was found that it is commercially desirable that Tata Power Solar Systems Limited, which is engaged in Engineering. Procurement and Construction ("EPC") of solar plants and manufacturing of solar modules, be kept as a separate entity rather than merging it into the Transferee Company, some of the key reasons, *Inter alia* are:

- i) Following the global pandemic, global investors have become very choosy about where they invest and have begun to give far higher importance to Environment, Safety and Governance (ESG) aspects, as a result of which the way renewables businesses are organized has become critical and mixing renewables businesses with other businesses is not seen as ideal.
- ii) In recent months, few select Global Investors have reached out to the Applicant Companies and their feedback is that they prefer the entire “Renewable/Green Generation related business” to be under one roof for better value creation.
- iii) The Ministry of New & Renewable Energy vide its Notification dated 28 April 2021 sanctioned the production Linked Incentive Scheme “National Programmed on High Efficiency Solar PV Modules, for achieving manufacturing capacity of Giga Watt (GW) scale in high efficiency solar PV modules (Incentive Scheme). The primary aim and objective of the incentive Scheme is to promote manufacturing of high efficiency solar PV modules in India, to develop an ecosystem for sourcing of local material in solar manufacturing and also create a boost in the employment generation. The incentive Scheme provides for a performance linked incentive to the tune of 50% to manufacturers who propose to set up a fully integrated thin film technology or any other technology. Further, manufacturers will be given preference if a higher capacity plant is set up i.e. minimum capacity of 1,000 MW has to fulfilled by an applicant manufacturer. A copy of the Incentive Scheme is annexed as Annexure “A1” to the joint Affidavit dated 19 July 2021.

- iv) Further, the Ministry of New & Renewable Energy vide its office memorandum dated 9 March 2021, in order to promote Government of India's Atmanirbhar Bharat initiative and scale up domestic solar manufacturing including exporting solar cells/modules, has imposed a Basic Customs Duty ("BCD") on import of solar cells and solar modules w.e.f. 1 April 2022. A copy of the Office Memorandum dated 9 March 2021 is annexed as annexure "A-2" to the joint Affidavit dated 19 July 2021.
5. In the light of the aforesaid, it was felt by the Applicant Companies that it would be commercially prudent and desirable by the respective Board of Directors of the Applicant Companies to keep Tata Power Solar Systems Limited as a separate entity and let it continue as a wholly owned subsidiary of the Transferee Company, rather than merging it with the Transferee Company as envisaged under the Original Composite Scheme.
6. Accordingly, after deliberations, the Boards of the respective Applicant Companies took the view that the synergy proposed to be created out of the amalgamation of Tata Power Solar Systems Limited with the Transferee Company will no longer be as attractive to shareholders and, therefore, it was proposed that the provisions of the Original Composite Scheme be amended to remove the part that provided for the amalgamation of Tata Power Solar Systems Limited with the Transferee Company and certain consequential changes.
7. The Additional Affidavits dated 9<sup>th</sup> July 2021 and 19<sup>th</sup> July 2021, the withdrawal of Tata Power Solar Systems Limited from the Original Composite Scheme states that it will not adversely impact the rights of the

- shareholders and creditors of any of the Applicant Companies, and it is in the interest of the stakeholders and expeditious to proceed to sanction the Amended Composite Scheme for Arrangement.
8. It is not out of place of mention that the shareholders of the Transferor Company and Tata Power Solar Systems Limited (i.e. the wholly owned subsidiaries of the Transferee Company) had consented and given their unconditional approval to the Original Composite Scheme, including any amendment/modification/alteration made therein as may be considered necessary by found acceptable to the Board of Directors of the respective Applicant Companies. Similarly, the Transferee Company in its meeting of shareholders, held pursuant to direction of this Hon'ble Tribunal, had also approved a resolution approving the original Composite Scheme which *inter alia*, authorities the board of directors of the Transferee Company to do all such acts, deeds, matters and things, as it may in its absolute discretion deem requisite, desirable appropriate or necessary to give effect to the above resolution and effectively implement the arrangement embodied in the scheme and to accept such modification, amendments, limitations and/or conditions, if any, at any time and for any reason whatsoever, which the Company may deem appropriate". In terms thereof, the shareholders have duly authorized the board of directors of the respective Applicant Companies to make and accept amendments to the Original Composite Scheme, which they have undertaken.
9. This Bench allows CA-239/2021 and allows the Applicant Company to delete Applicant Company No.2 from the array of parties, amend the cause title and file all necessary and consequential amendments in the company list. The Applicant companies are directed to serve the amended

scheme Petition along with the Amended Composite Scheme of Arrangement to the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai, Maharashtra; Registrar of Companies; Official Liquidator, High Court of Bombay; Income Tax Authorities; GST Authorities; Stock Exchanges, etc.

10. Learned Senior Counsel for the Applicant Companies submitted that though the Board of Director of respective Companies are authorized to amend the Scheme, however, it would be prudent to obtain approval of Shareholders of respective Companies to get the Scheme amended as proposed above. Accordingly, the conduct of meeting of Shareholders of respective Company to consider amendment in the Scheme is hereby ordered.

**Sd/-**  
**Rajesh Sharma**  
**Member (Technical)**

06.10.2021

*Suresh Raut*

**Sd/-**  
**Suchitra Kanuparthi**  
**Member (Judicial)**