

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

Company Application No.18/ALD/2018

[Under Section 230-232 of
the Companies Act, 2013,
other applicable provisions
of the Companies Act, 2013
And Rules framed
thereunder as in force from
time to time.]

IN THE MATTER OF THE COMPANIES ACT, 2013

IN THE MATTER OF

TECHNO ELECTRIC & ENGINEERING COMPANY LIMITED

A company incorporated under the
Companies Act, 1956 and being
a Company within the meaning
of the Companies Act, 2013,
having Corporate Identification No. L40108UP2005PLC094304
and its registered office at C-218, Sector 63, Ground Floor (GR-1), Noida,
Uttar Pradesh – 201 307

..... (*APPLICANT COMPANY NO. I /
TRANSFEROR COMPANY*)

AND

SIMRAN WIND PROJECT LIMITED

A company incorporated under the
Companies Act, 1956 and being
a Company within the meaning
of the Companies Act, 2013,
having Corporate Identification No. U40108UP2005PLC094368
and its registered office at C-218, Sector 63, Ground Floor (GR-1), Noida,
Uttar Pradesh – 201 307

..... (*APPLICANT COMPANY NO. II /
TRANSFeree COMPANY*)

AND

JUDGMENT/ORDER DELIVERED ON 31.01.2018

CORAM : Hon'ble Shri H.P. Chaturvedi, Member (J).
FOR THE PETITIONER : Sh. Rahul Agarwal, Advocate.
Alongwith
Sh. Shubham Agarwal, Advocate.

PER: SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)

1. The Present application is filed under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Rules framed there under, as in force from time to time for the Sanction of Proposed Scheme of Amalgamation of **TECHNO ELECTRIC & ENGINEERING COMPANY LIMITED** (*Transferor Company / Applicant Company I*) with **SIMRAN WIND PROJECT LIMITED** (*Transferee Company/ Applicant Company II*).

The Applicant Companies have prayed for following directions:

- i. For convening and holding the meetings of the Equity shareholders **TECHNO ELECTRIC & ENGINEERING COMPANY LIMITED** (*Transferor Company / Applicant Company I*)
 - ii. To dispense with the convening and holding meetings of the Equity shareholders of Applicant Company II/ Transferee Company and Creditors of the Applicant Companies.
 - iii. To Pass such other orders or direction in the matter as this Tribunal may deem fit and proper in the circumstances of the case.
2. The Board of Directors of the Applicant Companies at their respective meetings held on *6th July, 2017* have passed a unanimous resolution, approving the proposed Scheme of Amalgamation of the Transferor Company with the Transferee Company.
 3. We perused the averments made in the present Petition and heard the submissions of *Shri Shubham Agarwal*, the counsel for the Applicant Companies, we are of the view that the relief sought for in Company Application can be granted. Hence the present Company Application allowed in the term of its '*Prayer Clause*'/*Relief Clause* with the certain directions and subject to the following observation:
 - I. Since, there are only 7 Equity Shareholders of the Applicant Company No.2/ Transferee Company and all of them have

agreed in writing to the proposed Scheme of Amalgamation by way of Affidavit hence, *the convening and holding meeting of the Equity shareholders of Applicant Company II/ Transferee Company is dispensed with.*

- II. The Applicant Companies have mentioned the details of Creditors in the present Company Application which reads under:

	Secured Creditor	Unsecured Creditor
Transferor Company	04	901
Transferee Company	03	Nil

Further, it is matter of record that no Compromise or arrangement is proposed under the Scheme with any of the creditors of the Applicants and over 90% in value of the Creditors of each Applicants Companies have consented and accorded their approval to the Scheme of Amalgamation by way of affidavit. Hence, *the convening and holding of the meeting of the Creditors of the Applicant Companies are dispensed with.*

- III. As, it is a matter of record that the Transferor Company (Techno Electric & Engineering Company Limited) is having approx. **13,266 Equity Shareholders** (Annexure 3, at page 223 of the Company Application). Hence, a meeting of the *Equity Shareholders of Transferor Company / Applicant Company I* (Techno Electric & Engineering Company Limited) is to be convened and held at *Hotel Ginger*, 45A, Sector 63, Block H,

Noida, Gautam Buddha Nagar, Uttar Pradesh 201 301 on Saturday, *17th March, 2018 at 12:00 Noon* (or on any other date) that may be convenient to the Chairman, appointed for the purpose of holding such meetings in the present case, which should be fixed in consultation with the Board of Directors of the applicant companies and having consensus among Alternate Chairman and Scrutinizer for such meetings, for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation of TECHNO ELECTRIC & ENGINEERING COMPANY LIMITED with SIMRAN WIND PROJECT LIMITED .

- IV. The quorum for the aforesaid meeting of the Equity Shareholder shall be as prescribed under Section 103 of the Companies Act, 2013. Section 103 reproduced herein under:

103. Quorum for meetings. —

- (1) Unless the articles of the company provide for a larger number, —
- (a) **in case of a public company, —**
- (i) five members personally present if the number of members as on the date of meeting is not more than one thousand;
- (ii) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;
- (iii) ***thirty members personally present if the number of members as on the date of the meeting exceeds five thousand;***
- (b) in the case of a private company, two members personally present, shall be the quorum for a meeting of the company.


- (2) *If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company—*
- (a) *the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or*
- (b) the meeting, if called by requisitionists under section 100, shall stand cancelled:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days' notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

- (3) *If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.*

V. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the Transferor /Applicant Company I at least 48 hours before the meeting. The Chairperson and Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained.


VI. In accordance with Section 230(4) of the Companies Act, 2013 read with the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016 and Companies (Management & Administration) Rules, 2014 option for voting by postal ballot/ e-voting is given to the shareholders prior to the date of the meeting. The respective voting period is as follows: -



	Voting mode	Voting Period
A.	By Postal Ballot / Remote E-voting :	From 15 th February, 2018 (9:00 am.) to 16 th March 2018 (5:00 p.m.), as per Rule 22(1) read with Rule 20 of the Companies (Management & Administration) Rules, 2014.
B.	By poll at the venue of the meeting through polling paper	17 March 2018 during the time poll is announced and kept open by the Chairperson of the meeting.

- VII.** *7th Feb, 2017* is the cut-off date on which whoever is the shareholder will get the right to vote, Votes cast by Members shall be reckoned and scrutinized for all modes with reference to such date.
- VIII.** That Applicant Company to issue form of Proxy as Form No. MGT- 11 (Rule- 19) of the Companies (Management & Administration) Rules, 2014.
- IX.** That the notices for postal ballot / e-voting, polling date and venue to shareholders of the Transferor Company shall be communicated in the manner permitted under Companies (Compromises, Arrangements, Amalgamations) Rules, 2016) by the Authorised Representative of the Transferor Company individually to each of the shareholders by Registered Post or Speed Post or Courier or through email where email id is available. Such notices shall be sent at least one month before the date fixed for the end of e-voting/last date fixed for submission of postal ballots and polling date by the shareholders.



- X. It is further directed that such notices shall be accompanied by a copy of Scheme of Arrangement, copy of valuation report and fairness opinion report, and a statement disclosing the details as specified in *Rule 6(3) of Companies (Compromises, Arrangements, Amalgamations) Rules, 2016* and such other information/documents as may be necessary under any other provisions.
- XI. It is further directed that the Transferor Company shall place these notices on its website at least one month before the date fixed for the end of e-voting/last date fixed for submission of postal ballots and polling. Further, also to forward the notices to SEBI and the recognized stock exchanges where the securities of the company are listed so that the notices are placed on their web sites also.
- XII. The Transferor Company shall also place the proposed Scheme of Arrangement and all other documents, which are required to be hosted on the website under the Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016), are so hosted on its website within the prescribed time and the same are kept open.
- XIII. It is also directed that Notices shall be published in the following newspaper at least one month before the date fixed for the end of e-voting/last date fixed for submission of postal ballots and date fixed for poll, in "The Business
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Standard” in English and “Dainik Jagran” in Hindi in Form No. CAA2 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016.

XIV. Further, the applicant companies shall furnish a copy of the scheme free of charges within 1 day of any requisition for the scheme made by every member of the Applicant Companies.

XV. **Sh. P.K. Malhotra** (Former Law Secretary, Government of India and former Member of Securities, Appellate Tribunal, Bombay) (Mobile No.09818559029) (Add: - K-31 South Extension Part-II, New Delhi and e-mail: - malhotrapk@hotmail.com) is hereby appointed as the **Chairperson**. In addition to this **Sh. Abhinav Mehrotra**, Advocate (Mobile No.09838509679) is appointed as an **Alternate Chairperson** to conduct the meeting of the equity shareholders as per direction of this Tribunal which is to be convened in respect of Applicant Company –I/ Transferor Company. That apart, **Sh. Mukesh Mohan**, Chartered Accountant (Mobile No.09811024647) (Add: - Flat No.504 Tower 6, Commonwealth Game Village, Delhi-110092) is also appointed as **Scrutinizer** for smooth conduct of such meeting.

XVI. The fee of the Chairperson for the aforesaid meeting shall be **Rs.1,00,000/- (Rupees One Lakh)** and the fee of an Alternate Chairperson as well as of the Scrutinizer shall be



Rs.75,000/- each (Rupees Seventy-Five Thousand each)

in addition to their incidental expenses.

- XVII.** The Learned Chairperson to file an affidavit not less than 7 (seven) days before the date fixed for the holding of the meeting and to report this Tribunal that the direction regarding issue of notices and advertisement have been duly complied with as per Rule 12 of the Companies (Compromise, Arrangement and Amalgamations) Rules, 2016.
- XVIII.** The Ld. Chairperson is expected report to this Tribunal, the result of the aforesaid meeting within 30 (Thirty) days of the conclusion of the said meeting of the Equity Shareholder of the Transferor Company/ Applicant Company I and the said shall be verified by his Affidavit as per Rule 14 of the Companies (Compromise, Arrangement & Amalgamations) Rules, 2016.
- XIX.** The Applicant companies shall serve a notice upon the **Regional Director**, (Northern Region), Ministry of Corporate Affairs pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016. If no response is received by this Tribunal within 30 (Thirty) days of the date of the receipt of such notice, it may be presumed that the Regional Director and/ or Central Government is having no representation to the proposed

Scheme as per Rule 8 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016).

- XX. The Applicant companies shall serve notice upon the **Registrar of Companies**, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016. If no response is received by this Tribunal within 30 (Thirty) days of the date of the receipt of the notice, it will be presumed that the Registrar of Companies, Kanpur has no representation to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangement & Amalgamation) Rules, 2016).
- XXI. The Applicant Companies also to serve a notice on the concerned **Income Tax Authority** within whose jurisdiction the Applicant Companies being assessed, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016. If no response is received by this Tribunal within 30 (Thirty) days of the date of the receipt of the notice, it will be presumed that the Income Tax Authority Concerned is having no representation to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangement & Amalgamation) Rules, 2016).
- XXII. The Applicant Companies are also directed to serve a notice upon the **Security Exchange Board of India, BSE Limited**,



National Stock Exchange of India Limited pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016. If no response is received by this Tribunal within 30 (Thirty) days of the date of the receipt of the notice, it will be presumed that the SEBI, BSE and NSE is having no representation to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016).

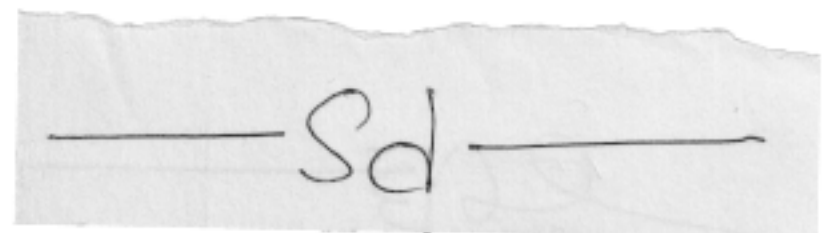
XXIII. Applicant to serve the notice of hearing of Company Petition upon the Official Liquidator, High Court, Allahabad, at least 30 (thirty) days before the date fixed for hearing.

XXIV. The Applicant Companies also to serve a notice on the concerned *Sectoral Regulator or Authority* pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016. If no response is received by this Tribunal within 30 (Thirty) days of the date of the receipt of the notice, it will be presumed that the concerned *Sectoral Regulator or authority* is having no representation to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016).

XXV. All the aforesaid directions are to be complied with, by the applicants in accordance with the law, including forms and formats contained in the Companies (Compromises,

Arrangements & Amalgamations) Rules, 2016 read with Companies (Management & Administration) Rules, 2014 as well as the provisions of the Companies Act, 2013 applicable to the present case.

- XXVI.** Further, the Applicants' Companies are at liberty to file Second Motion Petition at Appropriate Stage before this court.
- XXVII.** The Present Company Application to be clubbed with Second Motion Company Petition, as and when filed.
- XXVIII.** Registry of this Tribunal, as well as Applicant Companies is directed to communicate a copy of this order to the Learned Chairperson/Alternate Chairperson and the Scrutinizer on their contact address.
- XXIX.** With the above stated observation/directions, the present Company Application is allowed and stands disposed of.



**H.P. CHATURVEDI,
MEMBER (JUDICIAL)**

Dated: 31.01.2018

**Typed by:
Aparna Trivedi
(Law Research Associate)**