

**In the National Company Law Tribunal
Division Bench, Chennai**

**CP/117/CAA/2017
[CA/52/CAA/2017]**

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation of

M/s. Busbar Systems (India) Limited
(Transferor Company 1)

And

M/s. Mercury Manufacturing Company Limited
(Transferor Company 2)

With

M/s. Godrej & Boyce Manufacturing Company Limited
(Transferee Company)

Order delivered on: 14.09.2017

Coram:

Ch. Mohd Sharief Tariq, Member (J)

S. Vijayaraghavan, Member (T)

For the Petitioners: Shri K. Ramasamy, Advocate

Shri G.V. Mohankumar, Advocate

ORDER

Per: Ch. Mohd Sharief Tariq, Member (J)

1. Under consideration is a Company Petition No. CP/117/CAA/2017 filed under section 230 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules 2016. The purpose of the Company Petition is to obtain sanction of the Scheme of Amalgamation (in short, 'Scheme') by virtue of which Busbar System (India) Limited (hereinafter referred to as 'Transferor Company 1') and Mercury Manufacturing Company Limited (hereinafter referred to as 'Transferor Company 2') are proposed to

be merged, amalgamated and vested in Godrej & Boyce Manufacturing Company Limited (hereinafter referred to as ‘**Transferee Company**’) as a going concern.

2. Before proceeding with the matter, it is pertinent to mention herein that the Transferor Company 1 and Transferee Company are within the jurisdiction of NCLT, Mumbai. The Transferor Company 2 has filed this petition.
3. The details of Share Capitals, shareholders, Secured and Unsecured creditors of the Applicant Company are as under:

Particular	Authorised Capital	Issued, S&P Capital	Equity Share-holders	Secured Creditors	Unsecured Creditors
Transferor Company 2	Rs. 1400 Lakhs	Rs. 375 Lakhs	7	1	141

4. The Transferor Company 2 is a Public Limited having registered office at Plot no. D3, Madras Export Processing Zone, GST Road, Tambaram, Madras- 600045 and the Board of Directors of the petitioner company vide its resolution dated 31.01.2017 approved the said scheme of Amalgamation.
5. The Transferor Company is providing customized furnishing for workplace and falls under the jurisdiction of Special Economic Zone. This bench vide its order dated 24.04.2017 in CA/52/CAA/2017 dispensed with convening and holding the meeting of equity

shareholders of the Transferor Company 2 under section 230(9) of the Companies Act 2013 on production of their consent affidavits.

6. Shri K. Ramasamy, the learned counsel appearing for the Petitioner Company submitted that the rational, reasons and circumstances that have necessitated the proposed scheme are that the amalgamation will enable consolidation of the business of the two entities into one entity which will facilitate in focused growth, operational efficiency, resulting in more productive utilization of said resources and cost & operational efficiency which would be beneficial to all stakeholders. He further submitted that upon the Scheme becoming effective, no shares of the Transferee Company shall be issued or allotted in lieu or exchange of its holding in the Transferor Company 2 as the entire issued, subscribed and paid-up share capital is held by the Transferee Company. The learned counsel also submits that no investigation proceedings are pending against the Companies under the provisions of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.
7. Learned Counsel for the Applicant Company has further submitted that the equity shares of the Petitioner Company are not listed with the stock exchange, thus the Company does not require any compliance of Listing Agreement or any SEBI Rules/regulations.

8. The notices were issued to the statutory authorities viz. Official Liquidator, Regional Director, RoC and Income Tax Authority as per the procedure prescribed. However, there has been no objection/representation to the proposed scheme under reference.
9. The Regional Director, Southern Region (In short, '**RD**') in its Report Affidavit (for brevity, '**Report**') dated 09.08.2016 submitted that as per records of ROC, Chennai, the Transferor Company is regular in filing its statutory returns and no investigation is pending against the company. It is further submitted that Clause 16 of the scheme provides protection of the interest of all the employees of the Transferor Company. The RD decided not to make any objection to the Scheme and submitted that the petition may be disposed of on merits.
10. However, in Para 6 of the Report of RD, it has been submitted that the submission of the Transferor Company 2 that it is not required to convene the meeting of the secured and unsecured creditors as they are not affected by the amalgamation and to buttress its submission, the company has cited a judgement of the Hon'ble High Court of Andhra Pradesh in Para 24 of its application. This submission of the company is not acceptable as the judgement cited is pertaining to the arrangement with the shareholders wherein the creditors are not affected. Therefore, the RD submitted that this is against the interest

of the creditors for which notice should be given to the creditors and their consent obtained.

11. The Official Liquidator (In short, 'OL') in its report dated 21st August, 2017 submitted that M/s. S. Sony Associates, Chartered Accountants (Auditor) appointed by this Bench vide its order dated 24.04.2016, have scrutinized the books and accounts of the Transferor Company. The said Auditor has broadly reviewed and observed that the Transferor Company has maintained and written up all the statutory books in accordance with normally accepted accounting principle and fulfilled the requirements of the Companies Act, 2013 and also the affairs of the company have not been conducted in a manner prejudicial to the interest of its members, creditors or to the public interest.

12. The OL further submits that under Clause 16.1 of Part- C of the proposed scheme, the interest of all the workmen and employees in the service of the Transferor Company is safeguarded. As per Clause 13 of Part- C of the said Scheme, the entire issued, subscribed and paid-up share capital of the Transferor Company 2 is held by the Transferee Company. In Para 5 of OL Report, it has been submitted that Transferor Company 2 has not obtained No Objection Certificate from its secured & unsecured creditors.


13. With regard to the above observation made by the RD and OL, the learned counsel submitted that the Transferee Company 2 has produced proof of service by way of an affidavit stating that the Transferee Company 2 has sent individual notices to its secured & unsecured creditors, however, the applicant company did not receive any objection from the creditors.

14. Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any of the creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of Amalgamation will not cast any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed date of the said Scheme is 1st April 2016.

15. There is no additional requirement for any modification and the said Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under section 391 of the Companies Act, 1956. Taking into consideration the above facts, the Company Petition is allowed and the scheme of Amalgamation annexed with the petition is hereby sanctioned which shall be binding on the members, creditors and shareholders.

- 16.** While approving the scheme as above, we further clarify that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.
- 17.** This order shall be subject to the orders passed by the Hon'ble NCLT, Mumbai and NCLT Bengaluru Benches within whose jurisdiction the Registered Offices of the Transferor Company 1 and the Transferee Company respectively are situated.
- 18.** The Transferor Company 2 is directed to make payment of Rs. 50,000/- to the OL for making payment to the Auditor who has investigated into the affairs of the Transferor Company 2.
- 19.** The Companies to the said Scheme or other person interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.
- 20.** The Petitioner Company shall file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.
- 21.** The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this order with the RoC.

22. Upon receiving the certified copy of this order, the RoC, Chennai is directed to send all documents relating to the Transferor Company to that of the Transferee Company as per the procedure prescribed so that the files relating to the Transferor Company shall be consolidated with the files and records of the Transferee Company.
23. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.
24. Accordingly, the Scheme stands sanctioned and CP/117/CAA/2017 stands disposed of.


(S. Vijayaraghavan)
Member (T)


(Ch. Mohd. Sharief Tariq)
Member (J)

RLS