

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSA NO 907 (MAH) OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013;

AND

In the matter of Composite Scheme of Amalgamation and Arrangement of Grainger India Private Limited ("Transferor Company") and Grainger Industrial Supply India Private Limited ("Transferee Company") and their respective Shareholders

Grainger India Private Limited, a company }
incorporated under the provisions of Companies }
Act 1956 having its registered office at 9th Floor, El Tara }
Building, Orchard Avenue, Off Delphi Building, Hiranandani }
Gardens, Powai, Mumbai - 400076, Maharashtra, India }

..... First Applicant Company
(The Transferor Company)

AND

Grainger Industrial Supply India Private Limited, a company }
incorporated under the provisions of Companies Act, }
1956 having its registered office at 9th Floor, El Tara }
Building, Orchard Avenue, Off Delphi Building, Hiranandani }
Gardens, Powai, Mumbai - 400076, Maharashtra, India }

.....Second Applicant Company
(The Transferee Company)

Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocates for the First and Second Applicant Company

Order delivered on 27th September, 2017

Coram:

Hon'ble Shri. **B.S.V. Prakash Kumar**, Member (J)
Hon'ble Shri. **V. Nallasenapathy**, 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 Applicants states that the present Scheme is a Composite Scheme of Amalgamation and Arrangement of Grainger India Private Limited

("Transferor Company") and Grainger Industrial Supply India Private Limited ("Transferee Company") and an arrangement with the preference shareholders of the Transferee Company for cancellation of its entire Compulsory Convertible Preference Share Capital and their respective share holders.

2. The Counsel for the Applicants further submits that the Transferor Company functions primarily as a sourcing office. Its Activities include identifying and managing India-based suppliers for Grainger International, Inc. and secondarily, providing support services to certain customer service functions for W.W. Grainger, Inc.'s export customers located in the Asia Pacific Region. The Transferee Company primarily provides support services to W.W. Grainger, Inc. for the distribution of maintenance, repair, and operations products (MRO) and related services..
3. The Counsel for the Applicants further submits that the rationale for the Scheme:
 - i. Facilitating effective cash management;
 - ii. The amalgamation would provide synergistic linkages besides economies in costs and other benefits resulting from the economies of scale, by combining the businesses and operations of the Transferor Company and the Transferee Company and thus contribute to the profitability of the amalgamated entity by rationalization of management and administrative structure;
 - iii. The amalgamation would lead to greater and efficient use of infrastructure facilities and optimum utilisation of the financial resources, managerial, technical and marketing expertise of the Transferor Company and the Transferee Company;
 - iv. Simplification of group structure by eliminating multiple companies having similar objectives in relation to manpower staffing solutions;
 - v. Streamline and simplify the corporate structure will result in elimination of redundant administrative costs, reduction of cumbersome co-ordination efforts across multiple entities, more efficient and seamless service to the customers, and ultimately a more efficient corporate structure and effective administration of the combined businesses;
 - vi. Appropriate capital structure at India level with enhanced return on capital employed; and
 - vii. Enhancing earnings before interest, tax, depreciation and amortization (EBITDA) and shareholder value.

4. That the meeting of the Equity Shareholders of the First Applicant Company be convened and held at 9th Floor, El Tara Building, Orchard Avenue, Off Delphi Building, Hiranandani Gardens, Powai, Mumbai - 400076, Maharashtra, India on Friday, November 10, 2017 at 11.00 AM for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Arrangement embodied in the Composite Scheme of Amalgamation and Arrangement of Grainger India Private Limited and Grainger Industrial Supply India Private Limited and their respective Shareholders.
5. That the meeting of the Equity Shareholders of the Second Applicant Company be convened and held at 9th Floor, El Tara Building, Orchard Avenue, Off Delphi Building, Hiranandani Gardens, Powai, Mumbai - 400076, Maharashtra, India on Friday, November 10, 2017 at 11.30 AM for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed arrangement embodied in the Composite Scheme of Amalgamation and Arrangement of Grainger India Private Limited and Grainger Industrial Supply India Private Limited and their respective Shareholders.
6. That the meeting of the holder of 860166, 10% Compulsory Convertible Cumulative Preference Shares ("CCCPS") of the Second Applicant Company be convened and held at 9th Floor, El Tara Building, Orchard Avenue, Off Delphi Building, Hiranandani Gardens, Powai, Mumbai - 400076, Maharashtra, India on Friday, November 10, 2017 at 12.00 Noon for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed arrangement embodied in the Composite Scheme of Amalgamation and Arrangement of Grainger India Private Limited and Grainger Industrial Supply India Private Limited and their respective Shareholders. The quorum for the meeting of 860166, 10% Compulsory Convertible Cumulative Preference Shares ("CCCPS") shall be one present either in person or through authorized representative or proxy.
7. That at least one month before the said Meetings of the Equity Shareholders of the First and Second Applicant Company and CCCPS Holders of the Second 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 Hand Delivery/ Courier / Registered Post / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the First and the Second Applicant

Company for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the First and the Second Applicant Company and CCCPS Holder of the Second Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.

8. That at least one month before the meetings of the Shareholders of the First and Second Applicant Company to be held as aforesaid, a notice convening the said Meetings, 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 First and Second 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.
9. That the Notice of the Meetings shall be advertised in two local newspapers viz. “Free Press Journal” in English and “Navshakti” in Marathi, both circulated in Mumbai not less than 30 days before the date fixed for the meeting.
10. That Mr. Krishnamurthy S, Director of the First Applicant Company, and failing him, Mrs. Sundari Shunmugaraja, Authorised Representative of the First Applicant Company shall be the Chairperson of the aforesaid meeting of the Equity Shareholders of the First Applicant to be held at 9th Floor, El Tara Building, Orchard Avenue, Off Delphi Building, Hiranandani Gardens, Powai, Mumbai - 400076, Maharashtra, India on Friday, November 10, 2017 at 11.00 AM or any adjournment or adjournments thereof.
11. That Mr. Krishnamurthy S, Whole Time Director of the Second Applicant Company, and failing him, Mrs. Sundari Shunmugaraja, Authorised Representative of the Second Applicant Company shall be the Chairperson of the aforesaid meeting of the Equity Shareholders of the Second Applicant to be held at 9th Floor, El Tara Building, Orchard Avenue, Off Delphi Building, Hiranandani Gardens, Powai, Mumbai - 400076, Maharashtra, India on Friday, November 10, 2017 at 11.30 AM or any adjournment or adjournments thereof.
12. That Mr. Krishnamurthy S, Whole Time Director of the Second Applicant Company, and failing him, Mrs. Sundari Shunmugaraja, Authorised Representative of the Second Applicant Company shall be the Chairperson of the aforesaid meeting of the CCCPS Shareholders of the Second Applicant to be held at 9th Floor, El Tara Building, Orchard Avenue, Off Delphi Building,

Hiranandani Gardens, Powai, Mumbai -400076, Maharashtra, India on Friday, November 10, 2017 at 12.00 Noon or any adjournment or adjournments thereof.

13. That the Chairperson appointed for the aforesaid Meetings to issue the advertisement and send out the notices of the Meetings referred to above. The said Chairperson shall have all powers as per Articles of Association and also under the Companies Act 2013 in relation to the conduct of the meetings, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meetings by any person(s).
14. That the quorum of the aforesaid meetings of the Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
15. 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 meetings, are filed with the First Applicant Company at its Registered Office at 9th Floor, El Tara Building, Orchard Avenue, Off Delphi Building, Hiranandani Gardens, Powai, Mumbai - 400076, Maharashtra, India the Second Applicant Company at 9th Floor, El Tara Building, Orchard Avenue, Off Delphi Building, Hiranandani Gardens, Powai, Mumbai - 400076, Maharashtra, India ,not later than 48 hours before the aforesaid meeting.
16. That the value and number of the shares of each Equity Shareholder and CCCPS Holder shall be in accordance with the books / register of the First and Second Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairperson of the Meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.
17. That Mr. Mukesh Kumar Siroya, a whole time practicing Company Secretary (Membership Number FCS – 5682) hereby appointed as Scrutinizer of the meetings of the Equity shareholders of the First Applicant Company proposed to be held on Friday, November 10, 2017 at 9th Floor, El Tara Building, Orchard Avenue, Off Delphi Building, Hiranandani Gardens, Powai, Mumbai - 400076, Maharashtra, India and the Second Applicant Company proposed to be held on Friday, November 10, 2017 at 9th Floor, El Tara Building, Orchard Avenue, Off Delphi Building, Hiranandani Gardens, Powai, Mumbai - 400076, Maharashtra, India, and of the meeting of the CCCPS shareholder of the Second Applicant Company proposed to be held on Friday, November 10, 2017 at 9th Floor, El Tara Building, Orchard Avenue, Off Delphi Building, Hiranandani Gardens, Powai, Mumbai - 400076, Maharashtra, India, respectively.

18. That the Chairperson to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
19. That the Chairperson of the meetings to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meetings.
20. The First Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority, Circle 3(1)(2), Aayakar Bhavan, Mumbai,- 400020, within whose jurisdiction the First Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) The Reserve Bank of India, Mumbai Regional Office, (iv) Registrar of Companies, Mumbai, 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 First Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
21. The First 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. Niteen D. Kshirasagar & 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.
22. The Second Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority, Circle 14(1)(2), Aayakar Bhavan, Mumbai - 400020, within whose jurisdiction the Second Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) The Reserve Bank of India, Mumbai Regional Office, (iv) Registrar of Companies, Mumbai, 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 Second Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

23. The Counsel for the First Applicant Company submits that there are no Secured Creditors in the First Applicant Company, therefore the question of sending notices to Secured Creditors does not arise. The Counsel for the First Applicant Company further submits that since the Scheme is an amalgamation 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. This bench hereby directs the First Applicant Company to issue notice to all its Unsecured Creditors 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 First Applicant Company.
24. The Counsel for the Second Applicant Company submits that there are no Secured Creditors in the Second Applicant Company, therefore the question of sending notices to Secured Creditors does not arise. The Counsel for the Second Applicant Company further submits that since the Scheme is an amalgamation between the Applicant Company and their respective shareholders only the meetings of the Equity Shareholders and CCCPS Holders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This bench hereby directs the Second Applicant Company to issue notice to all its Unsecured Creditors 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 Second Applicant Company.
25. The First and Second Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, Creditors, publication of notices in newspapers and to the regulatory authorities as stated in clauses 20 to 22 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)