IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 712 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 623 OF 2014

Accurate Energy Solutions Limited
.....Petitioner/Transferor Company

AND

COMPANY SCHEME PETITION NO. 713 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 624 OF 2014

Accurate Industrial Controls Private Limited
........Petitioner/Transferee Company

In the matter of the Companies Act of 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 Accurate Energy Solutions Limited with Accurate Industrial Controls Private Limited and their respective shareholders

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner.

Ms. S.I. Shah , i/b Mr. H.P. Chaturvedi for Regional Director.

Mr. S. Ramakantha Official Liquidator.

CORAM: S. J. Kathawalla, J.
DATE: 23rd January, 2015

1. Heard the learned counsel for the Petitioner. No objector has come before the court to oppose the Scheme 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 of the Companies Act, 1956, to the Scheme of Amalgamation of Accurate Energy Solutions Limited with Accurate Industrial Controls Private Limited and their respective shareholders.

3. The Transferor Company is engaged in the business of designing, manufacturing all types of energy equipment and projects. The Transferee Company is presently engaged in the business of designing, manufacturing all types of control panels for industrial automation projects, control systems projects and power distribution systems.

4. The rational for the Scheme is that in view of commonality of business interest and commonality of the shareholding, inasmuch as 100% of the shareholders of the Transferor Company are holders of 99% of shares of the Transferee Company and synergistic linkages that exist between them, it is considered desirable and expedient to amalgamate the Transferor Company with the Transferee Company in the manner and on the terms and conditions stated in this Scheme

of Amalgamation. The amalgamation would *inter alia* have the benefits that the Transferee Company is purchasing certain parts and services from the transferor Company. Thus it would be the backward integration of the activity which will strengthen the production of the final product of the Transferee Company. Greater integration and flexibility for the Transferor Company, which would result in maximizing overall shareholder value and will improve the leadership position of the combined entity. Greater efficiency in cash management of the Transferor Company and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholder value. Improved organizational capabilities and leadership, arising from the pooling of human capital having diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry. Benefit of operational synergies to the combined entity in areas such as product placement, freight optimization and logistics, which can be put to the best advantages of the stakeholders. Greater leverage in operations planning and process optimization and enhanced flexibility in product slate. Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, productivity improvements, improved procurement, and the elimination of duplication, and rationalization of administrative expenses. Amalgamation of both will enable them to consolidate and pool the activities. The amalgamation will enable appropriate consolidation of the activities of the Transferor Company and the Transferee Company with pooling and more efficient utilization of their resources, greater economies of scale, reduction in overheads and other expenses and improvement in various operating parameters. The same will result *inter alia*, from advantages of vertical integration of the operations of the said companies, including better inventory management, reduction of working capital requirements and lower cost of production, which will be facilitated by and follow the amalgamation. The amalgamation will enable the business of the merged Transferee Company to be carried on more conveniently and advantageously. The Scheme is proposed accordingly and will have beneficial results for both the Companies, their shareholders, employees and all concerned.

5. The Transferor Company and Transferee Company had approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to the Company Scheme Petition filed by the Petitioner Company.

6. The learned counsel for the Petitioner state that Petitioner Companies have complied with all directions passed in Company

Summons for Direction and that the Scheme has been filed in consonance with the orders passed in Company summons for Direction.

7. Counsel appearing on behalf of the Petitioner has stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, Petitioner Company undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956/2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Company is accepted.

8. The Official Liquidator has filed his report on 8th January 2015 stating that the affairs of the Transferor Company have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved.

9. The Regional Director has filed an Affidavit on 19th January 2015, stating therein, save and except as stated in paragraph 6 it appears that the scheme is not prejudicial to the interest of shareholders and public.

6. In paragraphs 6 of the said Affidavit it is stated that:-

> *"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 the 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 Income Tax Authority is binding on the Petitioner Company".

10. In so far as observations made in paragraph 6 of the Affidavit of Regional Director is concerned, the Petitioner Company submit that the Petitioner is 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.

11. The Learned Counsel appearing for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director states that they are satisfied with the undertaking given by the Petitioner Company. The said undertaking given by Petitioner Company is accepted.

12. 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.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition filed by the Petitioner Company is made absolute in terms of prayer clause (a) of the respective Petitions.

14. Petitioners are 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 the physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

15. The Petitioner Companies to lodge a copy of this order and the 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 the Order.

16. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Petitioner in Company Scheme Petition No. 712 of 2014 to pay sum of Rs.10,000/- to the Official Liquidator, High Court, Bombay.

17. Costs to be paid within four weeks from today.

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

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

(S. J. KATHAWALLA, J.)