

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH AT MUMBAI

CSP NO.576 OF 2017

AND

CSP NO.577 OF 2017

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

In the matter of the Scheme of Amalgamation of V A Engineers Private Limited with Laxmi Agni Components and Forgings Private Limited and their respective shareholders.

V A ENGINEERS PRIVATE LIMITED .....the Petitioner / Transferor Company.

LAXMI AGNI COMPONENTS AND FORGINGS PRIVATE LIMITED .....the Petitioner/Transferee Company.

**Order delivered on 23<sup>rd</sup> August,2017**

Coram:

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

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

For the Petitioner(s): Mr. Nitin Gutka, Chartered Accountants for both the Petitioner

Mr S. Ramakantha, Joint Director in the office of Regional Director for the Petitioner in both the Petition.

Mr. Santosh Dalvi, Representative of Official Liquidator present in Company Scheme Petition No. 576 of 2017.

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

**ORDER**

1. Heard learned counsel for parties. No objector has come before the Hon'ble Tribunal to oppose the Scheme of Amalgamation nor has any party controverted any averments made in the Company Scheme Petitions.
2. The sanction of the Hon'ble Tribunal is sought under Sections 230 to 232 of the Companies Act,2013 to a Scheme of Amalgamation of V A Engineers Private Limited, the Transferor Company with Laxmi Agni Components and Forgings Private Limited, the Transferee Company and their respective shareholders (both the Companies are hereinafter referred to as "the Petitioner Companies").

3. The Learned counsel for the Petitioner Companies states that the Transferor Company is presently engaged in business of manufacturing of auto components and is also carrying on the labour job services for manufacturing of auto components mainly for the Transferee Company and the Transferee Company is presently engaged in business of manufacturing of auto components.
4. The Learned counsel for the Petitioner Companies states that the circumstances that have necessitated or benefits of Scheme of Amalgamation are as follows: -
  - a) The Transferor Company and the Transferee Company being compatible in terms of nature of their business the amalgamation will enable the Transferee Company to consolidate its business operation and provide significant impetus to growth of the Transferee Company business;
  - b) Integration of operations;
  - c) Efficient management control and system;
  - d) The amalgamation would result in optimum utilization of resources which would reduce the administrative costs and other overheads which are presently being multiplied because of separate entities.
  - e) The proposed consolidation would result in lesser regulatory / procedural compliance resulting in cost saving
  - f) Enhance values of all stake holders in the long run.
5. The Learned counsel for the Petitioner Companies states that the Board of Director of the Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in the respective Company Scheme Application and that the respective Company Scheme Petitions have been filed in consonance with the Orders passed in respective Company Scheme Application.



7. The Learned counsel appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and rules made there under whichever are applicable. The said undertakings given by the Petitioner Companies are accepted.
8. The Regional Director has filed his Report dated 21<sup>st</sup> August, 2017 stating therein that save and except the observations stated in para IV (1) to (3) of the report, it appears that Scheme is not prejudicial to the interest of shareholders and public. The Tribunal may take this report on record and consider the observation made in para IV (1) to (3) and pass such other order or orders as deem fit in the facts and circumstances of the case. In paragraphs IV of the said Report, the Regional Director, has observed that :
  1. *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 Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
  2. *It is submitted that the Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities acknowledged dated 24.04.2017. The office of the Regional Director sent reminder to the Income Tax Department dated 21.08.2017.*
  3. *Petitioner in clause 11.5 has inter alia mentioned that Board of the transferee company is in consultation with the statutory auditors is authorized to account any of these or other balances or items in any manner whatsoever as may be deemed fit or to make adjustments as may be necessities.*

*In this regard, it is submitted the petitioner companies have to undertake to authorized to account for any of these or other balances or items in any manner whatsoever as may be deemed fit to make such adjustments as may be necessities by Board of the transferee company in consultation with it statutory auditor only with the approval of the Hon'ble Tribunal*

9. As far as the observations made in paragraph IV(1) & (2) of Regional Director Report is concerned, the Petitioner Companies through its Learned Counsel undertakes to comply with all applicable provisions of the Income Tax Act,1961 and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
10. As far as the observations made in paragraph IV(3) of Regional Director Report is concerned, the Petitioner Companies through its Learned Counsel undertakes to seek approval of the Hon'ble Tribunal to account for any of these balances or other balances or items as mentioned in clause 11.1 and 11.2 of the Scheme in any manner whatsoever as may be deemed fit to make such adjustments as may be necessities by Board of the Transferee Company in consultation with it statutory auditor.
11. The observations made by the Regional Director have been explained by Petitioner Companies in paragraphs 9 and 10 above. The clarifications and undertaking given by the Petitioner Companies are hereby accepted.
12. The Official Liquidator has filed his report dated 23<sup>rd</sup> June,2017 in the Company Scheme Petition No 576 of 2017 stating that the affairs of the Transferor Company have been conducted in proper manner and that the Transferor Company may be ordered to be dissolved by this Tribunal.
13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. None of the parties concerned have come forwarded to oppose the Scheme of Amalgamation.



14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.576 of 2017 filed by the Transferor Company are made absolute in terms of prayer clause (a) to (c) and Company Scheme Petition No.577 of 2017 filed by the Transferee Company are made absolute in terms of prayer clauses (a) & (b).
15. The Petitioner Companies are directed to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai 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 this order.
16. The Petitioner Companies are further 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 issuance of the order by the Registry.
17. The Petitioner Companies to pay costs of Rs 25,000/- each to the Regional Director, Western Region, Mumbai in Company Scheme Petition No.576 & 577 of 2017 and costs of Rs. 25,000/- to Official Liquidator, High Court, Bombay in Company Scheme Petition No. 576 of 2017. Costs to be paid within four weeks from the date of receipt of this order.
18. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai.

Sd/-

**V. Nallasenapathy, Member (T)**

Sd/-

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