

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

COMPANY SCHEME APPLICATION NO 282 OF 2017

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

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

Mahindra Defence Systems Limited, a Company	}
Incorporated under the provisions of	}
Companies Act, 1956 having its registered office	}
at Mahindra Towers, P.K. Kurne Chowk,	}
Dr. G. M. Bhosale Marg, Worli,	}
Mumbai - 400018	}
CIN: U75220MH2012PLC233889	}.....Applicant Company

**Called for hearing :**

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Applicant Company

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

**V. Nallasenapthy, Member (Technical)**

**Dated: 29<sup>th</sup> day of March 2017**

**MINUTES OF THE ORDER**

1. The Counsel for the Applicants states that the Scheme of Amalgamation provides for the amalgamation of the Transferor Company with the Transferee Company pursuant to the relevant provisions of the Act.

2. The Counsel for the Applicants further submits that the Applicant Company is currently engaged in the business of design, development, manufacture, supply, dealing, operating, trading, overhaul, repair, maintenance and service of all kinds of defence vehicle and other defence equipment including training to armed forces people through specific equipments. The Applicant Company is also engaged in business of 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.
3. The Counsel for the Applicants further submit that rationale for Scheme is that the Transferee Company and the Transferor Company are engaged in similar line of business and both 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.
4. A meeting of the Equity Shareholders of the Applicant Company, be convened and held at its Registered office at Mahindra Towers, P.K. Kurne Chowk, Dr. G. M. Bhosale Marg, Worli, Mumbai 400018 on 24<sup>th</sup> day of May, 2017 at 4:00 p.m. for the purpose of considering and if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation between Defence Land Systems India Limited, the Transferor Company with Mahindra Defence Systems Limited, the Transferee Company and their respective shareholders.
5. The Applicant Company shall also give an option to the shareholders to vote through Postal Ballot.
6. That at least one month before the said Meeting of the Equity shareholders of the Applicant Company to be held as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule 2016 notified on 14<sup>th</sup> December 2016 and the prescribed Form of

Proxy, shall be sent by Courier / Registered Post, Speed Post or through Email (to those shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the Company, at their last known address or email addresses as per the records of the Applicant Company.

7. That at least one month before the meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting, indicating the place, date and time of meeting as aforesaid be published and stating that the copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy shall be obtained free of charge at the Registered Office of the Applicant Company as aforesaid and / or at the offices of its Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur Mumbai – 400071.
8. That Mr. S P Shukla, Director of the Applicant Company, failing him Mr. Zhooben Bhiwandiwala, Director of the Applicant Company, and failing him Mr. V S Parthasarathy, Director of the Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders to be held at its Registered office at Mahindra Towers, P.K. Kurne Chowk, Dr. G. M. Bhosale Marg, Worli, Mumbai 400018 on 24<sup>th</sup> day of May, 2017 at 4:00 p.m. or any adjournments thereof.
9. That Mr. Rajit Kesaria, Practising Company Secretary is hereby appointed as Scrutinizers of the meeting of Equity Shareholders of the Applicant Company to be held at its Registered office at Mahindra Towers, P.K. Kurne Chowk, Dr. G. M. Bhosale Marg, Worli, Mumbai 400018 on 24<sup>th</sup> day of May, 2017 at 4:00 p.m. or any adjournments thereof and his remuneration is fixed at Rs. 3,000/-.
10. That the Notice of the Meeting shall be advertised in two local newspapers viz. “Free Press Journal” in English and “Navshakti” in Marathi, both circulated in Mumbai not less than thirty (30) days before the date fixed for the meeting.
11. That the Chairman appointed for the aforesaid Meeting to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairman shall have all the powers as per the Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof.

12. The quorum for the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
13. The value and number of the Equity shares of each member shall be in accordance with the books/ register of the Applicant Company and where the entries in the books/ register are disputed, the Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
14. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at its Registered Office at Mahindra Towers, P.K. Kurne Chowk, Dr. G. M. Bhosale Marg, Worli, Mumbai 400018 not later than 48 hours before the aforesaid meeting.
15. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the Meeting and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
16. That the Chairman of the Meeting to report to this Tribunal, the results of the aforesaid meeting within thirty (30) days of the conclusion of the Meeting.
17. That Counsel for the Applicant submit that since the Scheme is an arrangement between the Applicant Company and their respective shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This bench hereby directs the Applicant Company to issue notice to all its secured and unsecured creditors as required under section 230(3) of the Companies Act 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
18. That the Applicant Company is directed to serve notices along with copy of Scheme upon:- (i) concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) the Registrar of Companies, Mumbai with the direction that they may submit their representations, if any, within a period of thirty (30) days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

19. Applicant Company to file affidavit of service in the Registry proving dispatch of notices upon shareholders, Creditors, notices to Regulatory authorities as stated in Clause 18 above and publication of notice in newspapers.

Sd/-

**B.S.V. Prakash Kumar, Member (Judicial)**

Sd/-

**V. Nallasenapathy, Member (Technical)**