

IN THE NATIONAL COMPANY LAW TRIBUNAL
"MUMBAI BENCH"

CSA No. 759/2017

Under Section 230 to 232 of Companies Act, 2013
AND

In the matter of Scheme of Amalgamation of Virgo Valves & Controls Private Limited having CIN U29120MH2004PTC146916 ('Transferor Company' or 'Virgo India') with Emerson Process Management (India) Private Limited having CIN U29196MH1981PTC024115 ('Transferee Company' or 'EPM India') and their respective Shareholders

VIRGO VALVES & CONTROLS PRIVATE LIMITED, a company incorporated under the provisions of Companies Act, 1956 having its registered address at 7B, 3rd Floor Sambhava Chambers, Sir P.M. Road, Fort, Mumbai- 400 001

.....Petitioner Company

Order delivered on 19th July, 2017

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)
Hon'ble **V .Nallasenapathy Hon'ble**, Member (T)

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

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

Order

1. The Counsel for the Applicant states that the present Scheme is a Scheme of Amalgamation between Virgo Valves & Controls Private Limited ('Transferor Company' or 'Virgo India') with Emerson Process Management (India) Private Limited ('Transferee Company' or 'EPM India') and their respective Shareholders. This Scheme of Amalgamation is proposed to merge the Transferor Company with

the Transferee Company without winding up the Transferor Company pursuant to the relevant provisions of the Companies Act.

2. The Counsel for the Applicant Company further submits that the Applicant Company is engaged in the business of manufacture of industrial valves and accessories for power, chemical, petrochemical, pharmaceutical, oil and gas industries. Further, the Transferee Company is engaged in the business of manufacture and trading of process control instruments, distributed control systems, gearbox and related services.
3. The Counsel for the Applicant Company further submits that it is proposed to merge the Transferor Company with the Transferee Company without winding up of the Transferor Company. The merger will result in administrative and operations rationalization, organizational efficiencies, reduction in overheads, personnel costs, compliance cost and other administrative expenses. Therefore, with a view to effect such plan, the Board of Directors of the Applicant Company proposes to merge the Transferor Company with the Transferee Company without winding up of the Transferor Company.
4. That the meeting of the Equity Shareholders of the Applicant Company be convened and held at Delphi, B-Wing, 6th Floor, Central Avenue, Hiranandani Business Park, Powai, Mumbai 400076 on Thursday, 24th day of August, 2017 at 11.00 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Amalgamation between Virgo Valves & Controls Private Limited with Emerson Process Management (India) Private Limited and their respective Shareholders.
5. That at least one month before the said Meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting at

the place, date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14th December 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Hand Delivery / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.

6. That atleast one month before the meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid and / or at the office of its Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.
7. That the Notice of the Meeting shall be advertised in two local newspapers viz. 'Free Press Journal' in English and 'Navshakti' in Marathi, both circulated in Mumbai not less 30 days before the date fixed for the meeting.
8. That Ms. Vaishali Danekar, Authorised Signatory of the Applicant Company, and failing him, Mr. Manoj Kohok, Head Finance and Company Secretary of the Applicant Company shall be the Chairperson of the aforesaid meeting of the Equity Shareholders of the Applicant Company to be held at Delphi, B-Wing, 6th Floor,

Central Avenue, Hiranandani Business Park, Powai, Mumbai – 400 076 on Thursday, 24th day of August, 2017 at 11.00 a.m. or any adjournment or adjournments thereof.

9. That the Chairman appointed for the aforesaid Meeting to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meeting by any person(s).
10. That the quorum of the aforesaid meeting of the Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
11. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meeting, are filed with the Applicant Company at their Registered Office not later than 48 hours before the aforesaid meeting, at the registered office of the Applicant Company situated at 7B, 3rd Floor Sambhava Chambers, Sir P.M. Road, Fort, Mumbai- 400 001.
12. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books / register of the Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
13. That Ms. Trusha Parikh, Practicing Company Secretary is hereby appointed as Scrutinizers of the meeting of the Equity shareholders of the Applicant Company

proposed to be held at Delphi, B-Wing, 6th Floor, Central Avenue, Hiranandani Business Park, Powai, Mumbai 400076 on Thursday, 24th day of August, 2017 at 11.00 a.m. and her remuneration is fixed as Rs. 3,000/- excluding taxes.

14. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
15. That the Chairman of the meeting to report to this Tribunal, the results of the aforesaid meeting within thirty days of the conclusion of the meeting.
16. The Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
17. The Applicant Company is also directed to serve notice along with copy of scheme upon Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013. M/s. Mukund Sabale & Co., Chartered Accountants are appointed with a remuneration of Rs. 2,00,000 /- for the services. If no response is received by the Tribunal from Official Liquidator within thirty days of the date of receipt of notice, it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The Counsel for the Applicant Company submits that since the Scheme is an arrangement between the Applicant Company and their respective shareholders only, a meeting of the Equity Shareholders of the Applicant Company is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act, 2013. The Counsel for the Applicant Company further submits that there are no Secured Creditors in the Applicant Company, therefore the question of sending notices to the Secured Creditors does not arise. This bench hereby directs the Applicant Company to issue notice to Unsecured Creditors having an outstanding balance of Rs. 2,00,000/- and above, under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.

19. The Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, unsecured creditors, publication of notices in newspapers and to the regulatory authorities as stated in clause 16 and 17 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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