

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

 COMPANY JURISDICTION

+ **COMPANY APPLICATION (MAIN) No. 4 of 2008**

% **DATED 26.02.2008**

In the matter of:

Companies Act, 1956

And

Applications under Sections 391(1), 393 & 394 of the
Companies Act, 1956

Scheme of Arrangement of:

Elcoma Engineers Pvt. Ltd.

....Applicant/Transferor
Company

With

Masyc Projects Pvt. Ltd.
Transferee

....Applicant/
Company

Through: Mr.Tarun Sharma
Advocate

VIPIN SANGHI, J. (ORAL)

1.This is a joint application under Section 391(1) read with Sections 393 and 394 of the Companies Act, 1956 (hereinafter referred to as the Act) by applicants Elcoma Engineers Pvt. Ltd. and Masyc Projects Pvt. Ltd. seeking directions from the Court for convening, holding and conducting separate meetings of the shareholders, secured and unsecured creditors, which are statutorily required for sanctioning the scheme of arrangement for amalgamation of Applicant/transferor

company Elcoma Engineers Pvt. Ltd. with Applicant/transferee company Masyc Projects Pvt. Ltd.

2.The registered offices of both the Transferor company and transferee company are situated at 20, Community Centre , Maya Puri , Phase-1, New Delhi 110064 , that is, within the jurisdiction of this Court.

3.The Board of Directors of the Transferor company and the Transferee company have passed separate resolutions approving the scheme of arrangement for amalgamation of the Transferor company with the Transferee company on 4th January, 2008, copies of which have been filed on record.

4.The Transferor company and the Transferee company have filed their respective Memorandums and Articles of Association along with the application. The audited balance sheets of the Transferor company and the Transferee company as on 31.3.2007 have been filed on record.

5.The Transferor company and Transferee company have also filed the scheme of arrangement for amalgamation and salient features of the amalgamation have been incorporated and detailed in the application.

6.Both the applicant companies have stated that no proceedings under Sections 235 to 251 of the Act are pending against the Transferor company and Transferee company.

7.The Applicant/Transferor company was incorporated on 22.02.1985 and the authorized share capital of the Transferor company is Rs.10 lacs divided into 10,000 equity shares of Rs.100/- each. The issued, subscribed and paid up share capital of the applicant/Transferor company is Rs 1 lac divided into 1000 equity shares of Rs.100/- each.

8.The Applicant/Transferee company was incorporated on 18.01.1990 and the authorized share capital of the Transferee company is Rs.20 lacs, divided into 20,000 equity shares of Rs.100/- each. The issued, subscribed and paid up share capital of the applicant/Transferee company is Rs.10 lacs divided into 10,000 equity shares of Rs.100/- each.

9.The applicant/Transferor company has 3 shareholders. All the shareholders of the applicant company have given their consent in writing by way of an affidavit to the scheme of amalgamation, which have been filed on record. Since the consents to the scheme of amalgamation have been filed on behalf of the respective shareholders of the applicant/transferor company, therefore, it is just and appropriate to dispense with convening the meeting of the shareholders of the applicant/transferor company to consider the scheme of amalgamation.

10.The applicant/Transferee company has 3 shareholders. All the shareholders of the applicant company have given their consent in

writing to the scheme of amalgamation, which have been filed on record. Since the consents to the scheme of amalgamation have been filed on behalf of the respective shareholders of the applicant/transferor company, therefore, it is just and appropriate to dispense with convening the meeting of the shareholders of the applicant company to consider the scheme of amalgamation.

11. The applicant/Transferor company has 84 unsecured creditors in all. The applicant has sought the holding of the meeting of its unsecured creditors for considering and if thought fit approving the scheme. Considering the facts and circumstances, the meeting of the unsecured creditors of the Transferor company, be held on 05.04.2008 at 12 noon, at 20, Community Centre, Maya Puri, Phase-I, New Delhi-110064. I appoint Mr. Siddharth Khattar, Advocate Mobile No.9810700078, as the Chairperson and Satish Kumar, Advocate Mobile No.9811053833, as the Alternate Chairperson for the meeting of the unsecured creditors of the Transferor company. The quorum for the said meeting will be 20 unsecured creditors in number and 25% of the total unsecured debt in value. The Chairperson and the Alternate Chairperson will ensure that the notices convening the meeting of unsecured creditors of the applicant company along with copies of scheme and statement under Section 393 of the Companies Act, 1956, shall be sent to the unsecured creditors of the Transferee company by UPC at their registered or last known addresses at least 21 days before

the date appointed for meeting, in their presence or in the presence of their authorized representatives. The notice shall also be published in newspapers 'Indian Express' (English edition) and 'Navbharat Times' (Hindi edition) in terms of the Companies (Court) Rules, 1959, at least 21 days before the day appointed for the meeting.

12.The applicant/Transferee company has 415 unsecured creditors in all. The applicant has sought the holding of the meeting of its unsecured creditors for considering and if thought fit approving the scheme. Considering the facts and circumstances, the meeting of the unsecured creditors of the Transferee company, be held on 05.04.2008 at 02:00 p.m., at same as before. I appoint Arvind Sah, Advocate, Mobile No.9811555076, as the Chairperson and Mr. Amitabh Narendra, Advocate, Mobile No.9810214798, as the Alternate Chairperson for the meeting of the unsecured creditors of the Transferee company. The quorum for the said meeting will be 75 unsecured creditors in number representing at least 25% of the unsecured debt in value. The Chairperson and the Alternate Chairperson will ensure that the notices convening the meeting of unsecured creditors of the applicant/transferee company along with copies of scheme and statement under Section 393 of the Companies Act, 1956, shall be sent to the unsecured creditors of the Transferee company by UPC at their registered or last known addresses at least 21 days before the date appointed for meeting, in their presence or in the presence of their

authorized representatives. The notice shall also be published in newspapers 'Indian Express' (English edition) and 'Navbharat Times' (Hindi edition) in terms of the Companies (Court) Rules, 1959, at least 21 days before the day appointed for the meeting.

13.The applicant/transferor company has one secured creditor. The letter of consent given by the sole secured creditor pertaining to scheme of arrangement for amalgamation has been filed on record. Therefore, it is just and appropriate to dispense with convening the meeting of the secured creditors of the applicant/transferor company to consider the scheme of amalgamation.

14.The applicant/Transferee company has 2 secured creditors in all. The applicant has sought the holding of the meeting of its secured creditors for considering and if thought fit approving the scheme. Considering the facts and circumstances, the meeting of the secured creditors of the Transferee company, be held on 05.04.2008 at 11.00 a.m. at same as before. I appoint Mr. Pritesh Kapur, Advocate, Tel. No.29212824, as the Chairperson and Mr. S.K. Banyal, Admn. Officer (J) of this Court, Mobile No.9910390964, as the Alternate Chairperson for the meeting of the secured creditors of the Transferee company . The quorum for the said meeting will be 2 secured creditors i.e. 100% both in number and value. The Chairperson and the Alternate Chairperson shall ensure that the notices convening the

meeting of secured creditors of the applicant/transferee company along with copies of scheme and statement under Section 393 of the Companies Act, 1956, shall be sent to the secured creditors of the Transferee company by UPC at their registered or last known addresses at least 21 days before the date appointed for meeting, in their presence or in the presence of their authorized representatives. The notice shall also be published in newspapers 'Indian Express' (English edition) and 'Navbharat Times' (Hindi edition) in terms of the Companies (Court) Rules, 1959, at least 21 days before the day appointed for the meeting.

15. In all the aforesaid meetings, voting by proxy shall be permitted, if prescribed form duly signed by the person entitled to attend and vote at the meeting is filed with the registered office of the applicant companies at least forty eight hours before the meeting. The chairpersons and the alternate chairpersons shall also ensure that the proxy registers are properly maintained and they shall inspect the same from time to time.

16. The fees of each of the Chairpersons for the meetings aforesaid shall be Rs.35,000/- and the fees of each of the Alternate Chairpersons shall be Rs.25,000/- in addition to meeting their incidental expenses. The Chairpersons appointed by this Court shall file their report within two weeks from the date of holding of the meeting. The Alternate

Chairpersons shall also attend the meeting and assist the Chairperson in conducting the meeting and in filing the report.

17.The Chairpersons and the Alternate Chairpersons shall be at the liberty to issue directions to the management of both the Applicant companies so that meeting the secured and unsecured creditors are conducted in a just, free and fair manner.

18.The application is allowed in terms of the above order.

February 26, 2008
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VIPIN SANGHI
JUDGE