

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO 824 OF 2017
AND
CSP NO 825 OF 2017

VIRGO VALVES & CONTROLS PRIVATE LIMITED
...Transferor /Petitioner Company

EMERSON PROCESS MANAGEMENT (INDIA) PRIVATE LIMITED
...Transferee /Petitioner Company

Under Sections 230 to 232 of the Companies Act, 2013

And

In the matter of Scheme of Amalgamation of Virgo Valves & Controls Private Limited having CIN U29120MH2004PTC146916 ('Transferor Company' or 'Virgo India') with Emerson Process Management (India) Private Limited having CIN U29196MH1981PTC024115 ('Transferee Company' or 'EPM India') and their respective Shareholders

Order delivered on 5th October, 2017

Coram:

Hon'ble SH. B.S.V. Prakash Kumar, Member (J), Hon'ble SH V. Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b M/s. Hemant Sethi & Co., Advocate for the Petitioner.

Per: SH. B.S.V. Prakash Kumar, Member (J)

ORDER

1. Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation between Virgo Valves & Controls Private Limited and Emerson Process Management (India) Private Limited and their respective shareholders.

3. Learned counsel for the Petitioners states that the Transferor Company is primarily engaged in the business of manufacture of industrial valves and accessories for power, chemical, petrochemical, pharmaceutical, oil and gas industries. Learned Counsel for the Petitioners further states that the Transferee Company is primarily engaged in the business of manufacture and trading of process control instruments, distributed control systems, gearbox and related services. Upon the sanction of the Scheme of Amalgamation, the business of the Transferor Company will be merged with the Transferee Company.
4. Learned counsel for the Petitioners further states that the scheme envisages the amalgamation of the Transferor Company with the Transferee Company and the amalgamation shall have the following benefits: (a) The proposed amalgamation will result in administrative and operations rationalization, organizational efficiencies, reduction in overheads, personnel costs, compliance cost and other administrative expenses; (b) The amalgamation will improve the organizational capability arising from the pooling of human capital that has diverse skills, talent and vast experience; (c) Strengthened leadership in the Industry, in terms of assets base, revenues, product range, production volumes and market share of the combined entity; (d) The Transferee Company will have the ability to leverage on its large asset base and vast pool of intellectual property; (e) Simplified group and business structure.
5. The Petitioner Companies have approved the said Scheme of Amalgamation by passing respective Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petitions have been filed in consonance with the order passed in Company Scheme Application Nos. 759 of 2017 and 760 of 2017 of the Hon'ble Tribunal.
7. The Learned Advocate appearing on behalf of the Petitioners states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble

Tribunal and they have filed necessary Affidavits of compliance with Hon'ble Tribunal. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.

8. Pursuant to filing of the Company Scheme Application to this Hon'ble Tribunal, the Regional Director, Western Region, Mumbai has filed his Report dated 4th October, 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:-

- a) *As per clause 1.2 Definitions of the Scheme, "Appointed Date" means 1st April, 2017 or such other date as the National Company Law Tribunal at Mumbai, Maharashtra or such other competent authority may approve. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April, 2017.*
- b) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 28th July, 2017 has served a copy Company Scheme Application No. 759 & 760 of 2017 along with relevant orders etc., further the Regional Director has also issued a reminder on 26/09/2017 to IT Department.*
- c) *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 Court 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.*
- d) *M/s. Virgo Valves & Controls Private (Transferor Company) is a wholly owned subsidiary of M/s Emerson Process Management (India) Private Limited (Transferee Company). Hence, this Hon'ble Tribunal may kindly direct each of the companies involved in the Merger, files a Declaration of solvency in a prescribed form with the Registrar of Companies, Mumbai w/s 233(1)(c) read with section 233(12) of the Companies Act, 2013 and pass appropriate order(s) as deem fit.*
- e) *That In view of provisions of proviso to Section 232(2)(e) of the Companies Act, 2013, Hon'ble Tribunal may kindly direct the Company to submit a certificate*

from auditor of the Company, to the effect that "the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013.

9. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report is concerned, the Petitioner Companies submits that the Appointed Date shall be 1st April, 2017.
10. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) and (c) of his report are concerned, the Transferee Company submits that it will comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of his report is concerned, the Counsel for the Petitioner states that Petitioner has filed the Scheme under Sections 230 to 232 of the Companies Act, 2013. The requirement of filing solvency certificate is applicable to the Scheme filed under Section 233 of the Companies Act, 2013 and does not apply to Schemes filed under Sections 230 to 232 which is complete code by itself.
12. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (e) of his report is concerned, the Transferee Company hereby submits that the certificate from the Statutory Auditors of the Transferee Company has been annexed to the Company Scheme Application No. 760 of 2017 and copy of the said certificate has also been filed by the Transferee Company with the Regional Director's office via letter dated 2nd August, 2017.
13. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 to 12 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
14. The Official Liquidator has filed his report dated 5th October, 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 without being wound up.

15. From the material on record, the Scheme appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest.
16. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 824 and 825 of 2017 are made absolute in terms of prayer clauses (a) to (f).
17. The Petitioner Companies are directed to file 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, within 30 days from the date of receipt of the order from the Registry.
18. The Transferee Company to lodge a copy of this order and the Scheme duly certified 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, within a period of 60 days from the date of receipt of the order.
19. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Transferor Company to pay costs of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the receipt of the order.
20. All authorities concerned to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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