

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT – I, MUMBAI BENCH

C.A. (CAA) 1106/MB/2020

In the matter of

Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

And

In the matter of

Scheme of Amalgamation of Aeroflex International Limited (Transferor Company) and Italice Furniture Private Limited (Transferor Company) with Sat Industries Limited (Transferee Company) and their respective shareholders.

AEROFLEX INTERNATIONAL LIMITED

121, Floor-12th, Plot-210, B Wing,
Mittal Tower, Free Press Journal Marg,
Nariman Point, Mumbai – 400 021
CIN: U74999MH2002PLC136032

... First Applicant Company

ITALICA FURNITURE PRIVATE LIMITED

121, Floor-12th, Plot-210, B Wing,
Mittal Tower, Free Press Journal Marg,
Nariman Point, Mumbai – 400 021
CIN: U25209MH2004PTC345795

... Second Applicant Company



SAT INDUSTRIES LIMITED

121, Floor-12th, Plot-210, B Wing,
Mittal Tower, Free Press Journal Marg,
Nariman Point, Mumbai – 400 021
CIN: L25199MH1984PLC034632

... Third Applicant Company

Order dated: 9th December, 2020

Coram:

Hon'ble Janab Mohammed Ajmal, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

Appearance:

For the Applicant(s) : Mr. Yahya Batatawala, Advocate i/b. Dr. S. K.
Jain, Practicing Company Secretary

Per: Janab Mohammed Ajmal, Member (Judicial)

ORDER

The present Scheme under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (the Act) is one of Amalgamation (the Scheme) of Aeroflex International Limited and Italica Furniture Private Limited with Sat Industries Limited and their respective shareholders and creditors.

2. The First Applicant Company is engaged in the business of design, manufacture, fabrication, assembly, machinery, work on process, repair, alter, convert, buy, deal in, import & export or consultation for plants, machineries, sub-assemblies,



machineries parts, tools, gauges, jigs, instruments, appliances, components, accessories and finished or semi-finished engineering products made of steel, thermoplastic, polymer and/or any other materials for industrial, agricultural or domestic use. The Second Applicant Company is carrying on the business as manufacturers of and dealers in plastic moulded goods of all kinds and for all purposes and in rubber and plastic tubes and tyres and in bottle, containers, tubes, thermoware, drums, crates, furniture, tanks, doors, windows, flaskwares, furniture wrapping materials, foams, rubber and plastic product, transmission belts and conveyors, and similar industrial articles, pipes, tubes, hoses, rubber containers and rubber linked vessels etc. The Third Applicant Company is engaged in the business of providing internet services and other wireless network services, software systems, E-commerce, M-commerce, any other commerce in any other form or forms, data bank, data processing, communication, information system and to design and develop computer, design software consisting of schematic capture, simulation hardware description languages such as HISC design kits placement and routing test vector translation and tool integration, designing and developing business applications, software involving local area networks, multitasking operating systems, graphical user interface, relations, data base management systems, object oriented database management system and interactive multimedia system, preparing advertisements and publishing information & advertisement on internet, conducting exhibition on internet, incorporating data on CD-ROM and to act as internet service provider (ISP) etc.

3. The respective Board of Directors of the Applicant Companies have approved the Scheme in their meetings held on 23rd September, 2020. The Appointed Date fixed under the Scheme is 1st April, 2020.



4. Counsel for the Applicant Companies submitted that the Transferor Companies are wholly owned subsidiaries of the Transferee Company and the proposed amalgamation would accomplish the following benefits:

- i) Reduction in number of entities;
- ii) Reducing administrative costs;
- iii) Achieving operational and management efficiency;
- iv) Result in availability of common performing platform and benefiting the Shareholders of both the Transferor Companies and the Transferee Company; and
- v) Efficient utilization of capital and will result in administrative and operational rationalization and promote organizational efficiencies.

5. That there are Seven (7) Equity Shareholders of the First Applicant Company. That one of the Shareholders namely Sat Industries Ltd. being a major Shareholder, holding 9,99,940 Equity Shares i.e. 99.99% in the First Applicant Company has given the Consent Affidavit and approval to the Scheme, annexed as 'Annexure M-Colly' to this Application.

6. That there are Two (2) Equity Shareholders of the Second Applicant Company. That one of the Shareholders namely Sat Industries Ltd. is a major Shareholder holding 20,82,108 Equity Shares i.e. 100% in the Second Applicant Company and has given the Consent Affidavits and approval to the Scheme, annexed as 'Annexure N-Colly' to this Application.

7. That the First Applicant Company does not have any Secured Creditor and there are three (3) Unsecured Creditors having value of Rs. 32,122/- (Rupees Thirty Two Thousand One Hundred and Twenty Two only).



8. That the Second Applicant Company has only one (1) Secured Creditor having value of Rs.16,32,001/- (Rupees Sixteen Lakhs Thirty Two Thousand and One only) and four (4) Unsecured Creditors having value of Rs.21,21,76,757/- (Rupees Twenty One Crore Twenty One Lakh Seventy Six Thousand Seven Hundred and Fifty Seven only).

9. That the Third Applicant Company have three (3) Secured Creditors having value of Rs. 52,16,007/- (Rupees Fifty Two Lakhs Sixteen Thousand and Seven only) and four (4) Unsecured Creditors having value of Rs. 6,26,85,949/- (Rupees Six Crores Twenty Six Lakhs Eighty Five Thousand Nine Hundred and Forty Nine only).

10. The Counsel for the Applicant Companies submitted that the meetings of the Secured and Unsecured Creditors of Transferor Companies and Transferee Company is not required to be convened as the present Scheme is an arrangement between the Applicant Companies and their respective Shareholders as contemplated under the provisions of Section 230(1)(b) of the Act, and not in accordance with the provisions of Section 230(1)(a) of the Act, as there is no Compromise and/or Arrangement with the creditors as no sacrifice is called for. Further there is no diminution of liability of any of the Creditors of the Transferor Companies who will be paid off in the ordinary course of business.

11. Counsel for the Transferee Company submitted that:

- i) The Transferor Companies are wholly-owned subsidiaries of the Transferee Company.
- ii) Being an Amalgamation of a wholly-owned subsidiary Companies with its Holding Company, no shares would be issued or allotted as consideration pursuant to the Scheme. The present Scheme will not result in any dilution in the shareholding in the Transferee Company.



- iii) The existence of the Transferee Company will remain as before without any material change either to its shareholding pattern or debt position pursuant to the Scheme.
- iv) The net-worth of the Transferee Company is and will continue to remain highly positive post amalgamation.
- v) There is no compromise or arrangement with the Members and Creditors of the Transferee Company. Therefore, the Scheme is not prejudicial to the interests of the Members and Creditors of the Transferee Company.

12. The Counsel for the Transferee Company submitted that in view of above, no reconstruction or arrangement is proposed with its shareholders and/or creditors and thus, it does not require to hold the Meetings of Shareholders and Creditors of the Transferee Company for approval of the proposed Scheme. This is also supported by the ratio laid down by this Tribunal in '*CSA No. 243 of 2017 in the matter of Housing Development Finance Corporation Limited*', in '*CSA No. 899 of 2017 in the matter of Mahindra CIE Automotive Limited*', in *CSA No. 915 of 2017 in the matter of Godrej Consumer Products Limited*, in *CSA No. 1019 of 2017 in case of Godrej Properties Limited*, in *CSA No. 1615 of 2018 in case of Dolvi Minerals and Metals Private Limited*, in *CSA No. 396 of 2019 in case of JSW Logistics Infrastructure Private Limited*, in *CSA No. 1142 of 2019 in case of City Corporation Limited*, in *CSA No. 3123 of 2019 in case of Jai Realty Ventures Limited*, in *CSA No. 3219 of 2019 in case of Impact Automotive Solutions Limited* and in *CSA No. of 3749 of 2019 in case of Datamatics Digital Limited*.

13. The Counsel for the Transferee Company further submitted that *Hon'ble National Company Law Appellate Tribunal*, ('NCLAT') in *Company Appeal (AT) No. 180 of 2019 in the matter of DLF Limited* ('Transferee Company') held that in the



event the views expressed by the coordinate bench or Larger Benches being squarely applicable, the Tribunal should follow the same. Hence, it is submitted that since the facts in the present case are similar to the facts of the above cases, no meeting of Shareholders and Creditors of the Transferee Company are required to be convened for the approval of the proposed Scheme.

14. We have heard the Counsel representing the Companies and have perused the records. In consideration of the materials indicated supra the following order is passed.

ORDER

- a) The Application be and the same is allowed.
- b) The meetings of the following are dispensed with.
 - i. the Equity Shareholders of the First Applicant Company.
 - ii. the Equity Shareholders of the Second Applicant Company.
 - iii. the Equity Shareholders of the Third Applicant Company.
 - iv. the Unsecured Creditors of the First Applicant Company.
 - v. the Secured and Unsecured Creditors of the Second Applicant Company.
 - vi. the Secured and Unsecured Creditors of the Third Applicant Company.
- c) The First Applicant Company shall individual notices to all its Unsecured Creditors, enclosing a copy of the Scheme, with instruction that they may submit their representations, if any, to the Tribunal within a period of 30 (thirty) days from the date of receipt of such notice, and copy of such representations shall simultaneously be



served upon the First Applicant Company. In view of the Covid-19 pandemic, notice to creditors be given by email at their respective registered e-mail addresses with the First Applicant Company. It shall be the responsibility of the First Applicant Company to ensure that every creditor is put on notice regarding the Scheme, so that they may take an informed decision thereon.

- d) The Second Applicant Company & Third Applicant Company shall individual notices to all its Secured & Unsecured Creditors, enclosing a copy of the Scheme, with instruction that they may submit their representations, if any, to the Tribunal within a period of 30 (thirty) days from the date of receipt of such notice, and copy of such representations shall simultaneously be served upon the respective Applicant Companies. In view of the Covid-19 pandemic, notice to creditors be given by email at their respective registered e-mail addresses with the Second Applicant Company & Third Applicant Company. It shall be the responsibility of the respective Applicant Companies to ensure that every creditor is put on notice regarding the Scheme, so that they may take an informed decision thereon.
- e) The Applicant Companies shall serve the Notice of the Application along with copy of the Scheme upon – (i) the Central Government through the office of Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai, (ii) Registrar of Companies, Maharashtra Mumbai; (iii) Income Tax Authority concerned within whose jurisdiction the Applicant Companies' assessments are made, clearly indicating the PAN. First Applicant Company PAN:- AAHCS6463K having its address at Income Tax Officer and Ward: Ward 2(3)(1),



Mumbai; The Second Applicant Company PAN:- AAJCS0883P having its address at Income Tax Officer and Ward Jurisdiction: ACIT C-2, Udaipur Range Code – 720 Area Code – RJN; The Third Applicant Company PAN:- AAACR2207F having its address at Income Tax Officer and Ward Circle 3(3)(1), Mumbai; (iv) The Transferee Company shall also serve the notice on the Securities and Exchange Board of India (SEBI) and Bombay Stock Exchange (BSE), where the securities of the Transferee Company are listed, as per section 230(5) of the Act and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Companies. If no response is received by the Tribunal from such authorities within the period, it shall be presumed that the Regulatory Authorities have no objection to the proposed Scheme.

- f) The Transferor Companies shall also serve the Notice of Application upon the Official Liquidator, as per to Section 230(5) of the Act.
- g) M/s. N. K. Sureka & Co., Chartered Accountants, having address at Office No.216, Commerce House, Nagindas Master Road, Fort, Mumbai – 400 001, Contact No. 022-22675181/22671485, are appointed as auditors to assist the Official Liquidator to scrutinize the books of accounts of the Transferor Companies for the last 5 years and submit its representation/report to the Tribunal. The Transferor Companies shall pay a consolidated sum of Rs. 50,000/- (Rupees



Fifty thousand only) towards fees for this purpose. If no representation/response is received by the Tribunal from Official Liquidator within a period of 30 days from the date of receipt of such notice, it shall be presumed that Official Liquidator has no objection to the Scheme.

- h) The Applicant Companies shall file compliance report with the registry in regard to the directions given in this Order in lieu of customary Affidavit of Service, due to the prevailing lockdown warranted by Covid-19 pandemic, proving service of notices to the Creditors and Regulatory Authorities as stated above.

Sd/-

V. Nallasenapathy
Member (Technical)

Sd/-

Janab Mohammed Ajmal
Member (Judicial)

Jenny DSouza – Steno



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On 28.1.2021

Joint Registrar
National Company Law Tribunal Mumbai Bench

**NATIONAL COMPANY LAW TRIBUNAL
COURT No. – I, MUMBAI BENCH**

*** **

CA (CAA) No. 1106/MB/2020

Aeroflex International Limited

*** **

Dated 9th December, 2020

ORDER

The matter is taken up on VC. The Mentioning praecipe as filed by the Counsel for the Applicant is taken on record. Heard and allowed. Heard Mr. Yahya Batatawala, Counsel for the Applicant. Application is allowed vide separate orders.

**Sd/-
V. NALLASENAPATHY
Member (Technical)**

**Sd/-
MOHAMMED AJMAL
Member (Judicial)**

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On 28.1.2021




Joint Registrar
National Company Law Tribunal Mumbai Bench