**EXECUTIVE REPORT**

**ON**

**A B RENEWABLE ENERGY PRIVATE LIMITED**

**(“Company”)**

DATED – 17 JULY, 2018

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**TABLE OF CONTENTS**

|  |  |  |
| --- | --- | --- |
| **S. NO.** | **TITLE** | **PAGE NO.** |
| **A B RENEWABLE ENERGY PRIVATE LIMITED** | | |
| **1.** | **CHAPTER A - CORPORATE DETAILS** |  |
| **2.** | **CHAPTER B - LOANS, BORROWINGS AND CHARGES** |  |
| **3.** | **CHAPTER C - MATERIAL CONTRACTS** |  |
| **4.** | **CHAPTER D – PROPERTY** |  |

**CHAPTER A: CORPORATE DETAILS**

**Brief history of the Company**

The Company was incorporated on December 24, 2011 as a private company limited by shares, in the name of ‘A B Renewable Energy Private Limited’ under the Companies Act, 1956 with the Registrar of Companies, Mumbai, Maharashtra. The Corporate Identity Number of the Company is U40300MH2011PTC225392.

**Registered Office**

The registered office of the Company is located at A/502, Kanakia Zillion, BKC Annexe, LBS Marg, CST Road, Kurla West, Mumbai – 400070, Maharashtra, India. Although, at the time of incorporation the registered office of the Company was located at Industrial Assurance Bldg., 3rd Floor, Churchgate, Mumbai- 400020, Maharashtra, India.

**Implications:**

Company has not provided (i) the board resolutions for approving the situation and change of the registered office; and (ii) Form 18 for the situation of the registered office at the time of incorporation.

**Memorandum of Association**

The main object clause of the Memorandum of Association (MoA) determines the scope of activities which a company can undertake legally. Any activity(ies) of the company not provided in the MoA shall be held as ultra vires.

The main objects of the Company as provided in its MoA are stated as under:

*To manufacture, Import, export, lease, licence, buy, sell, give consultancy and deal in components, modules, cells, accessories and other material relating to the field renewable and non- conventional energy sources*.

*To carry on the business in India and abroad to design, engineer, manufacture, fabricate, sell, give on lease, maintain and service products of all kind and description of energy products and renewable energy such as solar, wind, tidal, bio-mass, bagasse, municipal waste all kinds of electrical and electronic goods biotech equipments, product apparatus, material, components, parts and things*.

*To engage in the business as procurers, generators, suppliers, distributors, transformers, converters, transmitters, producers, manufacturer, processors, developers, stores, carrier, dealer, importers and exporters of Electricity generated by all kinds of non conventional energy sources included but not limited to solar wind, hydro, bagesse, bio-mass, wastes , tidal, wave, geothermal, biological and allied business and any products or by-products derived from any such generation, transmission distribution (including but not limited to steam) and any products derived from or connected with any other form of energy*.

**Implications:**

1. Based on the confirmations of the Company, the Company has not been engaged in any other activity apart from generating electricity from its solar power plant and, more specifically, it has not been engaged in any activity in relation to the first two (2) objects. Accordingly, we understand that the Company has not conducted or pursued any business operations in relation to the first two objects mentioned under the MoA.
2. However, it is to be noted that the first two objects deal with sectors which may attract additional FDI norms in relation to the Proposed Acquisition of the Company and, hence, it is advisable to amend the MoA for purpose of removing the first two objects.

**Articles of Association**

The Articles of Association (AoA) of the Company contains provisions as applicable to a private company.

**Implications**:

1. Although the Company is a private limited company in terms of its AoA it must be noted that, w.e.f. September 8, 2016, it is deemed to be a public company as per the Companies Act, 2013 (Act) as it became a subsidiary of a public company (i.e. subsidiary of Vishal Techno Commerce Limited (VTCL) from such date. Accordingly, compliances of a public company may be attracted including, without limitation, minimum requirement of three (3) directors, rotation of directors and minimum requirement of seven (7) members). However, it may be noted that based on the confirmation of the Company, before the Proposed Acquisition, (i) the CCDs which are allotted to Mr. Faizaan Dalal and Ms. Nafisa Dalal will be converted into equity shares ((i) referred to as “Internal Conversion”) and (ii) Mr. Faizaan Dalal and Ms. Nafisa Dalal will purchase the shares held by VTCL ((ii) referred to as “Internal Transfer”). Accordingly, on the earlier occurrence of either (a) Internal Conversion, (b) Internal Transfer or (c) Proposed Acquisition, the Company will become a private company for purposes of the Act.
2. The present AoA was adopted on March 3, 2017 (form filed, Form MGT-14). Based on the previous AoA which was last amended on November 29, 2016 (form filed, Form MGT-14), we understand that the same was not in the form prescribed under section 5 of the Companies Act, 2013 but instead it was in the form prescribed under section 28 of Companies Act, 1956. However, as per section 5 of the Companies Act, 2013, the prescribed form under the aforesaid section should have been adhered to from the date of its amendment in November 29, 2016.

**Board of Directors and Management**

The Board of Directors comprises of Mr. Faizaan Dalal, Ms. Nafisa Dalal and Mr. Shahzaad Dalal as Directors of the Company, appointed on August 11, 2017, August 11, 2017 and February 13, 2017 respectively.

**Implications:**

1. The ‘Disclosure of Interest’ form, i.e. Form MBP-1 for Mr. Faizaan Dalal and Ms. Nafisa Dalal are not in the prescribed format.
2. Mr. Faizaan Dalal and Ms. Nafisa Dalal were appointed as Additional Directors on August 11, 2016. As per Section 161 of the Companies Act, 2013 (erstwhile section 260 of the Companies Act, 1956), additional directors can be only appointed up to the next annual general meeting. However, in the instant matter, the appointment of Mr. Faizaan Dalal and Ms. Nafisa Dalal were not regularized in their 4thAGM which was held on September 30, 2016 but a year later in their 5thAGM held on September 25, 2017 along with regularization of Mr. Shahzaad Siraj Dalal, as per the relevant Form DIR 12 and CTC of shareholder resolution for regularization (dated September 25, 2017). This is a significant non- compliance on the part of the Company. Accordingly, it may be further noted that during the period between their 4th AGM (dated September 30, 2016) and 5th AGM (dated September 25, 2017) the only director duly appointed was Mr. Shahzaad Dalal. This may affect all the board meetings held during the aforesaid period on the grounds of a lack of quorum.

**Penal Provision:** (Section 172) *The company and every officer of the company who is in default shall be punishable with a fine which shall not be less than Rs 50,000 (fifty thousand rupees) but which may extend to Rs 5,00,000 (five lakh rupees).*

**Capital Structure**

Authorized Share Capital

The authorized share capital of the Company, as on the date of Due Diligence Report is Rs. 4,50,00,000 divided into 45,00,000 Equity Shares of Rs. 10 each, which was increased from Rs. 1,00,000 divided into 10,000 Equity Shares of Rs. 10 each on March 03, 2017.

Issued & Subscribed share capital

The issued and subscribed share capital of the Company, as on the date of Due Diligence Report is, Rs.1,96,000.00 divided into 19,600 equity shares of Rs. 10 each.

**Implications:**

Based on the previous AoA which was last amended on November 29, 2016, we understand that the same does not expressly allow the Company to increase the authorized capital in a general meeting in terms of Section 61 of the Companies Act, 2013 (erstwhile Section 94 of the Companies Act, 1956). Accordingly, the shareholder resolution(s) for increase in authorized share capital and amendment of MoA which were passed as ordinary resolution(s) should have been passed as special resolution(s). This is a significant non-compliance on the part of the Company.

**Penal Provision**: *(Section 450) If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues*.

**Shareholding Pattern (and CCD holding pattern)**

Equity Shareholding

The current shareholders of the Company, as per the MCA records, are M/s VTCL (10,000 Shares), Mr. Faizaan Dalal (4,800 Shares) and Ms. Nafisa Dalal (4,800 Shares).

The first subscribers to the MoA of the Company were Vishwajit Dahanukar (9,900 shares) and Yeshwant Jambotkar (100 shares).

CCD holding

The Company allotted 22,16,667 CCDs of face value Rs. 30/- to Mr. Faizaan Dalal and Ms. Nafisa Dalal in March, 2017.

***Implications:***

1. The Company has filed Form MGT 6 in respect of the one (1) share held by Mr. Faizaan Dalal on behalf of VTCL as a nominee of VTCL. If the shares of VTCL are not purchased by Mr. Faizaan Dalal and Ms. Nafisa Dalal (as required to be undertaken in terms of the AoA upon completion of 1 year from the date of supply of power) before the Proposed Acquisition, the one (1) share held by Mr. Faizaan Dalal on behalf of VTCL as a nominee of VTCL should be transferred to VTCL such that VTCL becomes the beneficial as well as the legal owner of the aforesaid one (1) share, as a condition precedent to the Proposed Acquisition.
2. The Company has issued Compulsorily Convertible Debentures (CCDs) to its directors, Ms. Nafisa Dalal and Mr. Faizaan Dalal in March, 2017. The aforesaid directors need to furnish declarations as per the Companies (Acceptance of Deposit) Rules, 2014 in order to ensure that such CCDs are not treated as ‘deposits’ under the Act. Otherwise, further provisions of the Act in relation to deposits may be attracted. Such declarations have not been provided. However, the Company has confirmed that they will be providing us the appropriate declarations in this regard.
3. Based on the CTC of board resolution dated January 19, 2018, the interest rate (coupon rate) of the CCDs was increased from 0.01% to 10.00% (w.e.f. April 01, 2017). However, it may be noted thatunder the statutory compliance documents in this regard including, without limitation, Form PAS– 4 and the Special Resolution dated March 03, 2017, the interest rate (coupon rate) of the CCDs was 0.01%. Accordingly, it is advisable for the shareholders of the Company (including, without limitation, Ms. Nafisa Dalal and Mr. Faizaan Dalal) to approve the increase in the interest rate (coupon rate) of the CCDs from 0.01% to 10.00% (w.e.f. April 01, 2017) by way of a special resolution. The Company has confirmed that they are in the process of undertaking the procedure for the approval via special resolution in this regard.
4. Further, it may be noted that under the terms of the CCD offer (as mentioned under the private placement documents including, without limitation, Form PAS – 4 and the Special Resolution dated March 03, 2017, the CCDs include conversion of ‘outstanding loans’ (from Ms. Nafisa Dalal and Mr. Faizaan Dalal) into CCDs. Accordingly, we understand that the aforesaid ‘outstanding loans’ (from Ms. Nafisa Dalal and Mr. Faizaan Dalal) were brought under the purview of CCDs from the date of the issuance of CCDs and private placement procedure (especially under sections 42 and 62 under Act) for the ‘outstanding loans’ was not followed at the time of the raising of such loan (from Ms. Nafisa Dalal and Mr. Faizaan Dalal). In our view, such a retrospective compliance of private placement procedure in respect of the aforesaid loan (by being included under the CCDs) is a non-compliance of private placement procedure (especially under sections 42 and 62 under Act). In addition, we are unable to determine the exact figure of the ‘outstanding loan’ amount as the given documents do not state any information in respect of the same.
5. As per the terms of the CCDs, the same shall be convertible by the Company within 30 days from the completion of 1 (one) year from the commencement of the Company providing solar energy to UPCL. The Company has informed that the Company has initiated the conversion process of the CCDs.

**Evolution of Allotment and Transfer of Share Capital of Company.**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| S. No. | Date of Allotment/ Transfer | **Number of Shares** | **Name and details of Transferor** | **Name and details of Allottees/ Transferees** | **Face Value**  **per Share**  **(Rs.)** | **Premium per Share**  **(Rs.)** | **Total amount for which Shares Allotted/ Transferred**  **(Rs.)** |
|  | At the time of incorporation | 10,000 | N/A | Yeshwant Jambotkar (100 shares)  VishwajitDahanukar (9900 shares) | 10 | - | 1,00,000 |
|  | On 02/08/2016 | 99 | Yeshwant Jambotkar | VTCL | 10 | - | 990 |
|  | On 02/08/2016 | 01 | Yeshwant Jambotkar | Mr. Faizaan Dalal (Nominee of VTCL) | 10 | - | 10 |
|  | On 08/09/2016 | 9,900 | VishwajitDahanukar | VTCL | 10 | - | 99,000 |
|  | On 09/03/2017 | 4800  and 22,16,667 (CCDs) | N/A | Mr. Faizaan Dalal | 10  and 30 (for CCDs) | 20 | 1,44,000  and 6,65,00,010 (for CCDs) |
|  | On 09/03/2017 | 4800  and 22,16,667 (CCDs) | N/A | Ms. Nafisa Dalal | 10  and 30 (for CCDs) | 20 | 1,44,000  and 6,65,00,010 (for CCDs) |

**Implications:**

1. Dates of transfer/issue of shares are as per Annual Return (Form MGT-7) for 2016-17.
2. Based on the documents provided, (a) the 4800 shares and 22,16,667 (CCDs) were issued to Ms. Nafisa Dalal; and (b) 4800 shares and 22,16,667 (CCDs) were issued to Mr. Faizaan Dalal in terms of private placement procedure under the Act. Under the aforesaid procedure, the Letter of offer (Form PAS 4, filed under Form GNL) for equity shares and CCDs does not include Annexure 3 (as mentioned under Form PAS 4) and the amount of the offer in respect of the issuance of equity shares and CCDs as mentioned under the relevant Record of Private Placement offer (Form PAS5) is incorrect and ambiguous.
3. We have not received Form 1 and the relevant board resolutions in respect of recording transfer of shares.

**Determining right and requirements to transfer of assets and equity shares of the Company**

We have examined the charter documents (MoA and AoA) of the Company to ascertain the rights and requirements for transfer of assets and liabilities and its respective rights thereon and also to ascertain the rights, liabilities of the shareholders of the Company and requirements thereof to sell/transfer their respective equity shareholding.

**A.10.1 AoA of the Company**

In terms of the provisions for ‘Transfer of Shares’ under the AoA of the Company, the 51% shares held by VTCL shall be considered as ‘Restricted Shares’ until earlier of (a) completion of 1(one) year from the commencement of the Company providing solar energy to UPCL or (b) occurrence of a liquidity event. Such Restricted Shares shall be transferred in favour of Mr. Faizaan Dalal and Ms. Nafisa Dalal on completion of 1(one) year from the commencement of the Company providing solar energy to UPCL.

Further, no transfer by VTCL shall be complete and effective unless the purchaser of the shares from VTCL executes a ‘deed of adherence’ incorporating the applicable principles specified of the SSHA and agreeing to be bound by the terms of the same in accordance therewith.

**Implications:**

In terms of provisions of the extant AoA of the Company, the shareholders of Company shall either have to give their respective waivers of said transfer restrictions and other provisions in the AoA or the shareholders must have ensured the transfer of the 51% shareholding of VTCL to and in favour of Mr. Faizaan Dalal and Ms. Nafisa Dalal, before the Proposed Acquisition of the Company.

We understand that such transfer restrictions and other provisions in the AoA are the result of the SSHA executed amongst the Company, VTCL Mr. Faizaan Dalal and Ms. Nafisa Dalal. However, we have received only an unstamped (executed) copy of the same. Accordingly, the aforesaid waivers or transfer must be ensured in respect of the SSHA as well.

**Auditors**

As per the MCA records, the present auditor of the Company is AbizerARangwala& Associates. It was duly appointed in the 5th Annual General Meeting (AGM) (erroneously mentioned as ‘6th AGM’) held on September 25, 2017. In this regard, the Company has filed the requisite Form ADT 1 (the prescribed form for the notice of appointment of auditors) with the Registrar of Companies, Mumbai, Maharashtra. However, it has been appointed only till the conclusion of the next AGM, i.e., 6th AGM (erroneously mentioned as ‘7th AGM’) subject to ratification “at every AGM to be held in financial year 2017-18”. Prior to this, the same auditor was appointed due to casual vacancy in the EGM held on March 01, 2017 (filed Form ADT 1).

The earlier auditor of the Company was Niteen D Kshirasagar& Co. It was appointed in the 3rd Annual General Meeting (AGM) held on September 30, 2015\* for 5 years up till 2020 (for the period of accounts from April 1, 2015 to March 31, 2020). In this regard also, the Company has filed the requisite Form ADT 1 with the Registrar of Companies, Mumbai, Maharashtra. However, it resigned on February 27, 2017 and filed the requisite Form ADT 3 in respect of the same. Prior to this, the same auditor was appointed in the 2ndAnnual General Meeting (AGM) held on September 30, 2014 for one (1) year. Further, it may be noted that the same auditor was appointed for the period of accounts beginning from the date of incorporation of the Company to March 31, 2015. However, we have not been provided Forms 23B (erstwhile form under 1956 Act corresponding to Form ADT 1).

**Implications:**

There seems to be inconsistency in respect of the appointment of auditors of the Company. As per section 139 of the Companies Act, 2013, statutory auditors must be appointed for a period of 5 years, however, in the instant case, adherence to the 5-year requirement has not been met. This is a significant non- compliance on the part of the Company.

We have not been provided with the minutes or CTC in respect of the appointed of the auditor in the 3rd Annual General Meeting (AGM) held on September 30, 2015. However, we have been provided the CTC of Board Resolution of the same date.

**Penal Provision:** [Section 147(1)] *the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.*

**Annual Returns & Balance Sheets**

Section 92 of the Companies Act, 2013 (and erstwhile Section 159 of the Companies Act, 1956) requires every company, to prepare and file with the RoC the Annual Return containing the various particulars prescribed within 60 days from the date on which the AGM of such company is held.

Upon scrutiny of the documents provided by the Company, we have noted that the Company has prepared and filed Annual returns (Form MGT – 7 and as prescribed in schedule V of the Companies Act, 1956 along with Form 20B), with the RoC, for the AGMs held on September 30, 2013\*, September 30, 2014, September 30, 2015, September 30, 2016 and September 25, 2017.

Please note that Section 137 of the Companies Act, 2013 (and erstwhile Section 220 of the Companies Act, 1956) provides that within 30 days after the Balance Sheet and Profit and Loss Account along with the Auditors’ and Directors Report thereon has been laid down in the AGM of a company, the company is required to file with the RoC Form AOC-4 (erstwhile Form 23 AC).

Based on scrutiny of the documents provided by the Company, we have noted that the Company has filed Form AOC-4 (erstwhile Form 23 AC)\*\* for all financial years uptill FY ending on March 31, 2017.

**Implications:**

\*As per MCA records and the documents provided, there was a delay in holding the 1st AGM of the Company. As per section 166 of the Companies Act 1956, a company may hold its first annual general meeting within a period of not more than eighteen (18) months from the date of its incorporation. Accordingly, in our view there was a delay of more than three (3) months in holding the 1st AGM of the Company. In this regard the Company has confirmed that there indeed was a delay in holding the 1stAGM and further confirmed that, till date, no compounding procedure or penalty payments have been undertaken or made by the Company for such delay.

Further, it may be noted that consequent to the delay in holding the 1st AGM, there have been delays in filing the relevant Form 20B and Form 23 AC in respect of the aforesaid AGM.

\*\* As per the Auditor’s report in respect of FY 2016-2017, there has been ‘a slight delay’ in respect of deposit of various statutory dues.

Also, based on the Form AOC-2 (attached with Form AOC-4) and the corresponding financial statements, in respect of FY 2016-2017, there seems to be an additional loan from the director, Mr. Faizaan Dalal, to the Company of an amount of Rs. 2,11,66,980. The Company has not provided any documents and/or additional information in this regard.

The Company has not provided Form 23 ACA (erstwhile prescribed form for filing profit and loss account) in respect of FY 2012(including incorporation in 2011)-2013 and FY 2013-2014. Accordingly, we cannot determine if the Company has duly filed the same for the aforesaid relevant years.

As per annual return 2016- 17 the total number of members who attended the AGM, dated September 30, 2016, and EGMs, dated September 30, 2016; March 01, 2017 and March 03, 2017 was 3 (three) members. However, based on the transfer of shares dated August 02, 2016 and September 08, 2016, the total number of members of the Company holding 100% shares in the Company during the period between September 08, 2017 and March 09, 2017 was 2 (M/s. VTCL and Mr. Faizaan Dalal as nominee of VTCL). Such inconsistencies have also been observed in case of board minutes dated March 14, 2017, where the number of Directors who attended the Meeting was 2 (two) (based on the copy of relevant minutes). But instead, it was mentioned (in the annual return) that 3 (three) Directors had attended the aforesaid meeting.

**Charges**

As per the MCA records, the details of charge registered in the name of the Company are as follows –

|  |  |  |  |
| --- | --- | --- | --- |
| **Date of Creation/ Modification of Charge** | **Date of**  **registration of Creation/ Modification of**  **Charge** | **Name of charge holder** | **Description of instrument creating charge** |
| 14.03.2017  (Creation) (Form CHG-1) | 12.04.2017 | Reliance Capital Limited | Deed of Hypothecation dated March 14, 2017 executed by the Company. |
| 16.03.2017  (Modification) (Form CHG-1) \* | 09.06.2017 | Reliance Capital Limited | Memorandum of Entry for Mortgage by  deposit by Title Deeds dated March 16, 2017 executed by the Company. |
| 29.06.2017  (Modification) (Form CHG-1) | 20.07.2017 | Reliance Commercial Finance Limited | Memorandum of deposit of title deed dated June 29, 2017 executed by the Mortgagors (Ms. Nafisa Dalal, Mr. Shahzaad Dalal and Mr. Faizaan), Reliance Commercial Finance limited  and the Company. |

**Implications:**

\*There was a delay in filing the relevant Form CHG- 1 in this regard.

**Minutes**

We have been provided with copies of a few board meeting minutes and shareholders meeting minutes and CTCs in respect of some of them. As per the documents received, we can conclude that the Company has not complied with certain provisions of the Act and SS-I and SS-II, with respect to minutes of board meetings and general meetings from time to time.

**Relevant Penal Provision: As per section 118(11),***if any default is made in complying with the provisions of section 118 of the Act, in respect of any meeting, the company shall be liable to a penalty of Rs. 25,000 (Twenty-Five Thousand Rupees only) and every officer of the company who is in default shall be liable to a penalty of Rs. 5,000 (Five Thousand Rupees only).*

**Registers**

As per Section 88 of the Act, it is mandatory for every company to maintain certain Registers (register of members, register of debenture holders, etc.) in such form as may be prescribed.

**Implications:**

The Company has provided incomplete register of members i.e. Form MGT- 1. Certain entries in the register have not been filled, inter alia, date of transfer, certificate no. etc.

Also, the Company has not provided the following registers:

1. Register of Debenture Holders (Form MGT- 2)
2. Register of contracts with Related Party (Form MBP-4)

**Relevant Penal Provision:** *As per section 88(5), if the company is not maintaining register (Register of Members and Register of Debenture Holders) or fails to maintain them in accordance with the provisions of Section 88, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 50,000 (fifty thousand rupees) but which may extend to Rs. 3,00,000 (three lakh rupees) and where the failure is a continuing one, with a further fine which may extend to Rs. 1000 (one thousand rupees) for every day, after the first during which the failure continues.*

*As per section 189(6), every director who fails to comply with the provisions of section 189 (Register of contracts with Related Party) and the rules made thereunder shall be liable to a penalty of twenty-five thousand rupees.*

**Miscellaneous observation**

There have been instances of late filing by the Company. Further, we have not been provided with copies of all board meeting minutes and shareholders meeting minutes except a few in respect of FY 2017-2018\*.

The security certificates (in respect of shares and CCDs) and securities transfer forms (SH4) have discrepancies in the following manner\*:

1. Date of issue is not mentioned in share certificates of Ms. Nafisa Dalal and Mr. Faizaan Dalal.
2. Stamps on certificates pertaining to CCDs issued have not been cancelled.
3. The folio numbers do not match with the ones mentioned in Register of members, annual return (2016-17) and Form SH- 4.
4. Stamps on FormSH-4 transferring 99 shares from Mr. Yeshwant Jambotkar to VTCL have not been cancelled.

The Company has informed that they will be providing further documents in this regard.

**CHAPTER B: LOANS AND BORROWINGS**

The Company has entered into a Loan Agreement with Reliance Capital Limited dated March 14, 2017 to avail Rupee Term Loan of Rs. 18.70 Crores (Rupees Eighteen Crores Seventy Lakhs only) for the development of the project, the project being the development of 6.25MW (DC) Solar PV Project at Narsan Kala, Roorkee, District- Haridwar, Uttarakhand. The cost of the project is valued at Rs. 32.00 Crores (Rupees Thirty-Two Crores only).

**Implications:**

The additional security (Clause 3.1 of the Agreement) lists out three (3) separate properties. However, Property II and III were replaced by the property situated at Village Lonavala, Taluka Maval, Dist. Pune, i.e., Villa No. 43, admeasuring 412.5 sq. Mtrs as per the sanction letter received from Reliance Commercial Finance Limited dated 29.06.2017.

However, it may be noted that we cannot conclude if the Loan Agreement has also been amended for purposes of the change in additional security, as we have not been given any amendment agreement in relation to the Loan Agreement.

**Property II -** Flat No. TB- 1802, 18th admeasuring 1369 sq. ft. area along with two covered car parking in tower B at Runwal Elegante, old Kamath Club, Lokhandwala Complex, Behind Infinity Mall, Oshiwara, Andheri- West.

**Property III-** Flat No. TB- 1803, 18th admeasuring 1318 sq. ft area along with two covered car parking in tower B at Runwal Elegante, old Kamath Club, Lokhandwala Complex, Behind Infinity Mall, Oshiwara, Andheri- West.

**CHAPTER C MATERIAL CONTRACTS**

1. **Power Purchase Agreement**

Uttarakhand Power Corporation Limited (UPCL) had entered into a Power Purchase Agreement (PPA) with M/s Vishal Techno Commerce Limited (VTCL) for purchase of entire/ surplus 5MW energy generated by Solar Photovoltaic Power Plant (SPPP) for a period of 25 years on March 29, 2016.

UPCL shall accept and purchase the entire /surplus 5 MW of power made available to make UPCL system from SPPP @ Rs. 5.790 after the bidding process conducted by UREDA. UPCL shall accept and purchase the entire/ surplus 5MW of power made available to UPCL System from SPPP @ Rs. 5.790 after the bidding process conducted by UREDA. This rate of sale of Power shall be applicable only if SPPP commissions the Plant on/before 31.03.2017. However, if the plant is commissioned after 31.03.2017, the rate shall be decided by UERC if such rates are lower than the tariff agreed to in PPA.

In accordance with Original Power Purchase Agreement and NOC issued by UREDA, the said Original PPA signed with M/S Vishal Techno Commerce Ltd has been assigned to M/s A B Renewable Energy Pvt Ltd., on 29.03.2016, with all the rights under the PPA.

**Implications**

1. It is to be noted that according to the SUP-PPA, (i) UREDA vide letter no. 2263/UREDA/03(1)-334-6/Solar Policy (181.40 MW)/ 2016-17 dated December 07, 2016 (Annexure 1) issued NOC for transferring the PPA to the subsidiary of VTCL, i.e. the Company (“NOC”) and (ii) the PPA has been assigned to the Company. However, (i) the NOC states that the RFP equity lock (such lock in must be maintained for a period of one (1) year from the date of supply of power) in as per clause 2.25 of the RFP must be adhered to; and the assignee (the Company) expressly assumes in writing, delivered to UPCL, all the obligations of the bidder company (VTCL).
2. It may be noted that the Company is neither a party to the SUP-PPA nor any other agreement has been executed between the Company and UPCL. Accordingly, it is suggested that a separate tripartite agreement is executed amongst the Company, UPCL and VTCL which expressly provides for the assignment of the rights of VTCL to the Company. Further, based on the terms of the NOC, we would require in writing and delivered to UPCL wherein the Company expressly assumes all the obligations of the bidder company (VTCL).
3. Further, as per the SUP-PPA, the PPA was approved by the UREDA vide order dared July 29, 2016 with further changes which have been incorporated in SUP-PPA (Order 1) and the Commissioning Date has been extended from October 30, 2016 to March 31, 2017 which has been incorporated in SUP-PPA vide order dated September 20, 2016 (Order 2). In this regard the Company has informed that they will be providing us Order 1 and Order 2 and all other documents which are required to ensure conclusive assignment of the PPA in favour of the Company.
4. **Engineering, Procurement and Construction Contract**

A B Renewable Energy Private Limited (Developer) had entered into a (Revised) Engineering, Procurement and Construction (EPC) Contract with Sure Energy Private Limited (Contractor) on December 16, 2016 for engineering, procurement, construction, testing and commissioning of the Project (5 MW AC (6.25 MW DC) Solar PV Power plant at the Purchaser’s site located at village Narsan Kala, Roorkee Tehsil, Uttarakhand, having the consideration/cost price of total comprehensive EPC as Rs. 8,75,00,000 (Rupees Eight Crores Seventy Five lakhs only).

The Contract shall commence from the Effective Date till the completion of 1 year from the Commissioning Datei.e. 31st March 2017 (both days included) unless terminated earlier.

**Implications**

1. The Revised EPC Agreement stands expired, as the Term of the Agreement given in Article 1(ii) is said to expire after 1 year from the commissioning date i.e. March 31st, 2017.
2. According to the Good’s Guarantee mentioned in Article 10 (vii), the Contractor shall make alteration, repairs and replacements of all the defects related to Goods that arises prior to 12 months from the Commissioning Date i.e. prior March 31st, 2017. Therefore, accordingly, the Good’s Guarantee by the Contractor stands expired.
3. The insurance by the Contractor to cover all the third-party damages as given in Article 8.1(i)(a) stands expired.

* The insurance by the Contractor to cover contractor’s liability under Workmen Compensation Act 1923, Minimum Wages Act 1948, Contract Labour Act 1970 and other applicable labour laws, as given in Article 8.1(ii) stands expired.
* Insurance cover by the Contractor against damage or loss due to any reason in respect of good’s material equipment for other work done in the Project, as given in Article 8.1(iii) stands expired.

1. According to the confirmation of the Company, a separate EPC was executed before the execution of this Revised Agreement for The Engineering, Procurement and Construction, and the same is yet to be provided.
2. The Company shall be providing the necessary certificates that have been obtained from Chief Electrical Inspector, as mentioned in Article 3.2(xi) and NOC from Uttarakhand Electricity Supply Company as mentioned in Article 9 and all the necessary Permits, Certificates and License as required under applicable law, as mentioned in Article 3.4.
3. The word – “Owner” has not been defined in the Agreement, and as per the Company’s confirmation, the Owner shall mean same as the Developer i.e. A B Renewable Energy Private Limited, we suggest the addition of the same in the definition clause (Article 1) vide amendment.
4. There is some ambiguity in the drafting of survivability clause as given in Article 18 (vii) of the Agreement, and therefore we suggest amendment of the same to ensure clear interpretation of the clause and intended survival of all the important clauses including, without limitation, the subsisting warranties under Article 10.
5. As per Article 7 (i), in consideration of the payment made by the Developer, the Contractor warrants and confirms that the Developer shall have legal title to and ownership of all and any of the portions of the Project and the Contractor shall have no right/title to the same. Accordingly, full payment to the Contractor by the Company must be ensured before the Proposed Acquisition.
6. Based on the confirmation of the Company, an amount of Rs.1,2500,000/- was received from Sure Energy Systems Private Limited in lieu of BG as per the EPC contract and the same has to be given back to Contractor once the performance ratio or minimum generation has been achieved for a considerable period. Further, the same shall be returned to Contractor before the closure of the Proposed Acquisition.
7. The Company has further confirmed that an amount of Rs.50,44,246/- is to be paid to Sure Energy due to escalation of claim under the EPC owing to increase in module prices.

**Resolution**

The Article 1.1(g.) of the Revised Engineering, Procurement and Construction Agreement shall be substituted by the following: -

““**Commercial Operation***" shall mean the condition of the operation in which the complete equipment covered under the Agreement is officially declared by the Owner/ Developer to be available for continuous operation, at different loads up to and including rated capacity. The date of Commercial Operation shall be the "****Commercial Operation Date" (COD)*** *or the* ***"*Commissioning Date*"*.”**

The definition of ‘Owner’ shall be added to the Article 1: Definitions and Interpretation: -

“*kk. “Owner” shall mean Developer*.”

The Article 3.4 of the Revised Engineering, Procurement and Construction Agreement shall be substituted by the following: -

“*Contractor shall procure, at its expense, all necessary permits, certificates and licenses required by virtue of all Applicable Laws. Contractor shall provide Developer with copies of such Contractor Permits as soon as reasonably practicable after they are obtained. Contractor shall also provide assistance and information as reasonably requested by Developer, to enable Developer to obtain the Developer Permits and Owner Permits respectively. Specifically, the Contractor shall procure the safety clearance from Chief Electrical Inspector and No- Objection- Certificate (NOC) from Uttarakhand Electricity Supply Company*.”

The Article 18 of the Revised Engineering, Procurement and Construction Agreement shall be substituted by the following: -

“(vii) ***Survivability***- *Articles 6 (Contract Price and Payments Terms), 7 (Title and Risk of Loss and Third Party Rights), 8 (Insurance), 15 (Intellectual Property), 10 (Guarantee, Warrantee and Performance Bank Guarantee), 11 (Project Commissioning, Penalties, losses and Damages.), 12 (Parties' Representations), 15 (Indemnities), 16 (Dispute Resolution and Governing Law), 17 (Confidentiality), and 19 (Limitation of Liability) shall survive any termination or expiration of this Agreement*.”

1. **Operation and Maintenance Agreement**

A B Renewable Energy Private Limited (“Employer”) has entered into a Maintenance Agreement with Sure Energy Private Limited (“Contractor”) on March 3, 2017.

ABREPL has engaged the services of SEPL for the provision of certain technical operation services and maintenance activities of its SPPP. SEPL would be operating and maintaining the plant as per the terms and conditions of this agreement at a cost of Rs. 31.25 lac/annum, subject to increase.

**Implications**

1. It may be confirmed from the Company if all the Services, performances and related licences, authorizations, consents, approvals, permits havebeen provided and obtained respectively by the Contractor, and further if the contractor has complied with all the requirements given in Article 5 of the Agreement.
2. It may be confirmed from the Company if all the required Service Fees had been duly paid by the Employer to the Contractor in accordance with Article 7 of the Agreement.
3. It may be confirmed from the Company if General Warranty and Guarantee of Minimum Generation of the PV Plant as given in Article 10 of the Agreement have ever been invoked due to some breach during the Term of this Agreement.
4. It may be confirmed from the Company if the Indemnity clause as given in Article 11 has ever been invoked due to occurrence of any such event or circumstance during the Term of this Agreement.
5. It may be confirmed from the Company if all the necessary Insurance given under Article 16 has been obtained and maintained by the Employer. It may further be clarified if the Contractor has obtained and maintained necessary insurances for a sum covering the potential damage or loss.
6. The word “Developer” has not been defined and should mean the same as “A B Renewable Energy Private limited”. We suggest insertion of the same in Article 1: - Definition and Interpretation in order to address the ambiguity.
7. It may be clarified as to who shall have the sole authority to terminate this Agreement on receipt of a written notice from the other Party as given under Article 13.1.
8. There is a certain ambiguity in the language of Article 13.1 and Article 13.2(f) regarding the “Termination” of the Agreement, and hence suggest amendment of the same to ensure that only the Company can terminate the agreement by giving 30 days notice under Article 13.1 and deletion of Article 13.2(f) as such a default can only be committed by the Contractor.
9. There are certain ambiguities and errors in respect of the clause references mentioned under Article 18.2 related to mode of settlement of dispute and hence suggest amendment of the same to address the issue.
10. Suggest amending the term “Employer” to be changed to “Developer” to ensure the correct interpretation of the independent contract relationship between the Parties.
11. **Business Transfer Agreement**

The Fun Solar Energy LLP (“Seller”) entered into Business Transfer Agreement with the Purchaser i.e. Vishal Techno Commerce Ltd (“VTCL”), on January 27, 2017 at Mumbai, Maharashtra for acquisition of stake, and selling and transferring of Identified Undertaking at Rs 94,00,000/- (RupeesNinety-Four Lakh Only). To comply with regulatory requirement, VTCL has formed a new entity in the name of A B Renewable Energy Private Limited (“ABREPL”) for carrying out the development generation and supply of solar energy of 5 MW at Uttarakhand (“Project”).

**Implication**

1. Fun Solar Energy LLP (Fun Solar Energy Private Limited - according to AOC-4 and AOC-2, dated 08.07.2017) (Seller) and the Company had entered into a Business Transfer Agreement on January 27, 2017 for selling and transferring the “Identified Undertaking” to the Purchaser. However, according to the confirmation of the Company, the BTA was executed solely to recover all the expenses incurred by Fun Solar LLP on behalf of the Company for purposes of the solar project but none of the clauses suggest any such outstanding expenses which are to be recovered through the execution of this BTA.
2. Further, according to the recitals and various clauses of the BTA, the BTA was executed for selling and transferring of the Identified Undertaking, which was in the possession of the Seller at the time of signing of this Agreement.

Some of these clauses are as follows: -

* According to Schedule 4, the Seller is obligated to deliver the physical possession of all the Assets, related documents of title and certificates, any related agreements and all Records of the Assets and any agreements.
* According to Clause8, besides all the rights, powers, duties and obligation, the liabilities of the Seller shall also be transferred to the Purchaser.
* According to Clause10, all records, data, information and documents of the Identified Undertaking shall be transferred to the Purchaser.
* According to Schedule 2, Identified Undertaking includes Assets whether leasehold or freehold.
* However, it is to be noted that (based on the documents provided, including, without limitation lease agreements dated March 10, 2017) the Identified Undertaking so mentioned in the Agreement was neither in the possession of the Seller nor the Seller had any rights in relation to the same. The rights and authority claimed under the Agreement to be held by the Seller were in fact never held by the Seller, as the Assets are not in the possession of the Seller. Hence, all such rights claimed by the Seller in relation to the Identified Undertaking which are being transferred under the BTA are baseless.

1. Accordingly, we suggest the execution of an agreement by referring to the BTA and recording the correct understanding of the parties to ensure reimbursement of expenses incurred in relation to the solar project instead of transfer of business.
2. Further, it may be noted that the BTA might have consequences from taxation perspective.

CHAPTER D: PROPERTY

**Memorandum of Understanding**

The Company had entered into a land development MOU (“MOU”) on June 20, 2016 with Shri Narendra Kumar (“Lessor 1”), Shri Vivek Kumar (“ Lessor 2”), Shri Anil Kumar (“Lessor 3”), Shri Rohit (S/o Surender Kumar)(“Lessor 4”) (hereinafter collectively referred to as “Lessors”) and Mr. Sanjeev Singh (“Facilitator”) for the purpose of taking on lease the land admeasuring 27.16 acres or 163 bighas at Narsan Kalan, PragnaManglaur, Roorkee – Tehsil, Haridwar – District, Uttarakhand for a period of 26 years.

**Implications**

According to the MOU, the Company agreed to enter into lease agreements/deeds with all the Lessors. However, only two lease deeds were executed with Lesser 1; and Lesser 2 and Lessor 3. Based on the confirmation of the Company, no lease agreements/deeds were executed with Lessor 4.In this regard, the Company has confirmed that the part of the total land held by Lessor 4 was not required for the purpose of the development of the solar power plant. Further the Company has confirmed that the MOU has expired.

**Lease Deed with Shri Narendra Kumar**

Further to the MOU, the Company has taken on lease land admeasuring 3.729 Hectares (i.e. 37290 sq. meter/ 9.21 Acre) at Narsan Kalan, Roorkee - Tehsil, Haridwar – District, Uttarakhand, for a period of 28 years (from 10.3.2017 to 10.3.2045) vide Lease Deeddated March 10, 2017 executed at Roorkee, District Haridwar, Uttarakhand, with Shri Narendra Kumar (“Lessor”).

**Lease Agreement with Shri Vivek Kumar and Shri Anil Kumar**

Further to the MOU, the Company has taken on lease land admeasuring 5.332 Hectares (i.e. 53320 sq. meter / 13.51 Acre) at Narsan Kalan, Roorkee - Tehsil, Haridwar - District for a period of 28 years (from 10.3.2017 to 10.3.2045) vide Lease Deed dated March 10, 2017 executed at Roorkee, District Haridwar, Uttarakhand, with Shri Vivek Kumarand Shri Anil Kumar (collectively referred to as “Lessor”).

**Implications**

1. It may be noted that the Lease Deed contains an attachment of an order (in vernacular language) issued by the appropriate adjudicating authority in Roorkee, Uttarakhand. This is in relation to the use of the land mentioned under the Lease Deed and its permitted use for the purpose of development of solar power plant subject to further approvals. The Company has confirmed that it will be providing further documents in this regard.
2. \*It may be noted that the registration of the Lease Deed was undertaken through online registration process. In addition, the Lease Deed does not contain the seal of the Registrar/ Sub-Registrars and/or book number. Accordingly, in our view, it cannot be concluded if the Lease Deed is duly registered until the Company provides further documents/ information in respect of the same. The Company has confirmed that it will be providing further confirmations and/or information in this regard.
3. Further, although the Lease Deed does not require any approval from the Lessor for the purpose of the Proposed Acquisition, it may be advisable to seek confirmation from the Lessor in respect of the change in control in the Company as a result of the Proposed Acquisition.