

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH  
TRANSFERRED COMPANY SCHEME PETITION NO 132 OF 2017  
IN  
HIGH COURT COMPANY SCHEME PETITION NO 631 OF 2016  
Shrenik Industries Private Limited...Petitioner Company  
AND  
TRANSFERRED COMPANY SCHEME PETITION NO 133 OF 2017  
IN  
HIGH COURT COMPANY SCHEME PETITION NO 632 OF 2016  
Gestamp Powergear Windsteel Private Limited...Petitioner Company

In the matter of the Companies Act,  
2013;

AND

In the matter of Sections 391 to 394 of the  
Companies Act, 1956 (corresponding sections  
230 to 232 of the Companies Act 2013);

AND

In the matter of Scheme of Amalgamation of  
Shrenik Industries Private Limited (“Transferor  
Company”) and Gestamp Powergear Windsteel  
Private Limited (“Transferee Company”) and  
their respective shareholders

**Called for Hearing**

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners in both  
Petitions.

Mr. S Ramakantha, Joint Director in the office of Regional Director in both the Petitions.

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

**Date: 1 March 2017**

**MINUTES OF ORDER**

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the court to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Court is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of Shrenik Industries

Private Limited with Gestamp Powergear Windsteel Private Limited and their respective shareholders.

3. The Learned Counsel for the Petitioners states that the Transferor Company is engaged in the business of manufacturing of wind turbine towers and rendering services involving contracts for fabrication of Wind Turbine Tower on job-work basis and the Transferee Company is engaged in the business of construction, manufacturing and delivery of wind towers as well as other steel parts of Wind Turbine Generator (WTG).
4. Learned Counsel for the Petitioners states that the Scheme will result into the following benefits:
  - a. *Simplified corporate structure.*
  - b. *The proposed amalgamation will result in administrative and operational rationalization, organizational efficiencies, reduction in overheads and other expenses and optimal utilization of various resources. It will prevent cost duplication and the operations would be substantially cost-efficient. Consequently, the Transferee Company will offer a strong financial structure to all creditors including the creditors of the Transferor Company and achieve better cash flows.*
  - c. *Reduction in compliances and statutory filings with various government departments.*
  - d. *The Scheme does not affect the rights and interests of the shareholders or the creditors of the Transferee Company. The shareholding and other rights of the members of the Transferee Company will remain unaffected as no new shares are being issued by the Transferee Company to the shareholders of the Transferor Company and there is no change in the capital structure. Further, the creditors of the Transferee Company will not be affected by the Scheme since the assets of the Transferor Company are more than its liabilities. Further, post the amalgamation, the assets of the Transferee Company shall be greater than its liabilities. Accordingly, the creditors of the Transferee Company will also not be affected by the Scheme.*
5. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to the respective Company Scheme Petitions.

6. Learned Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Tribunal/Court and they have filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Counsel undertakes 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 undertakings given by the Petitioner Companies are accepted.
7. The Official Liquidator has filed his report on 25<sup>th</sup> February 2017 stating that the affairs of the Transferor Company have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved.
8. The Regional Director has filed an Report dated 27<sup>th</sup> February 2017 stating therein, save and except as stated in paragraph IV (a) to (d), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs (a) to (d) of the said Report it is stated that:
  - (a) *As regards Para No.11 of the Scheme regarding "Employees of the Transferor Company", the Petitioner Company may be directed that after the Effective Date, the Transferee company shall be entitled to vary the terms and conditions as to employment and remuneration of the staff, workmen, employees or other labour of the Transferor company on the same basis as it may do for the staff, workmen, employees or other labour of the Transferee Company but these shall not be less favourable to the employees/workmen of the Transferor Company, prior to amalgamation.*
  - (b) *As regard para No.22 of the Scheme regarding "change of name ", the Petitioner Transferee company may be directed to make compliance of provisions of section 4 and 13 of the Companies Act, 2013 and rules made thereunder and to file relevant e- forms with requisite enclosures by requisite fees.*
  - (c) *In addition to compliance of AS-14, the Transferee company shall pass such Accounting Entries which are necessary in connection with the Scheme to comply with other applicable Accounting standards such as AS-5 etc, and ensure that the financial statement of the Transferee Company does not impair the true and fair value of the Financial Statements of the Transferee Company after post-amalgamation.*

*(d) 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.*

9. As far as the observations made in paragraph IV(a) of the Report of Regional Director is concerned, the counsel for Petitioner clarifies that all the employees of the Transferor Company shall become the employees of the Transferee Company and the terms of employment of the employees of the Transferor Company post sanctioning of the Scheme shall not be less favourable to the employees/workmen of the Transferee Company and modifications, if any shall not result in reduction in benefits to the employees of Transferor Company.
10. In so far as observations made in paragraph IV(b) of the Report of Regional Director is concerned, the Petitioner Transferee Company through its Counsel undertakes to make compliance of provisions of section 4 and 13 of the Companies Act, 2013 and rules made thereunder and will file relevant e- forms with requisite enclosures by requisite fees to the extent applicable.
11. In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Transferee Company through its Counsel undertakes that the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with Accounting Standard – 14 or any other applicable Accounting Standard such as Accounting Standard – 5.
12. As far as the observations made in paragraph IV(d) of the Report of Regional Director is concerned, the Petitioner submits that the Petitioner is bound 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.
13. Mr. S Ramakantha, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region Mumbai for Regional Director are satisfied with the undertakings given by the Petitioner Companies. The said undertaking given by Petitioner Companies are accepted.
14. 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.
15. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No 132 of 2017 and 133 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.

16. Petitioner Companies are directed to file 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 the physical copy within 30 days from the date of issuance of the order by the Registry.
17. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
18. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay to be paid within four weeks from the date of Order.
19. Costs to be paid within four weeks from today.
20. Filing and issuance of the drawn up order is dispensed with.
21. All authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
22. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

**B.S.V. Prakash Kumar, Member (Judicial)**