

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP (CAA)/ 2365/MB/2018

In

CA (CAA) No. 109 of 2018

In the matter of Scheme of Merger by Absorption of Faurecia Emissions Control Technologies Technical Center India Private Limited (First Petitioner Company / Transferor Company) with Faurecia Interior Systems India Private Limited (Second Petitioner Company / Transferee Company) and their respective shareholders.

Faurecia Emissions Control Technologies Technical Center India Private Limited
(First Petitioner Company / Transferor Company)

Faurecia Interior Systems India Private Limited
(Second Petitioner Company / Transferee Company)

Order Delivered on 30th day of August, 2018

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioners: Mr. Ajit Singh Tawar i/b Ajit Singh Tawar & Co.,
Advocates for Petitioners

For the Regional Director: Mr. S. Ramakantha, Joint Director.

For the Official Liquidator: Mr. M. N. Mangutkar, Representative from OL.

Per: - Bhaskara Pantula Mohan, Member (J)

ORDER

1. Heard the learned Counsel for the Petitioner Companies. None appears before the Tribunal to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation of Faurecia

Emissions Control Technologies Technical Center India Private Limited (Transferor Company) with Faurecia Interior Systems India Private Limited (Transferee Company).

3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolution, which are annexed to the Joint Company Scheme Petition.
4. The Learned Counsel for the Petitioners state that the petitions have been filed in consonance with the order passed in the Company Scheme Application No. 109 of 2018 of National Company Law Tribunal, Mumbai Bench.
5. The Learned Counsel for Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of National Company Law Tribunal, Mumbai Bench. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act 2013 and the rules made thereunder. The said undertaking is accepted.
6. The Learned Counsel for the Petitioner Companies submits that the First Petitioner Company is engaged in the business of providing Computer Aided Design (CAD) and Computer Aided Engineering (CAE) services for exhaust systems components for automotive industry and the Second Petitioner Company is engaged in the business of manufacture and supply of interior system components, product and process validation, design and development of tools for original equipment manufacturers and Computer Aided Design (CAD) and Computer Aided Engineering (CAE) services to group companies and for external customers for interior systems components for automotive industry.
7. The merger of the Transferor Company with the Transferee Company would, inter-alia, have the following benefits: -
 - Simplified corporate structure.
 - The proposed amalgamation will result in administrative and operational rationalization, organizational efficiencies, reduction in overheads and other expenses and optimal utilization of

various resources. It will prevent cost duplication and the operations would be substantially cost-efficient. Consequently, the Transferee Company will offer a strong financial structure to all creditors including the creditors of the Transferor Company and achieve better cash flows.

- Reduction in compliances and statutory filings with various government departments.
 - Achieving economies of scale.
 - Combined capital resources would strengthen the financial position of the merged entity and result in increasing leveraging capacity of the merged entity i.e. its capacity to borrow funds for business purposes.
 - Synchronizing of efforts to achieve uniform corporate policy.
 - Ease in decision making.
 - To reflect the consolidated net worth of these companies in one balance sheet.
8. The Regional Director has filed its report dated 18th day of July, 2018 and has stated that save and except as stated in paragraph IV (a) to (f) 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) *The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Amalgamation. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).*
- b) *In addition to compliance of (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.*
- c) *As per Clause 1.3 of the scheme, "Appointed Date" for the purpose of the Scheme and for the purpose of Income Tax Act, 1961, means 1*

April, 2018 or such other date as National Company Law Tribunal or such other authority as may be applicable, as the case may be, may direct or approve. In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.

- d) The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company Application and the Scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.*
- e) It is observed that the Petitioner companies have not submitted admitted copy of the Petition, and Minutes of Order for admission of the Petition. In this regard petitioner companies has to undertake to submit the same for the record of Regional Director.*
- f) It is observed that the both Transferor Company and Transferee Company has foreign/ non-resident shareholders. The transferee Company must observe the FEMA guidelines for allotment of shares to the shareholder of the Transferor Company in Transferee Company.*
9. In so far as the observation made in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Company through their counsel submits that that sanction of the Scheme by this Tribunal will not deter any authorities to deal with any of the issues arising after giving effect to the scheme and that such issues arising out of the Scheme will be met and answered in accordance with law.
10. In so far as the observation made in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Companies undertake that it will comply with all the applicable Accounting Standards. Further, in addition to compliance with the applicable Accounting Standards, the Transferee Company shall pass such Accounting entries

as may be necessary in connection with the Scheme to comply with other applicable Accounting Standards.

11. In so far as the observation made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies through their counsel submits that the Appointed Date has been fixed as 1st day of April 2018 as mentioned in sub clause 1.3 of clause 1 - Definitions of Part - I of the scheme which is in compliance with Section 232(6) of the Companies Act, 2013 and the Scheme shall be effective from such appointed date but shall be operative from the effective date.
12. In so far as the observation made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Companies through their counsel submits that the Scheme of Amalgamation was modified in the shareholders meeting held on 25th day of May, 2018 as under:

Amendment to Clause 3.2 Part 1 of the Scheme by addition of the following words and table at the end of Clause 3.2:

The Transferee Company has increased its authorized share capital on 2nd March 2018 and paid-up share capital on 27th March 2018. Accordingly, the share capital structure as on 31st March 2018 is as follows:

| Share Capital | Rupees |
|--|---------------------|
| Authorized Share Capital | |
| 1,00,00,000 Equity shares of Rs. 10/- each | 10,00,00,000 |
| TOTAL | 10,00,00,000 |
| Issued, subscribed and paid-up Share Capital | |
| 97,14,279 Equity shares of Rs. 10/- each | 9,71,42,790 |
| TOTAL | 9,71,42,790 |

The Counsel further submits that except for the above there are no material changes done to the Scheme.

13. In so far as the observation made in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel undertake to submit the petition as admitted by the Hon'ble Tribunal along with the minutes of order for the records of Regional Director.

14. In so far as the observation made in paragraph IV (f) of the Report of Regional Director is concerned, the Transferee Company through its Counsel undertakes to comply with the FEMA / RBI Regulations to the extent applicable.
15. The observations made by the Regional Director have been explained by the Petitioner Companies in Paragraph 9 to 14 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
16. The Official Liquidator has filed his report dated 21st day of August, 2018 stating therein that, the affairs of the Transferor Company have been conducted in a proper manner and the said Scheme is not prejudicial to the interest of public and that the Transferor Company may be ordered to be dissolved without winding up by this Tribunal.
17. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of Law and is not contrary to public policy.
18. Since all the requisite statutory compliances have been fulfilled, Joint Company Scheme Petition No. C.P.(CAA)/2365/MB/2018 filed by the Transferor and Transferee Company are made absolute in terms of prayers clauses (a) of the Joint Company Scheme Petition.
19. Petitioner Companies are directed to lodge a certified / authenticated copy of this order and the Scheme with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 working days from the date of the receipt of the certified copy of the Order, for the purpose of adjudication of stamp duty payable, if any on the above.
20. Petitioner Companies are directed to lodge a certified copy of this order along with the copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-form INC-28 in addition to the physical copy within 30 days from the date of issuance of the certified copy of the Order by the Registry, duly certified by the Deputy

Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.

21. The Petitioner Companies to pay cost of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai, cost to be paid within four weeks from the date of this Order.
22. The First Petitioner Company to pay cost of Rs. 25,000/- to the Official Liquidator, Mumbai, cost to be paid within four weeks from the date of this Order.
23. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.

SD/-

V. NALLASENAPATHY
MEMBER (T)

SD/-

BHASKARA PANTULA MOHAN
MEMBER (J)