

**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

CO. APPL.(CAA) 146 (ND)/2017

IN THE MATTER OF:

Nachi Tool Technology Limited

Applicant No.1/Transferor Company

WITH

Nachi Precision Private Limited

Applicant No. 2/ Transferee Company

CORAM: INA MALHOTRA, MEMBER (JUDICIAL)

S.K. MOHAPATRA, MEMBER (TECHNICAL)

Order Delivered on: 08.01.2018

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

This is a joint petition filed by way of a 1st Motion under Sections 230-232 of the Companies Act, 2013 (hereinafter referred to as 'the Act') by Nachi tool Technology Limited (Applicant No.1/Transferor Company) in connection with the Scheme of Amalgamation (hereinafter referred to as 'the Scheme') for merging its business with Nachi Precision Private Limited (Transferee Company/ Applicant No. 2).

2. As per averments, the registered offices of the Transferor Company as well as that of the Transferee Company are situated in the National Capital Territory of Delhi, falling within the territorial jurisdiction of this Court.

3. The Applicant No. 1 / Transferor No. 1 Company was initially incorporated under the Act on 9th December, 2004 under the name and style of "Motherson Advanced Auto Engineering Private Limited (MAAEPL)". Subsequently the name of the company was changed to " Nachi Motherson Tool Technology Limited". Further again the name of the company changed to its present name and style as "Nachi Tool Technology Limited" and was incorporated under the Act on 18th October, 2017 having CIN U34300 DL2004 PLC131121. Its authorized share capital is Rs. 3,50,00,000/- while its issued, subscribed and paid up capital is

Rs. 2,50,00,000 divided into 25,00,000/- equity shares of Rs. 10/- each.

The main objects of Applicant No.1 Company/Transferor Company is to carry on the business of manufacturing, assembling, marketing and selling of band saw together with other activities for the attainment of its main objects.

4. The Transferee Company/ Applicant No. 2 was initially incorporated under the Act on 22nd October, 2010 under the name and style of "Nachi Motherson Precision Limited". Subsequently the name of the company was changed to its present name and style as "Nachi Precision Private Limited" and was incorporated under the Act on 6th April, 2017 having CIN U29253 DL2010 PTC 209702. Its authorized and paid up share capital is Rs. 13,00,00,000/- divided into 1,30,00,000/- equity shares of Rs. 10/- each.

The main object of Transferee Company/ Applicant No. 2 is to carry on the business of manufacture, promoting and marketing of forming racks and broaches together with providing regrinding and recoating of services for forming racks and broaches and other activities for the attainment of these main objects.

5. As per averments, the Transferor Company is desirous of amalgamating with the Transferee Company and have formulated a Scheme of Amalgamation.

6. Copies of the Memoranda of Association and Articles of Association along with their audited Balance Sheets, as on 31.03.2017 and reports of the Statutory Auditors of both the Applicant Companies have been filed. Provisional Financial Statements for the period 01.04.2017 to 31.07.2017 have also been placed on record.

The Memorandum and Articles of Association of each company provides for a entering into a Scheme of such Amalgamation.

It has also been certified by the statutory Auditors that the Accounting Treatment as in the Scheme is in compliance with the Accounting Standards prescribed u/s 133 of the Companies Act 2013.

7. It has been stated on behalf of the Applicant Companies that the Scheme of Amalgamation is necessitated and justified on grounds that it:-

- a. As all the Companies are subsidiaries of the same holding Company, a consolidation of the Companies by way of amalgamation would therefore lead to more efficient utilization of capital and help achieve a streamlined structure.
- b. The proposed amalgamation will lead to greater efficiency in fund management and deployment for the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be

deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholder value.

- c. Elimination of multiple administrative functions and record-keeping and operational efficiencies, thus resulting in reduced expenditure, cost efficiency and improved business logistics.
- d. The amalgamation pursuant to this Scheme will create a focused platform for future growth of the amalgamated company.
- e. Improved organizational capability and leadership, arising from the pooling of human capital that has diverse skills, talent and vast experience to complete successfully in an increasingly competitive industry.
- f. The Scheme leads to more efficient utilization of capital as all the Companies are subsidiaries of the same holding Company and shall be in the beneficial interest of the Shareholders and Creditors of all Companies and shall not be in any manner prejudicial to the interest of the concerned members, creditors, employees, and or any other persons whether interested or not.
- g. The Scheme creates focused platform for future growth of the Amalgamated Company.
- h. The Appointed date shall be 1st April, 2017.

8. So far as the Share Exchange Ratio is concerned, in terms of the scheme, it has been determined in accordance with the Report on Valuation of Shares & Share Exchange Ratio dated 6th October

2017, issued by Rajesh Raj Gupta & Associates, Chartered Accountants, New Delhi, as per the settled principles of valuation.

9. Vide the present application, a prayer is made for dispensation of convening meetings in view of the following facts:-

A. In relation to the Transferor Company / Applicant Company No.1:-

- The Transferor Company has 7 Equity Shareholders, Consent of shareholders having value of more than 90% equity has been given.
- The Transferor Company No. 1 has no secured creditor as certified by the Auditors.
- There are 3 Unsecured Creditors, whose Consent affidavits are on record.

B. In relation to the Transferee Company /Applicant Company No.2:-

- The Transferee Company has 2, Consent of shareholders having value of more than 90% equity has been given.
- The Transferee Company No. 1 has no secured creditor as certified by the Auditors.
- There are 4 Unsecured Creditors, whose consent affidavits are on record. Convening their meeting is therefore dispensed with.

10. We have perused the application and the connected documents/papers filed with the application including the Scheme of amalgamation.

11. The Board of Directors of each of the applicant companies vide their respective meetings held on 24.10.2017 have unanimously approved the proposed Scheme of Arrangement. Copy of the board resolutions passed have been filed.

12. It is submitted that the proposed arrangement is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013 and the Scheme if sanctioned by this Tribunal, will take effect from the date of on which certified copy of the order of sanctioning of proposed Scheme, passed by this Tribunal is filed with the Registrar of Companies after obtaining necessary sanctions, orders or approvals.

13. It has also been submitted that there are no proceedings pending inquiry or investigation in respect of the applicant company.

14. Further, it has been stated that the scheme will be beneficial to the applicant companies and their respective shareholders and creditors.

15. In the aforesaid facts the following directions are issued:

A. In relation to the Transferor Company/ Applicant Company No.1

1. In view of the Consent of shareholders having value of more than 90% equity of its 7 shareholders being on record, the requirement of convening the meeting of the shareholders is dispensed with.
2. As there are no secured creditors of the Transferor Company, the requirement for convening their meeting does not arise.
3. In view of the consent affidavits of its 3 being on record, the requirement of convening the meeting of the unsecured creditors is dispensed with.

B. In relation to the Transferee Company/ Applicant Company No. 2

1. In view of the Consent of shareholders having value of more than 90% equity of its 2 shareholders being on record, the requirement of convening the meeting of the shareholders is dispensed with.
2. As there are no secured creditors of the Transferee Company, the requirement for convening their meeting does not arise.
3. In view of the consent affidavits of its 4 Unsecured Creditors being on record, the

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requirement of convening the meeting of the Unsecured Creditors is dispensed with.

In view of the above, the prayer for dispensing with the requirement of publication is also allowed.


16. We also direct that notices be sent to the Central Government through the office of the Regional Director (Northern Region), the Income Tax Authorities, Registrar of Companies, NCT of Delhi & Haryana, Official Liquidator and other sectoral regulators or authorities as required under sub-section (5) of section 230 of the Companies Act, 2013 who may have significant bearing on the operation of the applicant companies along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangement, and Amalgamation) Rules, 2016. Copies of the notices along with the proof of dispatch be filed before this Bench along with the affidavit of compliance.

17. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicant.

As sequel to the above, the present application stands allowed by dispensing with the meetings of shareholders and creditors of the applicant companies.

Let copy of the order be served on the parties.


(S. K. Mohapatra)
Member Technical


(Ina Malhotra)
Member Judicial