

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, MUMBAI

COMPANY SCHEME PETITION NO. 125 OF 2017

CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 991 OF 2016

Gammon India Limited ...Petitioner Company

AND

COMPANY SCHEME PETITION NO. 124 OF 2017

CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 992 OF 2016

Gammon Engineers and Contractors Pvt. Ltd. ...Petitioner Company

In the matter of the Companies Act, 1956 (I of 1956);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 AND Sections 230 to 232 of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between Gammon India Limited (the Transferor Company) AND Gammon Engineers and Contractors Private Limited (the Transferee Company) AND their respective shareholders and creditors

CALLED FOR HEARING:

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner Company.

Mr. Ramakatha, Joint Director in the office of Regional Director

Coram: **B.S.V. Prakash Kumar, Member (Judicial)**

V. Nallasenapathy, Member (Technical)

Date: 22nd March, 2017

MINUTES OF THE ORDER

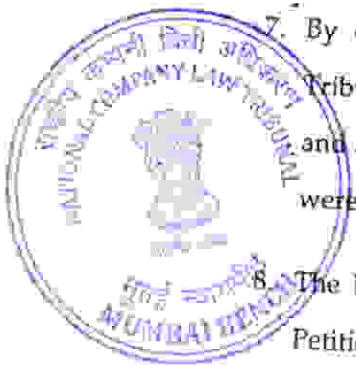
Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.

2. The present Scheme of Arrangement pertains to transfer of the Civil EPC Undertaking of Gammon India Limited and engaged in, *inter alia*, the business of civil engineering, design and construction of power transmission and



distribution limited into Gammon Engineers and Contractors Private Limited, which is 100% legally and beneficially held by GIL through its wholly owned subsidiary "Gammon Retail Infrastructure Private Limited". Transfer of the Civil EPC Undertaking by GIL to GECPL would help in achieving the desired operating structure and shall *inter alia* have the following benefits (i) To create a sector focused company, (ii) To enable investment by a strategic investor, (iii) Ring-fence businesses from each other, and (iv) Deleverage the balance sheet of GIL.

3. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. By order dated 2nd December, 2016 passed by the Hon'ble Bombay High Court in Company Summons for Direction Number 991 of 2016, meetings of equity shareholders and unsecured creditors of GIL were convened and held on January 6, 2017. The meeting of the secured creditors of GIL was dispensed with in view of the undertaking given by GIL that they would issue individual notice of hearing of the petition to all its secured creditors.
5. By the order dated 2nd December, 2016, passed by the Hon'ble Bombay High Court in Company Summons for Direction Number 992 of 2016 convening of meetings of equity shareholders of GECPL was dispensed with in view of consents given by all the equity shareholders of GECPL. Also, convening of meetings of unsecured creditors of GECPL was dispensed with in view of the undertaking given by GECPL that they would issue individual notice of hearing of the petition to all its unsecured creditors.
6. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in Company Summons for Direction Nos. 991 of 2016 and 992 of 2016.
7. By order dated 1st February, 2017 passed by the National Company Law Tribunal, Mumbai Bench. Petitions filed by both the Petitioners were admitted and fixed for final hearing on 22nd March, 2017. By the said order, the Petitioners were also directed to issue notices etc.
8. The Learned Advocate appearing on behalf of the Petitioners states that the Petitioner Companies have complied with all requirements as per directions of



the Hon'ble Bombay High Court and they have filed necessary Affidavits of compliance in the Hon'ble Bombay High Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.

9. The Regional Director has filed his Report on March 21, 2017 stating therein that save and except as stated in paragraph IV(a) to IV (c) of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

Paragraph IV, of the said Report reads as follows:

- a. *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.*
- b. *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It is observed that the Company vide letter dated 02.02.2017 has served a copy of the Company Scheme Petition No. 124 and 125 of 2017 along with relevant order etc. However, as on date there is no response from Income Tax Department. Further, the Regional Director has also issued a reminder on 21.03.2017 to respective IT Department. The tax implication if any arising out of the Scheme is subject to the final decision of the Income Tax Authorities. The approval of the Scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the Transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*
- c. *Petitioner in the Clause No. 5.3 inter alia has mentioned that GECPL shall, if necessary and to the extent required, increase its authorized share capital to facilitate the issue of equity shares under this Scheme. Therefore, Deponent prays that the Hon'ble Tribunal may pass orders to comply with the sec 61, r/w sec 13, sec 64 and other applicable sections of the Companies Act, 2013*

10. As far as observation of the Regional Director, as stated in paragraph IV(a) of his Report is concerned, the Petitioner Companies submit that in addition to compliance of AS -14 (IND AS -103), the Petitioner Companies shall pass such



accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.

11. As far as observation of the Regional Director, as stated in paragraph IV(b) of his Report is concerned, the Petitioner Companies submit that they are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.

12. As far as observation of the Regional Director, as stated in paragraph IV(c) of his Report is concerned, the Petitioner Company in CSP 124 states that it shall increase its authorized share capital to facilitate the issue of equity shares pursuant to the Scheme and it shall comply with the applicable provisions of the Companies Act, 2013.

13. From the material on record, the Scheme appears to be fair, reasonable and is not violative of any provisions of law nor is not contrary to public policy.


14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 124 of 2017 and 125 of 2017 are made absolute in terms of prayer clause (a) of the respective petitions.

15. Petitioners are directed to lodge a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013.

16. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order.

17. All concerned regulatory authorities to act on a copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai.

Certified True Copy
Date of Application 27-3-17
Number of Pages 4
Fee Paid Rs. 201-
Applicant called for collection copy on 31-3-17
Copy prepared on 31-3-17
Copy issued on 31-3-17


B.S.V. Prakash Kulkarni Member (Judicial)


V. Nallasenapathy Member (Technical)


Deputy Director

SCHEME OF ARRANGEMENT

BETWEEN

GAMMON INDIA LIMITED ('GIL' or 'Transferor Company')

AND

**GAMMON ENGINEERS AND CONTRACTORS PRIVATE LIMITED ('GECPL'
or 'Transferee Company')**

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

(Under Sections 391 to 394 of the Companies Act, 1956 or any re-enactment thereof)
("the Scheme")

(A) PREAMBLE

This Scheme of Arrangement is presented under Sections 391 to 394 and other applicable provisions of the Companies Act, 1956 / Companies Act, 2013 for the transfer of the Civil EPC Undertaking (*defined hereinafter*) of Gammon India Limited ('GIL' or 'Transferor Company'), a company incorporated under the Act (hereinafter defined) with registered office at Gammon House, Veer Savarkar Marg, Prabhadevi, Mumbai 400 025 and engaged in, *inter alia*, the business of civil engineering, design and construction of power transmission and distribution limited into Gammon Engineers And Contractors Private Limited ('GECPL'), a company



incorporated under the Act and which is 100% legally and beneficially held by GIL through its wholly owned subsidiary "Gammon Retail Infrastructure Private Limited" with registered office at Gammon House, Veer Savarkar Marg, Prabhadevi, Mumbai 400 025.

The Company vide a business transfer agreement dated July 21, 2016 (the 'BTA'), has agreed to transfer one of the undertakings relating to Civil EPC business, defined therein as the Identified Business ("BTA Undertaking") to GECPL. Pursuant to this Scheme the Company proposes to transfer the Transferred Undertaking to GECPL as part of the effort to consolidate the entire Civil EPC business in GECPL.

This Scheme also provides for various other matters consequential or otherwise integrally connected therewith.

(B) DESCRIPTION OF THE SCHEME

In furtherance of the understanding between the Transferor Company and the Transferee Company, this Scheme, *inter alia*, deals with the Transfer of the Civil EPC Undertaking from the Transferor Company to the Transferee Company (more particularly described in Part II of this Scheme) and various other matters consequential to or otherwise integrally connected with the above, pursuant to the provisions of Sections 391 to 394 and other applicable provisions of the Companies Act, 1956 in the manner provided for in this Scheme.

(C) RATIONALE FOR THE SCHEME

1. Transfer of the Civil EPC Undertaking by GIL to GECPL would help in achieving the desired operating structure and shall *inter alia* have the following benefits:

1. To create sector focused company;



- ii. To enable investment by strategic investor;
- iii. Ring-fence businesses from each other; and
- iv. Deleverage the balance sheet of GIL.

(D) **Parts of the Scheme:**

This Scheme is divided into the following parts:

- (i) **PART I** deals with the definitions and share capital;
- (ii) **PART II** deals with Slump Exchange of Civil EPC Undertaking into GECPL;
- (iii) **PART III** deals with general terms and conditions and other miscellaneous provisions applicable to this Scheme.

PART I

DEFINITIONS AND SHARE CAPITAL

1. DEFINITIONS

In this Scheme, unless inconsistent with the subject or context, the following expressions shall have the following meaning:

- 1.1 "Act" or "the Act" means the Companies Act, 1956 and/or the Companies Act, 2013 (as the case may be and to the extent applicable) as in force from time to time; it being clarified that as on the date of approval of this Scheme by the Board of Directors of GIL and GECPL, Sections 391 to 394 of the Companies Act, 1956 continue to be in force with the corresponding provisions of the Companies Act, 2013 not having been notified. Accordingly, references in this Scheme to particular provisions of the Act are references to particular provisions of the Companies Act, 1956 / Companies Act, 2013 as may be in force;

