

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 207 OF 2017**

IN

COMPANY SCHEME APPLICATION NO. 61 OF 2017

L&T Valves Limited

...Petitioner/Transferor
Company

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 208 OF 2017**

IN

COMPANY SCHEME APPLICATION NO. 60 OF 2017

L&T Electricals & Automation Limited

...Petitioner/Transferor
Company

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:

Sections 391 to 394 of the Companies Act, 1956

AND

IN THE MATTER OF: Scheme of Arrangement between:

L&T Valves LIMITED, (“Transferor Company/Demerged Company/Petitioner Company”)

CIN: U74999MH1961PLC012188

L&T ELECTRICALS & AUTOMATION LIMITED, (“Transferee Company/Resulting Company”),

CIN: U31501MH2007PLC176667 and their respective shareholders and creditors

Called for Final Hearing:

Darius Khambata, Senior Counsel, Rajesh Shah, Advocate; Abhijeet Shinde, Advocate; Siddharth Ranade, Advocate; Ahmed M. Chunawala, Advocate; i/b Trilegal., Advocates for the Petitioner

Mr. S. Ramakantha, Joint Director for the Regional Director

Coram: SH. B.S.V. Prakash Kumar Hon'ble Member (J) and SH. V. Nallasenapthy Hon'ble Member (T)

Date: 27th April, 2017

MINUTES OF THE ORDER

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Arrangement between L&T VALVES LIMITED, the Transferor Company and L&T ELECTRICALS & AUTOMATION LIMITED, the Transferee Company.
3. The Petitioner Companies have approved the said Scheme of Arrangement 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 Company Petitions have been filed in consonance with the order passed in their Company Scheme Application No. 60 of 2016 and Company Scheme Application No. 61 of 2016 by this Tribunal.
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 this Tribunal and they have filed necessary affidavits of compliance in this Tribunal. Moreover, Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.
6. The Learned Advocate appearing on behalf of the Petitioner Companies submits that the Transferor Company been primarily engaged in manufacturing of valves

for key sectors of the economy such as oil & gas, power, petrochemicals, chemicals, fertilizers and pharmaceuticals and the Transferee Company has been proposed to engage in manufacturing of low and medium voltage switchgear products, electrical systems, energy meters and automation solutions for various sectors such as industry, utility, building & home, infrastructure and agriculture segments and manufacturing of different types of valves including industrial and pipe line valves. The Learned Advocate appearing on behalf of the Petitioner Companies submits that both the Petitioner Companies have a positive net worth. The Learned Advocate appearing on behalf of the Petitioner Companies further submits that as per the opinion of the management, the Scheme will result in many benefits for both the Petitioner Companies. In case of the Transferor Company, the Scheme will create value for its shareholders. Whereas in case of the Transferee Company, the Scheme will create value by acquiring additional facilities and availability of increased resources and assets which can be utilized to enhance and grow the business of the Transferee Company.

7. The Regional Director has filed a Report on 11th day of April, 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. 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 Authorities to scrutinize the tax returned filed by the Transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding upon the Petitioner Company.*
- 2. The Transferor Company and the Transferee Company have submitted the proof of serving notice, upon the Income Tax Authorities dated 17 02 2017 for comments. This directorate has also issued a reminder letter to the income tax department dated 06 04 2017.*
- 3. Certificate by the Company’s Auditor stating that the accounting treatment if any in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act 2013 is not available.*

In this regard, the Petitioner has to submit the Auditor’s Certificate

4. *Petitioner in clause 13.2 of the Scheme on Accounting Treatment in the Books of Transferee Company/Resulting Company inter alia has mentioned that with effect from the Appointed Date, the Transferee Company shall record the assets of the Manapakkam Undertaking vested in it in accordance with this Scheme, at the values arrived at by apportioning the amount of consideration in the ratio of their respective values, as appearing in the books of accounts of the Transferor Company at the close of the business of the day immediately preceding the Appointed Date.*

It is hereby clarified that all transactions during the period between the Appointed Date and Effective Date relating to the Manapakkam Undertaking would be duly reflected in the financial statements of the Transferee Company at their respective transaction value upon this Scheme coming into effect, as may be decided by the Board of Directors (including committee(s) thereof) of the Transferee Company. In this regard Petitioner Company has to clarify accounting standard adopted for the proposed accounting treatment.

5. *Petitioner has not mentioned about Companies Staff, workmen and Employees. In this regard Petitioner Company has to amend the scheme to include a clause for protecting the interest of the employees working in the Demerged Undertaking.*

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 the tax implication if any arising out of the Scheme is subject to the final decision of the Income Tax Authorities and the decision of the Income Tax Authorities shall be binding on the Petitioner Companies.

9. So far as the observation in paragraph IV (2) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company has noted such observation.

10. 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 the Petitioner Companies have already filed the Auditor's Certificate with the Hon'ble Tribunal and have also provided a copy of the same to the Office of the Regional Director.

11. 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 Company undertakes to pass such accounting entries as may be necessary in connection with the Scheme to comply with applicable accounting standards. The Petitioner Company has already submitted the Auditors Certificate under section 133 of the Companies Act, 2013.
12. So far as the observation in paragraph IV (5) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the interests of the employees of both the Petitioner Companies shall remain unaffected by the present scheme.
13. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 12 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
14. As far as observation of RoC, the Petitioner Companies through their counsel submits that the surplus if any arising out of the scheme which shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against the Profit & Loss Account of the Transferee Company.
15. 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.
16. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 60 of 2016 is made absolute in terms of prayers clause (a) to (d) and 61 of 2016 is made absolute in terms of prayer clauses (a) to (d).
17. 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 2013.
18. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of the receipt of the Order.
19. The Petitioner Companies 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 within a period of 60 days, if any from the date of receipt of the order.

20. 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. Nallasenapthy Member (T)

Sd/-

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