

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENCH, AT MUMBAI

CSA NO. 831 OF 2017

IN THE MATTER OF the Companies Act, 2013;

AND

IN THE MATTER OF Sections 230 to 232 of the Companies Act, 2013;

AND

IN THE MATTER OF Diebold Nixdorf India Private Limited;

AND

IN THE MATTER OF Scheme of Amalgamation of Wincor Nixdorf India Private Limited (the "Transferor Company") with Diebold Nixdorf India Private Limited (the "Transferee Company") And Their Respective Shareholders.

Diebold Nixdorf India Private Limited Applicant Company

Order delivered on 6th September, 2017.

Coram :

Shri BSV Prakash Kumar, Member (J)

Shri V. Nallasenapathy, Member, (T)

For the Applicant ...

1. Mrs. Alpana Ghone

2. Mr. Arvind Talgaonkar

i/b M/s. Crawford Bayley & Co., Advocates for Applicant.

Per: V. Nallasenapathy, Member, (T)

ORDER:

1. The Counsel for the Applicant Company submits that the present Scheme is a Scheme for Amalgamation of Wincor Nixdorf India Private Limited (the "Transferor Company") with Diebold Nixdorf India Private Limited (the "Transferee Company") And Their Respective Shareholders under Sections 230 to 232 of the Companies Act, 2013.

2. The Counsel for the Applicant Company further submits that Companies under this Scheme of Amalgamation are indirect wholly owned subsidiaries of Diebold Nixdorf, Incorporated, formerly known as Diebold, Incorporated (“INC”), which is incorporated in the State of Ohio, USA. INC recently acquired a controlling interest in Diebold Nixdorf AG, formerly known as Wincor Nixdorf AG (“AG”) (the “Acquisition”). In connection with the Acquisition, INC is engaged in a global legal entity simplification project whereby certain legacy INC and legacy AG entities in various countries around the world are being consolidated, merged with and into each other, or otherwise restructured (the “LES Project”).

To effect certain transactions contemplated by the LES Project, and to best serve the customers of the Transferor and Transferee Companies are entering into this Scheme of Amalgamation intended to lead to better business synergies, improve overall operational efficiency and achieve cost savings and have the following effects:

- Elimination and duplication of processes and structures resulting in cost savings;
- Provide a single unified operating platform in India leading to better synergies and cost efficiencies and better, efficient, and economical management and control of Business in India;
- The combined operations of the Transferor and Transferee Companies are expected to give rise to capital efficiency and improved cash flows;
- Enhancing return on capital employed, earnings before interest, tax, depreciation and amortization and shareholder value;
- Drive simplification through bringing both companies on to a common platform in various processes such as legal & secretarial, accounting and controls. This would reduce the time spent on compliance support, and also reduce risk of unintended statutory non-compliance;
- Simplify compliances needed under the Act such as appointment of independent director, woman director, internal auditors and constitution of CSR Committee;
- Enable the Transferee Company to carry on and conduct its business more efficiently and advantageously with better economies of scale, more productive and optimum utilisation of various resources, strengthen its financial position and ability to raise resources for conducting business, stronger capital base for future expansion/growth;

- Optimize the costs of associated complexities in operating two separate companies, e.g. filing separate returns, consolidation and review of separate financial returns.
3. That a meeting of the Equity Shareholders of Diebold Nixdorf India Private Limited, the Applicant Company be convened and held at Rolta Tower-1, 5th Floor, Plot No. 39, Central Road, MIDC, Marol, Andheri (E), Mumbai – 400093, India, on Wednesday, 25th October, 2017, at 2:00 p.m. for the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme of Amalgamation of Wincor Nixdorf India Private Limited (the “Transferor Company”) with Diebold Nixdorf India Private Limited (the “Transferee Company”) And Their Respective Shareholders.
 4. That at least 30 clear days before the meeting to be held as aforesaid, a notice convening the said meeting at the place and time aforesaid, together with a copy of the Scheme of Amalgamation, a copy of the statement required to be sent under Section 230 and the prescribed form of proxy, shall be sent by Registered Post or by courier or by post or by hand delivery to each of the Equity Shareholders at their respective registered or last known addresses as per records of the Applicant Company.
 5. That at least 30 clear days before the meeting to be held as aforesaid, an advertisement convening the said meetings, at the place, date and time aforesaid and stating that copies of the proposed Scheme of Amalgamation and the statement required to be sent pursuant to Section 230 of the Companies Act, 2013 and form of proxy can be obtained free of charge at the registered office of the Applicant Company as aforesaid, shall be published once each in two local newspapers viz. “Free Press Journal”, in English language and translation thereof in “Navshakti”, in Marathi language, both having circulation in Mumbai.
 6. That the Applicant Company undertakes to:-
 - i. issue Notice convening meetings of the Equity Shareholders as per Form No. CAA2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
 - ii. issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;
 - iii. issue Form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

- iv. advertise the Notice convening meetings as per Form No. CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

The said undertaking is accepted.

7. That Mr. Jaivinder Singh Gill, Director failing him Ms. Indrani Saha, Director failing her Ms. Armin Daruwalla, Director – Legal officer of the Applicant Company is appointed as the Chairman for the above meeting of Equity Shareholders to be held at its registered office at Rolta Tower-1, 5th Floor, Plot No. 39, Central Road, MIDC, Marol, Andheri (E), Mumbai – 400093, India, on Wednesday, 25th October, 2017, at 2:00 p.m. or any adjournment or adjournments thereof. The Scrutinizer for the meeting shall be Mr. Yogesh Choudhary, Practicing Company Secretary.
8. The Chairman appointed for the meeting shall issue the advertisement and send out the notices of the meeting referred to above. It is further directed that the Chairman of the meeting shall have all powers as per the Articles of Association and as per provisions of the Companies Act, 2013 and also under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to conduct of the meetings including for deciding any procedural questions that may arise at the meeting or at any adjournment or adjournment(s) or any other matter including an amendment to the proposed Scheme or Resolution, proposed at the meeting by any person(s) and to ascertain the decision of or the sense of the meeting by a poll.
9. That quorum for the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
10. That voting by proxy / authorized representative is permitted, provided that a proxy in the prescribed form / authorization duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at Rolta Tower-1, 5th Floor, Plot No. 39, Central Road, MIDC, Marol, Andheri (E), Mumbai – 400093, India, not later than 48 hours before the meeting, as provided under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
11. That the number and value of the vote of Equity Shareholders shall be in accordance with the books / register of the Applicant Company and where the entries in the books are disputed, the Chairman shall determine the value for the purpose of the meeting and his decision in that behalf would be final.

12. That the Chairman to file affidavit not less than Seven 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 advertisement have been complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
13. That the Chairman appointed for the meetings to report to this Tribunal the result of the said meeting within Three days of the conclusion of the meetings and the said report shall be verified by his affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
14. That Counsel for the Applicant Company submits that as on date, there are no Secured Creditors in the Applicant Company. Hence, the question of convening and holding of the meeting of Secured Creditors of the Applicant Company does not arise.
15. That Counsel for the Applicant Company submits that, as 31st March, 2017, the Applicant Company has 1856 unsecured creditors to whom an aggregate amount of INR. 2,594,252,889/- is due to be paid by the Applicant Company, comprised in these unsecured creditors, there are 704 creditors for INR. 9,771,232 which constitute 0.377% of total creditors in value terms with whom the Applicant Company have a contractual arrangement for Leave & License / Lease of properties for the Outsourcing business of the Applicant Company. The Applicant Company have also placed security deposits with the Licensors / Lessors ("OS Landlords"). Their rights are protected under the contractual arrangements with the Applicant Company and they will not be affected by the proposed Scheme of Amalgamation in any manner. Hence, these parties are not in the category of trade creditors and have been excluded from the list of creditors of the Applicant Company. After excluding the above creditors, the Company has 1152 unsecured creditors to whom an aggregate amount of INR. 2,584,481,657/- is due to be paid by the Applicant Company.
16. That 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 is proposed to be held in accordance with the provisions of section 230(1)(b) of the Companies Act 2013 and so far as unsecured creditors of the Applicant Company are concerned, they will be paid off in the ordinary course of business and will not be affected by the proposed Scheme of Amalgamation in view of the fact that the assets of the Applicant Company after the proposed amalgamation will be far more than its

liabilities and the fact that there is no compromise or arrangement with the unsecured creditors of the Applicant Company. This bench hereby directs the Applicant Company to issue notice of the meeting of Shareholders of the Applicant Company to all unsecured creditors who have their outstanding dues of INR.5,00,000/- and above, as required 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.

17. The Applicant Company to serve the notice upon:- (i) concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessments are made; (ii) the Central Government through the office of the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra; (iii) the concerned Registrar of Companies and (iv) the Reserve Bank of India 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 and the copy of such representation shall simultaneously be served upon the Applicant Company, failing which, it shall be presumed that authorities have no representation to make on the proposal as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
18. The Applicant Company to file an Affidavit of service of notices issued to shareholders, creditors, publication of notices in newspapers, to the regulatory authorities as stated hereinabove and do report to this Tribunal that the directions regarding the issue of notices have been complied with.

Sd/-

V. Nallasenapathy, Member, (T)

Sd/-

BSV Prakash Kumar, Member (J)