IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 315 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 760 OF 2015

STROMAG ENGINEERS LTD ...**Petitioner /Transferor Company**

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 316 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 761 OF 2015

In the matter of Companies Act, I of 1956;

And

In the matter of Section 391 & 394 of the Companies Act, 1956 (I of 1956)

And

In the matter of **Scheme of Amalgamation of SPEED-O-CONTROLS PVT LTD** a company incorporated and registered under the Companies Act, 1956 and having its Registered Office at C-16, Nandjyot Industrial Estate, Andheri Kurla Road, Mumbai 400072

With

STROMAG ENGINEERS LTD and their respective shareholders

Speed-O-Controls Pvt.Ltd. ....**Petitioner/Transferee Company**

<u>Called for hearing</u>

Mr. Praveer G. Shetty, Advocate for the Petitioners.

Mr. Chiraj J Shah for the Regional Director.

Ms. Yogini G.Chauhan for the Official Liquidator.

CORAM: A.K Menon, J.

DATE: 29th September, 2016

PC:

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

2. The sanction of the Court is sought to a Scheme of Amalgamation of Stromag Engineers Ltd, the Petitioner Company with Speed-O-Controls Pvt. Ltd, the Transferee Company, under Sections 391 to 394 and other relevant provisions of the Companies Act, 1956.

3. The Learned Counsel for the Petitioners states that the Transferor Company has been interalia carrying on the business of manufacturing, trading, importing, exporting of Electronic, Mechanical, Electrical, Engineering goods and allied systems including material handling equipment and the Transferee Company has been interalia carrying on the business as manufacturers of and dealers in heavy and light electrical machinery and electrical apparatus and install, sell and contract for the supply of all kinds of material handling equipment etc. The proposed scheme of Amalgamation will as per the opinion of the Management benefit both the Companies as they would be under same management resulting in consolidation of the business in one entity and strengthening the position of the merged entity and enable it to harness and optimize the synergies of the two companies and achieve size, scale integration and greater financial strength, flexibility to effectively face competition. The merged entity will lead to increased competitive strength, cost reduction, efficiencies, productivity gains,

and logistic advantages, thereby significantly contributing to future growth and in the interests of maximizing shareholder value.

4. 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.

5. The Learned Counsel for the Petitioners further states that 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 orders passed in respective Company Summons for Directions.

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

7. The Official Liquidator has filed his report on 10th August 2016 in Company Scheme Petition No. 315 of 2016 stating that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved without winding up.

8. The Regional Director has filed an Affidavit dated 20th September 2016 stating therein, save and except as stated in paragraph 6(a) to (c), it appears according to the Regional Director that the Scheme is not prejudicial to the interest of shareholders and public. In

paragraph 6 of the said Affidavit, the Regional Director has stated that:-

"6. . That the Deponent further submits that,

(a) *In addition to the 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 Standards such as AS-5 etc.*

(b) Regarding Clause 11 of the scheme, it is submitted that the surplus if any arising out of the Scheme shall be credited to the Capital Reserve and the defeicit if any arising out of the scheme shall be decided to goodwill account and will not be adjusted against any other reserves of the Transferee Company.

(c) That the deponent further submits that the tax Implication if any arising out of this scheme shall be subject to final decision of the Income tax Authority and approval of the scheme by the Hon'ble High Court may not deter the Income tax Authorities to scrutinize the tax returns filed by the Petitioner company after giving effect to the amalgamation. The decision of the Income tax Authority is binding on the petitioner company.

9. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner Company through its Counsel submits that in the Affidavit of the Director filed with Regional Director they have already mentioned that they will comply with AS-14 for accounting treatment the Petitioner Company. The Petitioner Company through its counsel further undertakes that the Transferee Company shall pass such

accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 etc.

10. So far as the observation in paragraph 6 (b) of the Affidavit of Regional Director is concerned, the Petitioner Company through its Counsel submitted that if there is a surplus arising as a result of the difference, if any, of the value of the assets over the value of the liabilities of the Transferor Company, in accordance with this Scheme, the same shall be credited to Capital Reserve Account of the Transferee Company and in event of deficit if any, the same shall be debited to the Goodwill Account of the Transferee Company.

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

12. The Learned Counsel for Regional Director on instructions of Deputy Director in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertakings given by the Petitioners. The above undertakings are accepted.

13. 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.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 315 of 2016 is made absolute in terms of prayers clause (i) to (v) and Company Scheme Petition 316 of 2016 is made absolute in terms of prayer clauses (i) to (v).

15. The Petitioner Companies to file 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 the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the Order.

16. The Petitioners are directed to file a certified copy of order along with a copy of the Scheme of Amalgamation 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.

17. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Scheme Petition No. 315 of 2016 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of the Order.

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

(A.K Menon, J.)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer