

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
COMPANY SCHEME APPLICATION NO. 452 OF 2017

In the matter of the Companies Act, 1956 (1 of 1956)
or any corresponding provisions of the Companies
Act, 2013;

And

In the matter of Sections 230 to 232 of the Companies
Act, 2013;

And

In the matter of Scheme of Amalgamation of
DivgiTorqTransfer Systems Private Limited with
DivgiMetalwares Private Limited and their respective
shareholder

DIVGI TORQTRANSFER SYSTEMS PRIVATE LIMITED	}
a company incorporated under the provisions of Companies Act 1956	}
having its registered office at 75, General Block,	}
MIDC Bhosari, Pune -411026	}

.....Applicant Company

Called for hearing :

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

Coram: M. K. Shrawat, Member (Judicial)

V. Nallasenapathy, Member (Technical)

DATE: 12th April, 2017

MINUTES OF THE ORDER

1. The Counsel for the Applicant 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 Applicant further submits that the Applicant Company is presently engaged in the business of manufacturing products & components for 4WD vehicles.

3. The Counsel for the Applicant further submits that the rational for Scheme is that amalgamation of Divgi TorqTransfer Systems Private Limited with Divgi Metalwares Private Limited will result in various benefits including:

- (i) *Synergies in administration and marketing and business operations.*
- (ii) *Achieving economies of scale.*
- (iii) *Pooling of the human talents in terms of manpower, management, administration and marketing which would result in savings of costs.*
- (iv) *Combined capital resources would strengthen the financial position of the merged entity and result in increasing leveraging capacity of the merged entity i.e. its capacity to borrow funds for business purposes.*
- (v) *Lesser regulatory / procedural compliance.*
- (vi) *Integrate, rationalize and streamline the management structure of the merged business.*
- (vii) *Amalgamation of the companies would eliminate duplication of work, administrative services, and will result in cost savings.*
- (viii) *Cost saving in fees/ duties payable on statutory and procedural compliance.*
- (ix) *Facilitate inter transfer of resources and costs and optimum utilization of assets.*
- (x) *Synchronizing of efforts to achieve uniform corporate policy.*
- (xi) *To reflect the consolidated net worth of these companies in one balance sheet.*

4. A meeting of the Equity Shareholders of the Applicant Company, be convened and held at its Registered office at 75, General Block, MIDC, Bhosari, Pune – 411026 on 24th day of May, 2017 at 11a.m. for the purpose of considering and if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation of Divgi TorqTransfer Systems Private Limited with Divgi Metalwares Private Limited and their respective shareholders .

5. 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 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 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.

6. 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 NavParmanu, Behind Amar Cinema, Chembur Mumbai – 400071.
7. That Mr. Jitendra B. Divgi, Managing Director of the Applicant Company, failing him Mr. Hirendra B. Divgi, 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 75, General Block, MIDC Bhosari, Pune –411026 on 24th day of May, 2017 at 11a.m. or any adjournments thereof.
8. That Mr. Vinayak Khanvalkar, Practicing 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 75, General Block, MIDC Bhosari, Pune –411026 on 24th day of May, 2017 at 11a.m. or any adjournments thereof and his remuneration is fixed at Rs. 2500/-.
9. That the Notice of the Meeting shall be advertised in two local newspapers viz. “Indian Express” in English and “Loksatta” in Marathi, both circulated in Pune not less than thirty (30) days before the date fixed for the meeting.
10. 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.
11. The quorum for the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
12. 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.

13. 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 Registered office at 75, General Block, MIDC, Bhosari, Pune -411026 not later than 48 hours before the aforesaid meeting.
14. 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.
15. 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.
16. The Counsel for the Applicant Company submits that there are no Secured Creditors in the Applicant Company, therefore the question of sending notices to the Secured Creditors does not arise. That Counsel for the Applicants 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 unsecured creditors as required under section 230(3) of the Companies Act 2013 by speed post/ email 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.
17. 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, Pune 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.

18. The Applicant Company is also directed to serve notice along with copy of scheme upon Official Liquidator. M/s B.A. Ved & Co. Chartered Accountants are appointed to assist the Official Liquidator to scrutinize books of accounts of the Transferor Company for the last 5 years. The Applicant Company to pay fees of Rs. 2,00,000/-.

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 17 and 18 above and publication of notice in newspapers.

Sd/-
V. Nallasenapathy, Member (T)

Sd/- 17/11/17
M. K. Shrawat, Member (J)