

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL BENCH, AT MUMBAI

COMPANY SCHEME PETITION NOS. 664 OF 2017

And

COMPANY SCHEME PETITION 665 OF 2017

IN

COMPANY SCHEME APPLICATION 538 OF 2017

In the matter of Companies Act, 2013;

And

In the matter of Sections 230 to 232 of the
Companies Act, 2013;

And

And

In the matter of Scheme of Amalgamation
Between Sigma Electric Manufacturing
Corporation Pvt. Ltd. (Transferor
Company) And Sigma Electric
Manufacturing Pvt. Ltd (Formerly known
as Sunk Rock Metal Foundries India Pvt.
Ltd.) (Transferee Company

And their respective Shareholders and
Creditors

Sigma Electric Manufacturing

)

Corporation Private Limited

)

CIN no.U31909PN1996PTC101929

)

a Private Limited Company

)

incorporated under the provisions

)

of the Companies Act, 1956, having

)

its registered office at Gate No. 154/1

)

Mahalunge, Village Post Chakan,

)

Pune, Maharashtra- 410 501

)... Petitioner/Transferor Company

Sigma Electric Manufacturing)
Private Limited formerly known as)
Sunk Rock Metal Foundries India)
Private Limited)
CIN No.U74999PN2016PTC165939)
a Private Limited Company)
incorporated under the provisions)
of the Companies Act, 2013, having)
its registered office at Gate No. 154/1)
Mahalunge, Village Post Chakan,)
Pune, Maharashtra- 410 501)... Petitioner/Transferee Company

Judgement/order delivered on 14th September 2017

Coram:

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

V. Nallasenapathy, Member (Technical)

For the Petitioner(s):Counsel Alpana Ghone, with Prateek Mishra and Praveer Shetty i/b Res Legal Advocate for the Petitioners

Mr. S. Ramakantha, Joint Director for the Regional Director, Western Region

Mr. R. Pola, Deputy Registrar of Companies for the Registrar of Companies

Mr. Santosh Dalvi, Representative for the Official Liquidator, High Court Bombay

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

ORDER

1. No objector has come before the Tribunal to oppose the Scheme, nor has any party controverted any averments made in the Petitions to Scheme of Amalgamation between Sigma Electric Manufacturing Corporation Private Limited (hereinafter referred to as the **"Transferor Company"**) and Sigma Electric Manufacturing Private Limited (formerly known as Sunk Rock Metal Foundries India Private Limited, hereinafter referred to as the **"Transferee Company"**).

2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation between Sigma Electric Manufacturing Corporation Private Limited (hereinafter referred to as the **"Transferor Company"**) and Sigma Electric Manufacturing Private Limited (formerly known as Sunk Rock Metal Foundries India Private Limited, hereinafter referred to as the **"Transferee Company"**) and their respective Shareholders, whereby the entire Undertaking (as defined in the Scheme) of the Transferor Company shall be transferred and/or merged into the Transferee Company, with effect from the Appointed Date.
3. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Counsel appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order dated 3rd May 2017 passed in the Company Scheme Application 538 of 2017 by the National Company Law Tribunal Bench, at Mumbai.
5. Learned counsel for the Petitioner Companies states that the Transferor Company is a wholly owned subsidiary of the Transferee Company and accordingly, pursuant to the Scheme of Amalgamation, no shares of the Transferee Company shall be allotted in respect of its shareholding in the Transferor Company.
6. The Learned Counsel for the Petitioner Companies states that the Petitioner / Transferor Company is carrying on the business of *manufacturing, buying, selling, exporting, importing, dealing in, assembling, fitting, repairing, converting overhauling, altering, maintaining and improving all types, grades and varieties of electrical components devices, appliances, fittings, accessories, equipments, industrial castings, and electrical hardware.* The Transferee Company is in the business of *acting as buying and selling agents and/or manufacturing, buying, selling, sourcing, exporting, importing, dealing in, assembling, fitting, repairing, converting, overhauling, altering, maintaining and improving all types, grades and varieties of electrical components, devices, appliances, fittings, accessories, equipments, industrial castings and other electrical hardware*

(including raw materials and constituent parts thereof) as well as acquiring any business relating to or any entities engaged in such activities. The Transferee Company is also in the business of acting as consultants and advisors on all matters in the fields of management, organization or administrative activities, market research, accounting, commerce, technology, engineering and process planning and rendering of services on matters relating to business intelligence, strategy planning, scientific or mathematical information, front and back office operations and system analysis, database, information and data centers, image and data processing systems, for any commercial or non commercial entity whether in India or abroad.

7. The proposed Scheme of Amalgamation will result in :

- i. consolidating the business and synergies in the Transferee Company, and enabling it to become cost competitive and efficient in its operations. It shall also result in a single, simple consolidated and transparent ownership structure.
- ii. more focused operational efforts, realizing synergies in terms of compliance, governance, administration and costs.
- iii. greater efficiency in cash management of the merged entity and unfettered access to cash flows generated by the combined business which can be deployed more efficiently to maximize shareholder value.
- iv. the merged entity will experience operational synergies in areas such as raw material sourcing, product placement, marketing and sales promotion initiatives, freight optimization and logistics.
- v. the Transferee Company will gain the benefit of improved organizational capability and leadership which will inevitably arise from the pooling together of human resources and manpower which has the diverse skills, talent and vast experience to compete successfully in the industry.

8. The Learned Counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and have filed necessary affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.
9. The Regional Director has filed a Report dated 10th July 2017, stating therein, that save and except for certain observations as set out in Para VI (1) - (8), the Scheme sought to be implemented between the Petitioner Companies is not prejudicial to the interest of the shareholders and the public. In paragraph VI of the Report, the Regional Director has stated that: -

1. *The tax implication if any arising out of the Scheme is subject to the final decision of the Income Tax Authorities. The approval of the scheme by the 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 dated 11.05.2017 for comments. The office of the Directorate also has issued reminder dated 07.07.2017.*
3. *Petitioner in Clause 1 of the Scheme has inter alia mentioned that "Appointed Date" means 31st October, 2016 or such other date mutually agreed by the Board of Directors of the transferor company and the transferee company.*

In this regard, petitioner companies undertake to state that the Appointed Date is only 31st October, 2016 or such other date as directed by the Hon'ble Tribunal.

4. *Petitioner in Clause 9 of the scheme has inter alia mentioned that the name of the transferee company will be changed to the transferor company upon the scheme becoming effective.*

In this regard, Petitioner Company to undertake to file requisite forms with the Registrar of Companies and comply with the procedural requirements with regard to availability of name.

5. *Petitioners in their reply inter alia informed that the companies are subsidiaries of the foreign entity. Whereas proof of serving notice to the RBI is not submitted.*

In this regard, petitioners undertake to produce the same along with their comments.

6. *Petitioner in Clause 13 of the Scheme has inter alia mentioned that the transferee company further agrees for the purpose of payment of any retrenchment compensation or other severance pay or retirement benefits such past services with the transferee company shall be taken into account.*

In this regard it is submitted that the petitioners have to undertake to protect the interest of the employees.

- 6.1 *Petitioner in Clause 6.4 of the Scheme has inter alia mentioned that the difference if any between the amount recorded as share capital issued plus any additional consideration in the form of cash or other assets amount of share capital of the transferor company shall be transferred to capital reserve and shall be presented separately from other capital reserves with disclosure of its nature and purpose of its notes.*

In this regard it is submitted that there is no consideration for the transfer of Transferor Company as per clause 5 of the

scheme. And therefore petitioner to undertake to amend the clause.

- 6.2 Further petitioner in clause 6 of the scheme inter alia mentioned that the excess if any of the net assets over liabilities will be credited to the General Reserves of the Transferee Company.

In this regard petitioner companies has to undertake to credit the excess of net assets over liabilities to the capital reserve and not the general reserve.

7. Petitioner in Clause 16 of the Scheme has inter alia mentioned that any resolution passed by the transferor company which are valid and subsisting shall continue to be valid and subsisting be considered as resolution of the transferee company and any monetary limits approved in the resolution under the provisions of the Companies Act or any applicable statutory provisions then the said limits will be added to the limits if any under the like resolution passed by the transferee company.

8. Chairman's Report is not submitted

In this regard it is submitted that the petitioner has to undertake to submit the same.

10. As far as the observation made in Paragraph VI (1) of the Report of the Regional Director is concerned, this Tribunal directs the Petitioner Companies to comply with the said observation. Accordingly, the Petitioner Companies undertake to comply with all applicable provisions of the Income Tax Act and all income tax issues arising out of the Scheme will be met and dealt with in accordance with law. The said undertaking is accepted by this Tribunal.

11. As far as the observation made in Paragraph VI (2) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that the same does not require a response. However, the Petitioner Companies will comply with all applicable provisions of the

Income Tax Act and all income tax issues arising out of the Scheme will be met and dealt with in accordance with law.

12. As far as the observation made in Paragraph VI (3) of the Report of the Regional Director is concerned, this Tribunal directs the Petitioner Companies to comply with the said observation. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies shall abide by this direction. The Tribunal directs that the "Appointed Date" shall be 31st October 2016, as stipulated in the Scheme.
13. As far as the observation made in Paragraph VI (4) of the Report of the Regional Director is concerned, this Tribunal directs the Petitioner Companies to comply with the said observation. Accordingly, the Petitioner Companies undertake that the name of the Transferee Company shall be changed to Sigma Electric Manufacturing Corporation Private Limited, by following the procedure for change of name as prescribed under the provisions of Sections 4(2) & (3) of the Companies Act, 2013 read with rule 8 (8) of the Companies (Incorporation) Rules, 2014, by filing the requisite form with the Registrar of Companies and generally complying with the procedural requirements regarding availability of the name.
14. As far as the observation made in Paragraph VI (5) of the Report of the Regional Director is concerned, as far as notice to the Reserve Bank of India is concerned, Learned Counsel for the Petitioner Companies clarifies that no notice to the Reserve Bank of India is required to be given as there shall be no issuance of shares pursuant to the proposed Scheme of Amalgamation, and further, as there shall be no change in the capital structure that has been reported to the Reserve Bank of India. The said explanation is found to be satisfactory. In any case the Petitioner Companies undertakes to comply with the applicable FEMA guidelines.
15. As far as the observation made in Paragraph VI (6) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies clarifies that under the proposed Scheme of Amalgamation, it is intended that the interests of all employees shall be protected. Further, Clause 13.2 (b) of the Scheme dealing with "Treatment of Employees"

stipulates that *“the services of all employees with the Transferor Company, up to the Effective Date shall be taken into account from the date of their respective appointment with the Transferor Company, for the purposes of all retirement benefits for which they may be eligible. The Transferee Company further agrees that for the purpose of the payment of any retrenchment compensation or other severance pay or retirement benefits, such past services with the Transferor Company, shall be taken into account”*. Accordingly, the Petitioner Companies hereby undertake to ensure the protection of the interest of employees in terms of the Scheme.

16. As far as the observation made in Paragraph VI (6.1) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies clarifies that the accounting treatment used under Clause 6.4 of the Scheme of Amalgamation is as per Clause 12 of Appendix C of Indian Accounting Standard (Ind AS) 103 and the same accounting treatment has also been certified by the statutory auditor of the Petitioner / Transferee Company pursuant to Section 230(7) of the Companies Act, 2013, as being in compliance with all the applicable Accounting Standards specified under Section 133 of the 2013 Act, and other generally accepted accounting principles. The said explanation is found to be satisfactory.
17. As far as the observation made in Paragraph VI (6.2) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies clarifies that Clause 6 of the Scheme of Amalgamation does not reflect/resemble the observation made by the Regional Director. In view thereof, there is no requirement for Petitioner Companies to make any submission as regards this particular observation. The said explanation is found to be satisfactory.
18. As far as the observation made in Paragraph VI (7) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that the same is specifically mentioned in Clause 16.2 of the Scheme of Amalgamation, and that the observation does not require a response. The said explanation is found to be satisfactory.

19. As far as the observation made in Paragraph VI (8) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies states the respective Chairperson's Reports, each dated 4th July 2017, were filed with the Hon'ble Tribunal on 06 July 2017, in accordance with the directions specified in, and within the time period stipulated by, the Hon'ble Tribunal vide its Order dated 03rd May 2017. Copies thereof have been submitted with the Regional Director on 17 August 2017, vide a letter of the same date. The said explanation is found to be satisfactory.
20. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 19 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
21. The Official Liquidator has filed his report dated 14th July 2017 stating therein that on perusal of the Chartered Accountant report and specifically the questionnaire relating to the same and the Petition it is noticed that the affairs of the Transferor Company has been conducted in a proper manner.
22. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.
23. Since all the requisite statutory compliances have been fulfilled, the above Company Scheme Petition Nos. 664 of 2017 is made absolute in terms of prayer clauses 41 (a) – (g) and Company Scheme Petition 665 of 2017 is made absolute in terms of prayer clauses 41 (a) – (g).
24. The Petitioner Companies are directed to file certified / authenticated copy of this Order and the Scheme of Amalgamation 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.
25. The Petitioner Companies are directed to file certified / authenticated copy of this Order and the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28 in

addition to the physical copy, as per the relevant provisions of the Companies Act, 2013.

26. The Petitioner Companies to pay cost of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Company in Company Petition 664 of 2017 to pay costs of Rs.25,000/-to the Official Liquidator, High Court Bombay. The cost to be paid within four weeks from date of receipt of the Order.
27. All concerned regulatory authorities to act on a copy of this Order and the Scheme duly authenticated by Deputy Director, National Company Law Tribunal, Mumbai Branch.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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