

For Official Liquidator: Santosh Dalvi, representative
(in Company Scheme Petition No.975 of 2017)

PER: V. Nallasenapathy, Member (Technical)

ORDER

1. Heard Advocate for the parties. Neither any objector has come before the Hon'ble Tribunal to oppose the Scheme of Amalgamation nor has any party controverted any averments made in the Petitions.
2. The sanction of the Hon'ble Tribunal is sought under Section 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation of Tulga Vacuum Pumps Limited, the Transferor Company with Vacuum Plant and Instrument Manufacturing Company Limited, the Transferee Company and their respective shareholders and creditors.
3. The Share exchange ratio as mentioned in Clause 6.1 of the Scheme of Amalgamation is 1.65 Equity Shares of Rs.100/- (Rupees Hundred) each credited as fully paid up of the Transferee Company in lieu of 100 Equity Shares of Rs.100/- (Rupees Hundred) each held in the Transferor Company.
4. The Learned Advocate for the Petitioner Companies state that the Transferor Company is engaged in the business of manufacturing vacuum pumps and the Transferee Company is engaged in the business of manufacturing of high vacuum transformer oil/insulating oil purification plants, oil handling systems, oil storage tanks, refrigeration oil purification plants, vacuum drying plants for transformers, turbine oil purification plants, vapour phase drying plants, vacuum pumping system, vacuum valves, testing instruments, gas refilling and evacuation devices, gas filtering, drying, storage and recycling plants, etc.
5. The Learned Advocate for the Petitioner Companies state that upon Scheme coming into effect from the appointed date, the entire assets and liabilities of Transferor Company TVP as defined in the Scheme will be transferred to the Transferee Company VPI as a going concern so as to become as and from the Appointed date the assets and liabilities of the

Transferee Company and the Transferor Company is having the existing profit making business operations, whereas Transferor Company is having only liquid funds which are not utilized properly for the industrial and national growth and after merger it could be utilized by the Transferee Company in the business operations and the merger would provide economy in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the merged company and the merger will provide maximization of shareholders wealth and will give better returns to the investment made by the shareholders of Transferor Company in future and all the shareholders of the Transferor Company are the shareholders in the Transferee Company holding majority stake and it will be conducive to better and more efficient and economical control and conduct of the companies with enhanced financial capabilities and resources at its disposal, the merged company will have better financial position and greater flexibility to compete more effectively.

6. The Learned Advocate for the Petitioner Companies states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.
7. 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.
8. 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.
9. The Official Liquidator has filed his report dated 6th November, 2017 in the Company Scheme Petition No.975 of 2017 stating therein that the affairs

of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

10. The Regional Director has filed his report dated 15th December, 2017 wherein it is stated that save and except as stated in paragraph IV(a) to IV(f), 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:-

(a) In addition to compliance of AS-14 (IND AS-103) the Transferee Company 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.;

(b) As per Part –I Definitions- Nature of Business and Share Capital- Clause 1.2. of the scheme ‘The Appointed Date’ means 1st April, 2016 or such other date as the Hon’ble National Company Law Tribunal (NCLT) may direct. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April, 2016;

(c) As per Part-V- Clause 14 of the scheme it is submitted that the surplus if any arising out of the scheme shall be credited to Capital reserve and deficit if any arising out of the same shall be debited to Goodwill Account of the Transferee Company.

(d) As Part-VI Clause 16 of the scheme, effect of dissolution without winding up of the Transferor Company (M/s. Tulga Vaccum Pumps Limited) in this regard it is submitted that the fee payable by the transferee Company shall be in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013, and not a specified under clause 16 of the Scheme;

Further it appears that the heading combination of authorized capital and fee payable on amalgamation. The said clause needs to be amended suitably.

(e) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 12th August, 2017 has served a copy company scheme Application No. 289 & 281 of 2017 along with relevant orders etc.*

(f) *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.*

11. As far as the observations in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Companies states that the Transferee Company undertakes that in addition to compliance of AS-14 (IND AS-103) accounting treatment, the Transferee Company 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.
12. As far as the observations in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Companies states that the Appointed Date will be 1st day of April, 2016.
13. As far as the observations in paragraph IV (c) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Companies states that surplus if any arising out of the scheme shall be credited to the Capital Reserve Account of the Transferee Company and deficit if any arising shall be debited to the Goodwill Account of Transferee Company.
14. As far as the observations in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Companies states that the Clause 16 of the Scheme is as follows:
 16. Effect of Dissolution without winding up of the Transferor Company
 - 16.1. Upon sanction of this Scheme, the Authorised Share Capital of the Transferee Company shall automatically stand increased without any further act, instrument or deed on the part of the Transferee Company including without payment of stamp duty and fees payable

to Registrar of Companies, by Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) divided into 25,000 Equity Shares of Rs.100/- (Rupees Hundred Only) each and the Memorandum of Association and Articles of Association of the Transferee Company (relating to the authorised share capital) shall, without any further act, instrument or deed, be and stand altered, modified and amended, pursuant to Sections 13, 14, 61 and 232 and applicable provisions if any, of the Act as the case may be and for this purpose the stamp duties and fees paid on the authorised share capital of the Transferor Company shall be utilized and applied to the increased authorised share capital of the Transferee Company and no payment of any extra stamp duty and/or fee shall be payable by the Transferee Company for increase in the authorised share capital to that extent.”

The Section 232(3)(i) of the Companies Act, 2013 reads as follows:

232 (3)(i). Where the Transferor Company is dissolved, the fee, if any, paid by the Transferor Company on its authorised capital shall be set-off against any fees payable by the Transferee Company on its authorised capital subsequent to the amalgamation.

The Learned Advocate for the Petitioner Companies states that the Clause 16 of the Scheme is in consonance with the Section 232(3)(i), wherein upon dissolution of the Transferor Company, the authorised capital of the Transferee Company will be increased by Rs.25,00,000/- (Rupees Twenty Five Lakh only) divided into 25,000 Equity Shares of Rs.100/- (Rupees Hundred only) for which Transferor Company has already paid requisite fees to the Registrar of Company and pursuant to the present amalgamation as per Section 232(3)(i), the said fees will be set off against any fees payable by the Transferee Company on its authorised capital subsequent to the amalgamation.

The Learned Advocate for the Petitioner Companies further submits that the title of the Clause 16 is “Effect of dissolution without winding up of the Transferor Company’ which indicates that the effect of dissolution of Transferor Company is not contrary to any provisions of Companies Act or Rules made thereof, accordingly, it is not mandatory that it should be titled as “Combination of Authorized Capital and fee payable on amalgamation” as suggested by the Regional Director.

15. As far as the observations in paragraph IV (e) and IV (f) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Companies state that the Petitioner Companies have served the concerned Income Tax Department on 18th August, 2017 and 21st August, 2017 respectively and filed the original acknowledgements with this Tribunal vide its Affidavit of Service (Annexure F). Further, the Learned Advocate 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.
16. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 11 to 15 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
17. 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.
18. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.975 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No.981 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) and (b).
19. 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.
20. 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.
21. The Petitioner Companies to pay costs of Rs.25,000/-each to the Regional Director, Western Region, Mumbai and cost of Rs.25,000/- to the Official

Liquidator, High Court, Bombay in Company Scheme Petition No.975 of 2017. Costs to be paid within four weeks from the date of receipt of the Order.

22. 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.
23. 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/-

M. K. Shrawat, Member (J)

Dt. 21st Dec. 2017