

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

T.P.NO. 177/2017 & 178/2017

IN

CoP.NO. 139/2016 & 140/2016

DATED: WEDNESDAY THE 31st DAY OF MAY 2017

*PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL*

IN THE MATTER OF SECTIONS 391 to 394 OF THE COMPANIES ACT, 1956 AND OTHER
RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013 ALONG WITH THE
COMPANIES ACT, 1956

AND

IN THE MATTER OF SECTION 230 TO 232 OF THE COMPANIES ACT, 2013 AND
OTHER RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013 ALONGWITH

THE COMPANIES ACT, 1956

AND IN THE MATTER OF

SCHEME OF AMALGAMTION

WEG ELECTRIC (INDIA) PRIVATE LIMITED

WITH

WEG INDUSTRIES (INDIA) PRIVATE LIMITED

T.P.NO. 177/2017&178/2017 IN CoP.NO. 139/2016 & 140/2016

1. WEG Electric (India) Private Limited,
No.38, Ground Floor,
1st Main Road, Lower Palace Orchards,
Bengaluru-560 003 -

PETITIONER/TRANSFEROR COMPANY

2. WEG Industries (India) Private Limited,
No.38, Ground Floor,
1st Main Road, Lower Palace Orchards,
Bengaluru-560 003 -

PETITIONER/TRANSFeree COMPANY

- PARTIES PRESENT:
1. Mr. Rayappa Y.H.
DUA ASSOCIATES,
2nd FLOOR, 130/1, ULSOOR ROAD
BENGALURU 560042
Advocates for the Petitioner Company
 2. Ms.M.R.SINCHANA, Standing Counsel
Advocate for the Regional Director
 3. Mr. VASANT KUMAR, Assistant,
Representative for Official Liquidator

Heard on: 09.02.2017, 06.03.2017, 23.03.2017, 31.03.2017, 24.04.2017




C O M M O N O R D E R

Originally these Company Petitions were filed before the Hon'ble High Court of Karnataka and they were numbered as Co.P. No.139/2016 & Co.P. No.140/2016. Subsequently as per Notification No. GSR.1119 (E) dated 7th December 2016 issued by the Ministry of Corporate Affairs, New Delhi, the said cases were transferred to this Tribunal and renumbered as T.P No. 177/2017 & T.P No. 178/2017.

These Company Petitions were filed on behalf of the Petitioner Companies under Section 391-394 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959, praying to order for sanctioning the Composite Scheme of Amalgamation of the Transferor Company with the Transferee Company and shall be binding upon all the Shareholders and Creditors of the Petitioner Companies.

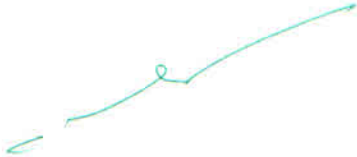
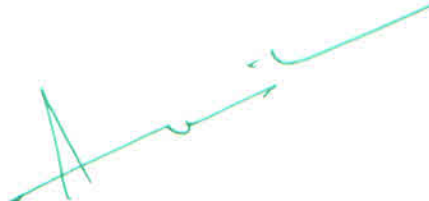
The averments made in the Company Petitions are briefly described hereunder:-

The Petitioner Companies seeks an order for sanctioning the Scheme of Amalgamation of **WEG ELECTRIC (INDIA) PRIVATE LIMITED** (Transferor Company) with **WEG INDUSTRIES (INDIA) PRIVATE LIMITED** (Transferee Company). The Scheme of amalgamation is shown as **Annexure A**.

The Transferor Company was incorporated on 24th September, 2004 as the Private Limited Company under the name, **WEG ELECTRIC (INDIA) PRIVATE LIMITED** and obtained Certificate of Incorporation vide bearing CIN No.-U31909KA2004PTC034755 .

The Registered office of the Transferee Company is situated at No.38, Ground Floor, 1st Main Road, Lower Palace Orchards, Bengaluru- 560 003.

The Transferor Company's objects as set out in its Memorandum of Association inter alia, as follows:

1. To carry on the business in India or elsewhere in the World the business of manufacture, Production, industrialization, export, import, trading in rotating electrical machinery of different typed, models, designs, mechanical machinery, equipment, devices and tools, electric, teletronic and electromechanical machinery, equipment and integrated systems, components and devices, machinery and equipment for the conservation, production,
- 
- 

generation, transmission and distribution of electric power, electromechanical and electronic components to control, command, protect and signal electric circuits and wiring in the widest possible applications.

2. To carry on in India or elsewhere in the world the business of marketing, promotion, aftersales service, technical support providers, assemblers relating to rotating electrical machinery of different types, models, designs, mechanical machinery, equipment, devices and tools, electric, teletronic and electromechanical machinery, equipment and integrated systems , components and devices, machinery and equipment for the conservation, production, generation and transmission and distribution of electric power, electromechanical and electronic components to control, command, protect and signal electric circuits and wiring for the purpose of extending timely after sales service and technical support services to store components and parts of various types of motors and generators.

A Copy of Certificate of Incorporation and Memorandum & Articles of Association of the Transferor Company is shown as **Annexure B in T.P.-178/17**.

The Latest Unaudited Balance Sheet of the Transferor Company as on 15th March, 2016 is as follows:

Liabilities	Amount	Asset	Amount
Share Capital	9,000,000	Non-Current Assets	
		Fixed assets	
		Tangible assets	5,925,140
Reserve and Surplus	37,396,332	Deferred tax assets, net	2,744,976
Non-Current Liabilities		Long term loans and advances	885,099
Long term provisions	11,343,609	Current Assets	
Current Liabilities		Trade receivables	49,068,757
Other Current Liabilities	591,945	Cash and bank balances	977,573
Short term provisions	5,422,382	Short term loans and advances	2,968,831
Total	62,570,378	Total	62,570,378

The Copy of Audited Balance Sheet as on 31st March, 2015 and copy of un-audited Balance Sheet as on 15th March, 2016 are shown as **Annexure C & D in T.P.178/17** respectively.

The Transferee Company was incorporated on 10th April, 2008 as the Private Limited Company under the name, WEG INDUSTRIES (INDIA) PRIVATE LIMITED and obtained Certificate of Incorporation vide bearing CIN No.-U31909KA2008PTC046020 .

The Registered office of the Transferor Company is situated at No.38, Ground Floor, 1st Main Road, Lower Palace Orchards, Bengaluru- 560 003.

The Transferee Company's objects as set out in its Memorandum of Association inter alia, as follows:

- i) to carry on the business in India or elsewhere in the world the business of manufacture, production, export, import of rotating electrical machinery of different types, models, designs, mechanical machinery, equipment devices and tools, electronic, telegraphic and electromechanical machinery, equipment and integrated systems, components and devices, machinery and equipment for the conservation, production, generation, transmission, and distribution of electric power, electromechanical and electronic components to control, command, protect and signal electric circuits and wiring in the widest possible applications.

A Copy of Certificate of Incorporation and Memorandum & Articles of Association of the Transferee Company is shown as **Annexure B in T.P.177/17**.

The Latest Unaudited Balance Sheet of the Transferor Company as on 15th March, 2016 is as follows:

Liabilities	Amount	Asset	Amount
Share Capital	3,50,38,71,597	Non-Current Assets	
Reserve and Surplus	3,50,04,037	Tangible assets	2,10,30,83,137
Non-Current Liabilities	-	Intangible assets	1,09,82,512
Long term provisions		Deferred tax / Income Tax	7,14,76,802
Current Liabilities		Investment WEI Shares	4,95,00,000
Trade Payable	19,13,29,394	Inventories	82,79,08,548
Social Security and Taxes	1,91,71,523	Trade receivables	53,76,63,170
Clients Advances	8,41,94,199	Cash and cash equivalents	3,42,62,287
Other Liabilities	6,82,54,620	Short term loans and advances	26,69,48,914
Total	3,90,18,25,369	Total	3,90,18,25,369


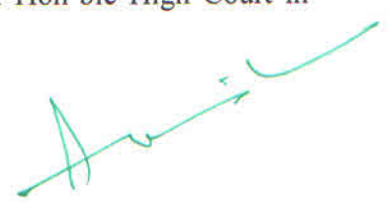
The Copy of Audited Balance Sheet as on 31st March, 2015 and copy of un-audited Balance Sheet as on 15th March, 2016 are shown as **Annexure C & D in T.P.177/17** respectively.

The Directors of both the Companies are of the opinion that if the Transferor and the Transferee Company are amalgamated as one single unit, the amalgamated Company will be benefitted. It is further averred that the reasons which justify the proposed Scheme of Amalgamation, inter alia, are as follows:

- i) The Transferor Company is a wholly-owned subsidiary of the Transferee Company and both the Companies are engaged in similar line of business. The merger would help in bringing in more focus on the business, which would facilitate in exploiting the significant potential for growth.
- ii) Strengthened leadership in the rotating electrical machinery business, in terms of asset base, revenues, product range, production volumes, integrated supply chains and market share of the combined entity; and the amalgamated Company will have the ability to leverage and optimize on its large asset base, diverse range of products, brands and vast pool of intellectual capital, optimize the value of brands, enter into the domestic market with greater access to brands, which would enhance the shareholder value.
- iii) Greater efficiency in cash management of the amalgamated Company, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholder value

The Board of Directors of the Transferor Company and Transferee Company at their respective Board Meetings held on 18th March, 2016 adopted the scheme of Amalgamation. Copy of Board Resolution is shown as **Annexure E** in the respective Company Petitions in T.P.-177/17 & T.P.-178/17.

The Transferor Company had filed C.A.No.171/16 before the Hon'ble High Court of Karnataka to dispense with the convening of meeting of Shareholders and Unsecured Creditors of the Transferor Company. The Hon'ble High Court of Karnataka vide order dated 22nd April, 2016 allowed the Application and dispensed with the Shareholders and Unsecured Creditors meeting, since there were no Secured creditors. Copy of the Order of Hon'ble High Court in C.A.No.171/16 is shown as **Annexure -L in T.P.-178/17**.

Similarly, the Transferee Company had filed the C.A.No.172/16 before the Hon'ble High Court of Karnataka to convene the separate meeting(s) of Equity Shareholders and Unsecured Creditors of the Transferee Company. The Hon'ble High Court of Karnataka vide order dated 22nd April, 2016 allowed the Application and Ordered to convene the separate meeting(s) of the Equity shareholders and Unsecured Creditors on 4th June, 2016, since there were no Secured creditors and appointed Mr. Hans Erich Stoltenberg as Chairman of the respective meeting(s). Copy of the Order of Hon'ble High Court in C.A.No.172/16 is shown as **Annexure -L in T.P.-17717.**

The Chairman had submitted report of Equity Shareholders and Unsecured Creditors Meeting(s) before the Hon'ble High Court of Karnataka. The meeting of the Equity Shareholders was attended personally or by proxy by two Equity Shareholders, entitled together to a total number of 15,49,984 Equity Shares of Rs.10/-each. The meeting of the Unsecured Creditors was attended personally or by proxy by Sixteen Unsecured creditors, entitled together to a total value of debts amounting to Rs.10,30,08,088.93/. In both the meeting(s) the Equity Shareholders and Unsecured Creditors had approved the Scheme of Amalgamation unanimously. The copy of said Chairperson's Report is shown as **Annexure -M in T.P. -177/17.**

It is averred that the Transferee Company and the Transferor Company filed the Petition bearing Co.P No.139/2016 and Co.P.No.140/2016 respectively before the Hon'ble High Court for sanctioning the scheme of Amalgamation on 16th June, 2016.

The Hon'ble High Court of Karnataka vide separate Order dated 24th June, 2016 in Co.P.No.139/16 & Co.P.No.140/16 directed to issue Notice to Regional Director and in addition a Notice to Official Liquidator in Co.P.No.139/16 and to have an advertisement of Notice of Petition be carried out in the 'The New Indian Express', an English daily Newspaper and 'Kannada Prabha', a Kannada daily newspaper on or before 8th July, 2016 and also stating the next date of hearing of the present petition was on 29th July, 2016. The Hon'ble High Court accepted the Memo dated. 12th July, 2016 for having advertised the Notice of the Petition as directed by the Hon'ble High Court. A Memo dated. 12th July, 2016 has been filed, shown at **Pg. No-240 & Pg.No-223 in T.P.173/17 & T.P.174/17** respectively.

The Regional Director, Ministry of Corporate Affairs, South East Region, Hyderabad represented by Registrar of Companies has filed Affidavits dated 20th September, 2016 making some observations in **T.P. No.177/17 & T.P. No.178/17** as follows:



- i) The Notice dated 12th July, 2016 was issued to the Income Tax Department giving 15 days' time to offer comments/objections, if any. The Assistant Commissioner of Income Tax(OSD),O/o. But no comment/ objections have been received so far from the Income Tax Department by Office of the Regional Director (South East Region) till 14th September, 2016.

On the prayer made by the Official Liquidator in OLR No.90/2016 in Co.P.No.140/16, vide order dated 29th July, 2016 N.M Arunkumar & Co. Chartered Accountants was appointed by the Hon'ble High Court of Karnataka to scrutinize the Books of Accounts and records of the Petitioner / Transferor Company. Upon scrutiny of Books & Records and other material made available by the Petitioner / Transferor Company N.M Arunkumar & Co.Chartered Accountants have submitted report dated 2nd September, 2016. Pursuant to the same, the Official Liquidator has filed a report in OLR No.-140/2016 in Co.P.No.140/16/T.P.No.178/17 dated 16th September, 2016 stating that:

- i) The Petitioner Company has maintained proper Books of Accounts, Statutory Registers, minutes and other related records as required by law have been kept by the Company.
- ii) On scrutiny of Books of Accounts, Statutory Registers and other related records of the Petitioner Company in their opinion that the affairs of the Petitioner Company have not been conducted have not been conducted in a manner prejudicial to the interests of its members or to public interest.

Thus relying on the Scrutiny Report dated 2nd September, 2016 submitted by N.M Arunkumar & Co. Chartered Accountants the Official Liquidator submits that Transferor Company may kindly be dissolved without winding up.

After this Petition was transferred from the Hon'ble High Court of Karnataka then the Tribunal directed the Counsel for the Petitioner Companies, whether Notice(s) to be issued to the authorities other than those to whom Notice(s) were already issued in pursuant to section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016.



The Counsel for the Petitioner Companies have filed the **Affidavits dated 24th April, 2017** of the Chief Operating Officer and duly authorised representative of the Petitioner Companies stating that Co.P. No.- 139/16 & 140/16 were filed before the Hon'ble High Court of Karnataka and notices were served upon the Regional Director Ministry of Corporate Affairs, South Eastern Region, Official Liquidator as applicable in Transferor Company on 24th June, 2016 and the notice was also issued to the Income Tax Department on 26th July, 2016 and as a matter of abundant caution, the Petitioner Companies have further issued notice to the Reserve bank of India on 17th March, 2017. It is stated further that no notice is required to be issued to Securities and Exchange Board or any Stock Exchange authorities since neither the Transferor nor Transferee companies are listed Companies. The proposed scheme falls under the exemption mentioned in schedule I Article 9 read with Regulation 4 of the Competition Commission of India Regulations, 2011. Therefore, no notice needs to be issued to the Competition Commission of India. The Petitioner Companies does not have any Sectoral regulators, therefore no notice has to be issued to any sectoral regulators for sanctioning the scheme.

The Petitioner Companies have also filed Valuation Certificate of K C Mehta & Co. dated 18th March, 2016 to consider the fair value of the Equity share of the Petitioner Companies for the purpose of the proposed amalgamation. On consideration of all the relevant factors and circumstances as mentioned in the certificate, they consider that the Fair Value per Equity Share of **M/s WEG Electric (India) Private Limited** by **M/s WEG Industries (India) Private Limited** should be **'Two Equity Shares of the Transferee Company of Rs.10/- each fully paid up** would be issued against **One Hundred Equity Shares of Rs.10/- each fully paid up** each held in the Transferor Company. The Fair Value Certificate is shown as **Annexure K** in the respective Company Petitions.

The Counsel for the Petitioner Companies has also filed Accounting Treatment Certificate of the Chartered Accountant **dated 30th March, 2017** stating that the Accounting Treatment contained in the Scheme of Amalgamation is in conformity with the Applicable Accounting Standards notified under Section 133 of the Companies Act, 2013 in the respective Company Petitions.

After hearing the Counsel for the Petitioner Companies and considering the material on record,



THIS TRIBUNAL DO FURTHER ORDER

While Approving the Scheme, we make clear that this order should not be construed as an order in any way granting exemption from payment of Stamp Duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specially required under any law.

The Whole of the property, rights and powers of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and vest in the transferee company for all the state and interest of the Transferor Company therein but subject nevertheless to all the charges now affecting the same; and

All the liabilities including taxes and charges, if any, and duties of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company; and

All the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company, if any; and

The Petitioner Companies are directed to strictly comply with the Accounting Treatment as stated under Section 133 of the Companies Act, 2013 for the time being in force.

The Petitioner Companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order along with a copy of scheme of Amalgamation to be delivered to the Registrar of Companies for registration in accordance with Rule 25 (7) of Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.

The Scheme shall be effective from the appointed date as mentioned in the Scheme of Amalgamation i.e. 1st April, 2015.

The Transferor Company or its authorised signatory is directed that after the completion of the process of Amalgamation to handover the possession of the books of accounts and other relevant documents of the Transferor Company to the Transferee Company for the purpose of section 239 of the Companies Act, 2013.

Any person shall be at the liberty to apply the Tribunal in the above matter for any directions that may be necessary.

31.5.17
(RATAKONDA MURALI)
MEMBER JUDICIAL

(ASHOK KUMAR MISHRA)
MEMBER TECHNICAL

DATED THIS THE 31st DAY OF MAY, 2017