IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 148 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 71 OF 2016

Eaton Industries Private Limited …………Petitioner

AND

COMPANY SCHEME PETITION NO. 149 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 72 OF 2016

Internormen Filters Private Limited ……Petitioner

AND

COMPANY SCHEME PETITION NO. 150 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 73 OF 2016

Eaton Technologies Private Limited ………Petitioner

In the matter of the Companies Act, 1956;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation and Arrangement between Eaton Industries Private Limited and Internormen Filters Private Limited and Eaton Technologies Private Limited and their Respective Shareholders

Called for hearing

Mr. Hemant Sethi along with Mr. Ajit Singh Tawar i/b Mr. Hemant Sethi & Co. Advocates, in both the Petitioners.

Mr. Rahul Tiwari i/b Pankaj Kapoor for Regional Director in all the Petitions.
Mr. Vinod Sharma, Official Liquidator, High Court, Bombay, a/w Ms. Yogini Chauhan, Deputy Official Liquidator, present.

CORAM: B.P.Colabawalla, J.

DATE: 12TH AUGUST 2016

PC:

1. Heard the learned Counsel for the Petitioner Companies. No objector has come before the Court to oppose the Scheme and nor has any party contravened any averments made in the Petition.
2. The sanction of the Court is sought to the modified Scheme of Amalgamation and Arrangement between Eaton Industries Private Limited and Internormen Filters Private Limited and Eaton Technologies Private Limited and their Respective Shareholders (as explained at paragraph 9 below.
3. The Counsel for the Petitioner submits that the Transferor Company i.e. Eaton Industries Private Limited is engaged in the development and export of design engineering services and caters as the Supply Chain Management Support Services Centre division of the Eaton Group. The Transferee Company i.e. Eaton Technologies Private Limited is engaged in providing, engineering design development, software development, back office support, and business development services.
4. The benefits and rationale of the Scheme *inter-alia* is that in connection with the integration of businesses acquired in the 2012

acquisition of Cooper Industries Plc, the Eaton Group embarked upon restructuring its global corporate footprint. Eaton Group's Indian businesses are within the hydraulics, electrical, truck and automotive industries, in addition to various service businesses. The Indian businesses are currently structured across various locations and through various legal entities. Eaton had 7 Indian legal entities prior to the acquisition of Cooper Group. The acquisition of Cooper Group resulted in 3 more legal entities within the fold of Eaton-Cooper Group in India. Due to the Indian business environment becoming very complex and tenuous, the Eaton Group felt the need to integrate the Eaton and Cooper structures in order to achieve operational synergies and centralized control and management and allow the Eaton Group to react quickly to business environment changes, establish coherent leadership, and increase operational efficiency. Pursuant to the internal restructuring exercise, the Eaton Group has recently merged significant electrical businesses within the fold of Eaton and Cooper entities. Another merger of entities engaged in hydraulics and automotive manufacturing business is in process. Transferor Company is wholly owned subsidiaries of the Transferee Company. Pursuant to the Eaton Group's strategy to integrate its businesses in India, in order to maintain a simple corporate structure and eliminate duplicate corporate procedures, it is desirable to merge and amalgamate all the Undertaking (as defined in the modified Scheme) of the Transferor Company into the

Transferee Company. The amalgamation of the Undertaking of the Transferor Company into the Transferee Company will facilitate consolidation of all the Undertakings in order to enable effective management and unified control of operations. Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities, multiplicity of records and legal/regulatory compliances.

5. The Transferor Company and the Transferee Company have approved the modified Scheme by passing necessary board resolutions which are annexed to the respective Company Scheme Petitions and additional Affidavits dated 26th July 2016.
6. The Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Direction.
7. The Counsel for the Petitioners further states that the Petitioner Companies have complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 or Companies Act 2013, as may be applicable and the rules made there under. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 16th June 2016 stating therein that save and except as stated in paragraph 6 (a) to (c) of the said Affidavit, it appears 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 :

The Deponent further submits that:-

(a) *The shares of Transferee Company are held by Foreign Body Corporate . Hence while giving effect to the Scheme, by buying back of shares by the Transferee Company from the shareholders of Transferee Company, the Transferee company has to comply with provisions of FEMA/RBI regulation as applicable in this regard.*

(b) *Clause 18 of the Scheme provides for insertion of a new object clauses in the Memorandum of Association of Transferee Company. In this regard, the Transferee Company may be directed to pass necessary resolution for amendment of object clause and it may further be directed to comply with the provisions of Section 13(1) & (6) read with section 15 of the Companies Act, 2013 corresponding to section 40 read with section 18 of the Companies Act, 1956 and to file amended copy of Memorandum of Association with necessary form with Registrar of Companies.*

(c) *This Scheme provides for buy back of shares of the Transferee Company by paying cash consideration to the shareholders of the Transferee Company. In this regard, it is respectfully submitted that the applicability of the provisions of Income Tax Act, 1961 such as Dividend Distribution Tax /Capital Gain Tax payable to the Income Tax Department, is subject to final decision*

of Income Tax Authorities. The approval of the Scheme by this Hon'ble Court may not deter the powers of the Income Tax Authority to examine the tax issues and the decision of the Income Tax Authority is binding on the Transferor Companies and Transferee Company.

9. In so far as observations made in paragraph 6(a) and 6(c) of the Regional Director's affidavit is concerned, the Counsel for the Petitioners tenders affidavit dated 26th July 2016 filed by the Transferor Companies and the Transferee Company and has placed on record that their board of directors resolved for (a) deletion of Part-C of the Scheme relating to the buy-back of shares of the Transferee Company and (b) exclusion/deletion of Internormen Filters Private Limited as one of the two Transferor Companies from the Scheme such that the only Transferor Company is Eaton Industries Private Limited, and (c) modification of clause 13.2 of the Scheme to the effect that the assets and liabilities of Eaton Industries Private Limited (which will be transferred to and vested in Eaton Technologies Private Limited pursuant to the amalgamation of Eaton Industries Private Limited with Eaton Technologies Private Limited on the revised Scheme becoming effective) are recorded at fair value in the case of all tangible and intangible assets and liabilities and at book value in case of all other assets and liabilities in accordance with the Accounting Standards 14 (Purchase Method).

10. The reasons for modification has been stated in paragraph 5 of additional Affidavit dated 26th July 2016. The Counsel for the

Petitioners further submit that the proposed modification to the Scheme has been approved by all the shareholders of Eaton Industries Private Limited, Internormen Filters Private Limited and Eaton Technologies Private Limited (i.e. all entities involved in the Scheme) and therefore submits that observations made in paragraph 6(a) and (c) of the Affidavit of Regional Director therefore does not survive. The draft amendment to the Scheme is annexed as Exhibit-A to the additional Affidavits of Eaton Industries Private Limited and Eaton Technologies Private Limited dated 26th July 2016 and the modified Scheme is annexed as Exhibit-C to the additional Affidavits of Eaton Industries Private Limited and Eaton Technologies Private Limited dated 26th July 2016.

11. In so far as observations made in paragraph 6(b) of the affidavit of Regional Director is concerned, the Counsel for the Petitioners submit that insertion of a new object clauses as mentioned in clause 18.1 of the modified Scheme is being done as an integral part of the modified Scheme and the modified Scheme has been approved by all the shareholders of the Transferor Company (Eaton Industries Private Limited) and the Transferee Company. The Transferee Company undertakes to comply with the provisions of Section 13(1) and (6) read with section 15 of the Companies Act, 2013 corresponding to section 40 read with section 18 of the Companies Act, 1956 by filing an amended copy of Memorandum of Association with necessary forms with Registrar of Companies.

12. The Counsel for the Regional Director on instructions of Joint Director 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 Companies. The said undertaking given by the Petitioner Companies is accepted.

13. The Official Liquidator has filed his report on 24th May 2016 in Company Scheme Petition Nos. 148 of 2016 and 149 of 2016 stating therein that the affairs of the Transferor Companies (Internormen Filters Private Limited and Eaton Industries Private Limited) have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved by this Court. Pursuant to the modifications set out at paragraph 9 above, only Eaton Industries Private Limited (the only Transferor Company in the modified Scheme) may be ordered to be dissolved by this Court.

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. None of the parties concerned has come forward to oppose the Scheme.

15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 148 of 2016 and 150 of 2016 filed by Eaton Industries Private Limited and Eaton Technologies Private Limited are made absolute in terms of prayer clauses (a) of the respective Petitions. The Petitioner in Company Scheme

Petition No. 149 of 2016 (i.e. Internormen Filters Private Limited) is allowed to withdraw the Petition and the same is dismissed for want of prosecution. The modifications to the proposed Scheme are allowed and the modified Scheme as annexed at Annexure-C to the additional Affidavits of Eaton Industries Private Limited and Eaton Technologies Private Limited dated 26th July 2016 (Scheme Petition No. 148 of 2016 and 150 of 2016) is approved and made absolute by this Court.

16. The Transferee Company to lodge a copy of this order and the modified 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 receipt of the order.

17. The Transferee Company 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 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

18. The Petitioner Companies to pay cost of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Companies in Company Scheme Petition No. 148 of 2016 and 149 of 2016 to pay Rs. 10,000/- each 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 authorities to act on a copy of this order along with modified Scheme annexed as Exhibit-C to the Additional affidavits dated 26th July 2016 filed by Petitioner Company in Company Scheme Petition No. 148 of 2016 and 150 of 2016 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 original signed order.

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