

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH**

COMPANY SCHEME PETITION NO. 564 OF 2017

CONNECTED WITH

COMPANY SCHEME APPLICATION NO. 510 OF 2017

GODREJ & BOYCE MANUFACTURING COMPANY LIMITED

.....Petitioner Company

In the matter of the Companies Act, 2013 (18 of 2013);

AND

In the matter of Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013

AND

In the matter of Scheme of Amalgamation between Busbar Systems (India) Limited ('Busbar' or 'the Transferor Company 1') and Mercury Manufacturing Company Limited ('Mercury' or 'the Transferor Company 2') with Godrej & Boyce Manufacturing Company Limited ('G&B' or 'the Transferee Company') And their respective shareholders

AND

Their respective shareholders

Judgment/Order delivered on 23rd August, 2017

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)

Hon'ble **V. Nallasenapathy**, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co

Per: **B.S.V. Prakash Kumar, Member(J)**

Order

1. Heard learned counsel for the party. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The present Scheme pertains to the amalgamation of Busbar Systems (India) Limited ('Busbar' or 'the Transferor Company 1') and Mercury Manufacturing Company Limited ('Mercury' or 'the Transferor Company 2') with Godrej & Boyce Manufacturing Company Limited ('G&B' or 'the Transferee Company') And their respective shareholders with effect from the Appointed Date in terms of the Scheme. The Transferor Company 1 is one of the leading manufacturers of Bus Products in India / Global Market. Further, the Transferor Company 2 is engaged in providing customized furnishing for workplace and the Transferee Company is engaged in the business of manufacturing and marketing of various consumer durables, office equipments, industrial products and real estate development. Amalgamation of the Transferor Company 1 and the Transferor Company 2 with the Transferee Company will result in integration of operations resulting in rationalization of administrative and operating costs and elimination of multiple entities.
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petition.
4. The learned Counsel for the Petitioner Company further states that, the Petitioner Company has complied with all the directions passed in Company Scheme Application and that the Company Scheme Petition has been filed in consonance with the Orders passed in the Company Scheme Application.
5. The Learned Advocate appearing on behalf of the Petitioner Company states that the Petitioner Company has complied with all requirements as per directions of the Hon'ble Tribunal and it has filed necessary Affidavits of compliance in the Hon'ble Tribunal. Moreover, Petitioner Company undertakes to comply with all statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.
6. The Regional Director has filed his Report dated 22nd day of August, 2017 stating therein that save and except as stated in paragraph IV of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

Paragraph IV, of the said Report reads as follows:

(a) The Registered Office of the Transferor Company 1 and the Transferor Company 2 are situated in the state of Karnataka and Tamil Nadu respectively, i.e. outside

the jurisdiction of NCLT of this Tribunal and falls within the jurisdiction of NCLT of Bengaluru and Chennai respectively. Accordingly, similar approval be obtained by the Transferor Company 1 and the Transferor Company 2 at Bengaluru and Chennai respectively.

(b) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It is observed that the Transferee Company vide letter dated 11.05.2017 has served a copy company scheme application No. 510 of 2017 along with relevant orders etc., further, this Directorate has also issued a reminder on 22.08.2017 to ITAT Department.

(c) The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Companies after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.

(d) Petitioner Companies in Clause 6 & 14 of the scheme inter alia mentioned that the Transferor Company shall account for the amalgamation in its books as per the applicable accounting principles prescribed under Indian Accounting Standard ('Ind AS') 103 and / or any other applicable Ind AS, as the case may be.

In addition to compliance of AS 14 (Ind AS 103) the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS – 5 (Ind AS – 8) etc.

(e) ROC, Mumbai in their report inter alia mentioned that considering the size of the company and turnover, the Transferee Company may be required to serve the notice to the Competition Commission of India.

7. In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner states that the Transferor Company 1 and Transferor Company 2 have filed Applications and Petitions with their respective jurisdictional benches of the NCLT and are in the process of obtaining approval for the present Scheme.

8. In so far as observations made in paragraph IV (b) and (c) of the Report of Regional Director is concerned, the Petitioners undertake that they shall comply with all

applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.

9. In so far as observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Company submits that it shall comply with the applicable Accounting Standards. Further, in addition to compliance with the applicable Accounting Standards, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable Accounting Standard.
10. In so far as observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner Company submits that the present Scheme of Amalgamation is between the Petitioner Company and its two wholly owned subsidiaries and hence a Notice is not required to be served to the Competition Commission of India as per the provisions of the Competition Act, 2002 read with the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 and the Notifications issued thereunder.
11. The observations made by the Regional Director have been explained by the Petitioner Company in paragraphs 7 to 10 above. The clarifications and undertakings given by the Petitioner Company are hereby accepted.
12. From the material on record, the Scheme appears to be fair, reasonable and is not violative of any provisions of law nor is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
13. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 561 of 2017 are made absolute in terms of prayer clause (a) to (b) of the Petition.
14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 564 of 2017 are made absolute in terms of prayer clause (a) to (b) of the Petition.
15. Petitioner Company is directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with e-Form INC-28, in addition to physical copy, within 30 days from the date of receipt of the certified copy of the Order by the Registry.
16. Petitioner Company to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the

concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the Order.

17. The Petitioner Company to pay costs of Rs. 25,000/- to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the receipt of the Order.

18. All authorities concerned to act on a copy of this Order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy Member (T)

Sd/-

B.S.V. Prakash Kumar Member (J)