

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENCH, AT MUMBAI
TRANSFERRED COMPANY SCHEME APPLICATION NO 21 OF 2017

In the matter of the Companies Act, 2013

AND

In the matter of Sections 230 to Section 232 of the
Companies Act, 2013 and other applicable
provisions of the Companies Act, 2013

AND

In the matter of Scheme of Amalgamation of
Vaibhav Engineers Private Limited ('The
Transferor Company') with Vaibhav Energy
Saving Equipments Private Limited ('the
Transferee Company') and their respective
shareholders

VAIBHAV ENGINEERS PRIVATE)
LIMITED, a company incorporated)
under the provisions of the Companies)
Act, 1956 and having its registered office)
at -W168, Addl Indl area, MIDC, Ambad,)
Nashik-422010)
)..... Applicant Company

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

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

V. Nallasenapathy, Member (Technical)

DATE: 23rd June, 2017

MINUTES OF THE ORDER

1. The Counsel for the Applicant submits that the present Scheme is a Scheme for Amalgamation of Vaibhav Engineers Private Limited ('Transferor Company or the Applicant Company') with Vaibhav Energy Saving Equipments Private Limited ('the Transferee Company') and their respective shareholders under sections 230 to 232 of the Companies Act, 2013. This Scheme provides for merger of Vaibhav Engineers Private Limited with Vaibhav Energy Saving Equipments Private Limited.

2. The Counsel for the Applicant further submits that Companies under this Scheme of Amalgamation are part of Vaibhav Group ('the Group'). The Group believes that the amalgamation involving the Transferor Company and the Transferee Company would have the following benefits:
 - a) Achieving operational and managerial efficiency;
 - b) Management focus and enhanced flexibility;
 - c) Simplification of group structure; and
 - d) Bringing synergy in operations and optimum utilisation of common resources
3. The meeting of the members of the Applicant Company be convened and held at –W-108, Addl Indl Area, MIDC, Ambad, Nashik-422010 India on of 29th July 2017 at 11:00 A.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Vaibhav Engineers Private Limited with Vaibhav Energy Saving Equipments Private Limited and their respective shareholders.
4. That at least one month before the said Meeting of the members of the Applicant Company to be held as aforesaid, a notice convening the said Meeting at the place date and time 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 14th December 2016 and the prescribed Form of Proxy, shall be sent by Hand delivery/ 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 Shareholder of the Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.
5. That at least one month before the meeting of the members of the Applicant Company to be held as aforesaid, a notice convening the said Meetings, indicating the place, date and time of meeting as aforesaid be published and stating that 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 can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid and / or at the office of its Advocates, M/s. Hemant Sethi & Co., 1602 NavParmanu, Behind Amar Cinema, Chembur, Mumbai – 400 071.

6. That the Notice of the Meeting of the members shall be advertised in two local newspapers viz. in "Deshdoot Times" in English and "Deshdoot" in Marathi, both circulated in Nasik, not less than 30 days before the date fixed for the meeting.
7. That Mr. Jagdish Uddhavrao Kulkarni, Chairman of the Applicant Company shall be the Chairman of the aforesaid meeting of the members of the Applicant to be held at W-108, Addl Indl Area, MIDC, Ambad, Nashik-422010, India, on 29th July 2017 at 11:00 A.M. or any adjournment or adjournments thereof.
8. That the Chairman appointed for the aforesaid meeting of the members to issue the advertisement and send out the notices of the meeting referred to above. The said Chairman shall have all powers as per 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 or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
9. That the quorum of the aforesaid meeting of the members shall be as prescribed under Section 103 of the Companies Act, 2013.
10. 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, are filed with the Applicant Company at its Registered Office at W-108, Addl Indl Area, MIDC, Ambad, Nashik-422010, India not later than 48 hours before the aforesaid meeting.
11. That the value and number of the shares of each member shall be in accordance with the books/ register of the Applicant Company or depository records and where the entries in the books / register / depository records 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.
12. That Counsel for the Applicant Company submits that since the Scheme is an arrangement between the Applicant Company and their respective shareholders, only a meeting of the members 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 30/05/2017 and

above 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.

13. That Mr. Ashok Surana, a Practicing Company Secretary is hereby appointed as Scrutinizer of the meeting of members of the Applicant Company to be held at W-108, Addl Indl Area, MIDC, Ambad, Nashik-422010, India on 29th July, 2017 at 11:00 A.M. or any adjournment or adjournments thereof and his remuneration is fixed as Rs. 5000/-
14. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings of the members and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
15. That the Chairman of the meeting of the members to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meeting.
16. The Applicant Company is directed to serve notices along with copy of scheme upon:-
 - (i) concerned Income Tax Authority with in whose jurisdiction the Company's assessments is made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai and (iii) the Registrar of Companies, with a direction that they may submit their representations, if any, within a period of thirty days from the date of 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.
17. The Applicant Company is also directed to serve notice along with copy of scheme upon Official Liquidator. M/s S.P Sakhala & Co., Chartered Accountants are appointed to assist the Official Liquidator to scrutinize books of accounts of the Petitioner Company for the last 5 years. The fees of the Chartered Accountant is fixed at Rs. 35,000/-. The official Liquidator shall submit his representations, if any, within a period of thirty days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served to the Applicant Company, failing which, it shall be presumed that the Official Liquidator has no representations to make on the proposal.
18. The Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, creditors, publication of notices in newspapers, to the

regulatory authorities as stated in clauses 16 & 17 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-
V. Nallasenapathy, Member (T)

Sd/-
B.S.V. Prakash Kumar, Member (J)