

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI**

**Company Application No.A.12/PB/2017**

**Present: CHIEF JUSTICE (Retd.) SHRI M.M.KUMAR, HON'BLE PRESIDENT  
& SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)**

**In the matter of:**

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

**AND**

**IN THE MATTER OF SCHEME OF AMALGAMATION**

**BETWEEN**

**Leadrail Infra Solution Private Limited  
(TRANSFEROR COMPANY)**

**WITH**

**SMEC (India) Private Limited  
(TRANSFEREE COMPANY/APPLICANT COMPANY)**

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WITH

Their respective Shareholders and Creditors

**MEMO OF PARTIES**

**1. LEADRAIL INFRA SOLUTION PRIVATE LIMITED**

Company registered under the Companies Act, 1956

Having Registered Office at:

Flat No, 201, Sri Sai Residency Bhuvaneshwari Nagar, CV Raman Nagar,

Bengaluru, Karnataka -560093

.....Transferor Company

**2. SMEC (INDIA)PRIVATE LIMITED**

Company registered under the Companies Act, 1956

Having Registered Office at:

507, 5<sup>th</sup> Floor, Bhikaji Cama Bhawan,



Bhikaji Cama Place, New Delhi

Through its authorized representative: Mr. Pushpendra Sharma

.....Transferee/ Applicant Company

**Counsel for the Applicants: Mr. Dalip Kumar Malhotra, Advocate**

**Mr. Rajesh Kumar Malhotra, Advocate**

## ORDER

1. This is an application which is filed by SMEC (India) Private Limited (for brevity "Transferee Company/Applicant Company") for the purpose of Amalgamation with Leadrail Infra Solutions Private Limited (for brevity "Non-Applciant/ Transferor Company") under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation(hereinafter referred to as the "SCHEME" ) proposed between the applicant-Transferee and Non-Applciant Transferor and the said Scheme is also annexed as Annexure "A-1" to the application. The applicant above named has preferred the instant application for the following purpose as evident from the reliefs sought for in from the respective paragraph of the Application, namely:-

- (i) Pass orders/directions for dispensing with the convening and holding of the meetings of the Equity Shareholders and Unsecured Creditors of the Petitioner/Transferee Company for the purpose of approval under the Scheme.
- (ii) Pass orders/directions for dispensing with the requirement to give individual notices to the Equity Shareholders and Unsecured Creditors of the Petitioner/Transferee Company.
- (iii) Pass appropriate orders(s) for dispensing with the publication of the notice(s) of the meetings of the said respective Shareholders and Creditors (Unsecured of the Petitioner/Transferee Company in the newspaper/s.
- (iv) That this Hon'ble Court may be pleased to give directions for filing the Company Petition/Application for sanction of the Scheme of Amalgamation; and
- (v) Pass such other order(s) as this Hon'ble Court may be pleased to pass in the facts and the circumstances of the case.

2. An Affidavit in support of the above application sworn for Transferee Company/Applicant Company by one Mr. Pushpendra Sharma, Authorized Signatory, has also been filed along with the application. Counsel for the Applicant took us through the averments made in the application as well as the typed set of documents annexed there with. Learned Counsel represents that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. It is further represented that the application as filed by the Applicants are maintainable in view of Rule 3(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 and it is also represented that the registered office of the Applicant company is situated within the territorial jurisdiction of this Tribunal and falling within Registrar of Companies, NCT, New Delhi and whereas the registered office of Transferor Company is situated at Bengaluru within the jurisdiction of NCLT Karnataka at Bengaluru. In relation to Leadrail Infra Solution Private Limited being the Transferor Company in the Scheme marked as Annexure –“A-1”, Learned Counsel represents that the Transferor Company is having 2 (Two) Equity Shareholders as on 30.09.2016 and from whom “No Objection Certificates” have been received and are placed on record. It is further represented by the counsel for the Applicant that Transferor Company has no Secured Creditor and 1 (One) Unsecured Creditor.

3. In relation to the SMEC (India) Private Limited being the Transferee Company/ Applicant Company in the Scheme marked as Annexure-“A-1”, Learned Counsel represents that company is having 2 (Two) Equity Shareholders as on 30.09.2016 and from whom “No Objection Certificates” have been received and are placed on record. It is further represented by the counsel for the Applicant that the Transferee Company/ Applicant Company has no Secured Creditor and 84 Unsecured Creditors as on 30.09.2016. In relation to the Equity shareholders, the Transferee Company/ Applicant Company seeks dispensation of the meeting for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent being obtained from all the equity shareholders and there being no Secured Creditor convening of a meeting does not arise. In

relation to the Unsecured Creditors, the Transferee Company/ Applicant Company seeks dispensation of the meeting for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent being obtained from the 4 ( Four) Unsecured Creditors constituting 97.29% of the total value.

4. The above application seems to have been filed, as evident from the endorsement made by the Registry of this Tribunal on 16.02.2017 and in light of the notification of the provisions for Sections 230 to 232 of Companies Act, 2013 and as well as Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 framed there under having been brought into force prior to the date of filing, this Tribunal proceeds to entertain the above application filed under the 2013 Act. Further, the registered office of the Applicant Company is situated within New Delhi and subject to Registrar of Companies, NCT, New Delhi and hence is amenable to the territorial jurisdiction of this Tribunal.
5. We have perused the application and the connected documents / papers filed herewith including the Scheme of Amalgamation contemplated between the Applicant companies.
6. From the certificate of incorporation filed, it is evident that the Transferor Company was initially incorporated under the name and style of Leadrail Infra Solutions Private Limited on 3<sup>rd</sup> October, 2012.
7. The authorized capital of the Transferor Company as on 31.03.2016 is Rs. 5, 00,000 divided into 50,000 equity shares of Rs. 10/- each. The issued, subscribed and Paid- up capital of the company is Rs.5, 00,000 divided into 50, 000 equity shares of Rs. 10/- each.
8. The main objects of the Transferor Company as stated in the scheme is to pursue activity related to Financial and Management are as follows:-
  - I. To carry on in India or abroad the business of providing services including concept development, project development, feasibility studies, detailed designs, project

management, supply and execution of railway/railway related works/rail logistic facilities pertaining to main line railways, railway sidings, heavy haul railways, mass transport systems and other inter modal transport systems.

- II. To carry on the business of demand surveying, mapping of origin and destination of passengers/freight, alignment studies, project cost estimation, traffic simulation models, financial viability studies, new products and solutions development, process improvement, value management, cost audit, safety audit of railway/railway related works/rail logistic facilities.
- III. To carry on the business of infrastructure development in the form of developing, modeling, surveying, designing, procuring, constructing, erecting, monitoring, managing, commissioning, de-bottle necking, staffing, maintaining and training of railway/railway related works/rail logistic facilities and to act as advisors, managers, consultants, designers, erectors, commissioners and maintainers of rail infrastructure.
- IV. To carry on the business of railway related works/rail logistic facilities in the field of earthwork, bridges and structures, tunnels, ballast, track, track materials, track machines, power supply, traction, electrification, signals and telecommunications, traffic simulation and operation, in India and abroad.
- V. To undertake all above activities subject to approval of railway authorities and also to undertake all above activities in other linear infrastructure areas including, inter-alia, Transport Systems like Roads, Expressways, Ports, and Airports, Irrigation & Water Systems, Pipelines, Material Handling Systems, Transmission Systems, Terminals and Structures subject to approval of concerned authorities.

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9. From the certificate of incorporation filed, it is evident that the Transferee Company / Applicant Company was initially incorporated under the name and style of SMEC (India) Private Limited on 15<sup>th</sup> December, 1994.
10. The authorized capital of the Transferee Company/ Applicant Company as on 31.03.2016 is Rs. 10, 00, 000 divided into 1, 00, 000 equity shares of Rs. 10/- each. The issued, subscribed and Paid- up capital of the company is Rs.5, 00, 000 divided into 50, 000 equity shares of Rs. 10/- each.
11. The main objects of the Transferee Company/ Applicant Company as stated in the scheme are as under:-
- I. To carry on the business of Engineering Consultants providing Consultancy services to any person, firm, body corporate, association or institution whether in India or abroad including project identification, feasibility studies, surveys, institutional studies, field and laboratory investigations, engineering design, planning, project management, training documentation, construction supervision and management, contract management, procurement of goods and services, commissioning, operation, maintenance, disaster management and mitigation, rehabilitation, inspection and review required for various projects and industries including but not limited to projects related to roads and transportation, traffic, power generation, transmission and distribution, water resources and development, regional development, dam engineering, water supply, irrigation, drainage and food control, tunnels and underground works, environmental am pollution control engineering, hazardous waste, mining am minerals, topography, geotechnical, geological, social and other infrastructure developments.
  - II. To carry on the business of promoting and implementing projects in India and abroad in the fields of civil, chemical, electrical, mechanical, constructional and general engineering, roads and transportation, power generation, transmission and


distribution, rehabilitation of power projects, bridges and other structures, water resources and development, regional development, dam engineering, water supply, irrigation, drainage and flood control, tunnels and underground works, environmental and pollution control engineering, hazardous waste, mining and minerals and other infrastructure developments.

- III. To carry on the business of providing technical services in India and abroad in the construction, operation and rehabilitation of industrial plants and structures, engineering construction, equipment design, agriculture farms, specifications and erection know how.
- IV. To carry on the business of providing services as lead managers in India and abroad in respect of Project assignments by undertaking follow up, supervision and coordination work at the instance, behest or on behalf of banks, financial institutions, companies, bodies corporate and aid agencies and to monitor the same to the participants, to act as an adviser in the management of undertakings, business enterprises, offices, trade, occupations and professions by introducing modern methods and techniques and systems and render all assistance as may be necessary including by acting as agents for recruitment of technical, skilled, unskilled, supervisory and managerial personnel and to act as an advisor in the selection of technical process, economic size, sources of plant and machinery and other utilities for business entrepreneurs.
- V. To build, own and operate or transfer in India and abroad, roads, highways, expressways, bridges and tunnels based on levy of tolls and power installations.

**12.** The applicant has filed the Memorandum and Articles of Association of the Applicant as well as the Non-Applicant and as well as their last available audited financial statements for the year ended 31.03.2016.





**13.** A copy of the Scheme of Amalgamation Annexure – “A-1”(Supra) has been placed on record and the salient features of the Scheme have also been brought about by the applicant in the application which is stated to be for the following benefits:

- a. Achieving better growth and commercial benefits due to combination of assets and resources as well as eliminating any overlapping of activities;
- b. Pooling the resources of both the Companies, thereby resulting in greater utilization of resources;
- c. Reducing the managerial overlaps involved in running multiple entities, unnecessary administrative costs and regulatory compliances as applicable on each Company;
- d. Reduction in cost of operation would be achieved by reducing the number of entities, thereby consolidating the value for stakeholders; and
- e. Reducing redundancies and enhancing profitability of operation of SMEC (the Petitioner Company/Transferee Company).

**14.** The Board of Directors of the Transferor company vide separate meetings held on 16.09.2016 and that of the Transferee company vide separate meetings held on 19.09.2016, have unanimously approved the proposed Scheme of Amalgamation and copies of resolutions passed therein have been placed on record by the companies .

**15.** Both the companies aver that no investigation proceedings are pending against them either under Sections 235 to 251 of the Companies Act, 1956 or under Sections 210 to 226 of the Companies Act, 2013. Further, the applicant also submits that the Scheme is not otherwise opposed to Public Policy or interests of the members of the respective applicant and non-applicant companies.

16. Taking into consideration the application filed by the Transferee/ Applicant company and the documents filed therewith, we propose to issue the following directions with respect to calling, convening and holding of the meetings of the shareholders, secured and Unsecured Creditors or for its dispensation of the Applicant/ Transferee Company as :

**A) In relation to Transferee Company/ Applicant Company No:**

(i) With respect to Equity shareholders:

Since it is represented by the Transferee Company/ Applicant Company that there are 2 (Two) Equity Shareholders and from whom consent has been obtained and are placed on record, therefore the convening a meeting of Equity Shareholders is dispensed with.

(ii) With respect to Secured Creditors:

Since it is represented by the Transferee Company/ Applicant Company that there are no Secured Creditors, the necessity of convening a meeting of Secured Creditors do not arise.

(iii) With respect to Unsecured Creditors:

Since it is represented by the Transferee Company/ Applicants Company that there are 84 Unsecured Creditors out of which 4 (Four) Unsecured Creditors constituting 97.29% of the total value have given their consent, therefore, the convening the meeting of Unsecured Creditors is also dispensed with.

The application stands allowed on the aforesaid terms.

14.03.2017

Sd/-  
(CHIEF JUSTICE M.M.KUMAR)  
PRESIDENT

Sd/-  
(R.VARADHARAJAN)  
MEMBER (JUDICIAL)