

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI**

**CSP NO.900 OF 2017
with
CSP NO.901 OF 2017**

Under Sections 230 to 232 of the Companies
Act, 2013

In the matter of Scheme of Arrangement
between Kalyani Global Engineering Private
Limited and Kenersys India Private Limited and
their respective shareholders

KALYANI GLOBAL ENGINEERING PRIVATE LIMITEDPetitioner Company
(Demerged Company)

AND

KENERSYS INDIA PRIVATE LIMITEDPetitioner Company
(Resulting Company)

ORDER DELIVERED ON: 6TH DECEMBER, 2017

CORAM:

Hon'ble B.S.V. Prakash Kumar, Member (Judicial)

Hon'ble V. Nallasenapathy, Member (Technical)

Advocate for the Petitioner: 1. Advocate Sachin Mandlik
 2. Advocate Shruti Kelji-Pednekar
 3. Advocate A. S. Lambhate
 4. Advocate Zacarias Joseph

For Regional Director: P. Sheela, Assistant Director

PER: V. Nallasenapathy, Member (Technical)

ORDER

1. Heard Learned Counsels for the parties. M/s. Classic Citi Investments Pvt. Ltd., an Unsecured Creditor (hereinafter referred as 'Objector') of Kenersys India Private Limited (Resulting Company) in Company Scheme Petition No.901 of 2017 has come before the Tribunal to oppose the Scheme of Arrangement by way of the Affidavits. However, vide letter dated 22nd November 2017, the Objector has given No Objection to the Scheme of Arrangement and has withdrawn their affidavits of objection.
2. The sanction of the Hon'ble Tribunal is sought under Section 230 to 232 of the Companies Act, 2013 to the Scheme of Arrangement between Kalyani Global Engineering Private Limited and Kenersys India Private Limited and their respective shareholders.
3. The Learned Advocate for the Petitioner Companies states that the Demerged Company is engaged in the business of various types of engineering activities such as power generation engineering, constructional engineering, etc. and other related activity and the Resulting Company is engaged in business activities relating to operation and maintenance of wind energy generators.
4. The Learned Advocate for the Petitioner Companies state that the Board(s) through the Scheme, propose to demerge undertaking of KGEPL and consolidate it with business operations carried out by the Resulting Company and the proposed demerger would consolidate the management, financial, administrative and technical resources of the demerged undertaking with the Resulting Company's business operations. Counsel further states that since both companies are engaged in engineering related activities and as both the businesses are complementary in the nature, the management of Demerged Company and Resulting Company consider it desirable and expedient to bring both the business operations under one roof and the proposed demerger will strengthen the financial position of the Resulting Company and effectively utilize the operational, financial, personnel and management bandwidth of the Demerged Undertaking and derive operating and financial synergies and the proposed Demerger would be value accretive to the Resulting Company due to the operational synergies, as some of

the operating teams of the Resulting Company work with operating teams of the Demerged Undertaking.

5. The Learned Advocate for the Petitioner Companies states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Arrangement by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned Advocate for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in the respective Company Scheme Applications and that the Company Scheme Petitions have been filed in consonance with the Orders passed in respective Company Scheme Application.
7. The Learned Advocate appearing on behalf of the Petitioner Companies have stated that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary affidavit of compliance in the Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/ 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Companies are accepted.
8. The Regional Director has filed his report dated 10th October, 2017 wherein it is stated that save and except as stated in paragraph IV(1) to IV(2), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-

“IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT are as under:-

- 1. 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 transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*

2. *It is submitted that the Petitioner Resulting Companies have not submitted the proof of serving notice upon the Income Tax Authorities.*

In this regards petitioner has to submit the proof of serving the notice to Income Tax Authorities as per the provisions of the Section 230 (5) of the Act, 2013.

9. As far as the observations in paragraph IV (1) and IV (2) of the Report of the Regional Director are concerned, the Learned Counsel for the Petitioner Companies undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law. Further, the Learned Counsel for the Petitioner Companies states that the Petitioner Companies have served the concerned Income Tax Department on 4th August, 2017 respectively as per the provisions of Section 230 (5) and filed the original acknowledgements with this Tribunal vide its Affidavit of Service on 21st August, 2017 (Annexure G and F respectively).
10. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
11. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
12. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 900 of 2017 and Company Scheme Petition No.901 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clauses (a) to (c).
13. The Petitioner Companies are directed to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the receipt of the order.

14. The Petitioner Companies are further directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC-28 in addition to physical copy, as per the relevant provisions of the Companies Act, 2013.
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 receipt of the Order.
16. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai.
17. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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