

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH: C-IV

CA(CAA)-99/MB/2024

In the matter of
Sections 230 to 232 and other applicable
provisions of the Companies Act, 2013

and

In the matter of
The Scheme of Amalgamation of
Synegra EMS Limited
*(Transferor Company/
Applicant Company-1)*

with

Smartlink Holdings Limited
*(Transferee Company/
Applicant Company-2)*

And their respective Shareholders.

Synegra EMS Limited
[CIN: U31909GA2016PLC012969]

... Applicant Company-1/
Transferor Company

Smartlink Holdings Limited
[CIN: L67100GA1993PLC001341]

... Applicant Company-2/
Transferee Company

(hereinafter collectively referred to as the 'Applicant Companies')

Order pronounced on: **12.07.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearance :

For the Applicants

: Mr. Ahmed Chunawala i/b Rajesh Shah &
Co., Advocate.

ORDER

1. This is an Application filed on 30.04.2024 jointly by Synegra EMS Limited and Smartlink Holdings Limited under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013, seeking directions of this Bench for Scheme of Amalgamation of **Synegra EMS Limited** (Transferor Company) with **Smartlink Holdings Limited** (Transferee Company) and their respective shareholders.
2. The Applicants state that the Board of Directors of the First and Second Applicant Companies in their respective meetings held on 09.02.2024 have approved the Scheme. They also submit that the First Applicant Company is a wholly owned subsidiary of the Second Applicant Company. The Appointed Date for the Scheme is 1st April 2024.
3. The Applicants submit that the Transferor Company is engaged in the business of manufacturing of various categories of electronic and IT products on job work basis and also engages in contract manufacturing for original equipment manufacturer. The Transferee Company is an NBFC and operates as an Investment Company.
4. ***Rationale:***
The Applicant Companies submit that Transferor Company and the Transferee Company are part of the same group. The major benefits of this Scheme of Amalgamation are as under:
 - a. *To foray into design, development, research in the field of Information Technology for networking products at the Holding company level.*

- b. *Reduce managerial overlaps, regulatory compliances which are necessarily involved in running multiple entities and elimination of duplication of administrative expenses, consequently enabling cost savings.*
- c. *Ease in raising funds at Holding company level.*
- d. *Economies of scale, greater integration, flexibility and market reach for the amalgamated entity.*
- e. *Achieve simplified corporate structure and ensuring more productive and optimum utilization of various resources*
5. The First Applicant Company states that the Authorized, Issued, Subscribed and Paid-up Share Capital of the Company as on 31.03.2023 is as under:

Particulars	Amount (in Rs)
<u>Authorised Share Capital</u>	
2,50,00,000 Equity Shares of Rs. 10/- each	25,00,00,000
TOTAL	25,00, 00,000
<u>Issued, Subscribed and Paid-up Share Capital</u>	
2,50,00,000 Equity Shares of Rs. 10/- each	25,00,00,000
TOTAL	25,00, 00,000

6. The Second Applicant Company states that the Authorized, Issued, Subscribed and Paid-up Share Capital of the Company as on 31.03.2023 is as under:

Particulars	Amount (in Rs)
<u>Authorised Share Capital</u>	
3,50,00,000 Equity Shares of Rs. 2/- each	7,00,00,000
TOTAL	7,00,00,000
<u>Issued, Subscribed and Paid-up Share Capital</u>	
99,75,000 Equity Shares of Rs. 2/- each	1,99,50,000
TOTAL	1,99,50,000

7. *Consideration:*

The Applicants submit that as the First Applicant Company is a wholly owned subsidiary of the Second Applicant Company and therefore, there shall be no shares will be issued as consideration for the amalgamation of the Transferor Company with the Transferee Company. The proposed Scheme will not result in any change in the share capital of the Transferee Company.

8. The First Applicant Company submits that there are Seven (7) Equity Shareholders holding 100% equity shares of the Company. The Applicant further submits that all the Equity Shareholders of the First Applicant Company have given their consent in the form of affidavits approving the proposed Scheme.

In view of the consent Affidavits, the meeting of the Equity Shareholders of the First Applicant Company is hereby dispensed with.

9. The Second Applicant Company submits that the present Scheme is an arrangement between the Transferee Company and its Shareholders as contemplated under Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013. The Scheme does not propose any Compromise and/or Arrangement with the Creditors of the Transferee Company. The rights of the creditors of the Transferee Company are not affected since there will be no reduction in their claims, and the assets of the Transferee Company, post-merger. Further, the merger is of a company having positive net worth and consequently, the ability to discharge the claims in the normal course of business would not be adversely impacted. Therefore, the creditors of the Transferee Company would not be affected by the approval of the Scheme. The net worth of the Transferee Company is highly positive. The assets of the Transferee Company are more than sufficient to discharge its liabilities. Further, there is no compromise or arrangement with the members or creditors of the Transferee Company. Therefore, the proposed Scheme of Merger by Absorption is not prejudicial to the interest of the shareholders or the creditors of the Transferee Company.
10. The Counsel for the Transferee Company submits that in view of above, no reconstruction or arrangement is contemplated with its shareholders or creditors, and thus, it does not require to hold either shareholders' meeting or creditors' meeting for approval of the proposed Scheme in view of ratio laid down by this Tribunal in *CSA No. 243 of 2017 in the matter of Housing Development Finance Corporation Limited*, in *CSA No. 237 of*

2021 in the matter Pidilite Industries Limited, in CSA No. 113 of 2022 in case of HDFC Life Insurance Limited, in CSA No. 76 of 2024 in case of Lighthouse Learning Private Limited, in CSA No. 247 of 2021 in case of Vibrant Global Capital Limited. The Counsel for the Transferee Company further clarifies that the Transferee Company will file petition and comply with the provisions of service of notices upon all Regulatory authorities.

In view of the above, the requirement to convene and hold meeting of the Equity Shareholders of the Second Applicant Company is dispensed with. Further, the Second Applicant Company is directed to serve notice to all its Equity Shareholders inviting representations, if any, thereto by R.P.A.D./speed post and by email. Representations, if any, shall be filed before this Tribunal with a copy to the Second Applicant Company within 30 (thirty) days from the date of receipt of such notice, failing which, it shall be presumed that they have no objection to the proposed Scheme.

11. The Applicant Companies further submit that there are Three (3) Secured Creditors in the First Applicant Company having outstanding of Rs.2,78,38,991.50/- (Rupees Two Hundred Seventy-eight Lakhs Thirty Eight Thousand Nine Hundred and Ninety One and fifty paise only) as on 29th February, 2024. They further submit that all the 3 Secured Creditors have given their consent Affidavits for approval of the scheme.

In view of the consent Affidavit, the meeting of the secured Creditors of the First Applicant Company is hereby dispensed with.

12. The Applicant Companies further submit that there are Twenty Eight (28) Unsecured Creditors having outstanding Rs.19,32,32,526/- (Rupees Nineteen Crores Thirty Two Lakhs Thirty Two Thousand Five Hundred and Twenty Six) as on 29th February, 2024. The Applicants further submit that 25 Unsecured Creditors having value of Rs.8,06,30,554/- (approximately 56.29% in value) has consented to the proposed Scheme and three (3) Unsecured Creditors having value of Rs.6,26,01,972/- (approximately 43.71% in value) have been paid off.

In view of the fact that all the Unsecured Creditors of the First Applicant Company have given their consent affidavits and No Due Certificate, the meetings of the Unsecured Creditors of the First Applicant Company is hereby dispensed with. The certificate issued by the Chartered Accountant regarding the net-worth of the First Applicant Company is part of the Application.

13. The Applicant Companies further submit that there are no Secured Creditors in the Second Applicant Company.

As no Secured Creditor(s) in the Second Applicant Company, no meeting of the Secured Creditor(s) is ordered in the Second Applicant Company.

14. The Applicant Companies further submit that there are Two (2) Unsecured Creditors having outstanding of Rs.25,976/- (Rupees Twenty Five Thousand Nine Hundred and Seventy Six only) as on 29th February, 2024 in the Second Applicant Company. So far as Unsecured Creditors of

the Second Applicant Company are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Second Applicant Company and the scheme of arrangement does not envisage any compromise or arrangement with the Unsecured Creditors of the Second Applicant Company and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Second Applicant Company is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Second Applicant Company shall continue with its existence and shall accordingly continue to meet the liabilities of its unsecured creditors as they arise in the normal course. The Second Applicant Company submits that there is no arrangement with the creditors and they will be paid in ordinary course of business. The certificate issued by the Chartered Accountant regarding the net-worth of the Second Applicant Company is part of the Application.

In view of the above, the requirement to convene and hold meeting of the Unsecured Creditors of the Second Applicant Company is dispensed with. Further, the Second Applicant Company is directed to serve notice to all its Unsecured Creditors inviting representations, if any, thereto by RPAD/speed post and by email. Representations, if any, shall be filed before this Tribunal with a copy to the Second Applicant Company within 30 (thirty) days from the date of receipt of such notice, failing which, it shall be presumed that they have no objection to the proposed Scheme. Copy of such notice shall simultaneously be served upon the

First Applicant Company.

15. The Second Applicant Company states that it is a Non-Banking Finance Company (NBFC) company. The Second Applicant Company has filed an affidavit wherein it has given a detailed explanation that the First Applicant Company is a wholly owned subsidiary of the Second Applicant Company and that there will be no impact on or change in the shareholding pattern of the company. Hence, the prior approval from the RBI is not required.
16. The Applicant Companies are directed to serve notice along with copy of Scheme under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 upon the -
- i. Central Government through the office of Regional Director, Western Region (MCA), Mumbai;
 - ii. Jurisdictional Registrar of Companies;
 - iii. Jurisdictional Income Tax Authority within whose jurisdiction the respective Applicant Company's assessments are made, clearly indicating PAN of the concerned Company;
 - iv. the concerned Nodal Officer in the Income Tax Department having jurisdiction over such authority;
 - v. concerned Goods and Service Tax Authorities;
 - vi. concerned Official Liquidator (in case of Transferor Company);
 - vii. Securities and Exchange Board of India (only in the case of the Second Applicant Company);

- viii. BSE Limited (only in the case of the Second Applicant Company);
 - ix. National Stock Exchange of India Limited (only in the case of the Second Applicant Company);
 - x. Reserve Bank of India, Mumbai; and
 - xi. Any other Sectoral/Regulatory Authorities relevant to the Applicant Companies or their business.
17. The above notice shall be served through R.P.A.D./Speed Post and by e-mail pursuant to Section 230(5) of the Companies Act, 2013 and rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The said notice will contain a statement that *“If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme”*.
18. The Applicant Companies will submit –
- a. details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any;
 - b. details of all Letters of Credit sanctioned and utilized as well as Margin Money details, if any.
 - c. list of pending IBC cases, if any;
19. The Applicant Companies shall host notices along with the copy of the Scheme on their respective websites, if any.
20. The Appointed Date is 1st April 2024.

21. The Applicant Companies to file an Affidavit of Service and Compliance Report within 10 working days after serving notice to all the Regulatory Authorities as stated above.
22. With the above directions, CA(CAA)-99/2024 is **allowed** and disposed of.

Sd/-
Anu Jagmohan Singh
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)

12.07.2024/pvs/sj