The Hon'ble Sri Justice C.V.Nagarjuna Reddy

<u>Company Petition Nos.198 & 199 of 2015</u>

<u>Dt: 16.09.2015</u>

<u>C.P.No.198/15:</u>

Between:

**Greenesol Power Systems Private Limited
Hyderabad, rep. by its Director
Mr.N.Venkataswamy**

…Petitioner /Transferee Company

<u>C.P.No.199/15:</u>

Between:

**Greenesol Power Services Pvt. Ltd.,
Hyderabad, rep. by its Director Mr.JSR.Prasad**

…Petitioner /Transferor Company No.1

Counsel for the petitioners: Mr.J.N.Bhushan

The Court made the following:

<u>Common Order</u>:

Company Petition No.199 of 2015 is filed by M/s.Greenesol Power Services Private Limited (hereinafter referred as 'Transferor Company No.1') under Sections 391 and 394 of the Companies Act, 1956 (for short 'the Act') seeking approval of the proposed Scheme of its Amalgamation along with M/s.Sequent Automation Private Limited (hereinafter referred as 'Transferor Company No.2') with M/s.Greenesol Power Systems Private Limited (hereinafter referred as 'the Transferee Company').

Company Petition No.198 of 2015 is filed by the Transferee Company for the same relief.

Transferor Company No.1 pleaded that it was incorporated under the provisions of the Companies Act, 1956 (for short 'the Act') on 22.01.2007; that its Corporate Identity Number is U40104AP2007PTC052441; that its registered office is situated at H.No.8-2-418, 1st floor, Meenakshi House, Road No.7, Banjara Hills, Hyderabad; that its main objects are to render services for constructing, laying down, establishing, promoting, erecting, building, installing, commissioning, carrying out and running all necessary power substations, workshops, repair shops, wires, cables, transmission lines and accumulators, for the purposes of conversion, distribution and supply of electricity of participating industries, state electricity boards and other boards for industrial, commercial, domestic, public and other purposes and also to private regular services for repairing and maintaining all distribution and supply lines and to carry on the business of rendering consultancy and other services in the areas of generation, distribution and transmission of power; that its authorized share capital is Rs.10 lakhs divided into 1 lakh equity shares of Rs.10/- each; and that its issued, subscribed and paid-up share capital, as on 31.03.2013, is Rs.1,50,000/- divided into 15,000 equity shares of Rs.10/- each.

The Transferee Company pleaded that it was incorporated under the provisions of the Act on 16-06-2003; that its Corporate Identity Number is U40104TG2003PTC041169; that its registered office is situated at H.No.8-2-418, 1st Floor, Meenakshi House, Road No.7, Banjara Hills, Hyderabad; that its main objects are to carry on the business as importers, exporters, dealers, distributors, agents, representatives of power generation, transmission and distribution equipments and to install, erect, commission, repair, maintain such equipments and to manufacture, produce, buy, sell, import, export, stock and deal in machine tools, grinding machine, automatic lathes, drilling machines *etc*., and other type of measuring equipment, electrical or non-electric die casting, screws, nuts and bolts, transformers of all types, circuit breakers, hoists, *etc*., and to construct, lay down, establish, promote, erect, build, install, commission, carry out and run all necessary power sub-stations, workshops, *etc*., and to acquire concession, facilities or licenses from electricity Board, Government, semi-Governments or local authorities for generation, distribution, production, transmission or use of electric power and to take over along with all movable and immovable properties the existing facilities on mutually agreed terms from the said authorities *etc*.; that its authorized share capital is Rs.12 Crores divided into 1.2 Crore equity shares of Rs.10/- each; and that its issued, subscribed and paid-up share capital, as on 31.03.2013, is Rs.10,28,95,350/- divided into 1,02,89,535 equity shares of Rs.10/- each.

Both the Companies pleaded that the proposed Scheme of Amalgamation involves merger of Transferor Company Nos.1 and 2 with the Transferee Company; that the Transferee Company will issue shares to the Transferor Companies as per the Scheme; that Transferor Company Nos.1 and 2 and the Transferee Company are in similar line of business, due to which consolidating various resources becomes easy to procure and manage; that the proposed Scheme of Amalgamation would generate cost efficiency, create economies of scale and facilitate large scale production, discount for bulk buying, better rate of interest, increased market share, technical economies, *etc.;* and that the said Scheme would also be advantageous and beneficial to all the Companies and their respective shareholders, creditors and employees.

Both the Companies further pleaded that anticipating the above benefits, their Board of Directors, in their respective meetings held on 11.06.2014, resolved to approve the proposed Scheme of Amalgamation (Annexure P-1) and fixed the appointed date as 01.04.2013.

Transferor Company No.1 pleaded that it has two shareholders, two secured creditors and seven unsecured creditors; that this Court *vide* Order, dated 24-10-2014, in Company Application No.1273 of 2014, dispensed with the requirement of convening the meeting of the shareholders for consideration of the proposed Scheme of Amalgamation and appointed a Chairperson for convening the meetings of its secured and unsecured creditors. Subsequently, by order, dated 04-12-2014, in Company Application No.1418 of 2014, the time for conducting the meetings and filing reports was extended.

The Chairperson has, accordingly, filed his reports stating that pursuant to this Court's Order, he has caused individual notices on the secured and the unsecured creditors of Transferor Company No.1 and has also carried out publication notifying the date of meetings in two daily newspapers *viz.*, Business Standard (English) and Andhra Bhoomi (Telugu) of Hyderabad Editions on 14-11-2014. However, as the meetings could not be conducted on the scheduled date, he has taken out fresh notices on the secured and the unsecured creditors of Transferor Company No.1 notifying the date of meetings and accordingly, convened the meetings on 10-01-2015 at 10.30 a.m. and 3.00

p.m. respectively.

In the first report, the Chairperson stated that none of the secured creditors have attended the meeting held on the aforesaid date at 10.30 a.m., but they have sent written communications conveying their no objection and consent for the proposed Scheme of Amalgamation. The Chairperson has filed those No objection letters.

In the second report, the Chairperson stated that none of the unsecured creditors have attended the meeting held on the aforesaid date, but he was informed that out of seven unsecured creditors for a sum of Rs.1,55,20,201/-, five unsecured creditors amounting to Rs.1,54,78,596/- have sent their no objection and consent for the proposed Scheme of Amalgamation. The Chairperson has filed the said No objection letters.

Transferee Company pleaded that it has seven shareholders and four secured creditors besides unsecured creditors for a balance of Rs.312,40,67,127/-; that this Court *vide* Order, dated 24-10-2014, in Company Application No.1274 of 2014 appointed a Chairperson for convening the meetings of its shareholders, secured and unsecured creditors. Subsequently, by order, dated 04-12-2014, in Company Application No.1419 of 2014, the time for conducting the meetings and filing reports was extended.

The Chairperson has, accordingly, filed her reports stating that pursuant to this Court's Order, she has caused individual notices on the shareholders, secured creditors and unsecured creditors of the Transferee Company and has also carried out publication in two daily newspapers *viz*., Business Standard (English) and Andhra Bhoomi (Telugu) of Hyderabad Editions on 14-11-2014, notifying the date of meetings. However, as the meetings could not be conducted on the scheduled date, she has taken out fresh notices on the shareholders, secured creditors and unsecured creditors of the Transferee Company notifying the date of meetings and accordingly, convened the meetings on 10-01-2015 at 10.30 a.m. and 2.00 p.m. respectively.

In her first report, the Chairperson has stated that out of seven shareholders, two have attended the meeting in person and four have attended through proxy; that the proposed Scheme of Amalgamation was read out and explained to them; that all of them have voted in favour of the proposed Scheme of Amalgamation; and that, accordingly, all of them have unanimously passed the resolution to approve the proposed Scheme of Amalgamation.

In her second report, the Chairperson stated that out of the four secured creditors, the representative of one secured creditor has attended the meeting and conveyed 'No Objection' and two secured creditors have sent written communications expressing their 'No Objection' to the proposed Scheme of Amalgamation. The Chairperson has filed copies of the No objection letters.

In her third report, the Chairperson stated that the total unsecured creditors being worth Rs.312,40,67,127/-, 96 unsecured creditors, amounting to Rs.276,74,32,125/-, have submitted their No objection letters; that only five unsecured creditors, amounting to Rs.1,55,77,008/-, have attended the meeting through their proxies; that the proposed Scheme of Amalgamation was read out and explained to them; and that one unsecured creditor voted against the proposed Scheme of Amalgamation, one unsecured creditor voted as abstaining himself and the votes of three unsecured creditors were declared as invalid.

While in Company Petition No.199 of 2015, this Court ordered notices to the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad, and the

Official Liquidator attached to this Court, in Company Petition No.198 of 2015, it ordered notice to the Regional Director only, besides ordering publication of advertisement in two daily newspapers each. In compliance with the said order, dated 13-07-2015, both the Companies have caused notices on the Regional Director, Government of India, Ministry of Corporate Affairs, South Eastern Region, Hyderabad; that Transferor Company No.1 has additionally caused notice on the Official Liquidator; that each of the two Companies have carried out publication of notices in two daily newspapers *viz.*, 'The Business Standard' (English) and 'Andhra Bhoomi' (Telugu) of Hyderabad editions having circulation in the State of Telangana and filed the proof through separate Memos in both the Company Petitions.

In response to the notices, the Regional Director has filed his Common report, dated 03-09-2015, in both the Company Petitions and the Official Liquidator has filed his report, dated 13-08-2015, in Company Petition No.199 of 2015.

In his report, the Official Liquidator has stated that based on the information made available by the petitioners, as the registered office of Transferor Company No.2 is situated in Bangalore, Karnataka, it has moved the Karnataka High Court for approval of the proposed Scheme of Amalgamation; that the same is pending; and that the affairs of Transferor Company No.1 have not been conducted in any manner prejudicial to the interests of its members or general public.

In his common report, the Regional Director stated that in pursuance of General Circular No.1/2014, dated 15-01-2014, issued by the Ministry of Corporate Affairs, New Delhi, the opinion of the Income Tax Department was sought *vide* letter, dated 31-07-2015; that in response thereto, the Additional Commissioner of Income Tax, Range-2 Hyderabad, *vide* his letter in F.No.115/R-2/Merger/2015-16, dated 27-08-2015, has informed that the Assessing Officer has reported that there are no arrears pending in Circle- 2(2), Hyderabad, in case of Transferor Company No.1; that the assessment proceedings under Section 143 (3) for the assessment year 2013-14 are pending in case of Transferor Company No.1 and that the Transferee Company should take the responsibility for completion of assessment proceedings and payment of income tax liability, if any, that may arise in respect of the pending proceedings.

The Regional Director further stated that the Registrar of Companies has further pointed out that though the Company Petitions were filed on 21-04-2015, the petitioners have disclosed financial position as on 31-03-2013 and enclosed only the balance sheet, profit and loss account and the audited report for the financial year ended 31-03-2013 to these Company Petitions and that they have not disclosed the financial position for the financial year ended 31-03-2014 and have also not enclosed the balance sheet, and profit and loss account and auditor's report for the financial year ended 31.03.2014. The Regional Director has referred to and relied upon Section 391 of the Act, which provides that no order, sanctioning any compromise or arrangement, shall be made by the Company Court unless all material facts, including the latest financial position of the Company and latest auditor's report on the accounts of the Company, are disclosed. The Regional Director, however, stated that the petitioners have produced the balance sheet and profit and loss account for the financial year ended 31-03-2014 of both the Companies signed on 04-08-2015 and 12-06-2015 respectively. He has further stated that the Registrar of Companies, Hyderabad, reported that both the Transferor and the Transferee Companies involved in the Scheme of Amalgamation are regular in filing statutory returns and that no inspections and investigations are pending against them.

At the hearing, Mr.J.N.Bhushan, learned Counsel for the petitioners has invited this Court's attention to Clause 13.1 of the proposed Scheme of Amalgamation wherein it is clarified that all taxes payable by the Transferor Companies relating to the transferred undertakings from the appointed date onwards including all or any refunds and claims shall for all purposes, be treated as the tax liabilities or refunds and claims of the Transferee Company.

As the proposed Scheme of Amalgamation provides for discharge of the liability of the Transferor Companies by the Transferee Company, the objection raised by the Regional Director stands complied with.

As regards the non-enclosure of the latest balance sheet and profit and loss account along with the Petitions, the learned Counsel for the petitioners pointed out that though they were not enclosed to the Company Petitions, they were submitted to the Regional Director, as evident from his own report, and that the Regional Director has not made any adverse comments about the same. In find merit in this submission, as nowhere in his report, the Regional Director has made any adverse comment regarding the said documents.

Having regard to the report of the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad, the no objection letters of the shareholders, the secured and the unsecured creditors of both the Companies and as no claims or objections have been received in pursuance of publication of notice in newspapers, this Court is satisfied that the proposed Scheme of Amalgamation is in conformity with the provisions of the Act and that the same is not being opposed by any stakeholders or general public.

Therefore, the proposed Scheme of Amalgamation is sanctioned with effect from the appointed date *i.e.,* 01.04.2013 and the same shall be subject to approval by the Karnataka High Court in the petition filed by Transferor Company No.2 before it. Transferor Company No.1 is ordered to be dissolved without going through the process of winding up. Both Transferor Company No.1 and Transferee Company shall, within 30 days of receipt of a copy of this order, cause a certified copy of the same to be delivered to the Registrar of Companies, Hyderabad, and take all other consequential actions in pursuance of the approval of the proposed Scheme of Amalgamation.

Both the Company Petitions are, accordingly, allowed.

(C.V.Nagarjuna Reddy, J)

Dt: 16th September, 2015
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