

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CSP 400/230-232/NCLT/MB/MAH/2017

CSP 401/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Karyasiddhi Blower Systems Private
Limited

.....Petitioner in CSP 401/2017
(Transferor Company)

M/s. Karyasiddhi Environmental Engineering
Company Private Limited

.....Petitioner in CSP 400/2017
(Transferee Company)

Order delivered on: 29.09.2017

Coram :

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Rajesh Shah a/w. Mr. Ahmed Chunawala i/b. Rajesh Shah & Co., Advocates for the
Petitioners

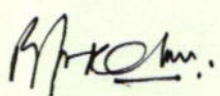
For the Regional Director :

Mr. Ramesh Gholap – Asst. Director (WR).

Per : Bhaskara Pantula Mohan, Member (J)

ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation between M/s. Karyasiddhi Blower Systems Private Limited (Transferor Company) with M/s. Karyasiddhi Environmental Engineering Company Private Limited (Transferee Company).
2. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.



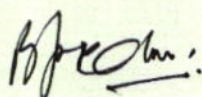
3. The transferor company is in the business of the manufacturing, repairing industrial blowers, Industrial fans and related engineering activities.
4. The transferee company is in the business of design, manufacture, supply, erect and commissioning new systems or modify existing system or export of air and water pollution control systems/ equipment such as Dust Collection system, Dust Scrubbing System, Fume Scrubbing System, Ventilation System, HVAC System, Pressurization System, Industrial Fans, Blower, Water Treatment Plant, Effluent Treatment Plant and sewage Treatment Plant.
5. This Scheme of Amalgamation would have the benefit of eliminating duplication of processes resulting in cost savings and a simplified corporate structure and improved management focus shift to a going concern company from multiple in-operative company and that centralizing the activities of both the company is expected to lead to improvement in operational and cost efficiency through economies of scale, optimization of resources, expansion of asset base and a stronger balance sheet of the enlarged company and post the amalgamation of Transferor Company into Transferee Company; Transferor Company will be dissolved and consequently, there would be less regulatory and legal compliance obligations including accounting, reporting requirements, statutory and internal audit requirements, tax filings etc and therefore reduction in administrative costs and that the restructuring would facilitate improvement in organizational capabilities arising from the pooling of human resources with diverse skills, talent and vast experiences and that the combined operations are expected to give rise to capital efficiency and improved cash flows.
6. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferor Company is ₹ 5,00,000/- comprising of 50,000 equity shares of ₹ 10/- each.
7. The Authorised Share Capital of the Transferee Company is ₹ 5,00,000/- comprising of 50,000 equity shares of ₹ 10/- each and the Issued, Subscribed and Paid up capital is ₹ 2,00,000/- comprising of 20,000 equity shares of ₹ 10/- each.
8. The averments made in the petitions and the submissions made by the Learned Representative for the Petitioners are:
 - a) The Petitioner Companies had complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes

to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.

- b) The Regional Director has filed a Report on 26th 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:

- i. 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.*
- ii. It is submitted that the Petitioner Companies have submitted the proof of serving notice, upon the Income Tax Authorities dated 23.03.2017 for comments. The office of the Directorate also issued reminder dated 24.07.2017*
- iii. Petitioner in clause 9 of the scheme inter alia has mentioned that in the event of retrenchment of staff, workman, or other employees, the transferee company shall be liable to pay compensation with laws. In this regard petitioner to undertake to protect the interest of employees.*
- iv. Petitioner in clause 14 of the scheme has inter alia mentioned that net value of assets will be adjusted in reserves whereas the same should be adjusted in capital reserve.*
- v. Petitioner Company have not submitted Valuation Report by Chartered Accountant, recommending the share exchange ratio.*



In this regard Petitioner company undertake to submit valuation Report by the Chartered Accountant recommending share exchange ratio.

- c) Apropos the observation in paragraph IV (1) & (2) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioners 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 Amalgamation will be met and answered in accordance with law.
 - d) Apropos 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 Petitioner Companies undertake to protect the interest of the employees.
 - e) Apropos the observation in paragraph IV (4) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies net value of assets will be adjusted in capital reserve.
 - f) Apropos the observation in paragraph IV (5) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company have submitted the Valuation Report. The same has been given by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal.
 - g) The Official Liquidator has filed his report dated 7th July, 2017 and stating therein that, the affairs of the Transferor Company have been conducted in a proper manner and accordingly the Transferor Company may be dissolved without winding up. Further it is submitted that, the Scheme is not prejudicial to the interest of public or shareholders.
 - h) No objector has approached, neither to the Petitioners nor before Tribunal, to oppose this Scheme of Amalgamation.
9. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this Bench, to the Petitioner Companies, **do Order that:**

- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Company, pursuant to S. 232 of the Companies Act, 2013, shall be transferred to and become the liabilities and duties of the Transferee Company.
- b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- c) In lieu of consideration of the Scheme, the Transferee Company shall issue and allot, 2 fully paid up Equity Shares of ₹ 10/- each for every 1 fully paid up Equity Share of ₹ 10/- each of the Transferor Company.
- d) Further, as the present Authorised Share Capital of the Transferee Company is not meeting up with the requirements after the Amalgamation, hence, the Transferee Company shall, on or before the allotment of shares in the Scheme of Amalgamation, increase its Authorised Share Capital by creation of such number of Equity Shares of ₹ 10/- each, as may be necessary to fulfil its obligations under the Scheme. And the Transferee Company shall comply with the applicable provisions of the Act and Rules therein, for raising of its Authorised Share Capital.
- e) 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 the physical copy within 30 days from the date of issuance of the Order by the Registry, duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- f) The Petitioner Companies to lodge a copy of this Order and the Scheme duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, 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.

- g) Each Petitioner Companies to pay cost of ₹ 25,000/- to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- h) Transferor Company i.e. Petitioner in CSP No. 401 of 2017 to pay cost of ₹ 25,000/- to the Official Liquidator, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- i) All authorities concerned, to act on a copy of this Order along with Scheme duly Certified by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- j) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
- k) The Scheme is sanctioned and the appointed date of the Scheme is fixed as, 1st April, 2016.

10. Ordered accordingly.

Sd/-

**BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)**

Sd/-

**M. K. SHRAWAT
MEMBER (JUDICIAL)**

Dated : 29.09.2017