

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

T.P.NO. 175/2017 & 176/2017

IN

CoP.NO. 120/2016 & 121/2016

DATED: TUESDAY THE 13TH DAY OF JUNE 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

TRELLEBORG SEALING SOLUTIONS (INDIA) PRIVATE LIMITED

WITH

TRELLEBORG INDUSTRIAL PRODUCTS INDIA PRIVATE LIMITED

T.P.NO. 176/2017IN CoP.No. 121/2016

1. Trelleborg Sealing Solutions (India) Private Limited,
No.22/9, Beretana Agrahara
Hosur Main Road,
Bengaluru-560 100 -

PETITIONER/TRANSFEROR COMPANY

T.P.NO.175/2017 IN CoP.No.120/2016

2. Trelleborg Industrial Products Private Limited,
19/1, Kalena Agrahara,
Bannerghata Main Road
Bengaluru-560 076 -

PETITIONER/TRANSFeree COMPANY

PARTIES PRESENT: 1. Mr. Saji P.John, Advocate
SPJ LEGAL, UNIT NO.1002,10TH FLOOR,
#30, PRESTIGE MERIDIAN II M G ROAD
BENGALURU 560001
Advocates for the Petitioner Company
2. Ms.Sinchana M.R., Standing Counsel for Central Government
Advocate for the Regional Director
3. Mr. Vasant Kumar, Assistant
Representative for Official Liquidator

Heard on: 03.03.2017, 17.03.2017 & 17.04.2017

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.121/2016 & Co.P. No.120/2016. 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. 176/2017 & T.P No. 175/2017.

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 **TRELLEBORG SEALING SOLUTIONS (INDIA) PRIVATE LIMITED** (Transferor Company) with **TRELLEBORG INDUSTRIAL PRODUCTS INDIA PRIVATE LIMITED** (Transferee Company). The Scheme of amalgamation is shown as **Annexure A** in the respective Company Petitions.

The Transferor Company was incorporated on 19th May, 1997 as the Private Limited Company under the name, **BUSAK AND SHAMBAN SEALS (INDIA) PRIVATE LIMITED**. Subsequently, the name of the Company was changed to **TRELLEBORG SEALING SOLUTIONS (INDIA) PRIVATE LIMITED** on 9th January, 2006 and obtained Certificate of Incorporation vide bearing CIN No.-U29130KA1997PTC022248 .

The Registered office of the Transferor Company is situated at No.22/9, Beretana Agrahara, Hosur Main Road, Bengaluru-560 100.

The main objects of the Transferor Company are inter alia to engage in the development, manufacture and marketing of safety critical polymer based precision seals and associated systems. It is also engaged in the provision of services to its related entities which include web page content management and support, hosting of product user learning, manuals, visualization and animation, webpage promotion, application development and enhancement comprising of design, code,



generation, testing, quality assurance etc. Copy of Certificate of Incorporation and Memorandum & Articles of Association of the Transferor Company are shown as **Annexure B in T.P.-176/17**.

The Latest audited Balance Sheet of the Transferor Company as on 31st December, 2015 is as follows:

Liabilities	Amount	Asset	Amount
Share Capital	1,99,99,000	Non-Current Assets	54,43,60,901
Reserve and Surplus	3,36,44,45,309	Current Assets	3,05,52,54,622
Non-Current Liabilities	2,02,66,527		
Other Current-Liabilities	19,49,04,687		
Total	3,59,96,15,523	Total	3,59,96,15,523

The Copy of Audited Balance Sheet as on 31st March, 2015 and as on 31st December, 2015 are shown as **Annexure C in T.P.-176/17**.

The Transferee Company was incorporated on 24th January, 2012 as the Private Limited Company under the name, **TRELLEBORG INDUSTRIAL PRODUCTS INDIA PRIVATE LIMITED** and obtained Certificate of Incorporation vide bearing CIN No.-U25203KA2012FTC062226.

The Registered office of the Transferee Company is situated at 19/1, Kalena Agrahara, Bannerghata Main Road Bengaluru-560 076.

The main objects of the Transferee Company are inter alia to engage in manufacturing and selling of anti-vibration mounts and connector seal caps. anti-vibration mounts manufactured by the company are used in commercial vehicles and industrial, vehicle and industrial, rail, marine application for dampening, the vibration. Connector seal caps are used in base towers in the telecom industry. Copy of Certificate of Incorporation and Memorandum & Articles of Association of the Transferee Company are shown as **Annexure B in T.P.-175/17**.

The Latest audited Balance Sheet of the Transferee Company as on 31st December, 2015 is as follows:

Liabilities	Amount	Asset	Amount
Share Capital	15,43,30,000	Non-Current Assets	9,64,32,299
Reserve and Surplus	(3,59,01,687)	Current Assets	15,18,12,041
Non-Current Liabilities	4,33,900		
Current-Liabilities	12,93,82,127		
Total	24,82,44,340	Total	24,82,44,340

The Copy of Audited Balance Sheet as on 31st March, 2015 and as on 31st December, 2015 are shown as **Annexure C in T.P.-175/17**.

The Board of Directors of the Transferor Company and Transferee Company at their respective Board Meetings held on 6th April, 2016 adopted the scheme of Amalgamation. Copy of Board Resolution is shown as **Annexure F** in the respective Company Petitions in T.P.-176/17 & T.P.-175/17.

The Petitioner Companies i.e. Transferor Company and Transferee Company had filed C.A.No.175/16 and 174/16 before the Hon'ble High Court of Karnataka to dispense with the convening of meeting of Shareholders and Creditors of their respective Companies. The Hon'ble High Court of Karnataka vide separate Order dated 28th April, 2016 allowed the Applications and dispensed with the meeting(s) of the Shareholders and Creditors of the respective Petitioner Companies. Copies of the Orders of Hon'ble High Court in C.A.No.175/16 and 174/16 are produced with **Memo dated 13th June, 2016 in the respective Company Petitions**.

That the Transferor Company and the Transferee Company filed the Petitions bearing Co.P No.121/2016 and Co.P.No.120/2016 respectively before the Hon'ble High Court for sanctioning the scheme of Amalgamation on 30th May, 2016.

The Hon'ble High Court of Karnataka vide separate Order dated 17th June, 2016 in Co.P.No.121/16 & Co.P.No.120/16 directed to issue Notice to Regional Director & in addition notice to Official Liquidator in Co.P.No.121/16 and to have an advertisement of Notice of Petition be carried out in the 'The Hindu', an English daily Newspaper and 'Udayavani', a Kannada daily newspaper on or before 8th July, 2016 and also stated the next date of hearing of the petitions was

on 29th July, 2016. The **Memo dated. 5th July, 2016** has been filed for having advertised the Notice of the Petition as directed by the Hon'ble High Court. **The Memos dated. 5th July, 2016 are shown at Pg.No-170-173 in T.P.176/17 & T.P.175/17 respectively.**

The Regional Director, Ministry of Corporate Affairs, South East Region, Hyderabad represented by Registrar of Companies has filed Affidavits dated 14th September, 2016 making some observations in **T.P. No176/17 & T.P. No.175/17** and in furnishing response to the same the Counsel for the Petitioner/Transferee Company in T.P.No.175/15 has filed **Reply Affidavit dated 4th October, 2016** of the Authorised Signatory of the Petitioner/Transferee Company. The observations made by the Regional Director through Registrar of Companies, Karnataka, Bangalore and the reply given are as follows:

I) The Regional Director has stated that:

- a.) The Notice dated 30th June, 2016 was issued to the Income Tax Department giving 15 days' time to offer comments/ objections, if any. The said Notice dated 29th April, 2016 was delivered to the I-PR CCIT K&G on 4th July, 2016 as per the details tracked from the India Post Website. A copy of the above said notice issued is attached with details evidencing the service of Notice to Income Tax Authority is enclosed herewith.
- b.) The Office of Regional Director vide letter dated 30th June, 2016 has requested the Petitioner Companies to serve a copy of the petition along with Scheme on the concerned Income Tax Department where the Petitioner Company is/are assessed. The Petitioner Companies submitted copies of letters dated 7th July, 2016 evidencing the service of notice on the Income Tax Authorities. Copies of the said letters are enclosed herewith.

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.

- II) The Office of the Regional Director vide letter dated 30th June, 2016 has requested the Petitioner Companies to serve a copy of the Petition/application along with enclosures on the Registrar of Companies, Karnataka. The Petitioner Companies submitted copies of letters dated 20th June, 2016 evidencing the service of notice on the Registrar of Companies, Karnataka.

- III.) The office of the Regional Director vide letter dated 30th June, 2016 has requested the Petitioner Company to confirm whether the Petitioner Company is governed or administered by the any Government Regulatory Body, if so, intimate the full details & address of the same and also to state as to whether notice of proposed Merger/Demerger/ Reconstruction etc. have been served to them. The Petitioner Companies submitted that the Transferor Company and the Transferee Company are not governed or administered by any Government Regulatory Body.
- IV.) The Regional Director has directed this Office to incorporate the following issues in the Affidavit:
- a.) Clause 3.2 of the Scheme provides for appointed date as 1st April, 2016. The Petitioner Companies have enclosed the Audited Balance Sheet and Profit and Loss Account for the Financial Year 31st December, 2015 to the Company Petition. Therefore, the appointed date may be fixed as 1st January, 2016.

The Petitioner Company in its Reply Affidavit submits that the Appointed Date was approved by the shareholders of both the Companies and both the Companies intend to implement the scheme with the appointed date as 1st April, 2016. The financial statements as on 31st March, 2016 are still in the process of being finalized by the Companies. Once finalized, they would be filed as per the statutory requirements within the time prescribed.

Counsel for the Petitioner Company has filed Audited balance sheet as at 31st March 2016 of the Petitioner Companies along with the Memo dated 12th June 2017. However, no proof for filing the Annual Returns with the Registrar of Companies, Karnataka, Bangalore.

- b.) Clause 14.1 of the scheme Provides for payment of cash to shareholders, which are foreign companies. The same may be clarified by the Petitioner Companies before the Hon'ble High Court. Further, in case the Hon'ble High Court is pleased to approve the scheme, payment of cash as stated at Clause 14.1 of the scheme may be subject to approval of RBI and compliance of the provisions of the FEMA.

The Petitioner Companies submit that Clause 20.4 of the scheme already provides for compliance with FEMA provisions and RBI approval, as applicable, as one of the condition for the amalgamation. It reads as "20.4- The approval of the Reserve Bank of India, if and to the extent required, being obtained under the provisions of the Foreign Exchange Management Act, 1999 and the regulations thereunder for the payment of cash (including all modes of transfer



through banks) to the non-resident shareholders of the Transferor Company in accordance with the provisions of the scheme." The Transferee Company thus further undertakes that it would comply with the FEMA Regulations applicable to payment of cash as consideration to the shareholders of the Transferor Company.

- c.) The valuation report is made by M/s. Ernst & Young LLP. The valuation report determining the share exchange ratio is to be prepared by a Chartered Accountant. It is not clear whether M/s. Ernst & Young LLP, valuer is a Chartered Accountant firm. The Petitioner Companies may be asked to clarify the same before the Hon'ble Court.



The Petitioner Companies in its reply submits that the share valuation report has been prepared and signed by CA Parag Mehta having Membership Number 102288. Further, the valuation is also approved by the shareholders of the Transferor and Transferee Companies who have extended their approval to the scheme. As such, the same may be accepted.

- d.) In the Petition, the Petitioner Companies have not incorporated the details of Board Resolution approving the Scheme of Amalgamation.

The Petitioner Companies in its reply submits that the Board Resolution of the Transferee Company approving the scheme is furnished along with the Company Petition No.120 of 2016 and was marked as Annexure F and the board Resolution of the Transferor Company approving the scheme is furnished along with the Company Petition No.121 of 2016 and was marked as Annexure F.

- V.) The Registrar of Companies has observed that the Petitioner Companies have filed the Annual Return and Balance Sheet up to the Financial Year ended 31st December, 2014. The Petitioner Companies may file the Balance Sheet and Annual Return for the Financial Year ended 31st December, 2015 before the scheme is implemented.

The Petitioner Companies in its reply submits that the Balance Sheet, Profit & Loss Account and Annual Return of the Transferor Company and the Transferee Company for the period ending 31st March, 2015 were already filed vide SRN G05142567 dated 13th June, 2016 (in respect of the Annual Return for the Transferor Company), SRN G05547559 dated 17th June, 2016 (in respect of financial statements of the Transferor Company), SRN G04975512 dated 9th June, 2016 (in respect of the Annual Return for the Transferee Company) and SRN G04882817 dated 8th June, 2016 (in respect of financial statements of the Transferee Company). Copies of the SRN along with the respective forms for the Transferor and the Transferee Company are attached herewith as Annexure 1.

On the prayer made by the Official Liquidator in OLR No.86/2016 in Co.P.No.121/16, vide order dated 23rd July, 2016 Raghavendra Rao & Associates Chartered Accountants were appointed by the Hon'ble High Court of Karnataka to scrutinize the Books of Accounts and records of the Petitioner /Transferor Company. Pursuant to the same, the Official Liquidator has filed a report in OLR No.-166/2016 in Co.P.No.121/16 dated 18th November, 2016 stating that Raghavendra Rao & Associates Chartered Accountants have submitted report dated 27th September, 2016 and concluded in the report as under:

The Company has maintained proper Books of Accounts, Statutory Registers and other relevant documents as on date. The Company has filed all the necessary statutory returns with various authorities. The Company is also regular in paying taxes. The Company has been regular in holding meetings of the Directors as required under the law.

On scrutiny of the Books and papers maintained and according to the information and explanation obtained from the Company, we confirm that-

- (a) The Company has maintained proper Books and records;
- (b) That the affairs of the Company have not been conducted in a manner prejudicial to the interests of the members or to public interest.

Thus relying on the Scrutiny Report dated 27th September, 2016 submitted by Raghavendra Rao & Associates Chartered Accountants the Official Liquidator submits that Transferor Company may kindly be dissolved without winding up.

After this Petitions were 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 has filed the **Affidavit dated 17th April, 2017** of the Authorised Signatory stating that the Co.P.No.176/16 was filed before the Hon'ble High Court of Karnataka and notices were served upon the Regional Director Ministry of Corporate Affairs, South Eastern Region, Registrar of Companies, Official Liquidator as applicable to

Transferor Company on 24th June, 2016 and the notice was also issued to the Income Tax Department. The Petitioner Companies further states that the Companies are not required to issue notice to the SEBI and Stock Exchange since they are unlisted companies. Further, there is no need for issuance of notice to the Reserve Bank of India as the companies are operating under a sector in which 100% foreign investment is permitted under the automatic route by the Reserve Bank of India. Further, no notice is required to be issued to the Competition Commission of India (CCI) as the total assets and turnover does not exceed the prescribed limit for obtaining approval from CCI. The companies are not governed by any sectoral or other regulatory authorities.


The Counsel for the Petitioner Companies has also filed Accounting Treatment Certificate of the Chartered Accountant dated 16th March, 2017. The said Chartered Accountant has made an observation stating that Clause 15.6 of the scheme regarding proposed adjustments of expenses and duties incurred in the implementation of the scheme against Goodwill arising from the difference between the net assets acquired by the Transferee Company and the consideration paid, which is not in accordance with the generally accepted accounting principles and same should have been recognised in the statement of Profit and loss of the Transferee Company except this matter referred to above, 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.

After hearing the Counsel for the Petitioner Company 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, compliances 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 Scheme of Amalgamation of **TRELLEBORG SEALING SOLUTIONS (INDIA) PRIVATE LIMITED** (Transferor Company) with **TRELLEBORG INDUSTRIAL PRODUCTS INDIA PRIVATE LIMITED** (Transferee Company) is sanctioned subject to the approval of RBI and compliance of provisions of FEMA; compliances undertaken by the Petitioner Companies in their Reply Affidavit and compliance of qualification raised by the Chartered Accountant in his Accounting Treatment Certificate.



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 Petitioner 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 Petitioner/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 Petitioner/Transferor Company be continued by or against the Transferee Company, if any; and

The tax implications, if any, arising out of the scheme is subject to final decision of Concerned Tax Authorities and the decision of the Concerned Tax Authorities shall be binding on the Petitioner Companies.

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 2016 subject to the filing of necessary statutory returns as undertaken by the Petitioner Companies in their Reply Affidavit dated 4th October 2016.

The Petitioner/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 Petitioner 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 to the Tribunal in the above matter for any directions that may be necessary.

(RATAKONDA MURALI)
MEMBER, JUDICIAL

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 13th DAY OF JUNE, 2017