

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

CP (CAA) 1421/230-232/NCLT/MB/MAH/2018

Under section 230-232 of the Company Act, 2013

In the matter of

M/s. INA Bearings India Private Limited
..... 1st Petitioner
(Transferor Company)

M/s. Schaeffler India Limited
..... 2nd Petitioner
(Transferee Company)

Order Pronounced on : 08.10.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)

For the Petitioners :

Mr. Gaurav Joshi, Senior Counsel a/w. Mr. Rohan Rajadhyaksha, Advocate i/b. AZB & Partners – Advocates for the Petitioner.

For the Regional Director :

Mr. R. S. Meena – Jt. Director (WR).

For the RoC :

Mr. Neemlambuj – CP RoC.

For the Official Liquidator :

Mr. Santosh Dalavi – Representative of OL.

Per : M. K. Shrawat, Member (J)

COMMON ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Company Act, 2013, to a Scheme of Merger by Absorption of M/s. INA Bearings India Private Limited (1st Transferor Company) and M/s. LuK India Private Limited (2nd Transferor Company) with M/s. Schaeffler India Limited (Transferee Company) and their respective shareholders.
2. It is stated that the 2nd Transferor Company i.e. M/s. LuK India Private Limited is situated within the Jurisdiction of the NCLT, Chennai Bench. And the NCLT, Chennai has sanctioned the Scheme vide an Order dated 13.06.2018.

3. The Petitioner Companies have approved the said Scheme of Merger by Absorption by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
4. The Transferor Company is currently engaged in the business of manufacturing and supply of precision engine, transmission and chassis components as well as needle and linear bearings for automotive, motorcycles, precision equipment, machine tools and material handling industries..
5. The Transferee Company is currently engaged in the development, manufacturing and supply of high precision and high quality rolling bearings - ball, cylindrical, spherical and taper - for mechanical engineering, wind energy, railways, aerospace and the automotive industry worldwide and related machine building activities.
6. It is stated that the shares of the 2nd Transferor Company are listed on the BSE Limited ('BSE') and the National Stock Exchange of India Limited ('NSE'). It is also stated that, both, the BSE and NSE by their respective letters dated 29.11.2017, have given their no objection to file the Scheme.
7. The proposed Scheme will inter alia have following benefits :
 - (i) Creation of a leading Indian automotive and industrial supplier;
 - (ii) Establish a diversified product offering across the high growth automotive and industrial segments and benefit from access to each company's client base;
 - (iii) Create revenue and cost synergies by bundling the product offerings, leveraging distribution networks, and reducing overhead costs; and
 - (iv) Enhance the financial profile with higher growth and margin expansion.
8. The averments made in the Petition and the submissions made by the Learned Representative for the Petitioners are:
 - a) The Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertake to comply with all the statutory requirements if any, as required under the Company Act, 2013 and the Rules made there under whichever is applicable.
 - b) The Regional Director has filed his Report dated 29.05.2018 stating therein that, save and except as stated in paragraph IV (a) to (i), it appears that the Scheme is

not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:

IV. The observation of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:

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 Compromise or arrangement. 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. It is observed that the Petitioner companies have not submitted a Chairman's Report, admitted copy of the Petition, and Minutes of Order for admission of the Petition. In this regard, the Petitioner has to submit the same for the Record of Regional Director.

c. 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 & the same and there is no discrepancy or deviation.

d. In addition to compliance of AS-14 (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.

e. As per the clause 1 (f) of the scheme, effective date shall not be subsequent to the Appointed date as per Section 232 (6) of Companies Act, 2013.

f. As per clause 13 of the scheme, petitioner companies have to undertake to comply with section 232(3)(i) of Companies Act 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised share mentioned in capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation and

therefore, petitioners to affirm that they comply the provisions of the section.

g. As per clause 14 of the scheme, the transferee company proposed to amend its main object, in this connection, transferee company have to undertake to comply with section 13 of the Companies Act, 2013 or any other provisions of the Act read with rules.

h. The Registered Office of the Transferor Company -2 is situated in the Coimbatore i.e. outside if the jurisdiction of NCLT of this Tribunal and falls within the jurisdiction of NCLT of Chennai. Accordingly, similar approval be obtained by the Transferor Company-2 from Hon'ble NCLT at Chennai respectively.

i. As per clause 1.1.6 of the scheme, "DSIR" means Department Of Scientific and Industrial Research; further as per clause 4.4 of the scheme With effect from the Appointed Date, the approval of DSIR pertaining to the Undertaking of Transferor Company 2 would continue to be available to the Transferee Company. In this regards, if required, Petitioner Transferee Company have to serve notice to Ministry of Science and Technology."

- c) Apropos to the observation in paragraph IV (a) of the said Report is concerned, the Petitioner Companies through the Learned Counsel submit that the Petitioner Companies, under section 230(5) of the Companies Act, 2013, have served notices upon the concerned authorities (including the Income tax authorities) and that any issues arising after giving effect to the Scheme shall be met and answered in accordance with law. Further, in light of clause 6.4, 6.5 and 6.6 of Scheme, the Petitioner Companies through the Learned Counsel undertake that in the event any income tax liability arises in respect of the Transferor Companies, it shall be dealt with by the Petitioner Company 2 (without prejudice to its rights under applicable law) upon the Scheme coming into effect.
- d) Apropos to the observation in paragraph IV (b) of the said Report is concerned, the Petitioner Companies through the Learned Counsel submit that a copy of the Chairman's Report; admitted copy of the Petition and a copy of minutes of order for admission of Petition, has been filed with the office of the Regional Director vide a letter dated August 21, 2018.

- e) Apropos to the observation in paragraph IV (c) of the said Report is concerned, the Petitioner Companies through the Learned Counsel submit that the Scheme enclosed to the Company Scheme Application and the scheme enclosed to the Company Scheme Petition are one and the same and there is no discrepancy or deviation.
- f) Apropos to the observation in paragraph IV (d) of the said Report is concerned, the Petitioner Companies through Learned Counsel undertake to comply with IND AS 14 (IND AS-103) and other applicable Indian Accounting Standards such as AS-5 (IND AS-8) etc.
- g) Apropos to the observation in paragraph IV (e) of the said Report is concerned, the Petitioner Companies through Learned Counsel submit that the Appointed Date in the Scheme has been defined in Clause 1.1.2 of the Scheme to mean January 1, 2018. Further, Clause 2 of the Scheme provides that the Scheme shall be effective from the Appointed Date, i.e. January 1, 2018. Accordingly, the Petitioner Companies have complied with the provisions of Section 232(6) of the Companies Act, 2013.
- h) Apropos to the observation in paragraph IV (f) of the said Report is concerned, the Petitioner Companies through their Learned Counsel undertake to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013.
- i) Apropos to the observation in paragraph IV (g) of the said Report is concerned, the Petitioner Companies through their Learned Counsel undertakes that the Petitioner Company 2 shall comply with the provisions of Section 13 of the Companies Act, 2013 for amending the objects in its Memorandum of Association.
- j) Apropos to the observation in paragraph IV (h) of the said Report is concerned, the Petitioner Companies through Learned Counsel submit that the Transferor Company 2 had filed Company Scheme Petition No. CP/70/CAA/2018 for obtaining sanction of the Hon'ble National Company Law Tribunal, Chennai bench ('NCLT Chennai'). NCLT Chennai by its final order dated June 13, 2018 (read with corrigendum dated July 3, 2018) has sanctioned the Scheme.
- k) Apropos to the observation in paragraph IV (i) of the said Report is concerned, the Petitioner Companies through Learned Counsel submit that the terms of paragraph 4 of recognition of Transferor Company 2's in-house R&D Unit

issued by Department of Scientific and Industrial Research ('DSIR') provide as follows:

'In case of merger/ de-merger/amalgamations, the department should be intimated immediately. The company should also spell out/ reiterate its policy towards R&D and submit an undertaking to continue the R&D activities, budgets, staffing, etc. along with necessary documents including legal documents such as court orders, ROC certificate/ returns, if any, within one month failing which the company should apply for fresh recognition'

The Petitioner Companies through Learned Counsel further submit that in view of the above mentioned paragraph, the Petitioner Company 2 undertakes to send an intimation to DSIR, Ministry of Science and Technology forthwith upon the sanction of the Scheme by this Tribunal. Further, the Petitioner Companies through the Learned Counsel undertake to submit necessary documents such as court order and ROC return, within one month from the date of the receipt of certified copy of this order. The intimation sought by the DSIR is a post-facto intimation and therefore there is no requirement of giving a notice to DSIR prior to final hearing.

1) The Official Liquidator, High Court Bombay has filed his report dated 11.07.2018 stating therein that the affairs of the 1st Transferor Company have been conducted in a proper manner and that 1st Transferor Company may ordered to be dissolved without winding-up.

m) It is also stated that no objector has approached neither to the Petitioners nor before this Tribunal to oppose the Scheme.

9. From the material on record, the Scheme of Merger by Absorption appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this bench, to the Petitioner Company, **do Order that:**

a) All the assets and liabilities including taxes and charges, if any, and duties of the 1st Transferor Company, shall, pursuant to S. 232 of the Company Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.

b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.

- c) The consideration of the Scheme shall be as follows :
- a. The Transferee Company, to the Shareholders of the 1st Transferor Company, shall issue and allot **10** Equity Shares of ₹ 10/- each, credited as fully paid-up for every **65** Equity Shares of ₹ 10/- each, credited as fully paid-up.
 - b. The Transferee Company, to the Shareholders of the 2nd Transferor Company, shall issue and allot **10** Equity Shares of ₹ 10/- each, credited as fully paid-up for every **35** Equity Shares of ₹ 10/- each, credited as fully paid-up.
- d) The Transferor Companies shall be dissolved without winding-up after this Scheme becomes effective.
- e) Petitioner Companies are directed to lodge a certified copy of this Order along with a copy of the Scheme with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the order.
- f) Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme with the concerned Registrar of Company, electronically, along with E-form INC 28 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry, duly certified by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.
- g) The Petitioner Companies shall pay costs of ₹ 25,000/- to the Regional Director, Western Region, Mumbai. The cost is to be paid within four weeks from the date of the receipt of Order.
- h) The 1st Petitioner / Transferor Company shall pay costs of ₹ 25,000/- to the Official Liquidator, High Court Bombay. The cost is to be paid within four weeks from the date of the receipt of Order.
- i) All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- j) Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

- k) Any concerned Authority (i.e. RD, RoC, OL, Income Tax Authority etc.) is at liberty to approach this Bench for any clarification/directions under this Scheme.
- l) The sanctioning of this Scheme shall not deter any concerned Authority (i.e. RD, RoC, OL, Income Tax Authority etc.) from assessing transactions arising out of this Scheme, if need be.
- m) The Scheme is sanctioned hereby, and the appointed date of the Scheme is fixed as **1st January, 2018.**

10. Ordered Accordingly. To be consigned to Records.

Dated : 08.10.2018

SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)

Avinash