

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

CSA No 779 OF 2017

In the matter of the Companies Act, 2013;

AND

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

AND

In the matter of Scheme of Amalgamation of Hoerbiger India Serial
Technology Private Limited ('the Transferor Company') and
Hoerbiger India Private Limited ('the Transferee Company') and their
respective Shareholders

Hoerbiger India Serial Technology Private Limited, a Company

.....First Applicant Company

AND

Hoerbiger India Private Limited, a Company

.....Second Applicant Company

Order delivered on 19th July 2017

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)

Hon'ble **V. Nallasenapathy**, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co

Per: **B.S.V. Prakash Kumar**

ORDER

1. The Counsel for the Applicants states that the present Scheme is an Amalgamation of Hoerbiger India Serial Technology Private Limited ('the Transferor Company') and Hoerbiger India Private Limited ('the Transferee Company') and their respective Shareholders.

2. The Counsel for the Applicants further submit that the Transferor Company is engaged in the business of Manufacture and sale of rotary compressor components, reed valves, parts, spare parts, accessories, items, machineries, gadgets, appliances thereof by using Serial Technology. And the Transferee Company is primarily engaged in the business of manufacture and sale of parts of Air Compressors, Suction and Discharge Valves (including parts) for reciprocating compressors and rotary compressor components, scavenge valves, marine valves, wear parts such as rings and packing, step less capacity control equipment etc.
3. The rationale for the Scheme is that the Transferee Company and the Transferor Company are engaged in the similar line of business. By amalgamation, there will be exploitation of individual strengths, avoid duplication of efforts and will provide foundation for big ticket growth of the enterprise. This will enable the entities to attract capital and facilitate expansion. By the proposed Scheme of Amalgamation, the financial resources of both the Companies will be conveniently merged and pooled together leading to a more effective and centralized management and reduction of administrative and manpower expenses and overheads, which are presently being multiplied because of separate entities. Amalgamation will result in the larger pool of various resources as well as manpower and will create a synergy, which will enable the Transferee Company to grow and prosper at a faster pace. The combined technical, managerial and financial resources will enhance the capability of the Transferee Company to invest in larger and sophisticated projects to ensure rapid growth and will consolidate the strategic strength of the Transferee Company. The Amalgamation will maximize the returns to the shareholders of the Transferee Company.
4. That the meeting of the Equity Shareholders of the First Applicant Company be convened and held at Gat No. 303/1, 312, 313, Village Kondhapuri, Taluka Shirur, District Pune-412209, Maharashtra on Monday, 4th September, 2017 at 11:00 A.M for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Amalgamation of Hoerbiger India Serial Technology Private Limited and Hoerbiger India Private Limited and their respective Shareholders.
5. That the meeting of the Equity Shareholders of the Second Applicant Company be convened and held at Gat No. 303/1, 312, 313, Village Kondhapuri, Taluka Shirur, District Pune-412209, Maharashtra on Monday 4th September, 2017 at 11:30 A.M for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Amalgamation of Hoerbiger India Serial Technology Private Limited and Hoerbiger India Private Limited and their respective Shareholders.

6. That at least one month before the said Meetings of the Shareholders of the First and Second 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 Courier / Registered Post / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the First and the Second Applicant Company for the purpose of receiving such notices by email), addressed to each of the Shareholders of the First and the Second Applicant 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 meetings of the Shareholders of the First and Second 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 First and Second Applicant Company as aforesaid and / or at the office of its Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.
8. That the Notice of the Meetings shall be advertised in two local newspapers viz. “Indian Express” in English and “Loksatta” in Marathi, both circulated in Pune not less 30 days before the date fixed for the meeting.
9. That Mr. Shripal Shah, Managing Director of the First Applicant Company, and failing him, Mr. Amar Kulkarni, Head – Finance & Controlling of the First Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the First Applicant to be held at Gat No. 303/1, 312, 313, Village Kondhapuri, Taluka Shirur, District Pune-412209, Maharashtra on Monday 4th September, 2017 at 11:00 A.M or any adjournment or adjournments thereof.
10. That Mr. Shripal Shah, Managing Director of the Second Applicant Company, and failing him, Mr. Amar Kulkarni, Head – Finance & Controlling of the Second Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Second Applicant to be held at Gat No. 303/1, 312, 313, Village Kondhapuri, Taluka Shirur, District Pune-412209, Maharashtra on Monday 4th September, 2017 at 11:30 A.M or any adjournment or adjournments thereof.

11. That the Chairman appointed for the aforesaid Meetings to issue the advertisement and send out the notices of the Meetings 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 meetings, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meetings by any person(s).
12. That the quorum of the aforesaid meetings of the Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
13. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form / authorization duly signed by the person entitled to attend and vote at the meetings, are filed with the First Applicant Company at its Registered Office at Gat No. 303/1, 312, 313, Village Kondhapuri, Taluka Shirur, District Pune-412209, Maharashtra and Second Applicant Company at its Registered Office at Gat No. 303/1, 312, 313, Village Kondhapuri, Taluka Shirur, District Pune-412209, Maharashtra, respectively, not later than 48 hours before the aforesaid meeting.
14. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books / register of the First and Second Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the Meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.
15. That C. S. Kelkar Company Secretary partner of C. S. Kelkar & Associates, Company Secretaries, is hereby appointed as Scrutinizers of the meetings of the Equity shareholders of the First Applicant Company proposed to be held on 4th September, 2017 at Gat No. 303/1, 312, 313, Village Kondhapuri, Taluka Shirur, District Pune-412209, Maharashtra and the Second Applicant Company proposed to be held on 4th September, 2017 at Gat No. 303/1, 312, 313, Village Kondhapuri, Taluka Shirur, District Pune-412209, Maharashtra, respectively and his remuneration is fixed as Rs. 2,000/- excluding taxes.
16. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
17. That the Chairman of the meetings to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meetings.
18. The First Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the First Applicant

Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies, Pune, 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 First Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

19. The First, Applicant Company are also directed to serve notice along with copy of scheme upon Official Liquidator. M/s. Jitendra Chablani & Co. Chartered Accountants are appointed to assist the Official Liquidator to scrutinize books of accounts of the First Applicant Company for the last 5 years. The First Applicant Company to pay fees of Rs. 2,00,000/-.
20. The Second Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the First Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies, Pune, 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 Second Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
21. The Counsel for the First and Second Applicant Company further submits that since the Scheme is an amalgamation between the Applicant Companies 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 First and Second Applicant Company to issue notice to all its Secured and Unsecured Creditors 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.
22. The First and Second Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, Creditors, publication of notices in newspapers and to the regulatory authorities as stated in clauses 19 and 20 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)