

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSP No. 874 of 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other
application provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation between
Hoerbiger India Serial Technology Private Limited,
(‘the Transferor Company’) and Hoerbiger India Private
Limited (‘the Transferee Company’) and their
respective shareholders

Hoerbiger India Serial Technology Private Limited

.....Petitioner/Transferor Company

AND

Hoerbiger India Private Limited

.....Petitioner/Transferee Company

Order delivered on 9th November 2017.

Coram:

Hon’ble **B.S.V. Prakash Kumar**, Member (J)

Hon’ble **V .Nallasenapathy**, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co

For Regional Director : Mr. S Ramakantha , Joint Director in the office of Regional
Director.

For Registrar of Companies : Mr. Ramesh Gholap, Deputy Registrar of Companies

For Official Liquidator: Santosh Dalvi, Senior Assistant in the office of Official
Liquidator

Per: **V .Nallasenapathy**, Member (T)

Order

1. Heard learned counsel for parties. No objector has come before this Hon’ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.

2. The sanction of the tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation between Hoerbiger India Serial Technology Private Limited, ('the Transferor Company') and Hoerbiger India Private Limited ('the Transferee Company') and their respective shareholders.
3. Learned counsel of the Petitioner Companies states that Transferee Company is engaged in the business in manufacture and sale of parts of Air Compressors, Suction and Discharge Valves (including parts) for reciprocating compressors and rotary compressor components, scavenge valves, marine valves, wear parts such as rings and packing, step less capacity control equipment etc. and also undertakes software development and IT Enabled Services and the Transferor Company is engaged in the business of manufacture and sale of rotary compressor components, reed valves. Thus both are engaged in the similar line of business, there will be exploitation of individual strengths, avoid duplication of efforts and will provide foundation for big ticket growth of the enterprise. This will enable the entities to best utilization of capital and will facilitate expansion of amalgamated entity.
4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
5. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petitions have been filed in consonance with the order passed in Company Scheme Application Nos. 779 of 2017 of the National Company Law Tribunal dated 19th July, 2017 which is annexed as Exhibit I to the respective Company Scheme Petitions.
6. The Learned Advocate appearing on behalf of the Petitioners states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Tribunal and they have filed necessary Affidavits of compliance with Hon'ble Tribunal. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.
7. The Regional Director, Western Region, Mumbai in his Report dated 9th October, 2017 stating therein that save and except as stated in paragraph IV of

the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

Paragraph IV, of the said Report reads as follows:

- a) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It is observed that the company has not served a copy company scheme application No. 779 of 2017 along with relevant orders etc. to the Income Tax Department. The Department prays that the Hon'ble Tribunal may pass orders as may deem fit.*
- b) *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*
- c) *In addition to compliance of AS-14 (IND AS-103) the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.*

- 8. As far as the observations made in paragraph IV (a) & (b) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel submits that they are bound to comply with all applicable provisions of the Income-tax Act and all tax implications arising out of the Scheme of Amalgamation will be met and answered in accordance with applicable law.
- 9. As far as the observations made in paragraph IV (c) of the Report of Regional Director, the Petitioner Company through its Counsel undertakes that the Transferee Company shall pass such accounting entries which are necessary in connection with Scheme to comply with Accounting Standard – 14 (IND AS-103) or any applicable Accounting Standard such as Accounting Standard – 5 (IND AS-8).

10. The observations made by the Regional Director have been explained by the Petitioner in paragraphs 8 & 9 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
11. From the material on record, the Scheme appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest.
12. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 874 are made absolute in terms of prayer clauses (a) to (b).
13. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with e-Form INC-28, in addition to physical copy, within 30 days from the date of receipt of the order by the Registry.
14. The Petitioner Companies to lodge a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, within a period of 60 days from the date of receipt of the order.
15. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the receipt of the order.
16. The Transferor Company in the Company Scheme Petition to pay cost of Rs. 25,000/- to Official Liquidator, Bombay. Cost to be paid within four weeks from the date of receipt of the order.
17. All authorities concerned to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V .Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)