

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

CSP 366/230-232/NCLT/MB/MAH/2017

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Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Ahmednagar Electronics Private Limited  
.....Petitioner in CSP 366/2017  
(1<sup>st</sup> Transferor Company)

M/s. Fizgic Properties And Investments Private  
Limited  
.....Petitioner in CSP 367/2017  
(2<sup>nd</sup> Transferor Company)

M/s. Greenfield Appliances Private Limited  
.....Petitioner in CSP 368/2017  
(3<sup>rd</sup> Transferor Company)

M/s. Proficient Engineering Private Limited  
.....Petitioner in CSP 369/2017  
(Transferee Company)

Order delivered on: 03.11.2017

**Coram :**

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

**For the Petitioner :**

Mr. Rajesh Shah a/w. Mr. Ahmed Chunawala i/b. Rajesh Shah & Co. – Advocates for the  
Petitioners

**For the Regional Director :**

Mr. Ramesh Gholap – Dy. Director (WR).

Per : Bhaskara Pantula Mohan, Member (J)



**COMMON ORDER**

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation between M/s. Ahmednagar Electronics Private Limited (1<sup>st</sup> Transferor Company) and M/s. Fizgic Properties And Investments Private Limited (2<sup>nd</sup> Transferor Company) and M/s. Greenfield Appliances Private Limited (3<sup>rd</sup> Transferor Company) with M/s. Proficient Engineering Private Limited (Transferee Company).
2. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The First Transferor Company is engaged in the business of Construction and Properties.
4. The Second Transferor Company is engaged in the business of construction and Properties.
5. The Third Transferor Company is engaged in the business of manufacturing and trading in electronic home appliances and consumer durables.
6. The Transferee Company is engaged in the business of engineering goods and engineering machinery.
7. This Scheme of Amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base for future growth and expansion of the Transferee Company and that the amalgamation will provide significant impetus to the growth of the Transferee Company and it would be advantageous to combine the activities and operation of all companies into a single Company as it would provide benefits of combining the resources in a single Company and to economize on administrative and other expenses and that the Amalgamation of the Transferor Companies with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business which specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage assets, capabilities, experience, expertise and infrastructure of all the companies and that the Scheme of Amalgamation will result in cost saving for all the companies as they are capitalizing on each other's core competency and resources which is expected to result in stability of operations, cost

- savings and higher profitability levels for the Transferee Company and that the Scheme of Amalgamation will result in reduction in multiplicity of legal and regulatory compliances required at present and elimination of administrative functions and multiple record-keeping thus leading to reduction in overall administrative costs.
8. The Authorised Share Capital of the 1<sup>st</sup> Transferor Company is ₹ 10,000,000 comprising of 1,000,000 equity shares of ₹ 10/- each. The Issued, subscribed and paid up capital is ₹ 2,500,200/- comprising of 250,020 equity shares of ₹ 10/- each.
  9. The Authorised Share Capital of the 2<sup>nd</sup> Transferor Company is ₹ 10,000,000 comprising of 1,000,000 equity shares of ₹ 10/- each. The Issued, subscribed and paid up capital is ₹ 100,000/- comprising of 10,000 equity shares of ₹ 10/- each
  10. The Authorised Share Capital of the 3<sup>rd</sup> Transferor Company is ₹ 1,00,000 comprising of 10,000 equity shares of ₹ 10/- each and the Issued, subscribed and paid up capital is ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 10/- each
  11. The Authorised Share Capital of the Transferee Company is ₹ 1,00,000 comprising of 10,000 equity shares of ₹ 10/- each and the Issued, subscribed and paid up capital is ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 10/- each.
  12. The averments made in the petitions and the submissions made by the Learned Representative for the Petitioners are:
    - a) The Petitioner Companies had complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.
    - b) The Regional Director has filed his report on 21<sup>st</sup> August, 2017, inter alia, 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. 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:*

*i. 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 Tribunal 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.*

*ii. The Petitioner Companies have not submitted the proof of serving notice, upon the Income Tax Authorities for comments.*

*In this regard, Petitioner Companies have to undertake to serve notice to the Income Tax Authorities and produce acknowledgement copy of service of notice before Regional Director and Hon'ble NCLT.*

*iii. Certificate by the Company's Auditor stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 is not available.*

*In this regard, Petitioner Companies undertake to file Certificate by the Company's Auditor accordance with Section 133 of the Companies Act, 2013.*

*iv. Petitioner companies have not provided the proof sending notice for Transferor Company 3 who is involved in the business of properties, and investment to RBI and to the Regulator administering real estate businesses.*

*In this regard petitioner companies to produce proof of serving notice to them.*

*v. Petitioner in clause 3.2 inter alia has mentioned that the Appointment Date is 1.1.2017 whereas Balance Sheets has been submitted up to 31.3.2016.*

*In this regard petitioner companies undertake to file audited Balance Sheets for the period from 1.4.2016 to 31.12.2016.*

*vi. Petitioner has provided in clause 15 for increasing authorised share capital if required.*

*H. K. Kulkarni:*

*In this regard petitioner has to undertake file prescribed form on increase of capital as per the Act, read with the rules.*

*vii. Petitioner in clause 12 of the Scheme has inter alia mentioned that as on date, the transferee company shall issue and allot without any application or deed in the following manner to the transferor companies' shareholders:*

*3 fully paid up equity share of ₹10/- each in the transferee company for every 1 fully paid equity shares of ₹ 10/- each held in the transferor company-1*

*1 fully paid up equity share of ₹ 10/- each in the transferee company for every 1 fully paid up equity shares of ₹10/- each held in the transferor company-2*

*716 fully paid up equity share of ₹ 10/- each in the transferee company for every 1 fully paid up equity shares of ₹10/- each held in the transferor company-3*

*Whereas the Chartered Accountant recommending the share exchange ratio has proposed that Shareholders of Ahmednagar Electronics Private Limited holding 10000 fully paid up equity share face value of ₹ 10/- each will receive 3 fully paid up equity share of face value of ₹ 10/- each in the Transferee Company for 1 share held in the transferor company-1.*

*Whereas the Chartered Accountant recommending the share exchange ratio has proposed that Shareholder of Ahmednagar Electronics Private Limited holding 10000 fully paid up equity share face value of ₹ 10/- each will receive 1 fully paid up equity share of face value of ₹ 10/- each in the Transferee Company for 1 share held in the transferor company-2.*

*Whereas the Chartered Accountant recommending the share exchange ratio has proposed that Shareholder of Greenfield Appliances Private Limited holding 10000 fully paid up equity*

*Appliances Private Limited holding 10000 fully paid up equity*

*share face value of ₹ 10/- each will receive 716 fully paid up equity share of face value of ₹ 10/- each in the Transferee Company for 1 share held in the transferor company-3.*

*In this regard petitioner companies undertake to explain the reasons for deviation from the recommendation of the Chartered Accountant, and to produce correct valuation report or amend the scheme*


*viii. Petitioner Company have not submitted Minutes of order.*

*In this regard petitioner companies undertake to submit Minutes of Order.*

- c) Apropos the observation in paragraph IV (1) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company 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.
- d) Apropos the observation in paragraph IV (2) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company have served copy of notice upon the Income Tax Authorities for their comments and the same is filed by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal with the same.
- e) Apropos the observation in paragraph IV (3) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies has submitted to this Hon'ble Tribunal the Certificate from the Auditors stating that the accounting treatment proposed in the Scheme is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013.
- f) Apropos the observation in paragraph IV (4) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferor Company 3 namely Fizgic Properties and Investments Private Limited is incorporated to undertake the business of properties. However, the Transferor Company 3 is not engaged in any activity relating to development of a building or a building consisting of apartments, or converting an existing building

or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto (Real Estate Projects). Accordingly, the provisions of REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 are not applicable to the Transferor Company 3. Further, the Transferor Company 3 is neither registered nor required to be registered with any regulators of Real Estates. The Transferor Company 3 is not engaged in any finance NBFC or finance activity, therefore is not a NBFC Company and not required to register with the Reserve Bank of India. Thus, it is submitted by the Petitioner Company that as the Transferor Company 3 is not registered with Reserve Bank of India or the Regulator administering real estate business, the Transferor Company 3 is not required to serve notice to them. Further a copy of Certificate obtained from the Statutory Auditors of the Transferor Company 3 namely Fizgic Properties And Investments Private Limited confirming that the Transferor Company 3 is neither registered nor required to be registered with any regulators of Real Estates and confirming that the Transferor Company 3 is not engaged in any Finance NBFC or Finance activity, therefore is not a NBFC Company and not required to register with the Reserve Bank of India was enclosed by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal for the same.

- g) Apropos the observation in paragraph IV (5) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies have submitted the Financial Statements (Provisional) of the Petitioner Transferor Companies for the financial period from 1<sup>st</sup> April, 2016 to 31<sup>st</sup> December, 2016 by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal for the same.
- h) Apropos the observation in paragraph IV (6) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies undertakes that the Transferee Company shall, on or before the allotment of shares in terms of Clause No. 15 of the Scheme of Amalgamation, increase its Authorized Share Capital by creation of such number of new Equity Shares of ₹10/- each as may be necessary to fulfill its obligations



under the said clause including filing of prescribed form on increase of capital as per the Act, read with the rules.

- i) Apropos the observation in paragraph IV (7) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that there is no deviation in the Valuation Report and the Scheme as pointed out by Hon`ble Regional Director. There appears to be some interpretation issue by the office of the Hon`ble Regional Director. The first sentence in the valuation report set out outstanding shares in the Company and the continual sentence provides for the share exchange ratio. The Transferee Company hereby undertakes that the Transferee Company shall allot shares to the shareholders of the Transferor Companies as recommended by the Chartered Accountant in Valuation Report. The same is submitted by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal regarding the same.
- j) Apropos the observation in paragraph IV (8) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies have submitted the minutes of the order. The same has been given by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal.
- k) The Official Liquidator has filed his report dated 17<sup>th</sup> July, 2017 and stating therein that, the affairs of the Transferor Company have been conducted in a proper manner and accordingly the Transferor Company may be ordered to dissolve without winding up. Further it is submitted that, the Scheme is not prejudicial to the interest of public or shareholders.
- l) No objector has approached, neither to the Petitioners nor before Tribunal, to oppose this Scheme of Amalgamation.

13. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this Bench, to the Petitioner Companies, **do Order that:**

- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Companies, shall, pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.





- b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- c) In lieu of the consideration of the Scheme, the Transferee Company shall issue and allot **3** fully paid up equity shares of ₹ 10/- each for every **1** equity share of ₹ 10/- held by the shareholder of the 1<sup>st</sup> Transferor Company.
- d) In lieu of the consideration of the Scheme, the Transferee Company shall issue and allot **1** fully paid up equity share of ₹ 10/- each for every **1** equity share of ₹ 10/- held by the shareholder of the 2<sup>nd</sup> Transferor Company.
- e) In lieu of the consideration of the Scheme, the Transferee Company shall issue and allot **716** fully paid up equity shares of ₹ 10/- each for every **1** equity share of ₹ 10/- held by the shareholder of the 3<sup>rd</sup> Transferor Company.
- f) Further this Bench hereby orders that, as the Share Capital of the Transferee Company is not sufficient to meet the requirements of allotment of shares, hence, the Transferee Company shall, on or before the allotment of shares in the Scheme of Amalgamation, increase its Authorised Share Capital by creation of such number of Equity Shares of ₹10/- each as may be necessary to fulfil its obligations under the said clause of Scheme including filling of prescribed form on increase of Capital as per the Act, read with the rules, if any.
- g) 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 the physical copy within 30 days from the date of issuance of the Order by the Registry, duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- h) The Petitioner Companies are directed to lodge a copy of this Order and the Scheme duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench, 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 date of receipt of the Order.

- i) Each Petitioner Companies to pay cost of ₹ 25,000/- to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- j) Each Transferor Companies (i.e. Petitioner in CSP No. 366 of 2017, Petitioner in CSP No. 367 of 2017 and Petitioner in CSP No. 368 of 2017) to pay cost of ₹ 25,000/- to the Official Liquidator, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- k) All the Transferor Companies shall be dissolved without winding up.
- l) All authorities concerned, to act on a copy of this Order along with Scheme duly Certified by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- m) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
- n) Any concerned Authority is at liberty to approach this Bench for any clarification hereinafter in this Scheme.
- o) The Scheme is sanctioned hereby and the appointed date of the Scheme is fixed as, 1<sup>st</sup> January, 2017.

14. Ordered accordingly. To be consigned to Records.

**Sd/-**

**BHASKARA PANTULA MOHAN  
MEMBER (JUDICIAL)**

**Sd/-**

**M. K. SHRAWAT  
MEMBER (JUDICIAL)**

**Dated : 03.11.2017**