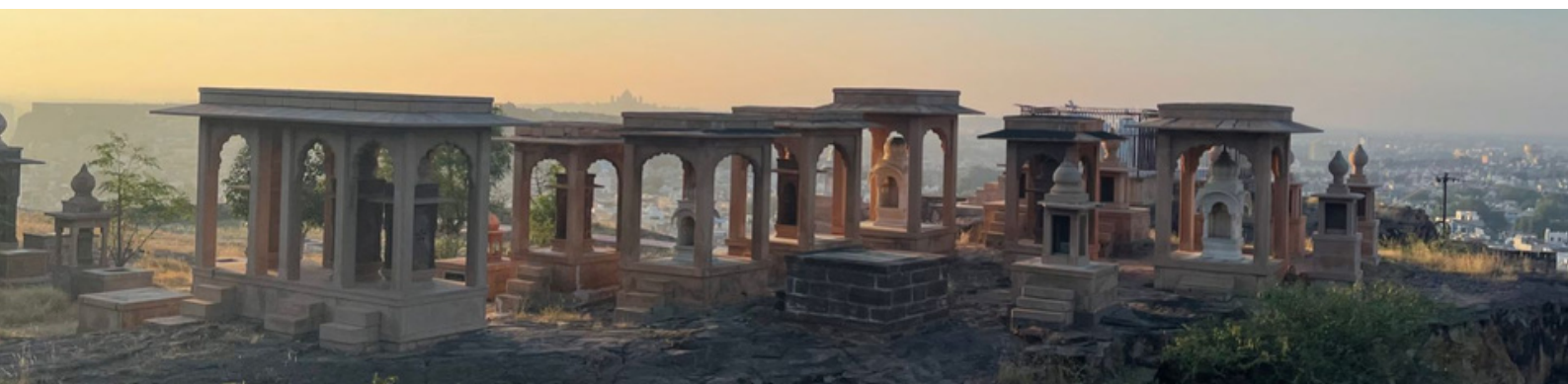
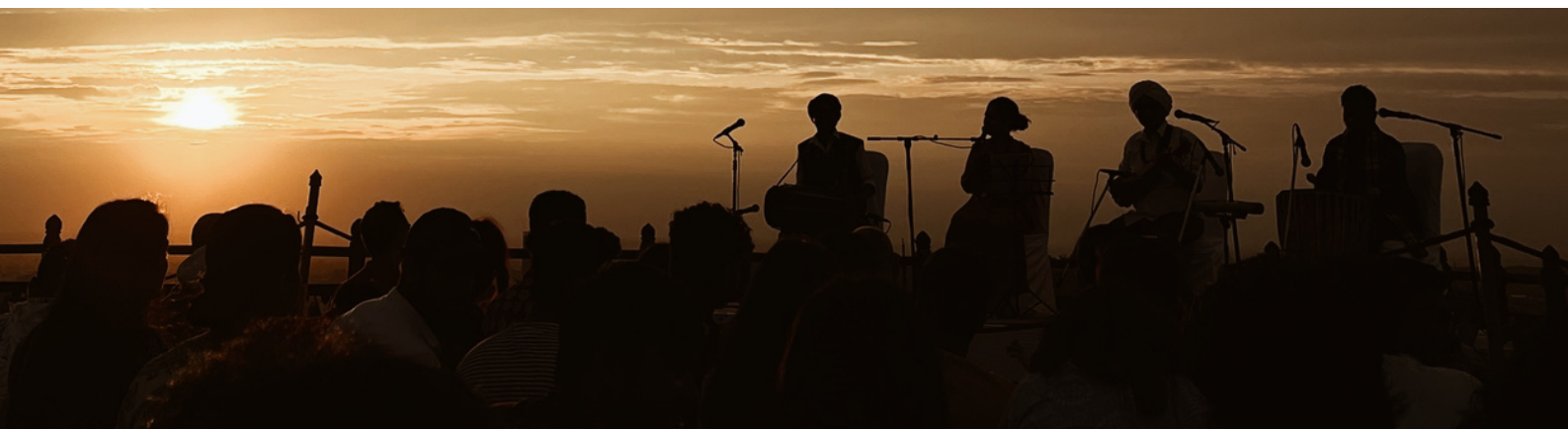


ALLEN & OVERY



PRELIMINARY PROPOSITION 1 THE RENEWABLE SHIFT

ALLEN & OVERY - NLU JODHPUR
INTERNATIONAL DEAL
NEGOTIATION COMPETITION
10TH - 12TH MARCH, 2023

SUPPORTING PARTNERS



**Swiss Arbitration
Centre**



WIPO | ADR
Arbitration
and Mediation
Center



ICSID

**International Centre for
Settlement of Investment Disputes**
WORLD BANK GROUP

BACKGROUND OF THE PARTIES

Al Aswad Petroleum

Al Aswad Petroleum [**“Aswad”**] is a Kuwait based oil company wholly owned by Kuwait’s Ghamdi Family. Aswad has a key presence in the Middle East and the North African region with an average annual revenue of approximately USD 550 billion for the years 2018 - 2022. Aswad is also a strong competitor to the Iranian presence in oil markets across other western countries.

In an effort to gain a first mover advantage in the renewable energy market, in 2016, Aswad set up SunTex — a wholly owned subsidiary focused on the production and supply of solar energy. SunTex manufactures solar modules, solar cells, and other solar products, and provides engineering, procurement, and construction services for solar power projects. At the time of inception, the intention of Aswad’s management [the **“Management”**] was to set up SunTex as an experimental project in the renewable energy sector, however, SunTex’s success in the last three years has made it a promising venture for Aswad.

With oil prices becoming increasingly volatile over the last few years, many Middle

Eastern oil companies have been forced to question the long-term viability of their reliance on oil revenue. The Gulf Cooperation Council’s adoption of the resolution, ‘Mission 2040 towards Sustainable Living’, in March 2019, pushed several companies, including Aswad, to re-evaluate their long-term goals. Aswad soon realized that both consumer preference and domestic governmental policies were slowly moving towards renewable and clean sources of energy, increasing the pressure to diversify.

As a result, Aswad set up a wind energy farm off the coast of Kuwait under the management of SunTex, in January 2020. As the business from the wind farm grew, Aswad’s management realized that the business research and market strategies required in the renewable energy sector are different from the oil industry. Further, the Management’s limited technical know-how in renewable energy acted as a hindrance to SunTex’s success and as a result, they are looking for opportunities for a merger/acquisition in the renewable energy sector.

CoolWheels Pvt. Ltd.

Kabir Gandhi is a passionate sustainability advocate, who has studied trends in climate change for over two decades. With his expertise in renewable energy, Kabir started CoolWheels Pvt. Ltd. [**“CoolWheels”**], a company based in India, specializing in renewable energy production. Over the last two decades, CoolWheels has become a market leader in renewable energy worldwide. CoolWheels has subsidiaries in China, India, United Kingdom, Canada, and Brazil, which are some of the largest renewable energy producing countries in the world.

CoolWheels engages in the generation of renewable energy through solar, hydro, and wind power. It operates in both rural and urban locations and offers tailored and specialized solutions for several industries, including banking, healthcare, telecom, and education because of which it has become a popular candidate for public electricity procurement contracts. Recently, CoolWheels has been testing a breakthrough prototype on Alkaline Fuel Cell technology. CoolWheels hopes that the technology will be an affordable alternative to conventional combustion engines in motor vehicles.

CoolWheels’ initial success can be attributed to its extensive distribution network. Its exclusive distribution agreements allowed CoolWheels to set up transmission lines across the world to transport energy. They achieved this through the help of various third-party distributors, with whom Kabir has built good personal relationships. It is important to note that these agreements contain a change of control clause in them.

Despite its expertise in the industry, CoolWheels is barely profitable. Over the last few years, CoolWheels’ rapid expansions have left it crumbling under high debt. Many reports say that CoolWheels’ senior management is driving its potential to the ground due to its aggressive expansion policies. To make matters worse, CoolWheels solar power business unit has not been performing well over the past half-decade.

CoolWheels’ intention in the near future is to become a profit-making venture and reduce its debts. It wishes to separate its non-performing business units from its successful business units. The sale of a part of its business is necessary for CoolWheels to avoid bankruptcy.

GENERAL INFORMATION

Aswad is interested in CoolWheels' projects, especially its wind and hydro power plants. Moreover, CoolWheels' extensive distribution network will enable Aswad to substantially expand its business by allowing it to transmit power over large distances. Aswad also wants to use the acquisition of CoolWheels to venture into western countries. Due to its traditional business model and ill reputation (stemming from previous disregard for sustainability and allegations of labour rights violations), Aswad regards reinventing its public image and goodwill as an essential precondition for its western expansion.

Post-acquisition, Aswad is looking to integrate CoolWheels' assets into its own company. However, Aswad is concerned that acquiring CoolWheels as is would be accompanied with massive liabilities,

especially the high debt, which could be detrimental to its business.

Aswad is aware that Padani Corp., the largest oil company in Qatar is also interested in CoolWheels. Thus, Aswad is willing to pay an exclusivity fee to ensure level bargaining power between the two companies.

The method for valuation of CoolWheels has been a point of contention and extensive discussion between the two companies. Aswad's representatives propose that valuation should be based on the entry cost method in light of the relative ease of entering into the market while CoolWheels believes that this undervalues the company because the entry cost method does not consider their intellectual capital and the future prospects of the renewable energy sphere.

ANNEXURE 1

Aswad has prepared the first draft of the term sheet for review by CoolWheels. CoolWheels has returned the mark-up of the draft to Aswad. The two parties wish to discuss their concerns in the upcoming negotiation in March 2023.

PROJECT SILVER PURCHASE AGREEMENT TERM SHEET

Sr. No.	Item	Position
1.	Structure	<ul style="list-style-type: none">• The transaction will be structured as an asset purchase transaction.• The assets to be acquired will be identified by SunTex and be mutually agreed between the parties after the signing of the term sheet. <p><i>[CoolWheels Note: The structure of the transaction is still to be discussed by the parties.]</i></p>
2.	Exclusivity	<ul style="list-style-type: none">• SunTex will pay an exclusivity fee of USD 1 million on the signing of the Term sheet, which is non-refundable.• CoolWheels agrees to suspend negotiations with any and all other parties in consideration for a period of four weeks by entering into an exclusivity agreement with SunTex.
3.	Due Diligence	<ul style="list-style-type: none">• CoolWheels agrees to grant SunTex the access to a data room containing, among others, material agreements concerning their wind and hydro energy plants, and its associated business.• All documents shared with SunTex will be subject to a non-disclosure agreement, signed separately.
4.	Warranties & Indemnities	<ul style="list-style-type: none">• Aswad seeks to include warranties for abiding by regulatory requirements and employment laws, including a warranty that there are no outstanding employment disputes.• CoolWheels wishes to restrict its financial liabilities arising from warranties and indemnities as much as possible. <p><i>[Note: To be discussed in detail in the upcoming meeting.]</i></p>

5.	Conditions	<ul style="list-style-type: none"> ● Completion of the transaction will be subject to satisfaction of the following conditions: <ul style="list-style-type: none"> ○ subject to on-going analysis, mandatory anti-trust and regulatory conditions; and ○ obtaining the relevant material third party consents (including, if applicable, from all of CoolWheels' suppliers). ● Parties to use commercially reasonable endeavours to satisfy the conditions. <p><i>[SunTex Note: The conditions to the term sheet are better suited to be discussed in-person depending on the business circumstance.]</i></p> <p><u>Waiver & Termination</u></p> <ul style="list-style-type: none"> ● Either party may, after discussion with the other party, waive the conditions mentioned in the term sheet. ● If the conditions are not satisfied by the date of signing or completion (as applicable) of the agreement, the party aggrieved may terminate the agreement.
6.	Distribution Channels	<p>CoolWheels to take reasonable steps to ensure that no material distribution agreements are altered or terminated as a result of this transfer and to seek change in control consents from distributors where required.</p> <p><i>[CoolWheels Note: Expectation of the company to take 'reasonable steps' to be discussed.]</i></p>
7.	Employees	<p>SunTex to conduct a performance-based appraisal to retain only 70% of the workforce of CoolWheels. Redundancies by way of duplicity of roles to be eliminated.</p> <p>Retention of board to be discussed.</p> <p><i>[CoolWheels Note: Potential liabilities arising out of this to be discussed.]</i></p>
8.	Nature of the	<p>The term sheet is not a legally binding agreement. Nothing in the term</p>

	Term sheet	sheet obliges parties to enter into an agreement.
9.	Third Party Rights	This term sheet does not create any right that is enforceable by any person who is not a party to this term sheet.
10.	Costs	Each party shall pay their own costs and expenses, including any payments in respect of tax analysis, negotiation and execution of this term sheet and final documentation, or otherwise as a result of the transaction.

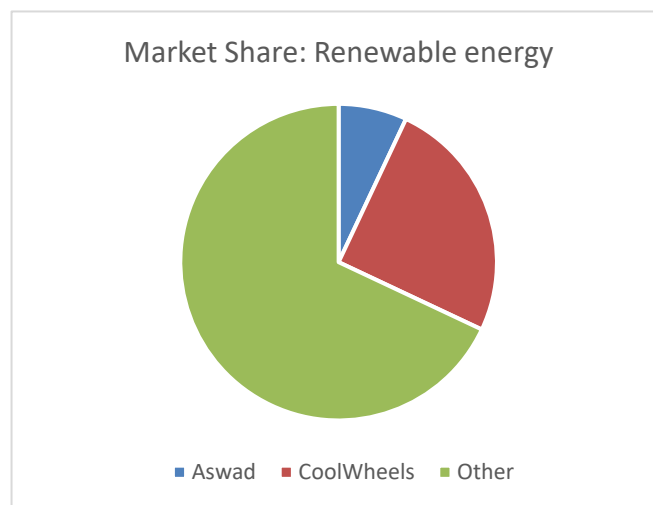
ANNEXURE 2

From: jane.smith@allenoverly.com
To: john.doe@allenoverly.com
Subject: Project Silver [Business Summary]

Hi John,

Please see below the pie chart from the reports I reviewed.

It seems that this transaction may come under the scrutiny of merger control. We should consider our options in that case.



Kind regards,

Jane

Jane Smith | Trainee Solicitor | E: jane.smith@allenoverly.com

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