

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COMPANY SCHEME PETITION NO 56 OF 2017

FLEXLINK SYSTEMS INDIA PRIVATE LIMITED

... Petitioner/Transferor Company

AND

COMPANY SCHEME PETITION NO 57 OF 2017

COESIA INDIA PRIVATE LIMITED

... Petitioner/Transferee Company

In the matter of the Companies Act, 2013 and In the matter of Sections 230 to 232 of the Companies Act, 2013 (corresponding to Sections 391 to 394 of the Companies Act, 1956) read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016; and In the matter of Scheme of Amalgamation of FlexLink Systems India Private Limited with Coesia India Private Limited and their respective shareholders and creditors.

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner Companies.

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

Coram: B.S.V Prakash Kumar, Member (Judicial)

V. Nallasenapathy, Member (Technical)

Date: 7th June 2017

MINUTES OF ORDER

- 1 Heard the learned counsel for the Petitioner Companies.
- 2 The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of FlexLink Systems India Private Limited with Coesia India Private Limited and their respective shareholders and creditors.
- 3 The Counsel for the Petitioner Companies submit that FlexLink Systems India Private Limited and Coesia India Private Limited are group companies of the 'Coesia Group'. The Transferor Company is engaged in the business of Industrial Process Solutions (IPS) wherein it provides conveying solutions to the customer

- i.e. internal traffic management within the factory for movement of goods from production line to the finished goods stocking area. The Transferee Company is engaged in the business of providing Packaging Technology Solutions by way of assembling of Packaging Machinery for local and export markets; distribution of spares & components; after-sales technical support for the machines; canvassing of sales and marketing of Machines of the Parent company with Indian customers.
- 4 The respective Boards of Directors are of the view that the proposed Scheme of Amalgamation is beneficial to the respective shareholders, employees and all stakeholders of the Petitioner Companies. The proposed Scheme of Amalgamation is aimed at achieving the following business and commercial objectives:
 - a. Consolidated base for future growth of the Transferee Company with a wider presence in the business of machinery manufacturing;
 - b. Simplify management structure, leading to better administration and a reduction in costs;
 - c. More focused operational efforts;
 - d. Rationalization, standardization and simplification of business processes; and
 - e. Reduction in number of companies and regulatory compliances thereof.
 - 5 The Board of Directors of the Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing necessary Board Resolutions which are annexed to the respective Company Scheme Petitions filed by the Petitioner Companies.
 - 6 The Learned Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Court/Tribunal and the necessary affidavits of compliance has been filed in the Court/Tribunal. Moreover, the Petitioner Companies through their Counsel undertake 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 undertakings given by the Petitioner Companies are accepted.

- 7 The Official Liquidator has filed his report on 14th March 2017 stating that the affairs of the Transferor Company have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved.
- 8 The Regional Director has filed his Report dated 26th April 2017 stating therein that, save and except as stated below, it appears that the Scheme of Amalgamation is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, it is stated that:

(a) The tax implications 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

(b) The Transferor Company and the Transferee Company have issued letter to the Income Tax Authorities dated 06.02.2017, for comments. This Directorate has also issued a reminder letter to the Income Tax Department dated 26.04.2017

(c) Certificate by the Company's Auditor stating 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 is not available.

In this regard the petitioner has to submit the Auditor's certificate.

(d) Pursuant to clause 5.6 of the Scheme has inter alia mentioned that the Transferee Company shall, if and to the extent required, apply for and obtain any approvals from concerned regulatory authorities (including approvals required under the Foreign Exchange Management Act, 1999, if any) for the issue and allotment by Transferee Company of New Equity Shares to the members of the Transferor Company under the scheme.

In this regard it is submitted that as per the list of shareholders provided by the Petitioner, there are non-resident shareholders. The Petitioner has not

provided the proof of serving notices to the RBI. Therefore Petitioner to undertake to apply to RBI

- 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 their Counsel submit that the Petitioner Companies 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.
- 10 In so far as observations made in paragraph IV (3) of the Report of Regional Director is concerned, the Transferee Company through its Counsel submits Certificate by the Company's Auditor stating that the accounting treatment proposed in the scheme of amalgamation is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013. has been filed with the office of Regional Director on 2nd May 2017.
- 11 In so far as observations made in paragraph IV (4) the Report of Regional Director is concerned, the Transferee Company undertakes that it shall to the extent required, apply for and obtain any approvals from concerned regulatory authorities (including approvals required under the Foreign Exchange Management Act, 1999, if any) for the issue and allotment by Transferee Company of New Equity Shares to the members of the Transferor Company under the scheme.
- 12 The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.

- 13 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.
- 14 Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No 56 and 57 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of CSP No 56 and 57 of 2017 of the respective Petitions.
- 15 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 receipt of the order by the Registry.
- 16 The Petitioner Companies to lodge a copy of this order and copy of the Scheme of Amalgamation 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, if any, on the same within 60 days from the date of receipt of the order.
- 17 The Transferor Company to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay and the Transferee Company, to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai.
- 18 Costs to be paid within four weeks from the date of receipt of the order.
- 19 All authorities concerned to act on a certified copy of this order along with copy of the Scheme of Amalgamation duly certified 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)