

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 67/2016

Reserved on 3rd May, 2016
Date of pronouncement: 19th July, 2016

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

**Application under Sections 391(1) and 394 of
the Companies Act, 1956 read with Rule 9 of
the Companies (Court) Rules, 1959**

Scheme of Amalgamation of:

Air Factory Energy Limited

Applicant/Transferor Company

WITH

Anest Iwata Motherson Private Limited

Applicant/Transferee Company

**Through Mr. Manoj Kumar Garg, Mr.R.
Kumar, Mr. Prem Mardi, Mr. Narender
Singh, Mr. Samar Bansal, Mr. Vinayak
Mehrotra and Mr. Kartik Nagarkatti,
Advocates for the applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391(1) and 394 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, preference shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Air Factory Energy Limited

(hereinafter referred to as the transferor company) with Anest Iwata Motherson Private Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this Court.

3. The transferor company was incorporated under the Companies Act, 1956 on 12th November, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 5th December, 2000 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Anest Iwata Motherson Private Limited. The company changed its name to Anest Iwata Motherson Limited and obtained the fresh certificate of incorporation on 1st June, 2001. The company again changed its name to Anest Iwata Motherson Private Limited and obtained the fresh certificate of incorporation on 31st March, 2015.

5. The present authorized share capital of the transferor company is Rs.1,00,00,000/- divided into 10,00,000 equity shares of Rs.10/- each.

The issued, subscribed and paid-up share capital of the company is Rs.80,00,000/- divided into 8,00,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.45,00,00,000/- divided into 4,20,00,000 equity shares of Rs.10/- each aggregating Rs.42,00,00,000/- and 30,00,000 preference shares of Rs.10/- each aggregating to Rs.3,00,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.43,50,00,000/- divided into 4,05,00,000 equity shares of Rs.10/- each aggregating Rs.40,50,00,000/- and 30,00,000 preference shares of Rs.10/- each aggregating to Rs.3,00,00,000/-.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2015, of the transferor and transferee companies, along with the report of the auditors, have also been filed.

8. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavit. It is submitted by the applicants that the transferor company is a wholly owned subsidiary of the transferee company. It is claimed that the proposed

amalgamation will give the consolidated company better finances, facilitate adequate resource mobilization to sustain growth, enable better leverages of facilities, infrastructure and human resources for better administration. It is further claimed that the proposed amalgamation will result in reduction in overheads, administrative, managerial and other expenditure and bring about operational rationalization, organizational efficiency, and optimal utilization of various resources.

9. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall not be required to issue and allot any shares since the transferor company is a wholly owned subsidiary of the transferee company.

10. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or under Sections 210 to 227 of the Companies Act, 2013 are pending against the applicant companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 7th December, 2015 have unanimously approved the proposed Scheme of Amalgamation. Copies of the

Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The transferor company has 07 equity shareholders and 37 unsecured creditors. All the equity shareholders and 02 out of 37 unsecured creditors, being 5.4% in number and 89% in value, have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and unsecured creditors of the transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferor company, as on 30th September, 2015.

13. The transferee company has 02 equity shareholders, 02 preference shareholders and 250 unsecured creditors. Both the equity shareholders, both the preference shareholders and 79 out of 250 unsecured creditors, being 31.6% in number and 91% in value, have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders,

preference shareholders and unsecured creditors of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferee company, as on 30th September, 2015.

14. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

July 19, 2016