

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 190 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 18 OF 2015

Essco Power Electronics Private Limited..... **Petitioner /First Transferor Company**

AND

COMPANY SCHEME PETITION NO. 191 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 19 OF 2015

Neowatt Energy Solutions Company Private Limited ...**Petitioner /Second
Transferor Company**

In the matter of Sections 391 to 394 read with the other
applicable provisions of the Companies Act, 1956 and
Companies Act 2013;

And

In the matter of Scheme of Amalgamation of Essco
Power Electronics Private Limited, Neowatt Energy

Solutions Company Private Limited and Megatech
Power Equipments Private Limited with Consul
Neowatt Power Solutions Private Limited and their
respective shareholders

Called for hearing:

Ms. Saeeda Bandukwala i/b J. Sagar Associates Advocates for the Petitioner.

Mr. D. R. Shah i/b i/b Mr. A. A. Ansari for the Regional Director.

Mr. S. Ramakantha, Official Liquidator, present.

Coram: S. C. Gupte, J

Date: 10th July 2015

P.C.:

1. Heard learned counsel for the parties. No objector has come before the Court to oppose the Scheme and nor has any party controverted the averments made in the Petitions.
2. The sanction of the Court is sought under the provisions of Sections 391 to 394 of the Companies Act, 1956 to the Scheme of Amalgamation of Essco Power Electronics Private Limited (**“First Transferor Company”**), Neowatt Energy Solutions Company Private Limited (**“Second Transferor Company”**) and Megatech Power Equipments Private

Limited (“**Third Transferor Company**”) with Consul Neowatt Power Solutions Private Limited (“**Transferee Company**”) and their respective shareholders and creditors.

3. The learned counsel for the Petitioner Companies states that the registered offices of the Third Transferor Company and the Transferee Company are situated in Chennai. The counsel for the Petitioners states that Company Petition Nos. 31 and 32 of 2015 were filed by Third Transferor Company and the Transferee Company respectively, in the Madras High Court and the Madras High Court by the Order dated 15th April 2015 has sanctioned the Scheme subject to the orders to be passed by the Bombay High Court.
4. The learned counsel for the Petitioner Companies states that First Transferor Company is engaged in the business of providing management services in power electronic products including electronic data processing equipment. The Second Transferor Company is presently engaged in the business of manufacturing uninterruptable power supply (UPS) units, active filters, solar power systems and static transfer switches.
5. The rationale of the Scheme of Amalgamation is for leveraging the established brands belonging to the Second and Third Transferor Company through a large network of sales and service personnel of Transferee Company and leveraging their superior technology and know-

how for enhancing the product portfolios of all the companies. It would also result in greater integration and greater financial strength and flexibility for the combined entity.

6. The Petitioner Companies have approved the said Scheme of Amalgamation by passing board resolutions which are annexed to the respective Company Scheme Petition.
7. The learned counsel for the Petitioner Companies states that the Petitioner Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in the respective Company Summons for Directions.
8. The learned counsel for the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of this Court. Moreover, the Petitioner Companies undertake to comply with the statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The undertaking is accepted.
9. The Official Liquidator has filed his report on 8th July 2015 in the above Company Scheme Petitions stating *interalia* that the affairs of the

Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

10. The Regional Director has filed an affidavit on 12th June 2015 stating therein that save and except as stated in paragraphs 6(a) and (b) of the said affidavit it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said affidavit, the Regional Director has stated that:

- “a) *Clause 24 of the Scheme provides for Modification and Amendments to Scheme wherein the Board of Directors of the Transferor Companies and Transferee Company have been authorized to make any amendments to Scheme, if necessary after the Scheme is approved by the Hon’ble High Court. Such liberty shall not be exercised by Board of Directors without obtaining prior approval from the Hon’ble High Court. Such liberty shall not be exercised by Board of Directors without obtaining prior approval from the Hon’ble High Court. The Petitioner Companies may be directed to undertake to this effect.*
- b) *It is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of the Income Tax Authorities. The approval of the Scheme by this Hon’ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.”*

11. In so far as the observation made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through the learned counsel appearing on their behalf undertakes that power of the Board of Directors of the Petitioner Companies to make any amendments to the Scheme will be subject to the prior approval of the High Court. The said undertaking is accepted.
12. In so far as the observation made in paragraph 6(b) of the Affidavit of the Regional Director is concerned, learned counsel appearing for the Petitioner Companies submits that the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
13. The learned counsel for the Regional Director on instructions of Mr. Mr. M. Chandanamuthu, Joint Director legal in the office of the Regional Director, Ministry of Corporate Affairs Western Region, Mumbai states that they are satisfied with the undertakings given by the Advocate for the Petitioner Companies. The said undertaking is accepted.

14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
15. Since all the requisite statutory compliances have been fulfilled, the above Company Scheme Petitions are made absolute in terms of prayer clauses (a) to (c).
16. The Petitioners to lodge a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court, (O.S), Bombay, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of order.
17. The Petitioners 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 the physical copy, as per the relevant provisions of the Companies Act 1956/2013.
18. The Petitioners in both Company Scheme Petitions to pay costs of Rs.10,000/- to the Regional Director, Western Region, Mumbai. The Petitioners in both Company Scheme Petitions to pay costs of Rs. 10,000/-

to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from date of order.

19. Filing and issuance of the drawn up order is dispensed with.
20. All concerned regulatory authorities to act on a copy of this order and the Scheme duly authenticated by Company Registrar, High Court, (O.S), Bombay.

(S.C. Gupte, J)