

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH,
AT NEW DELHI**

COMPANY PETITION NO. CA (CAA)-134 (PB) 2018

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

In the matter of

Scheme of Arrangement
of

A.A. Autotech Private Limited

Transferor Company/ (Applicant Company-1)

And

Ask Automotive Private Limited

Transferee company/Demerged Company/
(Applicant Company-2)

And

Vijaylaxmi Infra Projects Private Limited

Resulting Company/(Applicant Company-3)



Judgment delivered on: 28.09.2018

CORAM:

CHIEF JUSTICE (Rtd.) M.M. KUMAR, Hon'ble President

Mr. S. K. MOHAPATRA, Hon'ble Member (T)

For Applicants: Mr. P. Nagesh, Dhruv Gupta, Advocates



ORDER

S .K. Mohapatra, Member

1. This application has been jointly filed by the Applicant Companies under Sections 230 and 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, duly supported by separate affidavits of the Applicant Companies, for seeking appropriate orders/directions for dispensing with the respective meetings of shareholders, secured creditors and unsecured creditors of the applicant companies, in connection with the proposed Scheme of Arrangement contemplated between the applicant companies. The said Scheme of Arrangement (hereinafter referred to as the “Scheme”) has been placed on record along with the joint application.
2. It is represented that the registered offices of all the applicant companies are situated in New Delhi and therefore the subject matter of this joint application falls within the Jurisdiction of this Bench.



3. M/s A.A. Autotech Private Limited (Transferor Company) was originally incorporated as A.A. Realty Ventures Pvt. Ltd. on 10.02.2006. Subsequently, the name of Transferor Company was changed to its present name as “A.A. Autotech Private Limited” on 19.04.2010. The authorized share capital of the company is Rs.40,00,000/- divided into 4,00,000 equity share of Rs. 10/- each and Rs. 10,00,000/- divided into 1,00,000 preference shares of Rs. 10/- each. The issued, subscribed and paid up share capital is Rs. 32,00,000/- divided into 3,20,000 equity shares of Rs. 10 each and Rs. 8,00,000/- divided into 80,000, 0% non-convertible preference shares of Rs. 10 each. The registered office of the Transferor Company is situated at Flat No. 104,929/1, Naiwala, Faiz Road, Karol Bagh, New Delhi- 110005.

4. It is submitted that Transferor Company has 3 Equity Shareholders and all the equity shareholders have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. It has been stated in the application that the transferor company had 80,000 preference



shares of Rs. 10 each as on 28.02.2018 which has since been redeemed on 21.03.2018. Therefore as on date it is stated that there is no preference shareholders in the transferor company. It is further represented that the transferor company has 2 Secured Creditors and 263 Unsecured Creditors. All the two secured creditors have given their consent in favour of the Scheme. Consent affidavits of both the secured creditors have been placed on record. 49 unsecured creditors out of 263 unsecured creditors of the company constituting 97.2% in value have given their consent affidavits in favour of the Scheme. In relation to the shareholders, secured creditors and unsecured creditors, the transferor company seeks dispensation from convening and holding of their respective meetings on the ground that all the shareholders, all secured creditors and unsecured creditors having 97.2% in value of the total outstanding unsecured loan of the transferor company, have given consent affidavits in favour of the Scheme. Needless to say that under sub-section 9 of Section 230 of Companies Act, meeting of creditors can be dispensed with if creditors having



at least 90 % in value agree by way of affidavit in favour of the Scheme.

5. M/s ASK Automotive Private Limited (Transferee Company/ Demerged Company) was incorporated on 18.01.1988 as a private limited company. The registered office of the Company is situated at Flat No. 104,929/1, Naiwala, Faiz Road, Karol Bagh, New Delhi-110005. The authorized share capital of Transferee Company as on 31.3.2017 was Rs.50,00,000/- divided into 50,000 equity shares of Rs. 100/- each. The issued, subscribed and paid up share capital of Transferee Company/demerged company as on 31.3.2017 was Rs.42,35,300/- divided into 42,353 equity share of Rs. 100/- each fully paid. The authorized share capital of transferee company/demerged company was increased on 05.01.2018 to Rs.12, 00, 00,000/- divided into 12,00,000 equity shares of Rs. 100/- each.

6. It is submitted that Transferee Company/demerged company has 4 Equity Shareholders and all the equity shareholders of the company have given their consent affidavits to the Scheme constituting 100% in value and 100%



in number. The consent affidavits of each of the members have been placed on record. It is further represented that the transferee company has 2 Secured Creditors namely, HDFC Bank and Kotak Mahindra Bank. It is stated that no objection Certificates from the 2 Secured Creditors have been placed on record. Besides as per the application, the transferee company has 755 Unsecured Creditors out of which consent affidavits from 175 Unsecured Creditors having a value of more than 93 % of the total value of the unsecured creditors have been placed on record. In relation to the shareholders, secured creditors and unsecured creditors, the transferee company seeks dispensation from convening and holding of their respective meetings on the ground that all the shareholders, all the two secured creditors and unsecured creditors having 93% in value of the total unsecured debt of the transferee company, have given their consent affidavits in favour of the Scheme. Needless to say that under sub-section 9 of Section 230 of Companies Act, meeting of creditors can be dispensed with if creditors having at least 90% in value agree by way of affidavit in favour of the Scheme.



7. M/s Vijyalaxmi Infra Projects Private Limited (Resulting Company) was incorporated on 31.05.2013 as a private limited company. The registered office of the Company is situated at Flat No. 929/1, 1st Floor, 104, Karol Bagh, Naiwala, Desh Bandhu Gupta Road, near Faiz Road Crossing, New Delhi-110005. The authorized share capital of Resulting Company is Rs. 1 Crore divided into 10,00,000 equity shares of Rs. 10/- each. The paid-up share capital of Resulting Company is Rs.1,00,000/- divided into 10,000 equity shares of Rs. 10/- each fully paid up.
8. It is submitted that Applicant No. 3 Company/ Resulting Company, has 4 Equity Shareholders and all the equity shareholders have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. It is further submitted that the resulting company has neither any Secured Creditor nor any Unsecured Creditor. Certificate of chartered accountant in respect of status of the creditors has been placed on record. Since the resulting company has no secured creditor and no unsecured creditor the requirement of



convening their respective meetings does not arise. In relation to the Equity Shareholders, the Resulting Company seeks dispensation from holding and convening their meeting, as consent affidavits from all the Equity Shareholders in favour of the Scheme have been placed on record.

9. As per the Clause C (2) of the Joint Application and in terms of the Scheme of Arrangement the share exchange ratio is as follows:

Upon the same becoming finally effective, without any further application, act or deed:

'The 'Resulting Company', shall issue and allot 1 (One) Equity Share of face value of Rs. 10 (Rupee Ten) each in the Resulting Company for every 50 (Fifty) Equity Shares of Rs. 2 each fully paid up held by the Equity Shareholders of 'Transferee Company'.

10. As per the Clause C (8) of the Joint Application and in terms of the Scheme of Arrangement the share exchange ratio is as follows:



Upon the same becoming finally effective, without any further application, act or deed:

'The 'Transferee Company', shall issue and allot 20 (Twenty) Equity Shares of face value of Rs. 2 (Rupee two) each for every 1 (One) Equity Share of face value of Rs. 10 (Rupee Ten) each held by the Shareholders of 'Transferor Company'.

11. We have perused the joint applications and the connected documents / papers filed herewith including the Scheme of Arrangement as contemplated between the Applicant companies.
12. It is seen that the board of directors of all the applicant companies vide separate meetings, held on 19.02.2018, respectively have unanimously approved the proposed Scheme of Arrangement. Copies of such resolutions passed thereat have been placed on record by the companies.
13. All the applicants have filed their respective Memorandum and Articles of Associations. The applicants have also filed their latest audited financial statements for the



year ending 31.03.2017 and supplementary financial statement as on 28.02.2018.

14. 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 same if sanctioned by this Tribunal the appointed date as provided in the Scheme for the demerger is 31.03.2018 and for the amalgamation is 01.04.2018.
15. All the companies have submitted that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under the provisions of the Companies Act, 1956 is pending against applicant companies.
16. It is pertinent to state here that certificates of respective statutory auditors of all the applicant companies confirming that the accounting treatment in the scheme is in conformity with Section 133 of the Companies Act, 2013 have been placed on record.
17. Further, it has been stated in the application that the Scheme will be beneficial to all the applicant companies and



their respective shareholders, employees, creditors and other stake holders.

18. Taking into consideration the application filed jointly by the Applicant Companies the following directions are issued: -

A. In relation to the Transferor Company:

i. The meeting of Equity Shareholders of Transferor Company is dispensed with as there are only three Equity Shareholders and their consent affidavits have been placed on record.

ii. The meeting of secured creditors is dispensed with as there are only 2 Secured Creditors in the Company and consent affidavits of both the secured creditors have been placed on record.

iii, The meeting of unsecured creditors is also dispensed with as there are 263 Unsecured Creditors in the Company and out of 263 unsecured creditors 49 number of unsecured creditors having a value of more than 97 % of the



total value of the unsecured creditors have given their consent affidavits in favour of the Scheme.

B. In relation to the Transferee Company:

i. The meeting of equity shareholders is dispensed with as there are only four Equity Shareholders and their consent affidavits have been placed on record.

ii. The meeting of secured creditors is dispensed with as there are only 2 Secured Creditors in the Company and both the secured creditors have given their No Objection Certificates in respect of the Scheme.

iii. The meeting of unsecured creditors is also dispensed with as there are 755 Unsecured Creditors in the Company and out of 755 unsecured creditors, 175 number of unsecured creditors having value of more than 93 % of the total value of the unsecured loan have given their consent affidavits in favour of the Scheme.



C. In relation to the Resulting Company:

i. The meeting of equity shareholders is dispensed with as there are only four Equity Shareholders and their consent affidavits have been placed on record.

ii. The requirement of holding and convening meeting of secured creditors and unsecured creditors of the resulting company does not arise, since there is neither any secured creditor nor any unsecured creditor in the resulting company.

19. In view of the above, the present joint application stands allowed by dispensing with the meetings of shareholders and creditors of all the applicant companies.

20. The applicants are directed to serve notice of the proposed Scheme on the Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryavaran Bhavan, CGO Complex, New Delhi-110 003, Registrar of Companies at 4th Floor, IFCI Tower, 61, Nehru Place, New Delhi-110 019;



the Official Liquidator, Lok -Nayak -Bhavan, 8th Floor, Khan Market, New Delhi -110 001; the office of the Income Tax Department, Income Tax Officer, Ward – 7(4), Central Revenue Building, IP Estate, New Delhi-110 002 and Office of the Income Tax Department, Income Tax Officer, Additional Commissioner of Income Tax, Special Range-4, Central Revenue Building, IP Estate, New Delhi-110 002. The notices to Income Tax authorities shall disclose sufficient details like PAN card numbers, ward numbers and assessing officers so that proper reply may be filed.

Let copy of the order be served to the parties.

Sdl-

(M.M. KUMAR)

28.09.2018

PRESIDENT

Sdl-

(S. K. MOHAPATRA)

MEMBER (T)