

**NATIONAL COMPANY LAW TRIBUNAL,
BENCH AT AHMEDABAD**

C P (CAA) NO. 69 OF 2020
CONNECTED WITH
C A (CAA) NO. 64 OF 2020

Inox Renewables Limited

A company incorporated under
the provisions of Companies Act, 1956
And having its registered office at
survey No. 1837 and 1834
at Moje Jetalpur, ABS tower,
second floor, Old Padra Road,
Vadodara, Gujarat 390007

...Petitioner Transferor Company

GFL Limited

A company incorporated under
the provisions of Companies Act, 1956
And having its registered office at
Survey No. 16/3,26 and 27, village-Ranjitnagar,
Taluka – Ghoghamba, District Panchmahal,
Gujarat 389380

... Petitioner First Transferee/
De-merged Company

Inox Wind Energy Limited

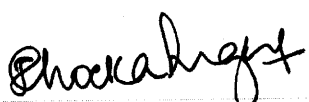
A company incorporated under
the provisions of Companies Act, 2013
And having its registered office at
3rd floor, ABS Towers, Old Padra Road,
Vadodara, Gujarat 390007

... Petitioner Second Transferee Company

Order delivered on :- 25.01.2020

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockolingam Thirunavukkarasu, Member (T)

Appearance: Mrs. Swati Soparkar, Advocate for the Applicant
Companies.





ORDER

[Per: Ms. Manorama Kumari, Member (Judicial)]

1. This petition filed by three petitioner companies under Section 230 and 232 read with Sections 52 and 66 and other applicable provisions of the Companies Act, 2013 seeking sanction of this Tribunal to a Composite Scheme of Arrangement in the nature of amalgamation of Inox Renewables Limited, the Petitioner Transferor Company with GFL Limited and De-merger and Transfer the De-merged Undertaking viz. Renewable Energy Business of GFL Limited, the Petitioner First Transferee/De-merged Company to Inox Wind Energy Limited, the Petitioner Resulting/ Second Transferee Company.
2. It has been submitted that all the companies belong to the same group of Management. GFL, the Petitioner First Transferee/De-merged Company is a listed public limited company. In compliance with the applicable SEBI Circulars, the prior approval in form of the observation letters dated 24th August, 2020 and 25th August, 2020 from BSE Limited ('BSE') and National Stock Exchange of India Limited ('NSE') respectively, were obtained from the concerned stock Exchanges and have been placed on record.
3. It has been further submitted that the said Petitioner First Transferee/De-merged Company inter alia, holds strategic business interest in leisure, infrastructure and renewables. It is the holding company of Inox Renewables Limited and Inox Wind Energy Limited, the other two Petitioner Companies. The rationale for the proposed Scheme has been explained as under:
 - (i) Each of the varied businesses being carried on by GFL, the First Transferee Company /Demerged Company either by itself or through its subsidiaries including renewable energy business have significant potential for growth and profitability. The nature of risk, competition, challenges, opportunities and business methods for renewable energy





business is separate and distinct from other businesses being carried out by GFL.

- (ii) In order to lend greater/enhanced focus to the operation of each of the said businesses, it is proposed to re-organize and segregate the renewable energy business.
 - (iii) The proposed arrangement would enable consolidation of same line of businesses into new wind company which will result in unlocking of value and creation of additional liquidity for the shareholders of GFL.
4. The Report recommending Share Entitlement Ratio provided by CA Harsh Chandrakant Ruparelia, Registered Valuer, dated 13th March 2020 for the proposed de-merger of the de-merged undertaking of GFL, under the present Scheme as well as the Fairness Opinion provided by Fedex Securities Private Limited, Category- I Merchant Banker dated 13th March 2020 has been placed on record. It has been clarified that since the proposed amalgamation is that of the Wholly Owned Subsidiary in the parent company, no shares are required to be issued for first part of the Scheme.
5. The petitioner companies had filed the proceedings before this Tribunal in form of joint application being C A (CAA) No. 64 of 2020, whereby dispensation of meetings of the Equity Shareholders of IRL and IWEL, two Wholly Owned Subsidiary companies of GFL and the unsecured creditors of IRL, the Transferor Company was sought in light of the requisite written consent letters on affidavit approving the proposed Scheme, being submitted. It was further submitted that there were no Secured creditors of any of the companies and no Unsecured Creditors of GFL and IWEL, as certified by the Chartered Accountant and hence their meetings were not necessary. Hence, vide the orders dated 15th and 20th October 2020, passed in CA CAA No. 64 of 2020, only the meeting of the Equity Shareholders of GFL, The Applicant First Transferee/De-merged Company was directed to be convened.

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6. Pursuant to the directions of the Hon'ble Tribunal, notices of the meetings were sent individually to all Equity Shareholders of the said company on or before 26th October 2020, together with a copy of the Scheme of Arrangement and the Explanatory Statement as well as all other requisite disclosures. The notice convening the meetings were also advertised in English daily 'Business Standard' Ahmedabad Edition and Gujarati daily 'Divya Bhaskar' Vadodara edition for the said Meeting, on 28th October 2020; The affidavit dated 6th November 2020 was filed by the Chairman of the said meeting confirming the compliance of the directions. The aforesaid meeting were duly convened and held on 30th November 2020 through Video Conferencing and the Chairman appointed for the said meeting reported the result of the said meeting to this Tribunal vide the affidavit dated 3rd December 2020. The said report confirms that the proposed Scheme of Arrangement was approved by requisite majority of 96.12 % in numbers and 99.99 % in value by the Equity Shareholders of GFL, exercising their right either by remote e-voting or e-voting at the time of meeting. It was also further confirmed that the resolution approving the Scheme of Arrangement was approved by majority of 99.99% by the public shareholders exercising their voting rights.
7. Vide the aforesaid order dated 15th October 2020, the original Applicant companies were also directed to serve Notice of the Scheme to the Regulatory Authorities-viz. (i) Central Govt. through the Regional Director, North-Western Region, (ii) Registrar of Companies, Gujarat, and (iii) concerned Income Tax Authorities for all the companies and (iv) Office of the Official Liquidator for the Applicant Transferor Company and (v) Reserve Bank of India, for the Applicant De-merged Company. The notices were duly served on all the authorities on or before 8th November 2020 and the affidavit dated 7th November 2020 confirming the compliance of the said directions for service of Notice on all the above Regulatory Authorities alongwith the acknowledgments for the same was filed with this Tribunal. In response to the said notice, the Regional director and Official Liquidator have filed their respective representations with the Hon'ble Tribunal dated 15th December 2020 and 31st December

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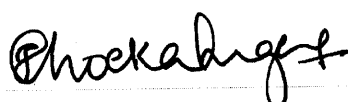
2020. No Representations were received from the Income Tax Authorities or any other regulatory authority for any of the companies.

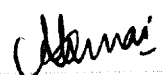
8. The petition was filed on 4th December 2020 and was admitted on 10th December 2020. The date of hearing was fixed as 15th January 2021. Directions were issued to publish Notice of Hearing of Petition in the newspapers viz. English daily 'Business Standard' Ahmedabad Edition and Gujarati daily 'Divya Bhaskar' Vadodara edition for both the companies, at least before 10 days of the date of hearing of the petition. Further directions were also issued to serve notice of hearing of the petition to the statutory authorities viz. (i) Central Govt. through Regional Director- North Western Region, (ii) Registrar of Companies, (iii) Income Tax authorities and (iv) Official Liquidator at least before 10 days of the date of hearing of the petition.
9. Pursuant to the directions, notices were duly served by the petitioner companies on the statutory authorities viz. (i) Central Govt. through Regional Director- North Western Region, (ii) Registrar of Companies, (iii) Income Tax authorities and the Official Liquidator, on or before 16th December 2020 and publications were duly made in the newspapers on 16th December 2020. The affidavit of service and publication dated 17th December 2020 confirming the same has been placed on record.
10. Heard Mrs. Swati Soparkar, learned advocate appearing for the petitioners. It has been submitted that the Petitioner Companies have filed a common additional affidavit dated 4th January 2021 in response to the representations filed by the Regional Director as well as the Official Liquidator.
 - (i) It has been submitted that Para 2 (a), (b) and (f) of the representation of the Regional Director deals with the factual aspects viz. Service of Notice for the proposed Scheme, nature of the proposed Scheme, consideration for the same being confirmed by the Registered Valuer as well as the rationale for the proposed Scheme.

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- (ii) Para 2 (c) of the affidavit, refers to the proposed consolidation of the Authorised Share Capital of the Transferor Company with that of the Transferee Company as envisaged under clause 25.1.1 of the Scheme. It is observed by the Regional Director that under Section 232 (3) (i) of the Companies Act, 2013, the Transferee Company shall get the set off only for the amount of fees paid by the Transferor Company. In view of the same, the Transferee Company will be required to pay the difference of amount of fees payable on the enhanced Authorised Capital as on date and the actual amount of fees paid by the Transferor Company at the relevant point of time. In this regard, it has been undertaken by the Transferee Company to pay such difference, if any applicable, for the amount of fees payable as on date on the proposed enhancement of Authorised Capital of Rs. 1,10,10,00,000/-.
- (iii) Para 2(d) of the affidavit refers to the investments made by foreign national/ NRI shareholders in case of GFL Limited, the petitioner First Transferee /De-merged company which being part of the record of the company, is not disputed. However, it has been clarified that the said company has complied with the applicable provisions of FEMA and RBI guidelines and has further undertaken to comply with the applicable provisions while implementing the present scheme.
- (iv) Para 2(e) of the affidavit refers to the insufficient Authorised Capital of IWEL, the Petitioner Second Transferee Company as on 31st March 2020, who shall issue new shares of the shareholders of the De-merged Company, upon scheme being effective. It has been submitted that vide Clause 15.8 of the Scheme, it is envisaged that upon Scheme being effective and before issuing the new shares, the said petitioner second Transferee Company shall increase its Authorised Capital to the required extent by following the requisite procedure under the Companies Act and the Authorised Capital shall be sufficient for the implementation of the Scheme. It is also

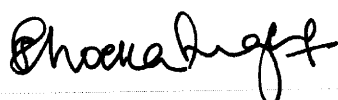




pointed out that clause 25.2.2 of the Scheme envisages the transfer of part of the Authorised Capital from GFL, the Petitioner first Transferee/De-merged Company to IWEL, the petitioner Second Transferee Company. In view of the same, it has been clarified that upon Scheme being effective, the Authorised Capital of the said company shall be sufficient for the issue of new shares as envisaged in the Scheme and no further directions are required to be issued to the petitioner companies in this regard.

(v) The Regional Director vide Para 2 (g) of the affidavit, has referred to the compliance with the applicable SEBI circulars by the petitioner First Transferee/De-merged Company, viz. GFL Limited being a listed company. It has been submitted that the said Petitioner Company has complied with all applicable requirements of the said circulars. It has been confirmed that in compliance with the applicable SEBI Circulars, the prior approval of the concerned stock exchanges were obtained and were placed on record along with the application, being CA (CAA) No. 64 of 2020. Further, in compliance with the SEBI Circulars and in particular, **para I (A) (9) (b) of Annexure I to the SEBI Circular No. CFD/ DIL3/ CIR/ 2017/21** dated March 10, 2017, the approval of the Scheme by the requisite majority of the Public Shareholders has also been reported by the Chairman of the meeting of the Equity Shareholders. It is further confirmed that the Petitioner Company has undertaken to comply with the further requirements of the said circulars as mentioned in the sanction letters of BSE and NSE, while implementing the Scheme.

(vi) Vide Para 2 (h) of the representation, it has been observed by Regional Director that vide para 25.1.5 of the Scheme, part of the Authorized Capital of GFL, the De-merged company is proposed to be transferred and consolidated with the Authorized Capital of the second Transferee Company. It is submitted by the Regional Director that such transfer and consolidation of the Authorized





Capital is permissible under the provisions of law only for the proposed Scheme of Amalgamation and mergers and not for the Scheme of Arrangement involving De-merger. In this regard, it has been submitted by the petitioners that there are no specific provisions of law prohibiting such consolidation of capital in case of De-merger. There are numerous instances where such transfer of part of the Authorized Capital has been permitted in case of De-merger by several decisions of the High Court as well as NCLT.

- (vii) The Regional Director vide Para 2(i) has referred to compliance of Section 2 (19 AA) of the Income Tax Act so far as the proposals of De-merger is concerned. In this regard, it has been submitted that the said compliance is already envisaged under the Scheme vide para (C) of the preamble of the Scheme. In view of the same, it is not necessary for the Hon'ble Tribunal to give any further instructions.
- (viii) Vide para 2 (j) of the affidavit, it has been observed by the Regional Director that as confirmed by the Registrar of Companies that there are no complaints against the petitioner companies and there are no objections against the proposed Scheme.
11. The other regulatory authority viz. Official Liquidator has filed its report dated 31st December 2020 for the Transferor Company. It has been observed that the Transferor Company has conducted its business in accordance with Objects Clause and the same has not been conducted in any manner prejudicial to the interest of its members or public interest, hence the petitioner transferor company may be dissolved without following the process of winding up. The petitioner companies are hereby directed to preserve the books of accounts, papers and records of the Transferor Company and not to dispose of the same without prior permission of the Central Govt. as per the provisions of Section 239 of the Companies Act, 2013. No adverse observations are made in the said report.





It has been confirmed by the learned advocate for the petitioners that the Regional Director, Registrar of Companies as well as the Official Liquidator have been served with a copy of the said Additional Affidavit.

12. No representation has been received from the Income Tax Authorities. Hence, it is assumed that the said authorities have no objection to the proposed Scheme. However, it is submitted that on the basis of the records of the Petitioner Companies, there are no undisputed outstanding demand for income tax as on 30th September 2020 for any of the petitioner companies. However, for IRL, the petitioner Transferor Company, there have been several income tax demands raised by the income-tax authorities, for the Assessment years- 2013-14, 2014-15 and 2015-16 and the cumulative amount of demand is Rs. 4.8 crores. The appeal proceedings have been initiated by the said petitioner company and the same are pending before Commissioner Appeals. In case of GFL Limited, the petitioner first Transferee/De-merged Company, and IWEL, the Petitioner Transferee Company, there are no disputed tax demands. It has been further confirmed that the first Transferee Company shall be liable for any demand that crystalizes at the end of the above referred appellate proceedings. The Petitioner Companies have undertaken to abide by all the applicable provisions of the Income Tax Act.
13. In compliance with the proviso to sub-section (7) of Section 230, the Statutory Auditors of the petitioner De-merged/First Transferee Company as well as petitioner second Transferee company have confirmed the compliance of applicable accounting standards in accordance with section 133 of the Companies Act, 2013; for the accounting treatment proposed under the said scheme. The concerned petitioner companies have placed on record the certificates of Statutory Auditors dated 13th March 2020 and 5th June 2020 respectively.
14. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the documents produced on record, it appears that all the requirements of section 230 and 232 read with Sections 52 and 66 of the Companies Act, 2013 are satisfied.

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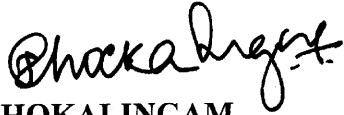
15. As a result, the petition being C P (CAA) No. 69 of 2020 is hereby allowed. The Composite Scheme of Arrangement, which is at Annexure- 'G' to the petition is hereby sanctioned and it is declared that the same shall be binding on the petitioner companies and their shareholders and all concerned under the scheme. The Authorised Capital of GFL and IWEL is hereby permitted to be reorganised as envisaged under Clauses 25.1 and 25.2 respectively.
16. The approval of the scheme shall not come in the way of competent authority(s) viz. Central Government, State Government. and/or any Local Bodies/Authority(ies) to take any action as per the law, for the time being in force, or as the case may be.
17. The amount to be paid to the Office of the Regional Director towards legal costs and expenses is quantified at Rs. 30,000/-. The said fees to the Regional Director shall be paid by the petitioner Transferee Company. An amount of Rs. 20,000/- shall be paid by the Transferee Company to the Office of the Official Liquidator towards legal costs and expenses.
18. Filing and issuance of drawn up order is hereby dispensed with. All concerned authorities to act on a copy of this order along with the scheme duly authenticated by the Registrar of this Tribunal. The Registrar of this Tribunal shall issue the authenticated copy of this order alongwith Scheme immediately.
19. The Petitioner Companies are further directed to lodge a copy of this order, separate schedules of immovable assets of IRL, the petitioner Transferor Company as on the date of this order as well as the De-merged Undertaking of GFL, the petitioner De-merged Company after giving effect of the amalgamation and the Scheme duly authenticated by the Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, if any, on the same within 60 days from the date of the order.



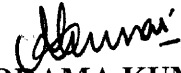


20. The Petitioner Companies are directed to file a copy of this order alongwith a copy of the scheme with the concerned Registrar of Companies, electronically, along with INC-28 in addition to physical copy as per relevant provisions of the Act.

21. CP (CAA) No. 69 of 2020 is allowed and disposed off accordingly.



Mr. CHOKALINGAM
THIRUNAVUKKARASU
MEMBER (TECHNICAL)



Ms. MANORAMA KUMARI
MEMBER (JUDICIAL)