

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
[Through Physical hearing/ VC Mode (Hybrid)]

C.A. (CAA) No. 03/BB/2024
Under Section 230 & 232 of the Companies Act, 2013
R/w Rule Companies (Compromises, Arrangements
And Amalgamations) Rules, 2016

IN THE MATTER OF SCHEME:

M/s. Control Techniques India Private Limited

No. 45, Nagarur Hoskur Road
Off Tumkur Road, Huskur,
Nelamangala, Bangalore Rural-562123.

**... APPLICANT COMPANY NO. 1 /
TRANSFEROR COMPANY**

AND

M/s. Nidec Industrial Automation India Private Limited

No. 45, Nagarur Hoskur Road
Off Tumkur Road, Huskur,
Nelamangala, Bangalore Rural – 562123.

**... APPLICANT COMPANY NO. 2/
TRANSFeree COMPANY**

Order delivered on: 24.04.2024

CORAM: 1. Hon'ble Shri K. Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Applicant Companies : Shri. Saji P. John

O R D E R

Per: K. Biswal, Member (Judicial)

1. The present first motion Application for Scheme of Amalgamation has been filed on 14.09.2023 by **M/s. Control Techniques India Private Limited** (for brevity, the Applicant Company No.1/Transferor Company) and **M/s. Nidec Industrial Automation India Private Limited** (for brevity, the

Applicant Company No.2/Transferee Company) under Sections 230 and 232 of the Companies Act, 2013 *inter alia*, seeking for dispensation of the meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors of Applicant Companies No.1 & 2. The Scheme of Amalgamation is placed on record at Annexure-F to the Application.

- 2. M/s. Control Techniques India Private Limited**, the Applicant Company No.1 was incorporated on 17.09.1993 under the provisions of the Companies Act, 1956. The Company was converted into a private limited company with effect from 17th June, 2002 and the registered office of the Company was shifted from State of Tamil Nadu to the State of Karnataka from 23rd May, 2023 and bearing CIN No.U30006KA1993PTC175731. Currently the Registered Office is situated at No.45, Nagaruru, Hoskur Road, Off Tumkur Road, Huskur, Nelmangala, Bangalore Rural – 562 123. The Authorized capital of the Company is Rs.17,00,00,000/- divided into 17,00,000 Equity Shares of Rs.100/- each and its Issued, Subscribed and Paid-up Capital is Rs.15,86,28,000/- divided into 15,86,280 Equity shares of Rs.100/- each. The copy of Certificate of Incorporation and Memorandum and Articles of Association is found attached as Annexure-A to the Application. As per the Memorandum of Association, the main objects of Applicant Company No.1 is as follows:

“to carry on the business of manufacturers, installers, maintainers, designers, repairs of an dealers in electrical and electronic equipment appliances etc..”

- 3. M/s. NIDEC Industrial Automation India Private Limited**, the Applicant Company No.2 was incorporated on 20.04.2000 under the provisions of the Companies Act, 1956 bearing CIN:U31101KA2000PTC026953 and having its registered office at No.45, Nagaruru, Hoskur Road, Off Tumkur Road, Huskur, Nelmangala, Bangalore Rural – 562 123. The Authorized capital of the Company is Rs.3,00,00,000/- divided into 30,00,000 Equity Shares of Rs.10/- each. The Issued, Subscribed and Paid-up Capital of the Transferee Company is Rs.3,00,00,000/- divided into 30,00,000 Equity shares of

Rs.10/- each. The copy of Certificate of Incorporation and Memorandum and Articles of Association is attached as Annexure-C to the Application. As per the Memorandum of Association, the main objects of Applicant Company No.2 is as follows:

“to carry on the business of manufacturers, dealers, wholesalers, retailers, Assemblers, importers and exporters of all kinds of electrical equipments, machineries like AC and DC generators, Alternators, AC and DC motors etc.”

4. It is submitted that the Rationale for Scheme of Amalgamation of the Transferor Company with the Transferee Company is, *inter alia*, as follows:

- (i) Greater efficiency in business management of the amalgamated entity, and unfettered access to the combined business which can be provide growth opportunities, to maximize shareholder value.
- (ii) Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, productivity improvements, improved procurement, usage of common resource pool like human resource, administration, finance, accounts, legal, technology and other related functions, leading to elimination of duplication and rationalization of administrative expenses.

5. The Board of Directors of the Transferor Company and Transferee Company at their meetings held on 27.04.2023 and 23.06.2023 approved the Scheme. Copy of certified true copy of resolution passed in the board meeting of the Applicant Companies is annexed to the Application and attached as Annexure-E to the Application.

6. The Appointed Date fixed under the Scheme on 01st April 2023.

7. The instant Application has been filed seeking for the following reliefs:

- a) *dispensation with the meeting of the Equity Shareholders of the Applicant Company No. 1 & 2 under Section 230 of the Companies*

Act, 2013, for the purpose of considering the Scheme of Amalgamation of Control Techniques India Private Limited with NIDEC Industrial Automation India Private Limited and their respective shareholders.

- b) As there are no Secured Creditors in Applicant Company No.1 & 2, there is no scope for conducting the meeting of Secured Creditors of Applicant Company No.1 & 2.*
- c) Dispensation with the meetings of the Unsecured Creditors of the Applicant Company No. 1 & 2 under Section 230 of the Companies Act, 2013 or alternatively direct to convene the meeting of unsecured creditors of the Applicant Companies, for the purpose of considering the Scheme of Amalgamation of Control Techniques India Private Limited with NIDEC Industrial Automation India Private Limited and their respective shareholders.*

- 8.** The Ld. Counsel for the Transferor Company has submitted that as per the Certificate dated 11.09.2023 of JAA & Associates, Chartered Accountants, there are **2 (two) Equity Shareholders** in the Transferor Company as on 31.05.2023. The details are given below: -

Sl. No.	Name of Shareholder	No. of Equity Shares (Face Value INR.100 per Share)
1.	Nidec Europe B.V.	15,86,283.00
2.	Sudeep EdakkattuKaruppal, nominee Shareholder for one equity share held on behalf of Nidec Europe B.V.	1.00
Total		15,86,284.00

Both the Equity Shareholders holding an aggregate of 100% shareholding in the Applicant Company No.1 have given their consents by way of affidavit to the Scheme, produced at ANNEXURE - K series of the Application.

9. The Ld. Counsel for the Transferor Company submitted that as per the Certificate dated 11.09.2023 of JAA & Associates, Chartered Accountants, there are NIL Secured Creditors in the Transferor Company as on 31.05.2023, produced at Annexure L series of the Application. Further, as per the Certificate dated 18.12.2023 Chitra V & Associates, Chartered Accountant, there are 213 (Two Hundred and Thirteen) Unsecured Creditors in the Transferor Company for a total amount of Rs.1,31,16,77,442.25 as on 31.05.2023. Out of the above 213 Unsecured creditors 35 (Thirty Five) Unsecured Creditors have given consent Affidavits with supporting Board Resolutions/Authorization Letters and 13 (Thirteen) Unsecured Creditors have been paid off and thereby the Creditors who extended consents to the scheme and who are being paid off constitutes 91.79% of the total Unsecured Debt as on 31.05.2023. The Consent Affidavits of Unsecured Creditors and CA certificate regarding total percentage of Creditors who gave consent Affidavits and Creditors who have been paid off are produced at ANNEXURE U of the Application.
10. The Ld. Counsel for the Transferee Company submitted that as per the Certificate dated 11.09.2023 of JAA & Associates, Chartered Accountants, Chartered Accountants, there are 2 (Two) Equity Shareholders in the Transferee Company as on 31.05.2023. The details are given below: -

Sl. No.	Name of Shareholder	No. of Shares (Face Value INR.100 per Share)
1.	Nidec Europe B.V	29,99,999.00
2.	Girish Kulkarni, nominee shareholder for one equity share held on behalf of Nidec Europe B.V.	1.00
Total		30,00,000.00

Both the Equity Shareholders holding an aggregate of 100% shareholding in the Applicant Company No.1 have given their consents by way of Affidavit to the Scheme, are produced at ANNEXURE L series of the Application.

- 11.** The Ld. Counsel for the Transferee Company has submitted that as per the Certificate dated 11.09.2023 of JAA & Associates, Chartered Accountants, there are NIL Secured Creditors in the Transferee Company as on 31.05.2023, produced at ANNEXURE M of the Application
- 12.** The Ld. Counsel for the Transferee Company has submitted that as per the Certificate dated 18.12.2023 of Chitra V & Associates, Chartered Accountant, there are 513 (Five Hundred And Thirteen) Unsecured Creditors in the Second Applicant Company for a total amount of Rs.2,44,28,69,789 as on 31.05.2023. Out of the above 11 (Eleven) Unsecured Creditors have given Consent Affidavits with supporting Board Resolutions/ Authorization Letters and 345 (Three Hundred And Forty-Five) Unsecured Creditors have been paid-off constitutes 91.76% of the total Unsecured debt as on 31st May 2023. The Consent Affidavits of Unsecured Creditors, CA certificate regarding total percentage of Creditors who gave consent affidavits and Creditors who have been paid off is produced at ANNEXURE V to the Application.
- 13.** The Applicant Companies have filed a Memo of Clarification regarding Dispensation of the meeting of Unsecured Creditors of the Applicant Companies along with judgement vide Diary No.1092 dated 16.02.2024, produced at Annexure -1.
- 14.** It is also stated that the Affidavits dated 13.09.2023 of the Authorized Signatories of the Applicant Companies have been filed stating that no investigation proceedings is pending against the Applicant Companies under the Companies Act, 1956 and under any other statute is produced at ANNEXURE-G to the Application.
- 15.** It is also submitted that the Affidavits dated 13.09.2023 of the Authorised Signatories of the Applicant Companies have been filed stating that the Scheme does not envisage for Corporate Debt Restructuring or Capital Reduction and the Scheme does provide for any kind of any arrangement

with the Creditors of the Companies under the Scheme and thereby CDR is not applicable to the Scheme. Further, the Affidavits dated 13.09.2023 of the Authorised Signatory of the Applicant Companies have been filed stating that the Applicant Companies are not regulated by any Sectoral Regulators to whom the Application, petition and scheme need to be intimated/filed before or after filing of the company application under Section 230 of the Companies Act, 2013.

- 16.** The certificate of the Statutory Auditors has been filed by the Applicant Companies certifying that the proposed accounting treatment as specified in Clause 10 of the Scheme is in compliance with Section 133 of the Companies Act, 2013. The same is on record as Annexure-S to the Application.
- 17.** The Ld. Counsel for the Applicant Companies further represented that the Transferor Company and Transferee Company have filed audited financial statements for the year ending on 31.03.2022. The same is annexed as Annexures - B and D to the Application respectively. The Transferor Company and Transferee Company have filed unaudited financial statements as on 31.03.2023 as Annexures – B1, and D1 of the Application respectively.
- 18.** Clause 6.1 of the Scheme stated the all employees of the Transferor Company in service on the Effective Date shall become employees of the Transferee Company with effect from the later of Appointed Date or the actual date of joining, without any break or interruption in their service and on the basis of continuity of service, and the terms and conditions of their employment with the Transferee Company (i.e cost to company basis, in monetary terms) shall not be less favourable than those applicable to them with reference to their employment with the Transferor Company on the Effective Date.

19. We have heard the Ld. Counsel for the Applicant Companies and have perused the records In view of the aforesaid discussion, the following directions are issued:

- a) Since Equity Shareholders of the Applicant Company Nos. 1 & 2 constituting 100% of the total value as on 31.05.2023 have given their consents to the “Scheme” and also for dispensing the meetings, the meeting of the Equity Shareholders of the Applicant Company Nos.1 & 2 are hereby dispensed with;
- b) Since there are Nil Secured Creditors in the Applicant Company Nos.1 & 2, there is nothing to convene their meeting;
- c) Since Unsecured Creditors of the Applicant Company No.1 constituting 91.79% of the total value as on 31.05.2023 have given consents to the “Scheme” or having been paid-off, the meeting of the Unsecured Creditors of the Applicant Company No.1 is hereby dispensed with.
- d) Since Unsecured Creditors of the Applicant Company No.2 constituting 91.76% of the total value as on 31.05.2023 have given consents to the “Scheme” or having been paid-off, the meeting of the Unsecured Creditors of the Applicant Company No.2 is hereby dispensed with.
- e) Further the Applicant Companies are directed to publish the notification in “The New Indian Express” and “Kannada Prabha” about the dispensation of the meetings by this Tribunal, within the period of 10 (Ten) days from the date of receipt of copy of this Order;
- f) All the aforesaid directions are to be compiled with strictly in accordance with the applicable laws including forms and formats contained in the “Rules” as well as the provisions of the Companies Act, 2013, by the Applicant Companies.

20. With the aforesaid directions, this First Motion Application bearing **C.A.(CAA) No.03/BB/2024 stands allowed**, giving liberty to the Applicant Companies to file Second Motion Petition with the direction that the Applicant Companies shall make specific prayer for sending notice to the (i) the Central Government through the office of the Regional Director (South East Region); (ii) Concerned Registrar of Companies; (iii) Official Liquidator (iv) Principal Chief Commissioner of Income Tax, Karnataka & Goa; (v) Jurisdictional Income Tax Authority by disclosing the PAN numbers of the Applicant Companies in the title of the Second Motion Petition.

-Sd-

**MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

-Sd-

**K. BISWAL
MEMBER (JUDICIAL)**