

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI**

CSP No. 447 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 Scheme of Amalgamation between  
Seinumero Machine Tools Limited, ('the Transferor  
Company') and Seinumero Nirman Private Limited ('the  
Transferee Company') and their respective shareholders

Seinumero Machine Tools Limited

.....Petitioner/Transferor Company

AND

Seinumero Nirman Private Limited

.....Petitioner/Transferee Company

Judgment/Order delivered on 20<sup>th</sup> July, 2017

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

Mr. Ramesh Gholap, Assistant Director in the office of Regional Director

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 Scheme of Amalgamation between Seinumero Machine Tools Limited, ('the Transferor Company') and Seinumero Nirman Private Limited ('the Transferee Company') and their respective shareholders.
3. Learned counsel or the Petitioner Companies states that Transferee Company and the Transferor Company are engaged in the business of Manufacture of spares, components, and equipment's for automobile and other industries like electrical, electronic, and mechanical and other engineering industries. Thus both are engaged in the similar line of business, there will be exploitation of individual strengths, avoid duplication of efforts and will provide foundation for big ticket growth of the enterprise. This will enable the entities to attract capital and facilitate expansion.
4. The Petitioner Companies have approved the said Scheme of Amalgamation 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 Nos. 301 of 2017 of the National Company Law Tribunal dated 29th March, 2017 which is annexed as Exhibit I to the respective Company Scheme Petitions.
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 16 May, 2017 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:

- a) *In addition to compliance of AS-14 (IND AS-103) 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 (IND AS-8) etc.*

- b) Regarding Clause 11 of the Scheme, it is submitted that the surplus if any arising out of the scheme 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 General Reserve / Profit & Loss Account of the Transferee Company.*
  - c) As per Clause 2.2, Definitions of the Scheme, "Appointed Date" means the 1<sup>st</sup> day of April, 2016 or such other date as may be approved by the NCLT. In this regards, it is submitted in terms of provisions of section 236(6) of the Companies Act, 2013 it should be 1<sup>st</sup> April, 2016.*
  - d) As per the Clause 25 of the Scheme, upon the scheme being sanctioned by an Order made by the NCLT under Section 230 to 232 of the Act, the Transferor Company shall stand dissolved without winding up on the "Effective Date". In this regard, it is submitted that the Transferor Company shall stand dissolved without winding up on 1<sup>st</sup> April, 2016 the "appointed date" and not "Effective Date".*
  - e) As per the existing practice, the Petitioner Companies are required to serve Notice for the Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 7<sup>th</sup> April, 2017 has served a copy Company Scheme Application No. 301 of 2017 along with relevant orders. Etc. Further the Regional Director has also issued a reminder on 12/05/2017, to IT Department.*
  - f) 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.*
8. As far as the observations made in paragraph IV (a) of the Report of Regional Director, the Petitioner Company through its Counsel undertakes that the Transferee Company shall pass such accounting entries which are necessary in



connection with Scheme to comply with Accounting Standard – 14 (IND AS-103) or any applicable Accounting Standard such as Accounting Standard – 5 (IND AS-8).

9. As far as the observations made in paragraph IV (b) of the Report of Regional Director, the Petitioner Company through its Counsel undertakes that in compliance of AS-14, on the Scheme becoming effective, surplus, if any arising out of the Scheme shall be credited to the Capital Reserve and deficit, if any shall be debited to Goodwill Account.
10. As far as the observations made in paragraph IV (c) of the Report of Regional Director, the Petitioner Company through its Counsel clarifies that the Appointed Date for the purpose of Scheme of Amalgamation means 1<sup>st</sup> April, 2016.
11. As far as observations made in paragraph IV (d) of the Report of Regional Director, the Petitioners through their Counsel clarifies that the Transferor Company shall dissolved without winding upon scheme becoming effective and the scheme shall be effective from the Appointed Date i.e. on 1<sup>st</sup> April, 2016.
12. As far as the observations made in paragraph IV (e) of the Report of Regional Director, the Petitioner Company through its Counsel submits that it has served a copy of Company Scheme Application to the Income Tax Department for their comments on 7<sup>th</sup> April, 2017.
13. As far as the observations made in paragraph IV and (f) of the Report of Regional Director, the Petitioner Company through its Counsel submits that the 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.
14. The observations made by the Regional Director have been explained by the Petitioner in paragraphs 8 to 13 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
15. From the material on record, the Scheme appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest.



16. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 447 are made absolute in terms of prayer clauses (a) to (d).
17. The 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 physical copy, within 30 days from the date of receipt of the order by the Registry.
18. 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.
19. 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.
20. 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.
21. 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.
22. Liberty is granted to the person who is aggrieved by this order to come before this bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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