

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO. 325 OF 2017

AND

CSP NO. 326 OF 2017

Under Sections 391 to 394 of the
Companies Act, 1956 and other relevant
provisions of the Companies Act, 2013
along with the Companies Act, 1956

AND

Under Sections 230 to 232 of the
Companies Act, 2013 and other relevant
provisions of the Companies Act, 2013
along with the Companies Act, 1956

AND

In the matter of Scheme of Amalgamation
of BBM ACOUSTIC (INDIA) PRIVATE
LIMITED, the Transferor Company with
BBM ENGINEERING SERVICES PRIVATE
LIMITED, the Transferee Company.

BBM ACOUSTIC (INDIA) PRIVATE LIMITED

....Petitioner/ the Transferor Company

AND

BBM ENGINEERING SERVICES PRIVATE LIMITED

....Petitioner/ the Transferee Company

Judgement/ order delivered on 7th September, 2017

Coram:

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

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

For the Petitioner(s): Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b
M/s. Rajesh Shah & Co., Advocate for the Petitioner.

Per : V. Nallasenapathy Hon'ble Member (T)

ORDER

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Amalgamation of BBM ACOUSTIC (INDIA) PRIVATE LIMITED, the Transferor Company with BBM ENGINEERING SERVICES PRIVATE LIMITED, the Transferee Company.
2. The sanction of the Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 and under Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation of BBM ACOUSTIC (INDIA) PRIVATE LIMITED, the Transferor Company with BBM ENGINEERING SERVICES PRIVATE LIMITED, the Transferee Company.
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in their Company Scheme Application Nos. 165 & 166 of 2017 of the National Company Law Tribunal.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all the

statutory requirements if any, as required under the Companies Act, 1956/2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.

6. The Learned Counsel for the Petitioners states that the Transferor Company has been carrying on the business as manufacturers, importers, exporters, buyers, assemblers, sellers, dealers and traders either as principals or as agents and in all kinds of advanced Hi-Tech products and equipments/ products and equipments requiring Specialized After Sales Service whether manufactured by the Company or by any other person in India or elsewhere for Noise Control, Air Pollution Control, Vibration Control, Machinery Acoustics, Room Acoustics, Building Acoustics, Thermal Building Physics and all other products and equipments suitable for Air & Noise Control for Power sector/Industrial Sector, NAVY & any industry including all kinds of Silencers, Noise Absorbing Enclosures for Machinery and Mechanical Units, Ventilation and Exhaust Equipments/ Devices, Automatic Monitoring Systems and all kinds of tools, plants, accessories, spares parts, jigs, moulds, fixtures, gauges, appliances and equipments, machine tools, hardware, general fittings, mechanical implements and devices, whether manufactured in India or elsewhere and used in such products/ equipments/ devices or used for such purposes and the Transferee Company has been carrying on the business as manufacturers, importers, exporters, buyers, assemblers, sellers, providers of engineering services such as drawings, designs, technical support, infrastructural support either as principals or as agents and/or otherwise in all kinds of Hi-Tech

products and equipments/ products and equipments requiring Specialized After Sales Services whether manufactured in India or elsewhere Acoustics, Building Acoustics, Thermal Building Physics and all other products and equipments suitable for Air & Noise Control and all kinds of tools, plants, accessories, spare parts, jigs, moulds, fixtures, gauges, appliances and equipments, machine tools, hardware, general fittings, mechanical implements & devices, whether manufactured in India or elsewhere and used in such products/equipments/devices or used for such purposes, etc.

7. The benefits of the Scheme of Amalgamation is that the Transferor Company and the Transferee Company are under the same management and that the management is of the opinion that the merger will lead to synergies of operations and more particularly the following benefits that the rationale for the Transferor Company and Transferee Company proposing the amalgamation is that it will allow the Shareholder of these Companies to streamline its holding in India and benefit from the operational and other synergies and that the amalgamation would result in better and efficient utilization of resources of the Transferor and Transferee Companies resulting in synergy of operations and economies of scale and to have better administrative and managerial control for the management, as the merger of the companies would ensure synergy in administration and management and that the amalgamation would enable Transferee Company to access and utilize the customer base and intangibles assets created and developed by the Transferor Company which is likely to enhance significantly the values and synergies for both Transferee Company and stakeholders and that

the Transferee Company will derive and avail the benefits of assets of the Transferor Company, thereby increasing its financial strength and the ability to make larger investments and help in expeditious and economical implementation of its proposed projects thereby enhancing the value of its business and asset base to result in maximization of shareholders wealth and that the Transferee Company will have an improved capital structure, which would enable it to access the Capital Market at better terms and will afford easier access to other resources and at a lower cost and that the proposed Amalgamation in general will have beneficial results for the Companies, their shareholders, employees and all concerned

8. The Regional Director has filed a Report on 10th day of July, 2017 stating therein, save and except as stated in paragraph IV, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-

"IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:

- 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 dated 03.03.2017 for comments. The office of the Directorate also has issued reminder dated 29.06.2017.*
- 3. Petitioner in clause 2.5 of the Scheme has inert alia mentioned that the appointed date shall be either 1st April, 2016 or any other date the board of Directors may require either before or after the appointed date. In this regard, it is submitted that the Appointed Date is that as approved by the Hon'ble Tribunal.*

4. *Petitioner in clause of the scheme has inter alia mentioned that the name of the transferee company will be changed to the name of Transferor Company upon the scheme becoming effective.*

In this regard Petitioner Company to undertake to file requisite form with the Registrar of Companies with the procedural requirements with regard to availability of name.

5. *As per the reply of the Petitioner companies and there are Foreign/ Non-resident shareholding in the Petitioner companies. BBM Akustik Technologie GmbH is holding 99.999% of the transferee company BBM Engineering Services Private Limited and also with BBM Acoustic (India) Private Limited. Whereas proof of serving notice to the RBI is not submitted.*

In this regard Petitioners has to undertake to produce the same along with their comments.

6. *Supplementary Financial statement not submitted for the period from the date of previous financial year ending and the date of appointment, which the petitioner has to undertake to produce before the Hon'ble Tribunal.*

9. So far as the observation in paragraph IV (1) and (2) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company undertakes to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law

10. So far as the observation in paragraph IV (3) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Appointed Date will be 1st April, 2016.

11. So far as the observation in paragraph IV (4) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that upon the Scheme becoming effective, the Transferee Company shall file necessary forms with the

Registrar of Companies, along with necessary fees, in compliance with the provisions of the Companies Act, 2013.

12. So far as observation in Para IV (5) of the report is concerned, the Petitioner Company submits that the Petitioner Company has served notices upon all the statutory authorities to the extent applicable and necessary as such Regional Director, Registrar of Companies, Income Tax Department and Official Liquidator in terms of Minutes of Order dated 23rd February, 2017. Further, it respectfully submits that they are not engaged in any financial activities but carrying on business of manufacturing of goods and providing services ancillary thereto hence they are not required to give notice to the Reserve Bank of India. It further submits that on the issue of issuance of shares to foreign shareholders, Reserve Bank of India regulations gives general permission stating that, once the scheme of amalgamation has been approved by a Court in India, the transferee company is allowed to issue shares to the shareholders of the transferor company resident outside India. The Petitioner Companies further undertake to comply in respect to issue of shares with the RBI.

13. So far as observation in Para IV (6) of the report is concerned, the Appointed Date is 1st April, 2016. The Petitioner Company has submitted audited financial statement for the financial year ended on 31st March, 2016, and supplementary financial statements for the period 1st April, 2016 to 30th September, 2016, along with the Company Scheme Application and Company Scheme Petition, in accordance with the provisions of the Companies Act, 2013 with the NCLT, Mumbai Bench and the Regional Director, Western Region, Mumbai.

14. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 to 13 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
15. 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.
16. Since all the requisite statutory compliances have been fulfilled, Company Petition Nos. 325 of 2017 is made absolute in terms of prayers clause (a) to (d) and 326 of 2017 is made absolute in terms of prayer clauses (a) to (c).
17. The Official Liquidator has filed his report on 7th August, 2017 in the Company Scheme Petition No. 325 of 2017 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Tribunal.
18. That on the Scheme become effective, the name of Transferee Company shall stand changed to "BBM Acoustic (India) Private Limited" and the same shall be substituted for the existing name wherever it appears in the Memorandum and Articles of Association of the Transferee Company.
19. Petitioners are directed to lodge 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, as per the relevant provisions of the Companies Act 1956 / 2013.

20. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the order, if any.
21. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition No. 325 of 2017 to pay costs of Rs.25,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of receipt of the Order.
22. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy, Member(T)

Sd/-

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