

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 374/2015

Reserved on 26th April, 2016
Date of pronouncement: 30th May, 2016

In the matter of

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

And

**Petition under Sections 391 to 394 of the
Companies Act, 1956 read with Rule 79 of the
Companies (Court) Rules, 1959**

Scheme of Arrangement between:

Nano Electrotech Private Limited

Petitioner/Transferor Company

AND

Infopower Technologies Limited

Petitioner/Transferee Company

**Through Ms. Gurkamal Arora,
Advocate for the petitioners
Ms. Aparna Mudiam, Asstt. Registrar
of Companies for the Regional Director
Mr. Ashish Makhija, Advocate for the
Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 read with Rule 79 of the Companies (Court) Rules, 1959 by the petitioner companies seeking sanction of the Scheme of Arrangement between Nano Electrotech Private Limited (hereinafter referred to as the transferor company) and Infopower Technologies 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 May, 2005 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 18th April, 1984 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Sark Synertek Private Limited. The word 'Private' was deleted from the name of the company w.e.f. 01.08.1990. Thereafter, the company changed its name to Infopower Technologies Limited and obtained the fresh certificate of incorporation on 16th July, 2007.

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.66,17,000/- divided into 6,61,700 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.3,75,00,000/- divided into 37,30,000 equity shares of Rs.10/- each aggregating to Rs.3,73,00,000/- and 20,000 cumulative convertible

preference shares of Rs.10/- each aggregating to Rs.2,00,000/-. The issued share capital of the company is Rs.3,34,43,200/- divided into 33,44,320 equity shares of Rs.10/- each. The subscribed and paid-up share capital of the company is Rs.3,27,39,450/- divided into 32,73,945 equity shares of Rs.10/- each.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application being CA(M) 95/2015 earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the reports of the auditors, had also been filed.

8. A copy of the Scheme of Arrangement has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavit. It is claimed that the proposed merger will result in formation of a larger company enabling further growth and development of the businesses of the said company thus enabling the said company to obtain greater facilities possessed and enjoyed by one large company compared to two small companies for raising capital, securing and conducting trade and business on favourable terms and other related benefits. It is claimed that the proposed merger will result in reduction in overheads and other

expenses, reduction in administrative and procedural cost, eliminate duplication of work, better and more productive utilization of various resources and will enable the undertakings concerned to attain economies of scale and optimize productivity.

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 issue and allot equity shares to the shareholders of the transferor company in the following ratio:

“16 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 01 equity share of Rs.10/- held in the transferor company.”

10. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 and/or Sections 210 to 224 of the Companies Act, 2013 are pending against the petitioner companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 19th January, 2015 have unanimously approved the proposed Scheme of Arrangement. Thereafter, vide Board Resolution dated 3rd November, 2015, the Board of Directors of the petitioner companies have approved the amendment made in para 11(a) of the Scheme. 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 petitioner companies had earlier filed CA (M) No. 95/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Arrangement. Vide order dated 25th May, 2015 this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and unsecured creditors of the transferor company and equity shareholders, secured and unsecured creditors of the transferee company, there being no secured creditor of the transferor company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Arrangement. Vide order dated 14th August, 2015, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in 'Statesman' (English) and 'Veer Arjun' (Hindi) editions. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Official

Liquidator and the Regional Director, Northern Regional and also regarding publication of citations in the aforesaid newspapers on 15th September, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

14. Thereafter, vide CA No. 3679/2015, petitioners sought to place on record the amended Scheme of Arrangement and the certified copies of the relevant Board resolutions. It was pointed out by the petitioners that the Scheme of Arrangement originally placed before this Court contained a typographical error, and that the additional equity share capital of the transferee company shall be Rs.10,00,00,000/- divided into 1,00,00,000 equity shares of Rs.10/- each instead of Rs.10/- crore equity shares of Rs.10/- each. The said application was allowed vide order dated 8th December, 2015 and the amended Scheme of Arrangement along with the relevant Board Resolutions were taken on record.

15. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 20th January, 2016 wherein he has stated that he has not received any complaint against the proposed Scheme of Arrangement from any person/party interested in the Scheme in any manner and that the affairs of the transferor company do not appear to have been conducted in a manner

prejudicial to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

16. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 21st January, 2016. Relying on Clause 15 of the Scheme, he has stated that, upon sanction of the Scheme of Arrangement, all the employees of the transferor company shall become the employees of the transferee company without any break or interruption in their services. He has further submitted that in Clause 10(f) of the Scheme, it has been stated that the transferee company shall comply with the accounting treatment as prescribed under Accounting Standard-14 issued by the Institute of Chartered Accountants of India. He further submitted that in Clause 23(a) of the Scheme, it has been stated that upon this scheme becoming effective, the transferor company shall stand dissolved without the process of winding up.

17. The Regional Director has not raised any objection to the proposed Scheme. However, in para 5 of his report, he has stated that the Income Tax Department vide its letter dated 12.10.2015 has informed that certain demands for the financial year 2007-08, 2008-09, 2009-10, 2010-11 and 2013-14 amounting to Rs.4,51,739/- are pending against the transferor company. Further, in para 7(i) of his report, he has submitted that as per

para 11(a) and 11(c) of the amended Scheme of Arrangement, the authorized share capital of the transferee company shall stand increased by Rs.10,00,00,000/- divided into 1,00,00,000 equity shares of Rs.10/- each. He, therefore, submits that the authorized share capital of the company may be increased only after following the procedure prescribed under the relevant provisions of the Companies Act and on payment of fee to the Registrar of Companies and stamp duty to the state government. In response to the aforesaid observations, the petitioner companies in the affidavit dated 22nd January, 2016 of Ms. Varsha Manwani, director of the transferee company have submitted that the transferor company has duly paid the income tax demands for the financial years 2007-08, 2008-09, 2009-10 and 2010-11 and their respective receipts are placed on record. She has further submitted that the assessment proceedings for the financial year 2013-14 are still pending and as per the proposed Scheme, all the liabilities of the transferor company shall stand transferred to the transferee company and the transferee company shall pay all its dues. In response to the second observation of the Regional Director, Ms. Varsha Manwani on behalf of the petitioner companies has undertaken to follow the procedure laid down in the Companies Act, 2013 and rules made thereunder for increase in the authorized share capital of the transferee company. In view of the aforesaid, the observations made by the Regional Director stand satisfied.

18. No objection has been received to the Scheme of Arrangement from any other party. The petitioner companies, in the affidavit dated 15th January, 2016 of Ms. Gurkamal Hora Arora, counsel of the petitioner companies have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 15th September, 2015.

19. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Arrangement and the affidavits filed by the Regional Director, Northern Region and the Official Liquidator having not raised any objection to the proposed Scheme of Arrangement, there appears to be no impediment to the grant of sanction to the amended Scheme of Arrangement. Consequently, sanction is hereby granted to the amended Scheme of Arrangement annexed with CA 3679/2015 under Sections 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the appointed date of Amalgamation,

i.e. 1st April, 2014, the transferor company shall stand dissolved without undergoing the process of winding up.

20. Learned counsel for the Official Liquidator prays that costs of at least Rs.1,00,000/- should be paid by the petitioners keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings. Learned counsel for the petitioner company states that the same is acceptable to her. As already directed vide order dated 26.04.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

21. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

May 30, 2016