IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 39 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 823 OF 2014

Hoerbiger India Private Limited ………….Petitioner

AND

COMPANY SCHEME PETITION NO 40 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 824 OF 2014

Hoerbiger India Serial Technology Private Limited ……….Petitioner

In the matter of Companies Act, 1956

And

In the matter of Sections 391 & 394 of the Companies Act, 1956 read with 78 and100 to 103 of the Companies Act, 1956 / Companies Act, 2013 (up to the extent notified and applicable) and rules made thereunder

And

In the matter of Composite Scheme of Arrangement between Hoerbiger India Private Limited (HIPL) Demerged Company and Hoerbiger India Serial Technology Private Limited (HIST) Resulting Company (from De Merged Undertaking) and their respective shareholders and creditors

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners in both the Petitions.

Mrs. Jyotsna Pandhi, i/b Mr. H.P. Chaturvedi for Regional Director in all the Company Scheme Petitions.

CORAM: S.J. Kathawalla, J.

DATE: 24th April, 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 of the Companies Act, 1956, to the Composite Scheme of Arrangement between Hoerbiger India Private Limited (HIPL) Demerged Company and Hoerbiger India Serial Technology Private Limited (HIST) Resulting Company (from De Merged Undertaking) and their respective shareholders and creditors.

3. Learned Counsel for the Petitioners states that the Petitioner / Demerged Company is presently engaged in the business of manufacture and sale of parts of Air Compressors, Suction and Discharge Valves (including parts) for reciprocating compressors and rotary compressor components, scavenge valves, marine valves, wear parts such as rings and packing, step less capacity control equipment etc. and also undertakes software development and IT Enabled Services and the Petitioner / Resulting Company has not yet commenced any business operations but proposes to carry on the business using Serial Technology Undertaking of the Demerged Company.

4. The Learned Counsel for the Petitioners states that proposed arrangement will enable to attain the following benefits namely efficient and focused management of Serial technology business segment; Unlocking value for the shareholders of HIPL; Realizing the potential for further growth by undertaking acquisitions in the similar field for both the divisions and Separate measurement of performances of both the businesses separately.

5. The Petitioner Companies have approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

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

7. Counsel appearing on behalf of the Petitioners 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 / 2013 and the Rules made there under. The said undertakings given by the Petitioner Companies are accepted.

8. The Regional Director has filed an Affidavit on 13th April, 2015 stating therein that save and except as stated in paragraph 6(a) to 6(d) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6(a) to 6(d) of the said affidavit, it is stated that:

6. That the deponent further submits that :-

(a) *Clause 7.1.4 of the Scheme provides for adjustment of difference arising out of this Scheme of Amalgamation. In this regard, it is submitted that the Surplus/ Reserve, if any arising out of this scheme shall be credited to Capital Reserve Account of the Resulting Company and such reserve shall not form part of the free reserve of the Resulting Company.*

(b) *It is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of 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 Resulting Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*

(c) *Clause 14 of the Scheme provides for increase in Authorized Share Capital of HIST to facilitate issue and allotment of Shares under this Scheme. In this connection, the Resulting Company may be directed to comply with provisions of section 61/64 of Companies Act, 2013 corresponding to section 94/97 of Companies Act, 1956, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.*

(d) *The Shares of Demerged Company are held by Foreign Body Corporate. Hence, while giving effect to the Scheme, by issuing new shares by the Resulting Company to the shareholders of Demerged Company, the Resulting Company has to comply with the provisions of FEMA / RBI regulations as applicable in this regard.*

9. As far as observations made in paragraph 6(a) of Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that surplus / reserve (over and above and

excluding identified free reserves of Rs. 94 Million), if any arising out of this scheme shall be credited to Capital Reserve Account of the Resulting Company and such reserve shall not form part of the free reserve of the Resulting Company.

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

11. As far as observations made in paragraph 6(c) of Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes to comply with provisions of section 61/64 of Companies Act, 2013 corresponding to section 94/97 of Companies Act, 1956, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.

12. In so far as observations made in paragraph 6(d) of the Affidavit of Regional Director is concerned, the Petitioner Company through their Counsel undertakes to comply with FEMA/RBI regulations as may be applicable while allotting new shares to the shareholders of the Demerged Company.

13. The Counsel for the Regional Director on instructions of Mr. M Chandanamuthu, Joint Director (Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking and submission given by the Petitioner Company. The said undertakings given by the Petitioner Company are 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 not contrary to public policy.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 39 of 2015 filed by the Petitioner Company is made absolute in terms of prayer clause (a) to (c) and Company Scheme Petition No. 40 of 2015 filed by the Petitioner Company is made absolute in terms of prayer clause (a).

16. The Petitioner Companies are directed to lodge a copy of this order and the Scheme along with form of minutes, 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 the Order.

17. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme and form of minutes with the concerned Registrar of Companies, electronically, along with E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

18. The Petitioner Companies in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. 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 and form of minutes duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S.J. Kathawalla. J.)