

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P(CAA)51/BB/2017

Under Section 230 to 232 of Companies Act, 2013
Orders Delivered on: 15TH February 2018

Coram: 1. Hon'ble Shri.RatakondaMurali, Member Judicial
2. Hon'ble Shri.Ashok Kumar Mishra, Member Technical

IN THE MATTER OF
KAUTEX PLASTIC TECHNOLOGY GUJARAT PRIVATE LIMITED
WITH
TEXTRON INDIA PRIVATE LIMITED
AND THEIR RESPECTIVE SHAREHOLDERS

Kautex Plastic Technology Gujarat Private Limited
2ND Floor, No.29, 80 Ft Road, 4th Block,
Koramangala,
Bengaluru-560034

- PETITIONER/TRANSFEROR COMPANY

For the Petitioner : 1) Mr. Saji P. John,SPJ Legal, Unit No.1002, 10TH Floor,
#30, Prestige Meridian II M G Road,
Bengaluru 560001-Advocate for the Petitioner Company
2) Ms. Prema Hatti, Standing Counsel for Central
Government appearing for ROC & RD
3) Mr. Pramod Kumar, Assistant - Representative for
Official Liquidator

Per: **Hon'ble Shri Ratakonda Murali, Member (Judicial) – Author**

Heard on: 15/09/2017, 30/10/2017, 10/11/2017, 05/12/2017,
20/12/2017,17/01/2018 & 31/01/2018.

ORDER

The Company Petition is filed on behalf of the Petitioner Company under Section 230-232 of the Companies Act, 2013 praying to order for sanctioning the Scheme of Amalgamation of the Petitioner / Transferor Company with the Transferee Company and shall be binding upon all the shareholders and creditors of the Petitioner Company.

The averments made in the Company Petition are briefly described hereunder:-



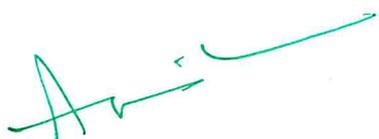
The Petitioner / Transferor Company seeks an order for sanctioning the Scheme of Amalgamation of **Kautex Plastic Technology Gujarat Private Limited** (Petitioner/Transferor Company) with **Textron India Private Limited** (Transferee Company). The Scheme of Amalgamation is shown as **Annexure-A**.

The Petitioner / Transferor Company was incorporated on 13th February 2014 as the Private Limited Company under the name and style **Krishna Kautex Private Limited** with the Registrar of Companies, Delhi & Haryana. Subsequently the name of the company was changed to **Kautex Plastic Technology Gujarat Private Limited** with effect from 19th May 2016 and the registered office was shifted to the State of Karnataka with effect from 24th November 2016 and obtained a fresh CIN bearing No: **U35999KA2014PTC098689**. The Registered office of the Petitioner Company is situated at 2nd Floor, No.29, 80 Ft. Road, 4th Block, Koramangala, Bengaluru-560034.

The main objects of the Petitioner / Transferor Company is to do business of designing, tooling, development, testing, manufacturing, assembling, marketing and sale of the automotive plastic fuel tanks, parts and components thereof and provide the necessary services ancillary and incidental thereto, amongst others etc., The Copy of Memorandum and Articles of Association of the Petitioner / Transferor Company is shown as **Annexure-B**.

The Latest Audited Balance Sheet of the Petitioner / Transferor Company as on 31st March, 2016, showing the assets and liabilities are as follows:

Liabilities	Amount in Rs.	Asset	Amount in Rs.
Share Capital	18,00,00,000	Non-Current Assets	51,62,17,726
Reserve and Surplus	(4,05,48,758)	Current Assets	17,96,14,513
Non-Current Liabilities	19,05,30,497		
Current Liabilities & Provisions	36,58,50,500		
Total	69,58,32,239	Total	69,58,32,239




The Copy of Audited Balance Sheet of the Petitioner / Transferor Company as on 31st March, 2016 shown as **Annexure C**.

It is averred that, the Transferee Company was incorporated on 2nd April 2004 as a private Limited Company under the name and style Textron Global Technology Center Private Limited. Subsequently the name was changed to **Textron India Private Limited** with effect from 20th November 2007. The Registered office of the Transferee Company is situated at Floor 1 & 2, Tower 2, SEZ Campus, Global Village, RVCE Post, Mylasandra, Bengaluru-560059.

The main objects of the Transferee Company is to engage in the business of design and development services, to provide engineering and technology solutions to the business units of group companies engaged in software and engineering pace, amongst others etc., The copy of Memorandum and Articles of Association of the Transferor Company is shown as **Annexure-E**.

The Latest Audited Balance Sheet of the Transferee Company as on 31st March, 2016, the assets and liabilities are as follows:

Liabilities	Amount in Rs.	Asset	Amount in Rs.
Share Capital	9,83,55,000	Non-Current Assets	42,60,50,635
Reserve and Surplus	43,81,36,582	Current Assets	33,13,83,415
Non-Current Liabilities	7,81,97,816		
Current Liabilities & Provisions	14,27,44,652		
Total	75,74,34,050	Total	75,74,34,050

The Copy of Audited Balance Sheet of the Transferee Company as on 31st March, 2016 is shown as **Annexure-F**.

The Petitioner /Transferor Company is a wholly owned subsidiary of the Transferee Company. Pursuant to the Scheme, no new shares are required to be issued by the Transferee Company to the members of the Petitioner /Transferor Company, as the entire share capital of the Petitioner Company is held by the Transferee Company and its nominee. The entire share capital of the Petitioner /Transferor Company will, on the Scheme taking effect, stand automatically

cancelled and extinguished. Accordingly, the Petitioner /Transferor Company submits that the present Scheme of Amalgamation by way of transfer of the entire undertaking of the Petitioner /Transferor Company does not affect the rights and interests of the members of the Transferee Company as it does not involve either a reorganisation of the share capital of the Transferee Company or issue of new shares of the Transferee Company. The shareholding and other rights of the members of the Transferee Company will remain unaffected as no new shares are being issued by the Transferee Company and there will be no change in the capital structure.

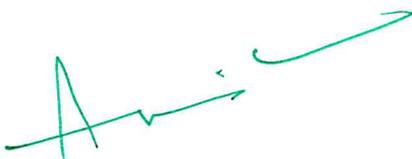
It is further stated that Petitioner /Transferor Company is proposed to be merged with the Transferee Company for the following reasons:

- i. The sanctioning of the Scheme of Amalgamation will be for the benefit of the companies who are a party to the Scheme and also their shareholders.
- ii. The scheme also does not affect the rights and interest of the creditors of the Petitioner /Transferor Company. The Scheme of Amalgamation is a contract between companies which will not affect the creditors of the Petitioner /Transferor Company.

The Board of Directors of the Petitioner /Transferor Company and Transferee Company and their respective shareholders at the Board Meetings held on 10th & 9th January 2017 respectively adopted the Scheme of Amalgamation. Copy of Board Resolution is marked as **Annexure-H**.

The Petitioner /Transferor Company had filed C.A(CAA) No.06/BB/2017 before this Tribunal to dispense with the convening of meeting of Shareholders and Creditors of the Petitioner /Transferor Company. The Hon'ble Tribunal vide order dated 21st August 2017 allowed the Application and dispensed with convening the meeting of Shareholders and Creditors. Copy of Order of the Hon'ble Tribunal in C.A (CAA) No.06/BB/2017 is shown as **Annexure-J**.

This Tribunal vide order dated 15th September 2017 issued notice to Regional Director, Registrar of Companies-Karnataka, Bangalore, Official Liquidator and Deputy Commissioner for Income Tax Department and also directed to have an advertisement published in the Bangalore edition of "**The Financial Express**" English Daily Bangalore Edition and "**Kannada Prabha**" Kannada Daily news paper in Bangalore Edition on or before 20th October 2017 stating that the next date of hearing of the present Petition was on 30th October 2017.



In pursuant to the same the Counsel for the Petitioner /Transferor Company has filed **Compliance Affidavit dated 27th September 2017** of the Authorised Signatory of the Petitioner /Transferor Company for carrying out the Advertisement of the Company Petition and issuance of notices to Regional Director, South-East Region, Ministry of Corporate Affairs, Hyderabad; Registrar of Companies, Karnataka, Official Liquidator and concerned Deputy Commissioner of Income Tax. The Copies of Paper Publication **dated 22nd September 2017** are shown as **Annexure A1 & A2** and copies of notice(s) to the above said authorities are shown as **Annexure B, C,D & E.**

On the prayer made by the Official Liquidator in OLR No.159/2017 vide Order dated 10th November 2017 of this Tribunal, the Official Liquidator appointed Suresh & Co., Chartered Accountants to scrutinize the Books of Accounts and records of the Petitioner/Transferor Company.

The said Chartered Accountant filed his Report and pursuant to the same, the Official Liquidator has filed a Report in OLR.No.9/2018 **dated 17th January 2018** stating that Suresh & Co., Chartered Accountants submitted Report **dated 8th January 2018** and has concluded in his Report as under:

“From the verification of Books of Accounts and records maintained by the Company and according to the information and explanation provided to him and to the best of his knowledge:

- a) The Transferor Company has maintained all the necessary statutory books and Registers, Books of Accounts, and other records up to date, as defined in the Companies Act, 2013.
- b) On scrutiny of books of accounts, papers, statutory registers and other related records of the applicant company we are of the opinion that the affairs of the company have not been conducted in a manner prejudicial to the interest of the members of the company or public interest.

In view of the above, the Chartered Accountant is of the opinion that the Transferor Company has maintained all its Books and Records as per requirement of the Companies Act, 2013. It has complied with the applicable



statutes and not conducted its activities in a manner prejudicial to the interest of its members or public.

Copy of the Report dated **8th January 2018** is shown as **Annexure "A"**.

Under the circumstances explained above, the Official Liquidator most respectfully submits that the Petition may be disposed off on its own merit after hearing the objections if any by other Sectoral Regulator and Transferor Company may be dissolved without winding up by this Hon'ble Tribunal, and / or any further order / orders as may be deemed fit and proper in the facts and circumstances of the case may kindly be passed".

The Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad vide his letter bearing F.No.3/Karnataka/Amal/813/RD (SER)/2017 dated 23rd January 2018 has stated that, he has examined the report of the Registrar of Companies, Karnataka, Bangalore in letter No. ROCB/Legal/CAA/51 & 58/BB/2017 dated 07/11/2017 and stated they have no objection. The Registrar of Companies, Karnataka, Bangalore has filed Affidavit dated 1st February 2018 on behalf of the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad and reported that the Petition may be decided on merits. Since, Regional Director and Registrar of Companies have not raised any comments/observations with respect to the Scheme of Amalgamation of the Petitioner /Transferor Company, it can be presumed that the Regional Director and Registrar of Companies have no objection.

The Counsel for the Petitioner /Transferor Company has also filed the copy of Accounting Treatment Certificate of the Chartered Accountant **dated 25th January 2017** stating that the Accounting Treatment contained in the Scheme of Amalgamation is in conformity with the Applicable Accounting Standards 14 in the Petition of the Petitioner /Transferor Company.

After hearing the Counsel for the Petitioner /Transferor Company and considering the material on record,



THIS TRIBUNAL DO FURTHER ORDER

While Approving the Scheme, we make clear that this order should not be construed as an order in any way granting exemption from payment of Stamp Duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specially required under any law.

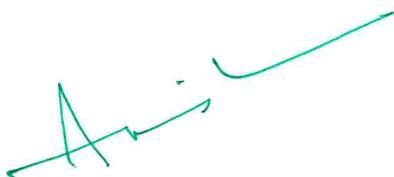
The Whole of the property, rights and powers of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and vest in the transferee company for all the state and interest of the Petitioner Company therein but subject nevertheless to all the charges now affecting the same; and

All the liabilities including taxes and charges, if any, and duties of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the transferee company; and

The tax implications, if any, arising out of the scheme is subject to final decision of Concerned Tax Authorities and the decision of the Concerned Tax Authorities shall be binding.

All the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company, if any; and

The Petitioner Company shall within thirty days of the date of the receipt of this order cause a certified copy of this order along with a copy of scheme of Amalgamation to be delivered to the Registrar of Companies for registration in accordance with Rule 25 (7) of Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.

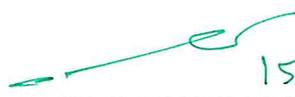


The Scheme shall be effective from the appointed date as mentioned in the Scheme of Amalgamation i.e. 1st April, 2018.

The Transferor Company or its authorised signatory is directed that after the completion of the process of Amalgamation to handover the possession of the Books of Accounts and other relevant documents of the Transferor Company to the Transferee Company for the purpose of section 239 of the Companies Act, 2013.

Any person shall be at the liberty to apply to the tribunal in the above matter for any directions that may be necessary.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL
15/2/18