

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSP No. 1073 of 2017

In the matter of the Companies Act, 2013;

AND

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

AND

In the matter of Composite Scheme of Amalgamation and Arrangement of Grainger India Private Limited ("Transferor Company") and Grainger Industrial Supply India Private Limited ("Transferee Company") and their respective Shareholders

Grainger India Private LimitedPetitioner/ Transferor Company
AND

Grainger Industrial Supply India Private Limited.....Petitioner/
Transferee Company

Order delivered on 7th February, 2018.

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
For Regional Director : Ms. P Sheela, Joint Director in the office of Regional Director.
For Registrar of Companies: Mr. Parvey Naikwadi, Assistant ROC
For Official Liquidator: Santosh Dalvi, Senior Assistant in the office of Official Liquidator
Per: V .Nallasenapathy, Member (T)

Order

1. Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.

2. The sanction of the tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to a Composite Scheme of Amalgamation and Arrangement between Grainger India Private Limited ('the Transferor Company') and Grainger Industrial Supply India Private Limited ('the Transferee Company') and their respective shareholders.
3. Learned counsel of the Petitioner Companies states that Transferee Company primarily provides support services to W.W. Grainger, Inc. for the distribution of maintenance, repair, and operations products (MRO) and related services and the Transferor Company functions primarily as a sourcing office. Activities include identifying and managing India-based suppliers for Grainger International, Inc. and secondarily, providing support services to certain customer service functions for W.W. Grainger, Inc.'s export customers located in the Asia Pacific Region. The businesses of the Transferor Company and the Transferee Company complement each other as both companies are primarily engaged in rendering support services to related companies. As both companies are under the same ownership, control, and management of W.W. Grainger, Inc. via its wholly-owned indirect subsidiaries, India Pacific Brands and Grainger International Holdings B.V., it would be beneficial to consolidate the Transferor Company and the Transferee Company into one legal entity. Therefore, Management proposes an internal group restructuring to streamline and simplify the overall corporate structure in India. The benefits of consolidating the businesses include elimination of redundant administrative costs, reduction of cumbersome co-ordination efforts across multiple entities, and more efficient and seamless service to the customers. Ultimately the consolidation of the Transferor Company and the Transferee

Company will result in a more efficient corporate structure and allow for more effective administration of the business. The following benefits are envisage pursuant to the amalgamation of the Transferor Company into and with the Transferee Company:

- i. Greater integration and financial strength for the amalgamated entity, which would result in maximising overall shareholder value and will improve the financial position of the amalgamated entity;
- ii. Facilitating effective cash management;
- iii. The amalgamation would provide synergistic linkages besides economies in costs and other benefits resulting from the economies of scale, by combining the businesses and operations of the Transferor Company and the Transferee Company and thus contribute to the profitability of the amalgamated entity by rationalization of management and administrative structure;
- iv. The amalgamation would lead to greater and efficient use of infrastructure facilities and optimum utilisation of the financial resources, managerial, technical and marketing expertise of the Transferor Company and the Transferee Company;
- v. Simplification of group structure by eliminating multiple companies having similar objectives in relation to manpower staffing solutions;
- vi. Streamline and simplify the corporate structure will result in elimination of redundant administrative costs, reduction of cumbersome co-ordination efforts across multiple entities, more efficient and seamless service to the customers, and ultimately a more efficient corporate structure and effective administration of the combined businesses;

- vii. Appropriate capital structure at India level with enhanced return on capital employed; and
 - viii. Enhancing earnings before interest, tax, depreciation and amortization (EBITDA) and shareholder value.
4. The Petitioner Companies have approved the said Composite Scheme of Amalgamation and Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
5. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petitions have been filed in consonance with the order passed in Company Scheme Application 907 of 2017 .
6. The Learned Advocate appearing on behalf of the Petitioners states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Tribunal and they have filed necessary Affidavits of compliance with Hon'ble Tribunal. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.
7. The Regional Director, Western Region, Mumbai in his Report dated 10th January, 2018 stating therein that save and except as stated in paragraph IV of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

Paragraph IV, of the said Report reads as follows:

- 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 Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*

2. *Petitioner in rationale of the scheme has inter alia mentioned that Both the petitioner companies are wholly owned subsidiaries of W.W. Grainger Inc. a publicly traded company incorporated in the state of Illinois, United States of America. As per the shareholders list India Pacific Brands, Mauritius and Grainger International Holdings B.V. Netherlands are shareholders of the transferor and transferee company. Therefore, notice to RBI is required under section 230(5) of the Act, 2013 for its representation within 30 days of the notice.*
3. *ROC in its report has stated that the transferor company has not filed Statutory returns for the year ended 31.3.2017 for which the petitioner to undertake to file the same.*
4. *It is submitted that the Petitioner has not submitted the proof of serving notice upon the Income-tax Authorities. In this regard petitioner has to submit the proof of serving the notice to Income Tax Authorities as per the provision of the Section 230(5) of the Act, 2013.*
5. *Petitioner companies not submitted admitted copy of the Petition, Minutes of order of the Hon'ble NCLT, Chairman's Report of the meeting. In this regard petitioner to undertake submit the same for the record of Regional Director.*
6. *Petitioner in clause 11 of the Scheme has inter alia mentioned that upon the sanction of the scheme of amalgamation, the authorized share capital shall stand combined to an amount of Rs. 97,78,06,500 divided into 9,77,80,650 equity shares of Rs.10/- each and the transferee company shall not be required to pay any fees stamp duty for its increased authorized share capital and the clause V of the Memorandum of Association shall stand altered without any further act, instrument or deed. In this regards, Petitioner Companies have to undertake to comply with provisions of section 232(3)(i) of the Companies Act, 2013.*
7. *Petitioner in clause 13 of the scheme has inter alia mentioned that upon the scheme coming into effect the debit balance of capital reserve account of the Transferee Company adjusted*

against the existing 8,60,166 10% Compulsorily Convertible Cumulative Preference Shares of Rs. 100 each and aggregate to Rs. 86,016,600 of the Transferee Company. If after adjustment any credit balance is left in the preference share capital, then such amount of accumulated book losses of the Transferee Company shall be adjusted against such balance amount remaining to the credit of said Preference Share Capital. In view of the above entire preference share capital shall stand cancelled as an integral part of the scheme.

In this regards, it is submitted that the petitioner transferee company is proposing reduction of 10% Compulsorily Convertible Cumulative Preference shares of Rs.100 each but has not prayed for approval of Hon'ble Tribunal under section 66 of Companies Act,2013 instead has proposed for adjustment with capital reserve for such cancellation.

Save and except as stated in para IV (1) to (7) it appears that the Scheme is not prejudicial to the interest of shareholders and public

8. As far as the observations made in paragraph IV (1) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel submits that they are bound to comply with all applicable provisions of the Income-tax Act and all tax implications arising out of the Scheme of Amalgamation will be met and answered in accordance with applicable law.
9. As far as the observations made in paragraph IV (2) of the Report of Regional Director, the Petitioner Company through its Counsel submits that the copy of the scheme has been served upon Reserve Bank of India and affidavit of service has been filed by the Petitioners.
10. As far as the observations made in paragraph IV (3) of the Report of Regional Director, the Petitioner Company through its Counsel submits that Statutory returns of the Transferor Company have

been filed by eForm AOC 4 and eForm MGT 7 under SRN No G56032972 dated 12th October 2017 and SRN No. G63411250 dated 22nd November 2017, respectively within the due dates by the Transferor Company for the financial year ended on 31.03.2017.

11. As far as the observations made in paragraph IV (4) of the Report of Regional Director, the Petitioner Company through its Counsel submits that it has served a copy of Company Scheme Application No. 907 of 2017 to the Income Tax Department for their comments on October 9, 2017.
12. As far as the observations made in paragraph IV (5) of the Report of Regional Director, the Petitioner Company through its Counsel submits that Petitioner companies has submitted copy of the Petition, which also contained the Chairman's Report of the meetings, to the Regional Director on November 29, 2017.
13. As far as the observations made in paragraph IV (6) of the Report of Regional Director, the Petitioner Company through its Counsel undertakes to comply with provisions of section 232(3)(i) of the Companies Act, 2013.
14. As far as the observations made in paragraph IV (7) of the Report of Regional Director, the Petitioner Company through its Counsel submits that reduction of share capital is being done as integral part of the Scheme and as per explanation to Section 230 of the Companies Act, 2013 provisions of section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section .
15. The observations made by the Regional Director have been explained by the Petitioner in paragraphs 8 to 14 above. The

clarifications and undertakings given by the Petitioner Companies are hereby accepted.

16. The Official Liquidator filed his report stating that the affairs of the Transferor Company has been conducted in proper manner and that the Transferor Company may be ordered to be dissolved.
17. From the material on record, the Scheme appears to be fair, reasonable and is not contrary to public interest.
18. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 1073 are made absolute in terms of prayer clauses (a) to (b).
19. The Petitioner Companies are directed to file a copy of this order along with a copy of the Composite Scheme of Amalgamation and Arrangement with the concerned Registrar of Companies, electronically, along with e-Form INC-28, in addition to physical copy, within 30 days from the date of receipt of the order by the Registry.
20. The Petitioner Companies to lodge a copy of this order along with the Scheme duly certified 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, within a period of 60 days from the date of receipt of the order.
21. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the receipt of the order.
22. The Transferor Company in the Company Scheme Petition to pay cost of Rs. 25,000/- to Official Liquidator, Bombay. Cost to be paid within four weeks from the date of receipt of the order.

23. All authorities concerned to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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

7.2.2018