

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CSP NO. 562 OF 2017
AND

CSP NO. 563 OF 2017

DEFENCE LAND SYSTEMS INDIA LIMITED

...Petitioner/ Transferor Company

AND

MAHINDRA DEFENCE SYSTEMS LIMITED

...Petitioner/ Transferee Company

In the matter of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation ('Scheme') of Defence Land Systems India Limited ('the Transferor Company') with Mahindra Defence Systems Limited ('the Transferee Company') and their respective shareholders and creditors

AND

In the matter of Sections 230 read with Section 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013

AND

In the matter of Sections 391 to Section 394 of the Companies Act, 1956 and other applicable provisions of the Companies Act, 1956

Order delivered on 5th October 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

Mr. Mr. Ramesh Golap, Assistant Director in the office of Regional
Director

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

Order

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of the Tribunal is sought under section 230 to 232, of the Companies Act, 2013 (erstwhile section 391 to 394 of the Companies Act, 1956), to the Scheme of Amalgamation of Defence Land Systems India Limited ('the Transferor

Company') with Mahindra Defence Systems Limited ('the Transferee Company') and their respective shareholders and creditors.

3. Learned Counsel for the Petitioner Companies states that the Transferor Company is engaged in the business of manufacturing, dealing and trading in all kinds of weapon systems, surveillance communication equipments, armaments, simulators and devices including but not limited to mines, guns & mortars, all kinds of vehicles, whether armoured or un-armoured including prototypes, assemblies, sub-assemblies, parts, components, accessories, fitments to any & all such devices/equipment and integration of vehicles meant for Ministry of Defence, other Ministries, their Departments, including but not limited to Police and Paramilitary forces. The Transferee Company is engaged in the business of design, development, manufacture, supply, dealing, operating, trading, overhaul, repair, maintenance and service of all kinds of defence and non-defence systems; weapon systems, simulators and devices and components or structures thereof for defence and non defence applications. Integration of systems and subsystems for use by armed forces. Consultancy, training, implementation, management and audit in the areas of Information Security, Physical Security, homeland security, critical infrastructure security, IT systems & network security, applications security, web & software security, change management & training, business continuity, disaster recovery, governance, loss prevention, fraud risk management, forensics, third party assessment and other allied areas with the objective of derisking the business and mitigation of loss arising from such security Risks..
4. The Transferee Company and the Transferor Company belong to the Mahindra Group. Also, the Transferor Company is the wholly owned subsidiary of the Transferee Company. Therefore, this Scheme of Amalgamation will achieve the following primary benefits:
 - Synergy between the Transferee Company and the Transferor Company in order to fulfil various defence contracts;
 - Operational efficiencies on account of cost rationalization;
 - The Transferee Company post merger would be in a better position to bid/participate for larger defence and homeland security projects.
5. The Petitioner Companies have approved the said Scheme by passing the board resolutions which are annexed to the respective Company Scheme Petitions.
6. The learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for

Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Directions.

7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all 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.
8. The Regional Director has filed a Report dated 25th July, 2017 stating therein that save and except as stated in paragraph IV of the said Report, 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:
 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 20.04.2017 for comments. The office of the Directorate also has issued reminder dated 24.07.2017.*
 3. *Petitioner inter alia mentioned that all manufacturing licenses for defense products is issued by the Department of Industrial Policy And Promotion.*
In this regard Petitioner Company to undertake to provide copy of License issued to the company by Department of Industrial Policy And Promotion. As well submit Proof of serving notice to the Department of Industrial Policy And Promotion.
9. In so far as observations made in paragraph IV (1) and (2) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertakes to comply with all applicable provision of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
10. In so far as observations made in paragraph IV (3) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel submit that as

directed by this Tribunal by an order dated 9th August, 2017, the Transferor company has duly given a notice dated 10th August 2017 to the Department of Industrial Policy and Promotion ['DIPP'] and that the same has been delivered to the DIPP on 14th August, 2017. In the said order dated 9th August, 2017, the Tribunal fixed the date of final hearing as 13th September 2017. Eventually, the next hearing in this regard was held on 14th September 2017, wherein the Petitioner Companies through its Counsel submitted that the Transferor Company has not received any representation from the DIPP in relation to the Scheme and hence, the Scheme should be approved.

11. However, keeping in view the fact that pursuant to the merger, the licenses held by the Transferor Company shall stand transferred to the Transferee Company, this Tribunal considered it fit to order that the Tribunal itself will give a further notice of two weeks to the DIPP to make representations, if any, in relation to the Scheme. However, no representation has been received from the DIPP in this regard. Therefore, it is construed that there has been no objection from DIPP in respect of transfer of licenses from Transferor Company to Transferee Company.
12. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 and 10 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
13. The Official Liquidator has filed his report dated 6th June, 2017 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.
14. 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. None of the parties concerned have come forward to oppose the Scheme.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 562 and 563 of 2017, filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
16. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench, 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.
17. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of companies, electronically, along with

e-form INC 28 in addition to the physical copy, within 30 days from the date of receipt of the order.

18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner Company in Company Scheme Petition No 562 of 2017 to pay sum of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of receipt of the Order.
19. All authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
20. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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