

LEGAL UPDATES

NCLT PERMITTED THE REMOVAL OF TATA POWER SOLAR SYSTEMS FROM THE AMALGAMATION SCHEME, TAKING COMMERCIAL VIABILITY INTO ACCOUNT.

The National Company Law Tribunal Mumbai while hearing a Company Scheme Petition permitted to amend the composite scheme with effect to the removal of Tata Power Solar Systems Ltd. from the list of parties and put on record the Amended Composite Scheme of Arrangement.

The Appellate Authority, while discussing the matter, observed that the Transferee Company's wholly owned subsidiary, Tata Power Solar Systems Ltd, was kept separate by the Applicant Companies rather than being merged into the Transferee Company because doing so was deemed to be more desirable from a business standpoint as the earlier collaboration would not have been attractive for the shareholders.

The facts, in brief, are that Petitioner and the Transferor Company's shareholders had approved the Original Composite Scheme. Any further modifications effectuating the withdrawal of Tata Power Solar Systems Ltd would not negatively impact the rights of the Applicant Companies shareholders and creditors.

The Hon'ble Tribunal noted that the Transferee Company endorsed a resolution approving the Original Composite Scheme, among other things, authorised the Transferee Company's Board of Directors to fully execute the arrangement embodied in the scheme, along with amendments. Given that the shareholders of the respective Applicant Companies had duly approved the board of directors to create and accept amendments to the Original Composite Scheme, NCLT allowed the application.

While it is known that the Board of Directors of the respective companies are authorised to obtain shareholders' approval, NCLT Mumbai emphasised its importance and held that "...it would be prudent to obtain approval of Shareholders of respective Companies to get the

Scheme amended as proposed above," and consequently ordered shareholders' meetings of the respective companies to consider an amendment in the Scheme.