

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 98/2016

Reserved on 11th July, 2016
Date of pronouncement: 3rd August, 2016

In the matter of

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

And

**Application under Section 391 of the
Companies Act, 1956 read with Rule 9 of the
Companies (Court) Rules, 1959**

Scheme of Amalgamation of:

GE India Exports Private Limited

Applicant/Transferor Company No. 1

GE India Technology Centre Private Limited

Non -Applicant/Transferor Company No. 2

WITH

GE India Industrial Private Limited

Applicant/Transferee Company

**Through Mr. Suhail Dutt, Sr. Advocate
with Rashi Dhir, Mr. Pawan Sharma,
Mr. Sumit Garg and Mr. Divay Rastogi,
Advocates for the applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Section 391 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 and preference shareholders and for convening separate meetings of their secured and unsecured creditors, to consider and approve, with or without modification, the proposed Scheme of

Amalgamation of GE India Exports Private Limited (hereinafter referred to as the applicant/transferor company no. 1) and GE India Technology Centre Private Limited (hereinafter referred to as the transferor company no. 2) with GE India Industrial Private Limited (hereinafter referred to as the applicant/ transferee company).

2. The registered offices of the transferor company no. 1 and the transferee company are situated at New Delhi, within the jurisdiction of this Court. However, the registered office of the transferor company no. 2 is situated at Bangalore, outside the jurisdiction of this Court. Learned senior counsel for the applicants has submitted that a separate application has been filed by the transferor company no. 2 in the court of competent jurisdiction seeking sanction to the Scheme of Amalgamation.

3. The applicant/transferor company no. 1 was originally incorporated under the Companies Act, 1956 on 9th March, 1998 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of GE Industrial Systems & Services Private Limited. The company changed its name to GE Electrical Distribution & Control India Private Limited and obtained the fresh certificate of incorporation on 29th May, 1998. The company again changed its name to GE Power Controls India Private Limited and obtained the fresh certificate of incorporation on 21st January, 1999. Thereafter, the company shifted its registered office from

the State of Delhi to Karnataka and obtained a certificate in this regard from the Registrar of Companies, Karnataka at Bangalore on 13th June, 2000. The company finally changed its name to GE India Exports Private Limited and obtained the fresh certificate of incorporation on 1st July, 2005. Thereafter, the company shifted its registered office from the State of Karnataka to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi 20th March, 2012.

4. The applicant/transferee company was originally incorporated under the Companies Act, 1956 on 27th May, 1992 with the Registrar of Companies, Gujarat, Dadra and Nagar Haveli under the name and style of Apar Lamps Private Limited. Thereafter, the word 'Private' was deleted from the name of the company. The company changed its name to GE Apar Lighting Private Limited and obtained the fresh certificate of incorporation on 22nd January, 1993. Thereafter, the word 'Private' was deleted from the name of the company. The company again changed its name to GE Lighting India Limited and obtained the fresh certificate of incorporation on 23rd July, 1996. The word 'private' was added in the name of the company w.e.f. 09.05.2001. The company finally changed its name to GE India Industrial Private Limited and obtained the fresh certificate of incorporation on 8th June, 2004. Thereafter the company shifted its registered office from the State of Gujarat to Delhi and

obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 25th September, 2009.

5. The present authorized share capital of the applicant/transferor company no. 1 is Rs.94,40,00,000/- divided into 7,19,00,000 equity shares of Rs.10/- each aggregating to Rs.71,90,00,000/- and 2,25,00,000 6.60% cumulative redeemable non-convertible preference shares of Rs.10/- each aggregating to Rs.22,50,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.37,72,32,990/- divided into 3,77,23,299 equity shares of Rs.10/- each.

6. The present authorized share capital of the applicant/transferee company is Rs.29,72,80,00,000/- divided into 2,91,58,95,90,000 equity shares of Rs.0.10/- each aggregating to Rs.29,15,89,59,000/-; 10 1% non-cumulative redeemable preference shares of Rs.100/- each aggregating to Rs.1,000/- and 5,69,04,000 6.6% cumulative redeemable preference shares of Rs.10/- each aggregating to Rs.56,90,40,000/-. The issued, subscribed and paid-up share capital of the company is Rs.22,02,89,45,284/- divided into 2,16,40,94,52,837 equity shares of Rs.0.10/- each aggregating to Rs.21,64,09,45,284/- and 3,88,00,000 6.6% cumulative redeemable preference shares of Rs.10/- each aggregating to Rs.38,80,00,000/-.

7. Copies of the Memorandum and Articles of Association of the applicant/transferor company no. 1 and the transferee company have been filed on record. The audited balance sheets, as on 31st March, 2015, of the applicant/transferor company no. 1 and the transferee company, 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 claimed by the applicants that the proposed Scheme would lead to more effective, centralized and streamlined resource and fund management, which would enable inter-unit sharing of resources in an efficient manner and will reap financial benefits to the group and its shareholders through better management of funds and cash flows. It is further claimed that the proposed amalgamation will also improve organizational capability arising from the pooling of human capital having diverse skills, talent and vast experience with respect to manufacturing and research and development.

9. So far as the share exchange ratio is concerned, the Scheme provides that since the transferor companies no. 1 & 2 are wholly owned subsidiaries of the transferee company, upon the Scheme becoming effective, the entire share capital of the transferor companies shall stand

cancelled and no shares shall be issued and allotted by the transferee company and no amount whatsoever be paid/payable as consideration for the amalgamation.

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

11. The Board of Directors of the applicant/transferor company no. 1 and the transferee company in their separate meetings held on 1st June, 2016 and 31st May, 2016 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the applicant/transferor company no. 1 and the transferee company have been placed on record.

12. The applicant/transferor company no. 1 has 02 equity shareholders. Both the equity shareholders have given their consents/no objections in writing to the proposed Scheme of Amalgamation. There consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the equity shareholders of the applicant/transferor company no. 1, to consider and, if thought fit,

approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

13. The applicant/transferee company has 02 equity shareholders and 01 preference shareholder. Both the equity shareholders and the sole preference shareholder 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 preference shareholder of the transferee company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

14. The applicant/transferor company no. 1 has 02 secured creditors and a direction is sought to convene and hold their meetings to seek their approval to the proposed Scheme of Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the secured creditors of the applicant/transferor company no. 1 shall be held on 9th September, 2016 at 11:00 a.m. at Shri Satya Sai Auditorium, Bhisham Pitamah Marg, Near NBCC Building, Lodhi Road, New Delhi – 110003. Mr. Aditya Chandra, Advocate, (Mobile No. 9717444444) is appointed as the Chairperson and Mr. Nishant K. Diwan, Advocate, (Mobile No. 9899837371) is appointed as the Alternate Chairperson to conduct the

said meeting. The Quorum of the meeting of the secured creditors of the applicant/transferor company no.1 shall be 2 in number.

15. The applicant/transferor company no. 1 has 121 unsecured creditors and a direction is sought to convene and hold their meetings to seek their approval to the proposed Scheme of Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the applicant/transferor company no. 1 shall be held on 9th September, 2016 at 12:30 p.m. at Shri Satya Sai Auditorium, Bhisham Pitamah Marg, Near NBCC Building, Lodhi Road, New Delhi – 110003. Mr. Saurabh Kansal, Advocate, (Mobile No. 9958378565) is appointed as the Chairperson and Mr. Hari Om Gautam, Advocate, (Mobile No. 9810057143) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the applicant/transferor company no. 1 shall be 25 in number and more than 25% in value of the total unsecured debt.

16. The applicant/transferee company has 02 secured creditors and a direction is sought to convene and hold their meetings to seek their approval to the proposed Scheme of Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the secured creditors of the applicant/transferee company shall be held on 9th September, 2016 at 02:00 p.m. at Shri Satya Sai Auditorium, Bhisham Pitamah Marg, Near

NBCC Building, Lodhi Road, New Delhi – 110003. Ms. Payal Chawla, Advocate, (Mobile No. 9811777786) is appointed as the Chairperson and Ms. Jyotika Jain, Advocate, (Mobile No. 9873021858) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the secured creditors of the applicant/transferee company shall be 2 in number.

17. The applicant/transferee company has 1252 unsecured creditors and a direction is sought to convene and hold their meetings to seek their approval to the proposed Scheme of Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the applicant/transferee company shall be held on 9th September, 2016 at 03:30 p.m. at Shri Satya Sai Auditorium, Bhisham Pitamah Marg, Near NBCC Building, Lodhi Road, New Delhi – 110003. Mr. Yogesh Malhotra, Advocate, (Mobile No. 9811151411) is appointed as the Chairperson and Mr. Tushar Gupta, Advocate, (Mobile No. 9871550054) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the applicant/transferee company shall be 150 in number and more than 25% in value of the total unsecured debt.

18. In case the quorum as noted above for the above meetings is not present at the meetings, then the meetings shall be adjourned by half an

hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form duly signed by the person entitled to attend and vote at the meetings is filed with the registered offices of the applicant companies at least 48 hours before the meetings. The Chairpersons and Alternate Chairpersons shall ensure that the proxy registers are properly maintained.

19. The Chairpersons and Alternate Chairpersons shall ensure that notices for convening the aforesaid meetings of the secured and unsecured creditors of the applicant/transferor company no. 1 and the transferee company, along with copies of the Scheme of Amalgamation and the statement under Section 393 of the Companies Act, 1956, shall be sent to the secured and unsecured creditors of the applicant/transferor company no. 1 and the transferee company by ordinary post at their registered or last known addresses at least 21 days before the date appointed for the meetings, in their presence or in the presence of their authorized representatives. Notice of the meetings shall also be published in the Delhi editions of the newspapers "Financial Express" (English) and "Navbharat Times" (Hindi) in terms of the Companies (Court) Rules, 1959 at least 21 days before the date appointed for the meetings.

20. The Chairpersons and Alternate Chairpersons will be at liberty to issue suitable directions to the management of the applicant companies so that the aforesaid meetings of the secured and unsecured creditors of the applicant/transferor company no. 1 and the transferee company are conducted in a just, free and fair manner.

21. The fee of the Chairpersons and the Alternate Chairpersons for the aforesaid meetings shall be Rs.50,000/- each in addition to meeting their incidental expenses. The Chairpersons will file their reports within two weeks from the date of holding of the aforesaid meetings.

22. The application stands allowed in the aforesaid terms.

Dasti

SUDERSHAN KUMAR MISRA, J.

August 03, 2016