IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 550 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTIONS NO 302 OF 2015

Blue Star Design and Engineering Limited ...Petitioner Company

AND

COMPANY SCHEME PETITION NO 551 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTIONS NO 303 OF 2015

Blue Star Engineering & Electronics Limited …Petitioner Company

In the matter of the Companies Act, 1956;

And

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

And

In the matter of the Scheme of Amalgamation under Sections 391 to 394 read with Section 78 (notified Section 52 of Companies Act, 2013), 100 to 104 of Companies Act, 1956 and other applicable provisions of the Companies Act, 1956 and Companies Act, 2013 between Blue Star Design and Engineering Limited with Blue Star Engineering & Electronics Limited and their respective shareholders and creditors

<u>Called for Hearing</u>

Mr Peshwan Jehangir, Mr Anindya Basarkod and Ms Akriti Sarkar of M/s. Khaitan & Co., Advocates for the Petitioner Companies.

Mr Atul S. Singh i/b A.A.Ansari for the Regional Director in the petitions.

Ms S. Ramakantha, Official Liquidator present

Coram: K. R. Shriram, J.

Date: 18th December, 2015

<u>P.C:</u>

1. Heard Learned Counsel for the Parties. No objector has come before the Court to oppose the Scheme and nor has any party controverted any averments made in the Petitions.

2. The sanction of the Court is sought Sections 391 to 394 read with Section 78 (notified Section 52 of Companies Act, 2013), 100 to 104 of Companies Act, 1956 and other applicable provisions of the Companies Act, 1956 and Companies Act, 2013 between Blue Star Design and Engineering Limited ("Transferor Company" or "BSDEL") with Blue Star Engineering & Electronics Limited ("Transferee Company" or "BSEEL") and their respective shareholders and creditors

3. The Learned Counsel for the Petitioner Companies states that the Transferor Company is presently engaged in the business of Engineering and CAD Support Service and letting out of properties to Blue Star Limited. The Transferee

Company is presently inter alia engaged in the business of plumbing, fire-fighting contracting services and other electronic fittings services.

4. The Learned Counsel for the Petitioner Companies states that proposed Scheme of Amalgamation is beneficial since, interalia, the proposed Amalgamation, will (i) enable better and more economic and efficient management, control and running of the businesses of the companies concerned and will assist in the utilization and realization of the potential of business of BSDEL and that of BSEEL to the maximum extent. (ii) consolidate these businesses and reap the benefits of operational synergy and enhance shareholder value (ii) enhance governance and controllership levels for Blue Star Limited as the holding company (iv) enable a focused business approach for the maximization of benefits to all stakeholders, simplification of group structure, reduced regulatory compliance and afford the advantages of synergies of their businesses and (v) result in realisation of synergies arising from consolidation of facilities, management teams and infrastructure which can be utilized optimally for improving economic outcome for the shareholder.

5. The Petitioner Companies have approved the said Scheme by passing Board Resolutions which are annexed to the 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 Directions and that the respective Company Scheme Petitions have been filed in consonance with the order passed in the respective Summons for Directions.

7. The Learned Counsel appearing on behalf of the Petitioner Companies have further stated that the Petitioner Companies have complied with all the requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, under the Companies Act, 1956 and 2013, and rules made thereunder, whichever is applicable. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 17th December 2015 stating therein that save and except as stated in paragraph 6 (a), (b) and (c) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

a. *Clause 9 of the Scheme provides for change in the object clause of the Memorandum of Association of the Transferee Company. In this connection, the Transferee Company may be directed to comply with the provisions of section 13 (1), (6) and 15 of the Companies Act, 2013 and to file amended copy of the Memorandum of Association alongwith Form No. 21 with Registrar of Companies.*

b. *Clause 11(d) of the scheme provides for creation of Securities Premium Account in the books of Transferee Company. Further clause 13 of the scheme provides for utilization of the said securities premium to adjust the debit balance of the Transferee Company. In this regard it is observed that the securities premium so created is not out of cash received and the securities premium account is only a notational value derived. A cash loss shown in the profit and loss account of the Transferee Company,* *therefore, cannot be adjusted against the said securities premium so created as provided in clause 11 (d). When the matter was taken up with the petitioner company the Transferee Company vide its letter dated 11/12/2015 (copy of the same annexed hereto and marked as Exhibit 'D' has agreed to delete clause 11 (d) and 13 of the scheme. In view of the above, the Hon'ble Court may direct the petitioner company to delete the aforesaid two clauses from the scheme. Consequent to deletion of clause no 13 from the scheme the remaining clause no 14 to 23 be renumbered as 13 to 22.*

c. *That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of 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 petition company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company.*

9. As far as the observation in paragraph 6 (a) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies, states that the Transferee Company confirms that it will comply with the provisions of section 13(1), (6) and 15 of the Companies Act, 2013 and will file an amended copy of the Memorandum of Association along with Form No. 21 of the Registrar of Companies.

10. As far as the observation in paragraph 6 (b) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner

Companies, states that the Petitioner Companies agree to delete clause no. 11 (d) and 13 of the Scheme and renumber the remaining clauses no. 14 to 23 as clauses no. 13 to 22 of the Scheme.

11. As far as the observation in paragraph 6 (c) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act and that all tax issues arising out of the Scheme will be met and answered in accordance with law.

12. The Learned Counsel for the 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 hereinabove by the Petitioner Companies through its counsel. The undertakings given by the Petitioner Companies mentioned hereinabove are accepted.

13. The Official Liquidator has filed his report on 8th October 2015 in Company Scheme Petition No. 550 of 2015 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

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 Company Scheme Petitions are made absolute in terms of prayer clauses (a) to (c) and (f) save and except that Clauses 11 (d) and 13 of the Scheme stand deleted and the remaining clauses be renumbered sequentially. Leave to amend the Scheme as aforesaid is granted. The aforesaid and any consequential amendments to be carried out within four weeks from today.

16. The Petitioner Companies 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 purposes of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the Order.

17. The Petitioner Companies are directed to file a copy of this order alongwith a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-Form 21/INC28 in addition to physical copy as per relevant provisions of the Companies Act, 1956 and the Companies Act, 2013 and Rules made thereunder whichever are applicable.

18. The Petitioner Companies are directed to pay a cost of Rs 10,000/- each to the Regional Director, Western Region, Mumbai and the Transferor Company is directed to pay a cost of Rs 10,000/- to the Official Liquidator. Costs to be paid within four weeks from the date of the 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 along with Scheme attached thereto, duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(K. R. Shriram, J.)

C E R T I F I C A T E

I certify that this Order uploaded is a true and correct copy of original signed order.

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