

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**AT NEW DELHI**

**Present: CHIEF JUSTICE (Retd.) SHRI M.M.KUMAR, HON'BLE PRESIDENT**

**& SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)**

**COMPANY PETITION NO. 777 OF 2016**

**CONNECTED WITH**

**COMPANY APPLICATION ( MAIN) NO. 69 OF 2016**

**(TRANSFERRED FROM THE FILE OF HON'BLE HIGH COURT)**

**IN THE MATTER OF SECTION 391 & 394 OF**

**THE COMPANIES ACT,1956**

**AND**

**IN THE MATTER OF SCHEME OF AMALGAMATION**

**BETWEEN**

**LAHMEYER INTERNATIONAL  
INDIA PRIVATE LIMITED  
A-3,2<sup>nd</sup> FLOOR, NEETI BAGH  
NEW DELHI - 110049**

**PETITIONER NO.1/  
TRANSFEROR  
COMPANY**

**AND**

**TRACTEBEL ENGINEERING  
PRIVATE LIMITED  
A-3,2<sup>ND</sup> FLOOR NEETI BAGH  
NEW DELHI -110049**

**PETITIONER NO.2/  
TRANSFEEEE  
COMPANY**

**ADVOCATE FOR THE PETITIONERS:**

**Mr. Arun Saxena , Advocate  
Ms. Simran Jyot Singh , Advocate  
Mr. C. Balooni, Company Prosecutor for RD(NR)**

## ORDER

- 1) This joint petition filed by the companies above named is coming up finally before us on 16.02.2017 for the purpose of the approval of the scheme of arrangement, as contemplated between the companies and its shareholders by way of amalgamation of the Transferor Company with the Transferee Company. A perusal of the petition discloses that initially the application seeking the directions for convening the meeting of equity shareholders, secured and unsecured creditors of both the transferor and transferee company for dispensation were filed before the Hon'ble High Court of Delhi in CA No.16/2016. The Hon'ble High Court of Delhi vide its order dated 27.07.2016 was pleased to dispense with the requirement of convening of the meetings of the equity shareholders, secured and unsecured creditors of both the Transferor as well as Transferee Companies in view of the requisite consents in excess of 75% in value having been obtained and produced before it.
- 2) Under the circumstances, the petitioners of the above named companies were required to file their petitions for approval of the Scheme of Amalgamation before the Hon'ble High Court of Delhi under the erstwhile provisions within a period of 7 days from the date of dispensation of the meeting ordered by the Hon'ble High Court of Delhi.
- 3) However, there seems to have been a delay of 8 days in filing the petition before the Hon'ble High Court of Delhi and for the condonation of which the petitioner had moved an application in Company Application No.3212/2016 and which delay eventually seems to have been condoned by the Hon'ble High Court of Delhi vide its order dated 30.08.2016. Further, in

the said order itself notice in the Second Motion petition in C.P. No.777/2016 moved by the petitioners under Sections 391 to 394 of the Companies Act, 1956 read with relevant Rules of the Companies (Court) Rules, 1959 in connection with the scheme of amalgamation have also been issued to the Registrar of Companies, Regional Director and the Official Liquidator. The Petitioners were also directed vide the said order that publication to be issued by the petitioners in the newspapers "Business Standard" (English) and "Jansatta" (Hindi) both of Delhi edition not less than 10 days before the date fixed for hearing on 19.1.2017.

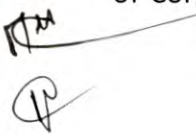
4) However, in the meanwhile, since the provisions relating to compromises, arrangements and amalgamation as contemplated under Sections 230-232 have been notified w.e.f. 15.12.2016 wherein the power to consider such schemes have now been vested with the National Company Law Tribunal, the Hon'ble High Court of Delhi pursuant to the notification bearing No. DL.33004/99 dated 7.12.2016 issued by the Ministry of Corporate Affairs has transferred/transmitted the records of the above petition to this Tribunal vide order dated 19.1.2017, for our consideration.

5) In view of the above, the petition of Second Motion as above filed by the joint petitioners before the Hon'ble High Court and subsequently transferred is taken up for consideration by us. The joint petitioners have filed an affidavit dated 10.2.2017 in relation to the compliance of the orders passed by the Hon'ble High Court of Delhi dated 30.08.2016 and a perusal of the same discloses that the petitioners have effected the paper publication as

directed by the Hon'ble High Court of Delhi in one issue of the "Business Standard" on 30.09.2016 and in "Jansatta" again on 30.9.2016 in relation to the date of hearing of the petition on 19.01.2017. Further, the affidavit also discloses that notices have been issued to the Regional Director, Northern Region as well as to the Official Liquidator attached to the High Court, Delhi in compliance with the order dated 30.08.2016 and in proof of the same postal receipts have also been enclosed. Further, it is also seen that pursuant to the directions from Regional Director, Northern Region, a copy of the Company Petition has also been served on the jurisdictional Income Tax Officer of the Transferee Company. Notices seem to have also been given to the Registrar of Companies of Delhi and Haryana dated 17.10.2016 by the petitioners.

6) The Counsel for the Petitioners represent that objections from any quarters have not been received in relation to the proposed Scheme coming up for sanction before this Tribunal. Further it is also represented that Certificate from the Statutory Auditor confirming that the Scheme and the accounting treatment proposed therein are not in violation of the Accounting Standard prescribed by the Central Government under Section 133 of the Companies Act, 2013. No report has been received from the Official Liquidator despite due notice.

7) We have heard the counsels for the petitioners and also considered the representations made by the Regional Director, Northern Region vide representation dated 14.02.2017. An examination of the said representation/affidavit of Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi discloses that despite letter dated 06.10.2016 to the Principal



Commissioners of Income Tax, New Delhi, no observation/comments have been received from the said office. A further perusal of the said report dated 14.2.2017 and as pointed out by the representative appearing on behalf of the Regional Director, Northern Region, Ministry of Corporate Affairs as extracted below from Paragraph 13 and Paragraph 14 of the affidavit discloses:

“That the Deponent states that the Registrar of Companies, Delhi and Haryana vide para 23 of his report has referred to clause 15 of the Scheme, wherein it has been stated that in order to carry on the activities currently being carried on by the Transferor Company, upon coming into effect of the Scheme, the Main Objects in the Memorandum of Association of the Transferor Company to the extent necessitated shall be added to the Main Objects of the Memorandum of Association of the Transferee Company. Further, upon coming into effect of the Scheme, such other/Ancillary Clauses in the Memorandum of Association of the Transferor Company shall be added to the other/Ancillary Clauses in the Memorandum of Association of the Transferee Company, as may be considered necessary by the Board of Directors of the Transferee Company. In this regard, the Hon’ble Tribunal may consider to direct the Transferee Company to comply with the applicable provisions of the Companies Act, 2013.

That the Deponent states that the Registrar of Companies, Delhi & Haryana vide para 31 of his report has made the following observations:

- (i) It has been observed that the transferor Company is subsidiary of  
Lahmeyer International GmbH, hence, it is submitted that the



petitioner/Transferee Company may be asked to give an undertaking in regards to requisite compliances from Reserve Bank of India as required under FEMA for allotment of shares to foreign company/entities.”

8) Counsels for the petitioners were confronted with the above observations made by the Regional Director, in its report Northern Region in relation to the scheme as well as approval, if any which is required to be obtained from the RBI under FEMA for allotment of shares to foreign company or entities. The counsel for Petitioners unequivocally undertake that the above said observations made by the Regional Director, Northern Region will be fully complied with both in letter as well as in spirit as and when the Scheme is approved by the Tribunal and further in relation to allotment of shares it is stated that at the appropriate time all necessary approvals as required will be obtained from RBI. The above undertaking is taken on record and in view of no further or other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the scheme of amalgamation annexed as Annexure-A to the Company Petition as well as the prayer made therein clauses 1 and 2.

9) While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER

- (1) That all the property, rights and powers of the transferor company be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and vested in the transferee company for all the estate and interest of the transferor company therein but subject nevertheless to all charges now affecting the same; and
- (2) That all the liabilities and duties of the transferor company be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and
- (3) That all proceedings now pending by or against the transferor company be continued by or against the transferee company; and
- (4) That the transferee company do without further application allot to such members of the transferor company as have not given such notice of dissent as is required by clause 12 of the SCHEME OF AMALGAMATION herein the shares in the transferee company to which they are entitled under the said SCHEME OF AMALGAMATION; and
- (5) That transferor company shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the transferor company shall be dissolved and the Registrar of Companies shall place all documents relating to the transferor company and registered with him on the file kept by him in relation to the



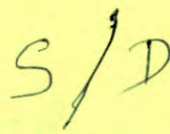


transferee company and the files relating to the said two companies shall be consolidated accordingly; and

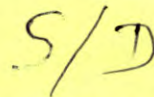
(6) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

10) Each of the Petitioners herein to pay costs of Rs.10.000/- each to the Regional Director, Northern Region, Delhi within four weeks from the date of the order.

23.02.2017

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**(CHIEF JUSTICE M.M.KUMAR)  
PRESIDENT**

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**(R.VARADHARAJAN)  
MEMBER (JUDICIAL)**