

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

CA(CAA)86/BB/2017

CA(CAA) No.87/BB/2017

Under Sections 230 to 232 of Companies Act, 2013

**IN THE MATTER OF SCHEME OF AMALAGAMATION
IN THE MATTER OF
HOMAG INDIA PRIVATE LIMITED**

WITH

HOMAG MACHINERY BANGALORE PRIVATE LIMITED

Order delivered on 12th January, 2018

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

Homag India Private Limited
Registered Office at
#88, Industrial Suburb, II Stage
Tumkur Road
Bengaluru – 560 022

- **Applicant / Transferee Company**
In CA(CAA) No.86/BB/2017

Homag Machinery Bangalore Private Limited
Registered Office at
#7/6, Veerananjipura Grama
Kasaba Hobli, Nelmangala Taluk
Bengaluru – 562 123

- **Applicant / Transferor Company**
In CA(CAA) No.87/BB/2017

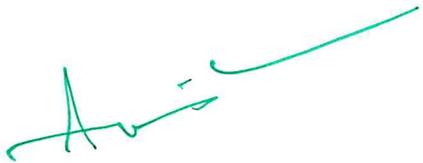
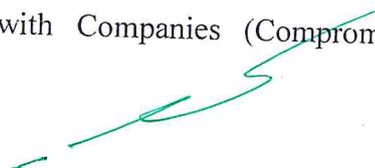
For the Applicant(s): Udayshankar Assts.,
Advocates
Representing the Applicant Company

Per: Hon'ble Shri Ashok Kumar Mishra, Member (Technical) - (Author)

Heard on: 21.11.2017, 12.12.2017, 03.01.2018.

ORDER

These Applications are filed on behalf of the Applicant Companies under Sections 230 to 232 of the Companies Act, 2013 read with Companies (Compromises,

Arrangement and Amalgamation) Rules, 2016, praying for an order for dispensation of holding the meeting of the Equity shareholders, Secured and Unsecured Creditors or alternatively direct convening of the meeting of the Equity shareholders, Secured and Unsecured Creditors for approving the Scheme of Amalgamation of **HOMAG MACHINERY BANGALORE PRIVATE LIMITED** (Transferor Company) to be merged with **HOMAG INDIA PRIVATE LIMITED** (Transferee Company) in terms of Scheme of Amalgamation shown in **Annexure-A** in CA(CAA) No.86 & 87/2017.

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

The Applicant Companies seek an order for dispensation of holding the meeting of the Equity shareholders, Secured and Unsecured Creditors or alternatively to direct convening the meeting of the Equity shareholders, secured and unsecured creditors for approving the Scheme of Amalgamation of **HOMAG MACHINERY BANGALORE PRIVATE LIMITED** (Transferor Company) to be merged with **HOMAG INDIA PRIVATE LIMITED** (Applicant/Transferee Company) in terms of Scheme of Amalgamation shown as **Annexure-A** in CA(CAA) No.86 & 87/2017.

It is further averred in the Application CA(CAA)No.86/2017 that the Applicant/Transferee Company was incorporated on 29th November 2004 under the provisions of the Companies Act, 1956 in the name and style of HOMAG India Private Limited bearing CIN No.U29299KA2004PTC035110, having its Registered office at # 88, Industrial Suburb, II Stage, Tumkur Road, Bengaluru -- 560 022.

The main objects of the Applicant Company as set out in the Memorandum of Association are:-

- i. to carry on the business of trading, selling and servicing of all kinds of machinery particularly wood working machines like through feed hi-speed edge handing machines, CNC controlled machining centers, CNC controlled processing centers, profile wrapping machines, CNC cutting Machines and all other kinds of machinery required for carrying on the business of wood working and metal working machinery.

- ii. To establish testing facilities, training facilities and organise exhibitions and to do such other things for furtherance and development machines, tools and accessories industry.
- iii. To carry on in the business of sellers, exporters, importers, distributors/stockists in all types of wood and metal working machinery, components, accessories and tools.

The Authorised share capital of the Applicant Transferee Company is Rs.33,00,00,000/- divided into 3,30,00,000 Equity Shares of Rs.10/- each. The issued, Subscribed and paid up equity share capital is Rs.31,25,11,010/- divided into 3,12,51,101 Equity shares of Rs. 10/- each, *as on 31.08.2017.* A copy of the latest Audited financial statements as on 31st March, 2017 is marked as **Annexure-C** in CA(CAA) No.86/2017 and the provisional unaudited financial statements of the Applicant Transferee Company as on 31.08.2017 is produced at **Annexure-D** in CA(CAA) No.86/2017.

It is further stated that, the Board of Directors of the Transferee Company have, in its meeting, held on 11th September 2017, has approved the Scheme of Amalgamation. A Copy of the Resolution dated 11th September 2017 passed by the Board of Directors of the Transferee Company is marked as **Annexure- E** in CA(CAA)No.86/2017.

The Applicant/Transferee Company further states that there are four equity shareholders and a Chartered Accountant has issued a certificate dated 22.09.2017 certifying the details of the equity shareholders. The said certificate is produced as **Annexure-F** in CA(CAA)No.86/2017. It is further submitted that 100% of the equity shareholders have given their consent to the scheme through respective affidavits produced as **Annexure-G** series in CA(CAA)No.86/2017.

It is further submitted that the Applicant/Transferee Company has one Secured Creditor as on 31.08.2017. A Chartered Accountant has issued a certificate dated 22.09.2017 which is produced as **Annexure-H** in CA(CAA)No.86/2017. Consent of the respective Secured Creditor through affidavit is also produced as **Annexure-J** in CA(CAA)No.86/2017. That on filing the Company Application, the Registry raised objections regarding the non-filing of the affidavit of the Secured Creditor and the counsel for the Applicant/Transferee Company has filed a memo dated 06.12.2017 along with the loan closure letter dated 16.11.2017 stating that the loan has been satisfied and the Applicant-Company has no Secured Creditor. As directed by this Tribunal the

Applicant/Transferee Company has also filed a fresh certificate issued by the Chartered Accountant dated 12.12.2017 certifying that there are no Secured Creditors and therefore the prayer for dispensation of convening of the meeting of the Secured Creditors may be dispensed with.

It is also submitted that the Applicant/Transferee Company has Unsecured Creditors amounting to Rs.2,23,47,308/-. A Chartered Accountant has issued certificate dated 22.09.2017, certifying the value of the unsecured creditors which is produced as **Annexure-K** in CA(CAA)No.86/2017. The Unsecured Creditors of the value of Rs.2,02,11,013/- have given their respective written consents for the Scheme through affidavits which are produced as **Annexure-L series** in CA(CAA)No.86/2017.

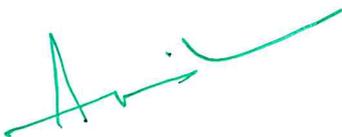
It is also stated that no investigation or proceedings have been instituted or are pending in relation to the Applicant/Transferee Company. The same is certified by a Chartered Accountant and produced as **Annexures-M & N** in CA(CAA)No.86/2017.

In the light of the above facts stated, the Applicant/Transferee Company prays for the following relief:

1. To dispense with the convening and holding of the meeting of the Equity Shareholders of the Applicant-Transferee Company since all the equity shareholders have conveyed their 'consent' for the proposed scheme of Amalgamation.
2. To dispense with the convening and holding of the meetings of Secured Creditor since the Secured Creditor has conveyed its approval for the Scheme.
3. To dispense with the convening and holding of the meeting of the Unsecured Creditors as 90% have consented to the scheme.
4. To pass such other or further orders, as this Hon'ble Tribunal may deem fit and proper in the interest of justice and equity.

Consent letters from the shareholders of the Applicant/Transferee Company are produced at **Annexure F** in CA(CAA)No.86/2017. And the consent letters of the unsecured trade Creditors are produced at **Annexure L series** in CA(CAA)No.86/2017.

The averments made in the Company Application No.CA(CAA) No.87/2017 are briefly described hereunder:-



The Applicant/Transferor Company seeks an order for dispensation of holding the meeting of the Equity shareholders, Secured and Unsecured Creditors or alternatively direct to convening the meeting of the Equity shareholders, secured and unsecured creditors for approving the Scheme of Amalgamation of **HOMAG MACHINERY BANGALORE PRIVATE LIMITED** (Applicant/Transferor Company) to be merged with **HOMAG INDIA PRIVATE LIMITED** (Applicant/Transferee Company) in terms of Scheme of Amalgamation shown as **Annexure-A** in No.CA(CAA) No.87/2017.

It is further averred in the Application that the Applicant/Transferor Company was incorporated on 27th May 2011 under the provision of the Companies Act, 1956 in the name and style of HOMAG India Private Limited bearing CIN No.U29299KA2004PTC058848, having its Registered office at # 7/6, Veerananjipura Grama, Kasaba Hobli, Nelamangala Taluk, Bengaluru Rural – 562 123.

The main objects of the Applicant/Transferor Company as set out in the Memorandum of Association are:-

- i. Manufacture and assemble specialised machines used in cutting/sawing, panel production, drilling and mounting fittings, sizing, edgbanding, beam processing and also machinery used in production of structural elements, timber framing and such other associated tools, apparatus, equipments and applications which are automated or otherwise.
- ii. To provide technical assistance and technology end to end solutions standardised or customised using simulations, CNC processing, manufacturing execution system, assembly technology and packaging for use of machinery, tools and equipments in connection with production systems, plants, furniture production, components and machinery in construction and production of wood houses etc.
- iii. To provide and use advanced technology to commercially develop machinery, equipments and tools, including the software for the execution of the machinery and products related to assembly and manufacture of specialised machines.

The Authorised share capital of the Applicant/Transferor Company is Rs.28,00,00,000/- divided into 2,80,00,000 Equity Shares of Rs.10/- each. The issued, Subscribed and paid up equity share capital is Rs.28,00,00,000/- divided into 2,80,00,000

Equity shares of Rs. 10/- each. A copy of the latest Audited financial statements as on 31st March, 2017 is marked as **Annexure -C** in No.CA(CAA) No.87/2017 and the provisional unaudited financial statements of the Applicant/Transferee Company as on 31.08.2017 is produced at **Annexure-D** in No.CA(CAA) No.87/2017.

It is further stated that, the Board of Directors of the Transferor Company have, in its meeting, held on 8th September 2017, has approved the Scheme of Amalgamation. A Copy of the Resolution dated 8th September 2017 passed by the Board of Directors of the Transferor Company is marked as **Annexure- E** in No.CA(CAA) No.87/2017.

The Applicant/Transferee Company further states that there are two equity shareholders and a Chartered Accountant has issued a certificate dated 18.09.2017 certifying the details of the equity shareholders. The said certificate is produced as **Annexure-F** in No.CA(CAA) No.87/2017. It is further submitted that 100% of the equity shareholders have given their consent to the scheme through respective affidavits produced as **Annexure-G** series in No.CA(CAA) No.87/2017.

It is further submitted that the Applicant/Transferor Company has no Secured Creditor as on 31.08.2017. A Chartered Accountant has issued a certificate dated 18.09.2017 which is produced as **Annexure-H** in No.CA(CAA) No.87/2017.

It is also submitted that the Applicant/Transferor Company has Unsecured Creditors amounting to Rs.29,36,20,006/-. A Chartered Accountant has issued certificate dated 06.10.2017, certifying the value of the Unsecured Creditors which is produced as **Annexure-J** in No.CA(CAA) No.87/2017. That 90% in value of the Unsecured Creditors have given their respective written consents for the Scheme through affidavits which are produced as **Annexure-K series** in No.CA(CAA) No.87/2017.

It is also stated that no investigation or proceedings have been instituted or are pending in relation to the Applicant/Transferee Company. The same is certified by a Chartered Accountant and produced as **Annexures-L &M**.

In the light of the above facts stated, the Applicant/Transferor Company prays for the following relief:

1. To dispense with the convening and holding of the meeting of the Equity Shareholders of the Applicant/Transferor Company since all the equity

shareholders have conveyed their 'consent' for the proposed scheme of Amalgamation.

2. To dispense with the convening and holding of the meetings of Secured Creditor since the Secured Creditor has conveyed its approval for the Scheme.
3. To dispense with the convening and holding of the meeting of the Unsecured Creditors as 90% have consented to the scheme.
4. To pass such other or further orders, as this Hon'ble Tribunal may deem fit and proper in the interest of justice and equity.

Consent letters from the shareholders of the Applicant/Transferor Company are produced at **Annexure F** in No.CA(CAA) No.87/2017. And the consent letters of the unsecured trade Creditors are produced at **Annexure K series** in No.CA(CAA) No.87/2017.

We have seen the consent affidavit filed by the 04 shareholders and also consent affidavit of the Unsecured Trade Creditors of the Applicant Transferee Company. There are no Secured Creditors as stated by the Chartered Accountant vide his certificate dated 12.12.2017.

We have seen the consent affidavit filed by the 02 shareholders and also consent affidavit of the Unsecured Trade Creditors of the Applicant Transferor Company. There are no Secured Creditors as stated by the Chartered Accountant vide his certificate dated 18.09.2017.

The Applicant/Transferee Company in No.CA(CAA) No.86/2017.is seeking an order to dispense with the holding of meeting of shareholders and unsecured trade creditors of the applicant company on the ground that there are only 04 shareholders and no secured creditors. The 04 shareholders and 90% of the Unsecured Trade Creditors have given their consent by way of affidavit for the proposed scheme of Amalgamation.

The Applicant/Transferor Company in No.CA(CAA) No.87/2017. is seeking an order to dispense with the holding of meeting of shareholders and Unsecured Trade Creditors of the Applicant Company on the ground that there are only 02 shareholders and no secured creditors. The 02 shareholders and 90% of the Unsecured Trade Creditors have given their consent by way of affidavit for the proposed scheme of Amalgamation.

In the result, the Applications are allowed and holding of meeting of Shareholders and Unsecured Trade Creditors are dispensed with. In any eventuality when the Applicant Company approaches this Tribunal for seeking approval of the scheme it would be open for any person who is interested in the scheme of Amalgamation to put forth their contentions before the Tribunal.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL

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