

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH**

T. C SP NO. 10 OF 2017

AND

T. CSP NO. 11 OF 2017

In the matter of the Companies Act, 2013 (18 of 2013);

AND

In the matter of Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 along with the Companies Act, 1956.

AND

In the matter of Scheme of Amalgamation of Reliable Gensets & Controls Private Limited, the Transferor Company, with Perfect House Private Limited, the Transferee Company

Reliable Gensets & Controls Private LimitedApplicant/ Transferor Company

Perfect House Private Limited Applicant/ Transferee Company

Date: 9th August, 2017

Coram: Hon'ble SH. B.S.V. Prakash Kumar, Member (J)

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

Called for hearing

Smita Vora of M/s Vora & Associates, Advocates & Solicitors, Advocate for the Petitioner.

Per: Sh. V. Nallasenapathy, Member (T)

MINUTES OF THE ORDER

1. Heard learned counsel for parties. No objection has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Amalgamation of Reliable Gensets & Controls Private Limited, the Transferor Company with Perfect House Private Limited, the Transferee Company.
2. The sanction of the Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation of Reliable Gensets & Controls Private Limited, the Transferor Company with Perfect House Private Limited, the Transferee Company.
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in their Company Summons for Direction Nos. 852 of 2015 and 853 of 2015 of the Hon'ble High Court, Mumbai.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble High Court, Mumbai and they have filed necessary affidavits of compliance in the Hon'ble High Court, Mumbai. Moreover, Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 1956/2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
6. The Learned Counsel for the Petitioners states that the Transferor Company presently carrying on business of manufacture, assemble, process, repair, maintain, export, import, lease, buy, sell or deal in generators, conventional and non conventional motors, etc. and the

Transferee Company at presently is carrying on the business of manufacture, assemble, process, repair, maintain, export, import, buy, sell or deal in generators. As per the opinion of the management the amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base and it would be advantageous to combine the activities and operations of both companies into a single Company for synergistic linkages and the benefit of combined financial resources and this will be reflected in the profitability of the Transferee Company and that this Scheme of amalgamation would result in merger and thus consolidation of business of the Transferor Company and the Transferee Company in one entity, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform and that the Amalgamation of the Transferor Company with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of both the companies and that the merged entity will also have sufficient funds required for meeting its long term capital needs as provided for in the scheme and that the Scheme of amalgamation will result in cost saving for both the companies as they are capitalizing on each other core competency and resources which is expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company.

7. The Regional Director has filed a Report on 27th day of March, 2017 stating therein, save and except as stated in paragraph IV, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-

“IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT are as under:

- 1. 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 Standard such as AS-5 (IND-8) etc.*
- 2. As per Clause 3.5 of the scheme it is submitted that the Appointed Date means 1st April, 2014 or such other date as may be fixed or approved by the Hon’ble High Court of Judicature Bombay or any other competent Authority may otherwise direct fix. In this regard it is submitted that the Transferor Company is seeking approval which will have a retrospective effect. The gap between the date of audited balance sheet and the appointed date should be reasonable and nearer to the time of final hearing of the Petition and this requirement is statutory. It is pertinent to mention that the balance sheet as at 31.03.2015 and 31.03.2016 are due. Further balance sheet as at 31.03.2017 is shortly due. Hence, the companies to the scheme be directed to serve the shareholders of the Petitioner Company the financial statements for the above said period duly approved in accordance with the provisions of the Act, failing which the scheme deserves to be rejected.*
- 3. As per the practice, the Petitioner Company are required to serve Notice for Scheme of Arrangement to Income Tax Department for their comments. It appears that the company vide letter dated 09/05/2016 has served the copy of the Petition No. 144 & 145/ 2016 along with relevant*

orders etc., to IT department. This directorate has also issued a reminder letter to the Income Tax Department dated 23.03.2017

- 4. The tax implication 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. So far as the observation in paragraph IV (1) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits 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 Standard such as AS-5 (IND-8) etc.
9. Though the Income-tax Authority not present before this Bench, the Regional Director Officer Mr. S. Ramakantha, Jt. Director has raised objection for approval of this Scheme because the appointed date has been given as 31.3.2014 i.e. almost before three years from now, therefore, they are not aware as to whether any tax liability is there for clearance by this company or not because there is no information from Income Tax Department to raise their apprehension on tax refund/liability, if any, lying in the company.
10. Though the objections raised by the Regional Director are plausible, *since* separate notice has been given to the Income tax Authority to raise their objections if any, within 30 days from the date of receipt of the Notice as envisaged u/s.230(5) of the Companies Act, 2013 and for there being no objection till date i.e. after completion of the 30 days from the date of receipt of notice, since the Act itself saying if the objection has not come to NCLT within a period of 30

days from the date of receipt of notice u/s.230(5) of Companies Act, 2013, it shall be presumed that they have no objection to the proposal made by the Petitioner Company.

11. For there being no objection on record, not even a representation from Income Tax Authorities, this Bench has no other go except to presume that there is no representation or objection from the Income-tax Authorities, whereby if at all liability from any Tax Authority side is present, no accountability could be fastened on the Regional Director.
12. So far as the observation in paragraph IV (3) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that they have noted the same.
13. So far as the observation in paragraph IV (4) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits 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.
14. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 11 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
15. The Official Liquidator has filed his report on 30th June, 2016 in the TCSP/10 of 2017 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Tribunal.

16. 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.
17. Since all the requisite statutory compliances have been fulfilled, TCSP/10 of 2017 is made absolute in terms of prayers clause (a) to (d) and TCSP/11/ of 2017 is made absolute in terms of prayer clauses (a) to (c).
18. The Petitioners are directed to lodge 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 physical copy, as per the relevant provisions of the Companies Act 1956 / 2013.
19. The Petitioners to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any.
20. The Petitioner Companies to pay costs of Rs.,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the TCSP/10 of 2017 to pay costs of Rs.25,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of the Order.
21. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)