

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH

T.P.NO. 207/2017

IN

CoP.NO. 230/2016

DATED: MONDAY THE 20<sup>TH</sup> DAY OF MARCH 2017

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

IN THE MATTER OF COMPANIES ACT, 2013(18 OF 2013);

AND

IN THE MATTER OF SECTIONS 391 to 394 OF THE COMPANIES ACT, 1956

AND SECTION 230 – 232 OF THE COMPANIES ACT, 2013

AND

OTHER RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013

ALONG WITH RULES OF THE COMPANIES (COMPROMISES,

ARRANGEMENTS AND AMALGAMATIONS) RULES 2016

AND

IN THE MATTER OF

GE INDIA TECHNOLOGY CENTRE PRIVATE LIMITED

T.P.NO. 207/2017 IN CoP.NO. 230/2016

1. GE India Technology Centre Private Limited,  
Sy.No.152, Export Promotion Industrial Park,  
Phase-2,Hoodi Village, Whitefield Road  
Bengaluru-560066 - PETITIONER/TRANSFEROR COMPANY

PARTIES PRESENT: 1. Mr.C.K. Nandakumar, Mr. Pawan Sharma, Mr. Sumit Garg  
No.67/3/A-1 Ground Floor,4<sup>th</sup> Cross, Lavelle Road,  
Bengaluru-560001 Advocates for the Petitioner Company  
2.Ms.Prema Hatti, Standing Counsel for Central Government  
Advocate for the Regional Director  
3.Mr. Vasant Kumar, Assistant, Official Liquidator  
Representative for Official Liquidator

Heard on: 13/02/2017, 06/03/2017 AND 08/03/2017

**ORDER**

Originally this Petition was filed before the Hon'ble High Court of Karnataka and it was numbered as Co.P. No.230/2016. Subsequently as per Notification No. GSR.1119 (E) dated 7<sup>th</sup> December 2016 issued by the Ministry of Corporate Affairs, New Delhi, the said case is transferred to this Tribunal and renumbered as T.P No. 207/2017.



This Company Petition is filed on behalf of the Petitioner Company 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 Scheme of Amalgamation of the Petitioner/Transferor Company and shall be binding upon all the Shareholders, Secured Creditors, Unsecured Creditors and Employees of the petitioner Company.



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

The Petitioner Company seeks an order for sanctioning the Scheme of Amalgamation of **GE INDIA EXPORT PRIVATE LIMITED** (Non Petitioner/Transferor Company) **GE INDIA TECHNOLOGY CENTRE PRIVATE LIMITED** (Petitioner/Transferor Company) with **GE INDIA INDUSTRIAL PRIVATE LIMITED** (Transferee Company). The Scheme of amalgamation is shown as **Annexure A**.

The Petitioner Company was incorporated on 10<sup>th</sup> June, 1999 as the Private Limited Company under the name, **GE INDIA TECHNOLOGY CENTRE PRIVATE LIMITED**. The Registered office of the Petitioner /Transferor Company is situated at Sy.No.152, Export Promotion Industrial Park, Phase-2, Hoodi Village, Whitefield Road Bengaluru-560066

The Petitioner/Transferor Company is engaged in the business of Research and development activities in the areas of material sciences, process technology and providing engineering analysis and related software development services/export of customized electronic data.

The Non-Petitioner Transferee Company was incorporated on 27<sup>th</sup> May, 1992 as a Private Limited Company under the name, **APAR LAMPS PRIVATE LIMITED** and subsequent changes were made to the name on 23<sup>rd</sup> July 1996 and finally on 8<sup>th</sup> June, 2004 **GE INDIA INDUSTRIAL PRIVATE LIMITED**. The registered office of the Transferee Company is situated at 401-402, 4<sup>th</sup> Floor, Aggarwal Millennium Tower, E1,2,3, Netaji Subhash Place, Wazirpur, New Delhi -110034.





The Transferee Company is engaged in various businesses which, inter alia, includes: (a) Export of Computer Service, (b) Providing hardware and Software support for power transmission and distribution, (c) Trading of Industrial lighting, high intensity discharge lamps and other lighting products, (d) Providing specialised equipment used for extraction and transmission of oil and gas, and (e) Manufacturing of wind turbine generators.

The Board of Directors of the Petitioner/Transferor Company, Non Petitioner/Transferor Company and Transferee Company at the Board Meetings held on 30<sup>th</sup> May, 2016, 1<sup>st</sup> June, 2016 and 31<sup>st</sup> May, 2016 have adopted the scheme of Amalgamation respectively. Copy of Board Resolution is marked as **Annexure B-D** respectively.

The Petitioner Company has filed C.A.No.290/16 before the Hon'ble High Court of Karnataka to dispense with the convening of meeting of Equity Shareholders and hold separate meeting(s) of the secured & unsecured creditors of the Petitioner Company. The Hon'ble High Court of Karnataka vide order dated 24<sup>th</sup> June, 2016 allowed the Application and dispensed with the convening of Equity Shareholders Meeting and directed to convene separate meeting(s) of Secured & Unsecured Creditors and filing of report by the Chairman within two weeks. Copy of the Order of Hon'ble High Court in C.A.No.290/16 is shown as **Annexure E**.

The Chairman appointed for convening of separate meeting(s) of secured & unsecured creditors has filed two reports dated 27<sup>th</sup> August, 2016 before the Hon'ble High Court of Karnataka on 30<sup>th</sup> August, 2016. We have seen the reports both Secured & Unsecured have unanimously in their respective meetings voted in the favour of the scheme. Copy of the Reports filed before the Hon'ble High Court of Karnataka shown as Annexure F & G respectively. It is further averred that the Petitioner Company filed the present petition bearing Company Petition No. 230/2016 before the Hon'ble High Court for approving the scheme of Amalgamation.

The Hon'ble High Court of Karnataka vide order dated 28<sup>th</sup> October, 2016 issued notice to Regional Director & Official liquidator and also directed to have an advertisement published in the Bangalore edition of "THE HINDU" and "THE

**UDAYAVANI**" newspapers on or before 11<sup>th</sup> November, 2016, stating the next date of hearing of the present petition was on 25<sup>th</sup> November, 2016. A Memo dated. 18<sup>th</sup> November 2016 has been filed regarding the compliance.

On the prayer made by the Official Liquidator in OLR No.165/2016 in Co.P.No.230/16, vide order dated 25<sup>th</sup> November 2016 M/s Ravi & Shrihari Chartered Accountant was appointed by the Hon'ble High Court of Karnataka to scrutinize the Books of Accounts and records of the Petitioner Company. Pursuant to the same, the Official Liquidator has filed a report in OLR No.-19/2017 in Co.P.No.230/16 stating that the Petitioner Company has maintained proper books of accounts, statutory registers and other relevant documents as on date. The Petitioner Company has filed all the necessary statutory returns and is also regular in paying taxes and the affairs of the petitioner Company are not conducted in a manner prejudicial to the interest of Shareholders or creditors, or public at large.

The Regional Director, Ministry of Corporate Affairs, South East Region, Hyderabad represented by Registrar of Companies who filed an affidavit on 8<sup>th</sup> February 2017. In his Affidavit in Paragraph (3) & (4) he has made the following observations:

1. The Notice dated 1<sup>st</sup> December-2016 was issued to the Income tax department as required by Ministry of Corporate Affairs General Circular No.-1/2014 dated 15<sup>th</sup> January 2014 giving 15 days' time to offer comments/objections, if any. But no comments/objections have been received from the Income Tax Department by the office of the Regional Director, South East Region, Hyderabad till 09.01.2017.
2. The Registered Office of the other Transferor Company and Transferee Company are situated at New Delhi. Therefore, approval of the Scheme by the Hon'ble National Company Law Tribunal may be subject to the orders of the Hon'ble National Company Law Tribunal, New Delhi.



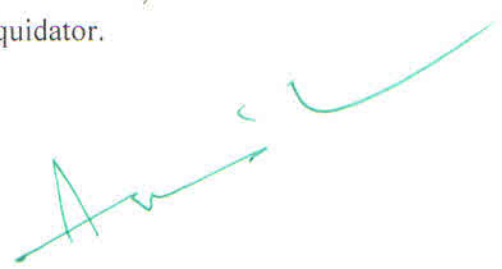
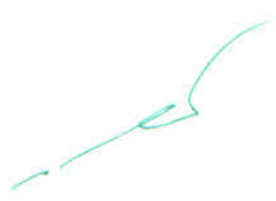


The Director and authorised signatory of the Petitioner Company has filed an affidavit dated 7<sup>th</sup> March, 2017 averring that the Petitioner Company is proposed to be dissolved without being wound-up. The accounting treatment of the proposed amalgamation in the books of accounts of the Petitioner Company is not specified in the proposed Scheme of Amalgamation. However, the accounting treatment in the books of accounts of the surviving entity, i.e. the Transferee Company is mentioned in para 3.10 of the Scheme which is in accordance with the applicable accounting standard. A copy of the Chartered Accountant Certificate to the effect that the accounting treatment, if any, proposed in the scheme is in conformity with Section 133 of the Companies Act, 2013 is shown as **Annexure A** with this affidavit.

After this Petition was transferred from the Hon'ble High Court of Karnataka then the Tribunal directed the Counsel for the Petitioner Company that, 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.

Then the Counsel for the Petitioner Company filed Affidavit of the Director that the Petitioner Company stating that, the Petitioner Company is the Private Limited Company and none of its shares/securities are listed on any Stock Exchange. Therefore, no Notice was required to be issued by the Petitioner Company to Securities & Exchange Board of India or any Stock Exchange. Further, it is stated that Petitioner is a non-banking finance company and no Notice was required to be issued to Reserve Bank of India and further the present scheme does not require any approval from Competition Commission of India for the reason that the threshold prescribed for the approvals under the Competition Act, 2002 are not met in the present case and there are no sectoral regulators.

We have heard the learned Counsel for the Petitioner as well as the Counsel for Central Government and Representative of Official Liquidator.



**THIS TRIBUNAL DO FURTHER ORDER:**

While Approving the Scheme as above, it is further clarified 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, or any exemption under provisions of Income Tax Act or other applicable regulations or in respect to any permission/compliance with any other requirement which may be specially required under any law.

All property, rights and powers of the Petitioner Company be transferred without further act or deed to the Transferee Company and accordingly the same shall be in pursuant to section 232 of the Companies Act, 2013, 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 duties of the Petitioner 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 Company be continued by or against the Transferee Company; and

The Petitioner Company 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 concerned 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. 1<sup>st</sup> April, 2016.



The Petitioner 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 compliance of Section 239 of the Companies Act, 2013.

The order of this Tribunal shall come into effect, subject to passing of the order approving the scheme in the matter of GE INDIA EXPORT PRIVATE LIMITED (Non Petitioner/Transferor Company) with GE INDIA INDUSTRIAL PRIVATE LIMITED (Transferee Company) by National Company Law Tribunal, Delhi.

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 20<sup>th</sup> DAY OF MARCH, 2017