

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO 188 OF 2017

**Kalyani Technotherm Limited.....Petitioner**

AND

TRANSFERRED COMPANY SCHEME PETITION NO 189 OF 2017

**Kalyani Thermal Processing Private Limited.....Petitioner**

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of the Scheme of Amalgamation of Kalyani Technotherm Limited and Kalyani Thermal Processing Private Limited with Kalyani Technoforge Limited and their Respective Shareholders

**Called for Hearing**

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners in all the 3 Petitions.

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. No objector has come before the Tribunal to oppose the Petition and nor any party has 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 of Kalyani Technotherm Limited and Kalyani Thermal Processing Private Limited with Kalyani Technoforge Limited and their Respective Shareholders.
3. The Counsel for the Petitioners submit that the first Transferor Company is presently engaged in the business of providing heat treatment services especially for auto components and in manufacturing of specialty furnaces. The Second Transferor Company is Company presently engaged in the business of providing services relating to vacuum heat treatment, plasma ion nitriding, etc.
4. The Counsel for the Petitioners further submit that the rational for Scheme is that the Transferor Companies are 100% wholly owned subsidiary of the Transferee Company. With a view to maintain a simple corporate structure and eliminate duplicate corporate procedures it is desirable to merge and amalgamate all the

undertakings of Transferor Companies with the Transferee Company. The amalgamation of all undertaking of Transferor Companies into the Transferee Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations. Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.

5. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to the respective Company Scheme Petitions filed by the Petitioner Companies.
6. The Learned Counsel appearing on behalf of the Petitioner Company further states that the Petitioner Company has complied with all requirements as per directions of the Court/ Tribunal and the necessary affidavits of compliance has been filed in the Court. Moreover, the Petitioner Company through its Counsel 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. The said undertakings given by the Petitioner Company is accepted.
7. The Regional Director has filed an Report dated 11<sup>th</sup> April 2017 stating therein, save and except as stated in paragraph IV(a) to (c) , it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs IV, of the said Report it is stated that:

*(a) In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting standards such as AS-5(IND-AS-8 etc.) .*

*(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 7<sup>th</sup> November 2016 has served a copy of company petition No 696 & 697/2016 along with relevant orders etc. Further the Regional Director has also issued reminder on 3<sup>rd</sup> April 2017 to IT Department.*

*(c) 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.*

8. In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Transferee Company through its Counsel undertakes that in addition to compliance of AS-14(IND AS-103), the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (Ind AS-8) etc.
9. In so far as observations made in paragraph IV (b) and (c) 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 will be met and answered in accordance with law.
10. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 8 and 9 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
11. The Official Liquidator has filed his report on 1<sup>st</sup> May 2017 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that Transferor Companies may be ordered to be dissolved.
12. 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.
13. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No 188 and 189 of 2017 filed by the respective Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
14. 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.

15. The Petitioner Companies 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, if any, on the same within 60 days from the date of receipt of the order.
16. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay.
17. Costs to be paid within four weeks from the date of receipt of the order.
18. All authorities concerned to act on a certified copy of this order along with the Scheme duly certified by the Deputy Director National Company Law Tribunal, Mumbai Bench.
19. 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 Kúmar, Member (J)**