IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.129 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 839 OF 2015

ELECTRONICA TOUGH CARB LIMITED....Petitioner Company/Transferor Company

With

COMPANY SCHEME PETITION NO.130 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.840 OF 2015

SRP TUNGSTEN PRIVATE LIMITED....Petitioner Company/Transferee 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 Electronica Tough Carb Limited ('the Transferor Company')

WITH

SRP Tungsten Private Limited ('the Transferee Company')

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. P.S. Gujar i/b Mr. Pankaj Kapoor for Regional Director
Mr. Vinod Sharma, Official Liquidator Present in CSP No. 129 of 2016.

CORAM: B.P. Colabawalla, J.

DATE: 22nd July, 2016

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 of Electronica Tough Carb Limited with SRP Tungsten Private Limited and their respective Shareholders.

3. The Learned Counsel for the Petitioners states that Petitioner Company in Company Scheme Petition No. 129 of 2016 is engaged in manufacturing of tungsten carbide products and the Petitioner Company in Company Scheme Petition No. 130 of 2016 is engaged in manufacturing of tungsten powder and mining products.

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

5. The 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 Counsel 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.

8. The Regional Director has filed an Affidavit on 16th June, 2016 stating therein, save and except as stated in paragraphs 6 (a), 6 (b) and 6(c), 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) The Shares of Transferor Company are held by Non Resident Indian, Hence, while giving effect to the Scheme, by issuing new shares by the Transferee

Company to the shareholders of Transferor Company, the Transferee Company has to comply with the provisions of FEMA/RBI regulations as applicable in this regard.

(b) Clause 6.2 of the Scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to 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

(c) 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 return filled by the Transferee Company after giving effect to the Scheme. The decision of Income Tax Authority is binding on the Transferor Company and Transferee Company."

9. 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 with the provisions of FEMA/RBI regulations, if any with regard to issue of shares by the Transferee Company to the shareholders of Transferor Company.

10. As far as observations made in paragraph 6(b) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company through their Counsel undertakes that it shall pass such accounting entries which may be necessary in connection with the Scheme to comply with other applicable accounting standards.

11. As far as observations made in paragraph 6(c) of Affidavit of the Regional Director is concerned, the Petitioner Company through their Counsel undertakes to comply with all applicable provisions of the Income Tax Act and tax implication, if any arising out of the Scheme of Amalgamation will be subject to the decision of the Income Tax Authority.

12. The Learned Counsel appearing for the Regional Director on instructions of Joint Director in the office of the Regional Director states that they are satisfied with the undertakings given by the advocate on behalf of the Petitioner Companies. The above undertakings are accepted.

13. The Official Liquidator has filed his report on 20th June, 2016, 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 without being wound up.

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, Company Scheme Petitions No. 129 of 2016 and 130 of 2016 are made absolute in terms of the prayer clause (a) to (g) and (a) to (f) of the respective Company Scheme Petition.

16. 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.

17. 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.

18. 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. 129 of 2016 to pay cost of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

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 the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(B.P.Colabawalla, J.)

CERTIFICATE

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

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