IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.201 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 158 OF 2015

Emerson Network Power (Pune) Private Limited....Petitioner Company

With

COMPANY SCHEME PETITION NO.202 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 159 OF 2015

Emerson Network Power (India) Private Limited....Petitioner Company

In the matter of Companies Act, 1956 (1 of 1956)

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation of Emerson Network Power (Pune) Private Limited with Emerson Network Power (India) Private Limited and their respective Shareholders

<u>Called for hearing</u>

Mr. Hemant Sethi, i/b M/s Hemant Sethi & Co. Advocate for the Petitioner Company
Mr. H,V Mehta i/b Mr. A.A Ansari in both the Petitions.

Mr. S. Ramakantha, Official Liquidator Present in CSP No. 201 of 2015.

CORAM: S. C. Gupte, J.

DATE: 24th July, 2015

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation and nor any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 to the Scheme of Amalgamation Emerson Network Power (Pune) Private Limited with Emerson Network Power (India) Private Limited and their respective Shareholders.

3. The Learned Counsel for the Petitioners states that Petitioner Company in Company Scheme Petition No. 201 of 2015 and the Petitioner Company in Company Scheme Petition No. 202 of 2015 is presently engaged in the business of manufacturing, trading, exporting and servicing of UPS Systems, Power Electronics Equipments, Electrical Panels and parts and accessories of the above items.

4. Learned Counsel for the Petitioners states that the Scheme will result into following benefits namely simplify the Group structure, minimize cost of administration of two legal entities, for better and more economic and efficient management, control and running of the businesses of the companies concerned and to pool the resources of both the companies for growth.

5. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The Learned Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

7. The learned Advocate for the Petitioners state that Petitioner Companies have complied with all directions passed in Company Summons for Directions and that the Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

8. The learned Advocate appearing on behalf of the Petitioner Companies has stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / the Companies Act, 2013 and the Rules made there under. The said undertakings given by the Petitioner Companies are accepted.

9. The Regional Director has filed an Affidavit on 12th June, 2015 stating therein, save and except as stated in paragraphs 6 (a), 6 (b) and 6(c)

thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a), 6 (b) and 6(c) of the said Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits that,

(a) Clause 11.5 of the scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regards, it is submitted that in addition to the compliance of Accounting Standard–14, the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standard such as AS-5 etc.

(b) It has been observed that, the equity shares of the Transferor Company are held by foreign body corporate. Hence for allotment of new shares to the shareholder of Transferor Company, the Transferee Company may be directed to comply with FEMA/RBI Regulations as applicable in this regard.

(c) Clause 11.4 of the scheme provides for creation of share premium account on issue of new shares by the Transferee Company. In this regard, whether such creation is subject to tax or not is a matter within domain of the income tax Authority. In this regard, it is respectfully submits that tax issue if any arising out of this Scheme shall be subject to final

decision of the income Tax Authority and approval of the Scheme by the Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company.

10. As far as observations made in paragraph 6(a) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company through their Counsel undertakes to comply and follow the accounting treatment such as AS-14, AS-5 and other applicable accounting standards which are necessary in connection with the scheme .

11. As far as observations made in paragraph 6(b) of Affidavit of the Regional Director, the petitioner through their counsel submits that the Transferee Company shall comply with the provisions of FEMA, RBI regulations as may be applicable.

12. As far as observations made in paragraph 6(c) of Affidavit of the Regional Director is concerned, the Petitioner through their counsel submits that the petitioners is bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of Scheme of amalgamation will be met and answered in accordance with law.

13. The Learned Counsel for Regional Director on instructions of 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 Petitioner Company. The said undertakings given by the Petitioner Company are accepted.

14. The Official Liquidator has filed his report on 15th July 2015 in Company Scheme Petition No. 201 of 2015 and has observed in paragraph 14 of his report that:

> *"That the Official Liquidator submits in view of the above the Chartered Accountant cannot impose his views on the transactions. However, the transferor company may please be directed to submit to this Hon'ble Court the following information/documents. The details are as under:-*
>
> *(a) The resolution authorizing the payment of commission to M/s. Emerson Network Power (India) Pvt. Ltd. and the basis on which commission is calculated.*
>
> *(b) A copy of Exchange Ratio Report dated 15th November, 2014 issued by Price Waterhouse & Co. LLP.*
>
> *(c)* Justification for premium of Rs. 2373 per share. As the same do and not find place in Exchange Ratio Report dated 15th November2014, issued by Price Waterhouse & Co. LLP,

15. In response to the observations made by the Official Liquidator, the Petitioner/Transferor Company has filed an Affidavit dated 20th July 2015 and have placed on record all the relevant material and information and

annexed copies of Commission Agreement, Valuation Report and working of premium by Price WaterHouse & Co. LLP .

16. Based on the Affidavit filed by the Transferor Company, the Official Liquidator has thereafter filed Supplementary Report dated 23rd July 2015 and has submitted that on perusal of the Chartered Accountant's Report dated 16th June 2015, Supplementary Report dated 3rd July 2015 and Affidavit dated 20th July 2015 of the Petitioner/Transferor Company , it is noticed that the affairs of the Transferor Company have been conducted in a proper manner. Therefore, the Transferor company may kindly be ordered to be dissolved by this Court, subject to the Company giving an undertaking to pay the Income Tax dues, if any arises in future in respect of the Transferor Company.

17. The Transferee Company through their Counsel undertakes that all Income Tax dues, if any arising in future will be paid in accordance with law by the Transferee Company.

18. 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.

19. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 201 of 2015 and 202 of 2015 are made absolute in terms of the prayer clause (a) of the respective Company Scheme Petitions.

20. The Petitioner Companies are directed to lodge a copy of this order and Scheme duly authenticated by the Company Registrar, High Court, 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 receipt of the order.

21. Petitioner is directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.

22. The Petitioners in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and Petitioner Company in Company Scheme Petition No. 201 of 2015 to pay cost of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

23. Filing and issuance of the drawn up order is dispensed with.

24. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. Gupte, J.)