

**NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, CHENNAI**

CP/70/CAA/2018

**Under Sections 230 to 232 of the Companies Act, 2013**

In the matter of Scheme of Amalgamation  
of  
**M/s.INA Bearings India Private Limited**  
(Transferor Company-1)  
And  
**M/s.LuK India Private Limited**  
(Applicant/ Transferor Company-2)  
With  
**M/s.Schaeffler India Limited**  
(Formerly known as Fag Bearings India Limited)  
(Transferee Company)  
and  
**Their Respective Shareholders**

Order delivered on: 13.06.2018

**Coram:**

**K. ANANTHA PADMANABHASWAMY, MEMBER (J)**  
**S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

*For the Petitioners :*      *Shri.T.K.Bhaskar, Advocate*  
   *Shri.Vikram.P.Jain, Advocate*  
   *Shri.Shwetha Vasudevan, Advocate*  
   *Shri.K.Manivannan,*  
   *Authorised Representative for OL*  
   *Shri.Rajkumar Jhabakh & Shri.Rani.R*  
   *Standing Counsel for IT Department*

**ORDER**

**Per:S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

Under consideration is a Company Application in CP No.  
CP/70/CAA/2018 filed by Transferor Company 2 which is  
situated within the jurisdiction of this Tribunal under Section

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230 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules 2016. The instant application pertains to the proposed Scheme of Amalgamation by virtue of which **M/s.INA Bearings India Private Limited** (Applicant/ Transferor Company-1), **M/s.LuK India Private Limited** (Applicant/ Transferor Company-2) And **M/s.Schaeffler India Limited** (Transferee Company).

1. The Authorised and issued, subscribed & paid up share capital of the Transferor and the Transferee Companies are as under:

<b>Particulars</b>	<b>Authorized Capital</b>	<b>Issued, subscribed &amp; paid-up Capital</b>
Transferor Company 1	Rs.83,00,00,000/-	Rs.53,39,67,770/-
Transferor Company 2	Rs.22,50,00,000/-	Rs.22,50,00,000/-
Transferee Company	Rs.20,00,00,000/-	Rs.16,61,72,700/-

2. The Transferor Company 1 is a Private Limited Company, it was incorporated on 23.09.1997 under the provisions of the Companies Act, 1956 having its registered office at Plot No.A3, Talegaon Industrial Area, Village Navalakh Umbre, Taluka Maval, Pune, Maharashtra, India.The

Transferor Company 2 is a Private Limited Company which was earlier known as Rane Luk Clutch Private Limited which was issued with a fresh incorporation certificate on 06.12.2001 (Page 8 of the petition) under the provisions of the Companies Act, 1956 having its registered office at Survey No.950, Rayakottah Road, Krishnagiri, Hosur – 635 109. The Transferee company is a Private Limited Company earlier known as Fag Bearings India Limited which was issued with a fresh certificate of incorporation on 07.07.2017 pursuant to Rule 29 of the Companies(Incorporation) Rules,2014 having its registered office at Nariman Bhavan, 8<sup>th</sup> Floor, Backbay Reclamation, Nariman Point, Mumbai, Maharashtra, India- 40002. The Board of Directors of the Transferor Companies and Transferee Company vide their resolution dated 30.08.2017 approved the said scheme of Amalgamation.

3. This Bench vide its order dated 17.01.2018 in CA/7/CAA/2018 has already issued order regarding meeting of equity shareholders, secured and unsecured creditors, wherein the meetings have been dispensed with.

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The Applicant Companies have complied with all the orders passed by the Bench.

4. The learned counsel appearing for the applicant Companies submitted that the rationale of the Scheme of Amalgamation would inter-alia have the 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.

Further it has been submitted that no investigation, proceedings are pending against them under the Companies Act, 1956 or the Companies Act, 2013.

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5. In this case as per the provisions of the Companies Act, 2013, notices were issued to the statutory authorities as per the procedure prescribed. However, there were no objections to the scheme under reference. In this case, the applicant companies have filed an affidavit (Pg.873) dated 05.02.2018 stating that they are exempted under the Competition Act 2002 and the regulation made thereunder.
6. The Regional Director, Southern Region (In short, '**RD**') in their Report Affidavit (for brevity, '**Report**') dated 18.04.2018 submitted that as per records of ROC, Chennai, the Transferor Companies are regular in filing their statutory returns and no investigation is pending against the companies. It is further submitted that as per Clause 10 of Part II of the scheme of the companies provides for the protection of the interest of the employees of the Transferor Company 2. In its report, RD has raised the issue regarding the payment of stamp duty for the increase in the Authorized capital and the same has been clarified by the affidavit dated 14.05.2018 filed by the Transferor Company-2 and has submitted to comply with the same.

7. The Official Liquidator (**In short, 'OL'**) in their report dated **19.04.2018** submitted that **M/s. Padmanabhan Ramani & Ramanujam, Chartered Accountants** appointed by the official liquidator of the Hon'ble High Court, has scrutinized the records and accounts of the Transferor Companies. The Auditor has observed that the Transferor Companies have maintained and written up all the statutory books in accordance with normally accepted accounting principles and policies in accordance with the requirements of the Companies Act, 2013 and also the affairs of the companies have not been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.
8. The OL further submitted that under Clause 10 of the proposed scheme, the interest of all the employees in the service of the Transferor Companies is safeguarded. As per Clause 5.1 the said scheme, pursuant to the Scheme coming into effect and without any further application, act or deed, the Transferee Company shall issue and allot 10 (Ten) equity shares or Rs.10/- each fully paid up in its equity share capital in respect of every 35 (thirty five) equity shares of Rs.10/- each fully paid up in the equity

share capital of the Transferor Company-2, whose names appear as the respective beneficial owners of the equity shares of the Transferor Companies in the records of the depositories (or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of the Transferee Company) as on the Record date. The equity shares to be issued by the Transferee Company to the shareholder of the Transferor Companies in accordance with this Clause shall be hereinafter referred to as “New Equity Shares”. Fractional entitlement of shares, if any, will be rounded off to the nearest integer. The valuation of shares of the Transferor Companies and Transferee Company has been done by **M/s. Padmanabhan Ramani & Ramanujam, Chartered Accountants** vide their report dated **03.04.2018**. The OL has submitted that the company applications may be decided on merits.

9. The memo on behalf of Assistant Commissioner of Income Tax, Circle 1, Hosur, Tamil Nadu dated 23.04.2018 it is submitted that this Tribunal may direct the Applicant company to pay the Income Tax arrears

aggregating to Rs.4,11,52,246/- (Rupees four crore eleven lakh fifty two thousand two hundred and forty six only to the Department prior to the sanctioning to the proposed Scheme. It is further submitted that on amalgamation any claim exempt from payment of capital gains tax will be subject to the conditions stipulated under the provisions of the Income Tax Act and more particularly to the conditions stipulated under Section 47(vi) of the Income Tax act. The Applicant may be directed by this Tribunal to pay the advance tax due that would arise on account of capital gains tax on the said transaction.

**10.**It is further submitted that this representation by way of this submission, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of Companies (Compromise, Arrangement and Amalgamation) Rules, 2016 may be taken on record without prejudice to the rights of the Department to take all appropriate proceedings under the provisions of the Income Tax Act, 1961 to protect the interest of the Government revenue including the right to reopen the assessment and that the income tax department shall not have deemed to waive its rights to undertake any proceedings under the Income Tax

Act, 1961 and the Department has all rights to proceed de hors this Scheme in terms of the Income Tax act, 1961 and as per law.

**11.**In an affidavit filed on behalf of the Transferor Company - 2 dated 14.05.2018 is submitted that as per Clause 6.4. 6.5 and 6.6 of the Scheme of Amalgamation, the interests, rights of the IT department would remain unfettered and will not be impacted by virtue of the proposed Scheme of Amalgamation as any Income Tax liability that arises in respect of the Transferor Company for the said years shall be borne by the Transferee Company upon the Scheme coming into effect. It was submitted that the reserves and assets of the Transferee Company are more than adequate to take care of any liability that may arise in respect of the demands made by the Income Tax Department.

**12.**It is further submitted that the condition stipulated under Section 47(vi) for the purpose of claiming exemption from the payment of capital gains is that the amalgamated company is to be an Indian Company. The condition stipulated has been duly complied with, considering that the Transferee Company is a Company incorporated in India under the Companies Act, 1956. Therefore, the


Transferee Company is an “Indian Company” as defined in section 2(26) of the Income Tax Act, 1961. It is further submitted that the eligibility or otherwise of the Transferee Company to claim an exemption under Section 47 of the Income Tax Act, 1961 is not a relevant consideration for sanctioning of the scheme of amalgamation.

13. Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any of the creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of Amalgamation will not cast any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed date of the Scheme is 01.01.2018.

14. The Scheme does not require any modification and the said Scheme of Amalgamation appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. All the statutory compliances have been made under the Companies Act, 2013. Taking into consideration all the above, the

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Company Applications are allowed and the Scheme of Amalgamation annexed with the petition is hereby sanctioned which shall be binding on all the members and shareholders.

15. While approving the scheme as above, we further clarify that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained and compliances that may have to be made as per the mandate of law.
16. The Transferee Company is directed to file the amended MoA and AoA with RoC, Chennai as stated by the RD.
17. The Transferor Companies shall be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies.
18. Upon receiving the certified copy of this order, the RoC, Chennai is directed to place all documents relating to the Transferor Companies with that of the Transferee Company and the files relating to the Transferor Companies shall be consolidated with the files and records of the Transferee Company. 

19. The Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme. The Petitioner Companies are directed to file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.

20. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 as has been notified on 14<sup>th</sup> December, 2016.

Accordingly, the Scheme stands sanctioned and the Company Petition CP/70/CAA/2018 **stands disposed of.**

  
(S.VIJAYARAGHAVAN)  
MEMBER (TECHNICAL)

  
(K.ANANTHA PADMANABHA SWAMY)  
MEMBER (JUDICIAL)

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