

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO 279 of 2017

Lancer Valve Private LimitedPetitioner / Transferor Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO 280 of 2017

Niton Valve Industries Private Limited.....Petitioner / Transferee Company

In the matter of the Companies Act, 1956 (1 of 1956) / Companies Act, 2013;

AND

In the matter of Sections 391 to 394 / 230 to 232 of the Companies Act, 1956 / Companies Act, 2013 ;

AND

In the matter of the Scheme of Amalgamation of Lancer Valve Private Limited with Niton Valve Industries Private Limited and their Respective Shareholders

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners in both the 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 : 21st 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 Lancer Valve Private Limited with Niton Valve Industries Private Limited and their Respective Shareholders.
3. The Counsel for the Petitioners submit that the Transferor Company is presently is engaged in the business of production and supply of Industrial valves specializing in manufacture of Globe Valve, Gate Valve, Cryogenic Valve etc. Apart from this, it also renders technical services such as Radiography, drilling, threading, PHWT testing etc which are essential for valve manufacturing.
4. The Transferee Company is in the business of production and supply of Industrial valves

5. The Counsel for the Petitioners further submit that the rationale for Scheme is that the proposed Scheme of Amalgamation is aimed at achieving the following business and commercial objectives:
 - a. The Transferor Company and the Transferee Company are part of the same management group
 - b. Enable the two companies to consolidate their business operations and provide significant impetus to their growth since both the companies are engaged in similar business.
 - c. Result in enhancing the scale of operations and reduction in overheads, administrative, managerial and other expenditure, operational rationalization, operational efficiency, and optimal utilization of various resources.
 - d. Result in improved shareholder value for both the companies by way of improved financial structure and cash flows, increased asset base and stronger consolidated revenue and profitability.
 - e. Result in enhanced leveraging capability of the combined entity which in turn will allow the combined entity to undertake future expansion strategies and tap into bigger opportunities in the valve industry.
 - f. Consolidation of managerial expertise of the Companies will facilitate greater focus and utilization of resources. Amalgamation will give greater strength to the operations and management of the Amalgamated Company.
6. 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.
7. 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.
8. The Regional Director has filed a Report dated 16th June, 2017 stating therein, save and except as stated in paragraph IV(a) to (d) , 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 Part – I Definitions Clause 1(b) of the Scheme “Appointed Date” means 01st Day of April, 2016 or such other date as may be approved by the High Court of Judicature at Bombay or such other competent authority, as may be applicable, (being the date from which the scheme shall become operative). In this regards, it is submitted in terms of provisions of Section 232 (6) of the Companies Act, 2013 it should be 01st April, 2016.

(c) 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 20th December 2016 has served a copy of company petition No 800 & 801 /2016 along with relevant orders etc. Further the Regional Director has also issued reminder on 01st June, 2017 to IT Department.

(d) 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.

9. 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.
10. In so far as observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Counsel for Petitioners clarify that Appointed Date under the Scheme is 1st April 2016.
11. In so far as observations made in paragraph IV (c) and (d) 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.

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. The Official Liquidator has filed his report on 10th April 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.
14. 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.
15. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No 279 and 280 of 2017 filed by the respective Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
16. 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.
17. 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.
18. 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.
19. Costs to be paid within four weeks from the date of receipt of the order.

20. 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.
21. 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)