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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**T.P. No. 24/NCLT/AHM/2017 (New)
With Gujarat High Court C.P. No. 487/2016 with C.A. No. 477/2016 (Old)**

Coram: **Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 10.04.2017**

Name of the Company: Rubberking Tyre Quality Products Pvt Ltd.


Section of the Companies Act: Sections 391-394 of the Companies Act, 1956

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	SWATI SOPARKAR	ADVOCATE	PETITIONER	Swati Soparkar
2.				

ORDER

Learned Advocate Mrs. Swati Soparkar present for Petitioner.

Common Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 10th day of April, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 10th day of April, 2017

T.P. No.24/NCLT/AHM/2017

With

T.P. No.25/NCLT/AHM/2017

In the matter of: -

1. Rubberking Tyre Quality Products Private Limited,
A company incorporated under the Companies
Act, 1956 and having its registered office
At 103-104, Naindhara Apartment,
S. G. Highway, Bodakdev,
Ahmedabad – 380054. ... Petitioner of TP No.24 of 2017
(Transferee-company)
2. Rubberking Tyres India Private Limited,
A company incorporated under the Companies
Act, 1956 and having its registered office
At 103-104, Naindhara Apartment,
S. G. Highway, Bodakdev,
Ahmedabad – 380054. ... Petitioner of TP No.25 of 2017
(Transferor-company)

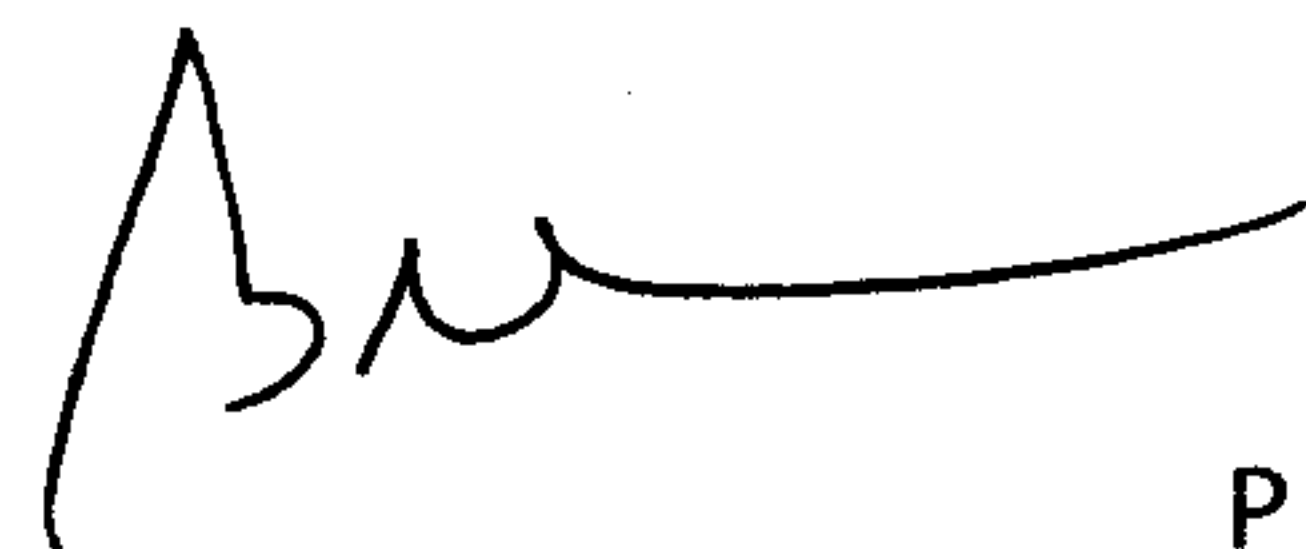
Appearance: -

1. Mrs. Swati Soparkar, Advocate for the Petitioner.

COMMON FINAL ORDER

(Date: 10.04.2017)

1. These petitions have been filed by the petitioner-companies for sanctioning of an Arrangement in the nature of Amalgamation of Rubberking Tyres India Private Limited (transferor-company) and Rubberking Tyre Quality Products Private Limited (transferee-company) and their respective shareholders and creditors ("scheme" for short).



2. The petitioner of T.P. No.24 of 2017, i.e. Rubberking Tyre Quality Products Private Limited, filed Company Application No.477 of 2016, praying for dispensation of meeting of shareholders. The Honourable High Court, by its order dated 7th November, 2016, dispensed with the meeting of shareholders of the petitioner transferee-company. It is stated in the order of the Honourable High Court that there are no secured or unsecured creditors of the transferee-company. Further, the procedure prescribed in Section 101(2) and the procedure prescribed in Rules 46 to 65 of the Companies (Court) Rules, 1959 have also been dispensed with by the Honourable High Court.

3. The petitioner in T.P. No.25 of 17, Rubberking Tyres India Private Limited (transferor-company), filed Company Application No.478 of 2016 on the file of the Honourable High Court of Gujarat seeking dispensation of meeting of equity shareholders of the company. The Honourable High Court, by its order dated 7th November, 2016, dispensed with the convening of meeting of equity shareholders of the petitioner transferor-company. The Honourable High Court also mentioned in the said order that the transferor-company had undertaken to place on record the written consent letters from all its secured creditors. Considering the said undertaking, the Honourable High Court dispensed with the meetings of secured and unsecured creditors of the transferor-company.

4. The petitioner-companies, thereafter, filed Company Petitions Nos.487 and 488 of 2016 before the Honourable High Court of Gujarat seeking sanction of the scheme. During the pendency of the petitions, on 03.02.2017, the Honourable High Court transferred both the petitions to this Tribunal in view of Rule 3 of the Companies (Transfer of Pending Proceedings) Rules, 2016. Before this Tribunal, Company Petition No.487 of 2016, filed by the transferee-company before the High Court, came to be registered as T.P. No.24 of 2017 and Company Petition No.488 of 2016, filed by the transferor-

company before the High Court, came to be registered as T.P. No.25 of 2017.

5. This Tribunal, in T.P. No.24 of 2017, by order dated 23rd February, 2017, directed the petitioner transferee-company to issue notice of hearing of the petition by way of advertisement in English daily "Indian Express", Ahmedabad edition and Gujarati daily "Sandesh", Ahmedabad edition, not less than 10 days before the date fixed for hearing calling for their objections, if any, on or before the date of hearing and also to issue individual notices to equity shareholders not less than 10 days before the date of hearing, informing the date of hearing and calling for their objections, if any, to the scheme. This Tribunal also ordered issuance of notice to (i) the Central Government through Regional Director, Gujarat, (ii) the Reserve Bank of India, (iii) the Income Tax Authority and (iv) the Registrar of Companies, Gujarat, Ahmedabad, asking them to file their representations, if any, within 30 days from the date of receipt of notice with a condition that in case no representation is received by this Tribunal, it shall be presumed that the above said authorities have no representation to make on the proposed scheme of amalgamation.

6. In T.P. No.25 of 2017 also, this Tribunal passed similar order on 23rd February, 2017 besides a direction for issuance of notice to the Official Liquidator.

7. The petitioner-companies, thereafter, filed affidavits in respect of service of notice to the shareholders and publications made in the newspapers. The petitioner-companies also filed affidavit in respect of service notice to the statutory authorities.

8. In response to the publication made in the newspapers, no objection is received either from the public or from the creditors. No representation is also received from the Income Tax authorities. However, in response to the notice, the Regional Director filed a



representation dated 21st March, 2017. Likewise, the Official Liquidator filed a report dated 24th March, 2017.

9. Heard learned Advocate, Mrs. Swati Soparkar, for the petitioner-companies.

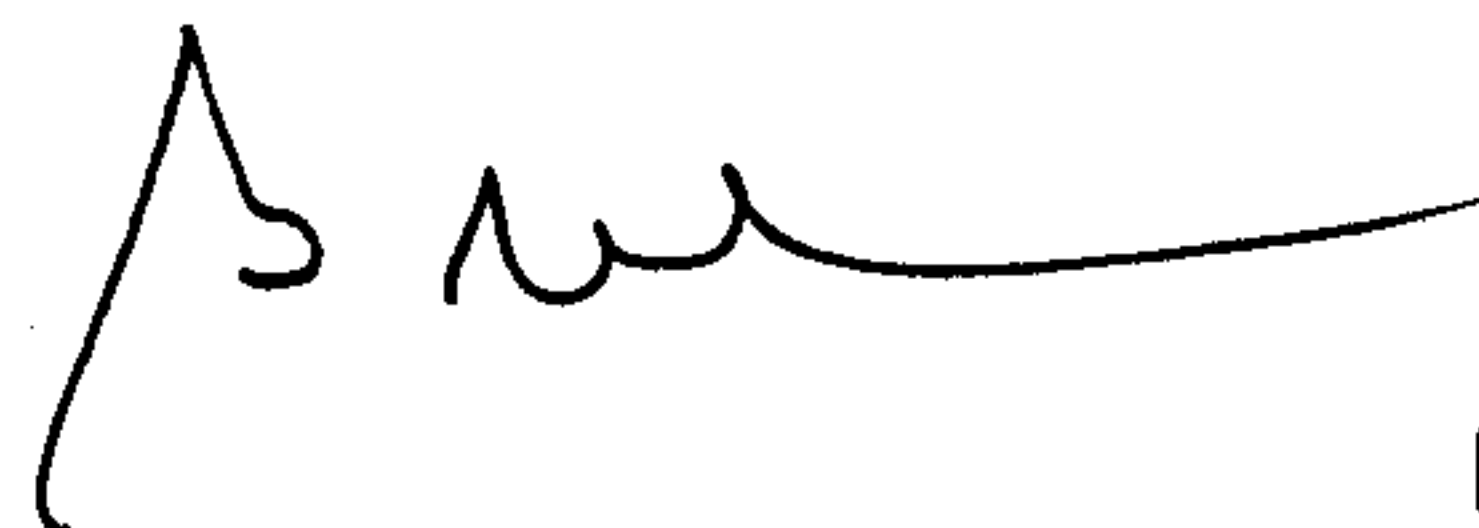
10. On perusal of the report of the Official Liquidator, in paragraph 2(f), it is stated that it is not clearly disclosed in the scheme about the payment of necessary fees in compliance of Section 13 of the Companies Act, 2013 for the change of name of the transferee-company from Rubberking Tyre Quality Products Private Limited to Rubberking Tyre Private Limited and, therefore, it is necessary that the transferee-company should pay the necessary fees including other fees and charges for alteration of its name in compliance with Section 13 of the Companies Act. In the common reply affidavit dated 28th March, 2017, filed by the petitioner-companies, it is stated that the transferee-company shall do the needful with regard to the payment of requisite fees as well as filing requisite forms with the Registrar of Companies. In view of the said statement in the common affidavit of the petitioner-companies, this Tribunal is of the view that the observation made by the Regional Director in paragraph 2(f) of the common representation stands satisfied.

11. The Regional Director, in paragraph 2(g) of the common representation, stated that, as per the circular issued by the Ministry of Corporate Affairs, the Regional Director invited comments from the Income Tax Department on the proposed scheme vide letter dated 02.01.2017. The Income Tax Department gave a reply dated 16.01.2017 stating that there is an outstanding amount of tax payable by the transferor-company to the tune of Rs.1,89,277/- and Rs.1,99,747/- for the assessment years 2010-11 and 2014-15, respectively. It is also stated in the representation of the Regional Director that no comments have been offered by the Income Tax Department in respect of M/s Rubberking Tyre Quality Products Private Limited, i.e. the petitioner transferee-company. In the

common reply affidavit filed by the petitioner-companies, it is stated that the demand for the assessment year 2010-11, as stated by the Income Tax Department, was owing to technical error in the records of the Department. It is further stated in the affidavit that, as regards the demand outstanding for the assessment year 2014-15, the transferor-company has preferred an appeal against the said demand and the same has not attained finality. In the common affidavit dated 28th March, 2017, it is also stated that the transferee-company undertakes to pay any outstanding Income-tax dues that may be pending against the transferor-company. It is also stated in the said affidavit filed by the petitioner-companies that in respect of the transferee-company, no representation was received from the Income Tax Department within the statutory period of 30 days as envisaged in Section 230(5) of the Companies Act, 2013 and, therefore, it can only be presumed that the Income Tax Department has no comments to offer in respect of the proposed scheme.

12. The Regional Director, in paragraph 2(h) of the common representation, stated that, as per the report of the Registrar of Companies, Gujarat, vide letter dated 27.12.2016, there are no complaints against the petitioner-companies.

13. The Authorised Signatory of the petitioner-companies filed a further affidavit on 30th March, 2017 stating that the Income Tax Department raised a demand of Rs.1,00,390/- by way of a demand notice dated 26th February, 2017 and the said amount was paid by the transferor-company on 20th March, 2017 and in proof of the same, a copy each of the demand notice and the challan is produced at Annexure-1 and 2, respectively, to the further affidavit. The petitioner-companies also filed a screen shot of the status of assessment, as available on the e-filing portal of the Income Tax Department, for the assessment year 2010-11, confirming that no demand is outstanding in respect of the transferor-company vide Annexure-3.

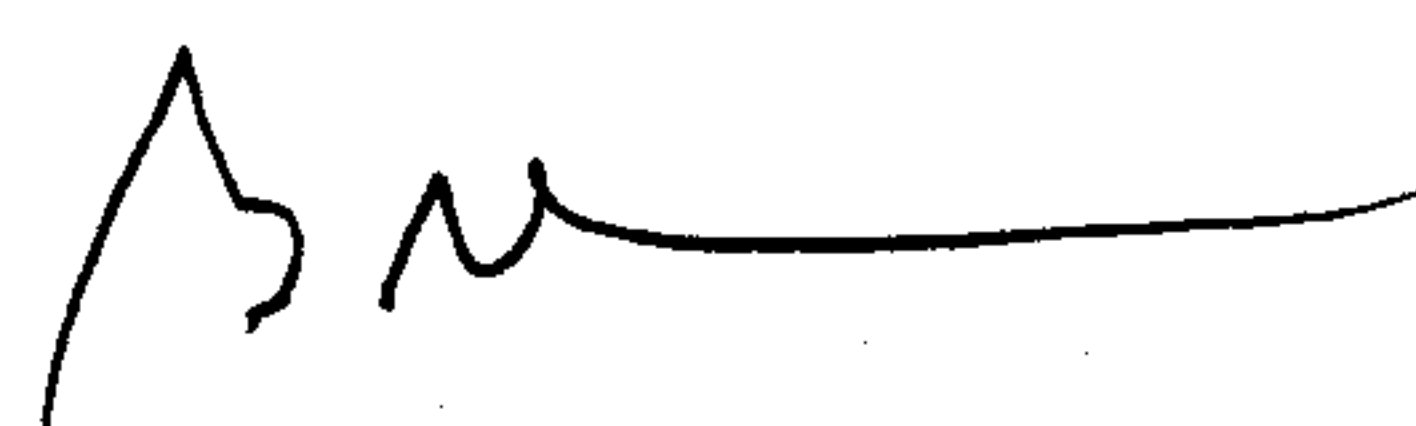


14. This Tribunal, having considered the comments of the Income Tax Department, as mentioned in the representation of the Regional Director and the contents of the affidavits along with Annexures 1 to 3 to the affidavit dated 30th March, 2017, is of the view that the transferee-company should pay the outstanding demands of Income Tax, if any, in respect of the transferor-company, for the assessment years 2010-11 and 2014-15. In fact, there is also an undertaking in the affidavit dated 28th March, 2017 filed by the Authorised Signatory of the petitioner-companies to the effect that the transferee-company shall pay any outstanding income-tax dues that may be pending against the transferor-company. However, it is observed that the Income Tax Department is at liberty to recover outstanding income-tax dues of the transferor-company, if any, from the transferee-company.

15. The Official Liquidator, in paragraph 13 of the report dated 24th March, 2017, stated that, as can be seen from the returns of income filed by the transferor-company, there are no outstanding dues of Income Tax. The Official Liquidator in his report stated that the transferor-company is not a non-banking finance company and, as such, not registered with the Reserve Bank of India. The Official Liquidator further stated in his report that the transferor company has made provisions for transfer of employees of the transferor-company to be transferred in terms of sub-section (3)(g) of Section 232 of the Companies Act, 2013. The Official Liquidator further stated, based on the submissions made before the said office by the management of the petitioner-companies in the context of the scheme of amalgamation of Rubberking Tyres India Private Limited with Rubberking Quality Products Private Limited, that to the best of their knowledge and belief, the affairs of the transferor-company had not been conducted in a manner prejudicial to the interest of its members or to the public. The Official Liquidator also stated in his report that M/s Rubberking Tyres India Private Limited, being the transferor-company, may be dissolved without following the process of winding up in terms of clause (d) of sub-section (3) of Section 232

of the Companies Act, 2013. The Official Liquidator further stated in the report that the petitioner-company may be directed to file a certificate from the Auditor stating that the accounting treatment proposed in the scheme or arrangement is in conformity with the accounting standards prescribed under Section 133 of the Companies Act. The Official Liquidator also requested for a direction to the transferee-company for payment of office expenses of Rs.10,000/- approximately to the office of the Official Liquidator. In the affidavit filed on behalf of the petitioner-companies, it is stated that the transferee-company undertakes to preserve the books of accounts and other records of the transferor-company as required under Section 239 of the Companies Act.

16. In the order of the Honourable High Court in Company Petition No.488 of 2016, it is observed that in compliance with the contractual terms with the secured creditors, the transferor-company has undertaken to place on record the written consent letters from all its secured creditors. In compliance with the said undertaking, the Authorised Signatory of the petitioner-companies along with the common affidavit dated 28th March, 2017 filed certificate of the Chartered Accountant dated 27.03.2017, wherein it is stated that Volkswagen Finance Private Limited and State Bank of India are the secured creditors of Rubberking Tyres Private Limited (transferor-company) and they have given their written consents approving the proposed scheme of arrangement between Rubberking Tyres India Private Limited and Rubberking Tyre Quality Products Private Limited and their respective shareholders and creditors. The petitioner-companies also placed on record consent letter dated 21st November, 2016 given by Volkswagen Finance Private Limited, wherein it is clearly stated that the said company gave consent for the proposed scheme of amalgamation. State Bank of India, by its letter dated 25th November, 2016, stated that they have approved issuance of No Objection Certificate for amalgamation of Rubberking Tyres India Private Limited into Rubberking Tyre Quality Products Private Limited with effect from 01.10.2016, being the Appointed



Date. In view of the said documents, the transferor-company complied with the undertaking given by it before the Honourable High Court of Gujarat.

17. In compliance of the proviso to sub-section (7) of Section 230, the petitioner-companies filed certificate of Chartered Accountant dated 10.03.2017 stating that the accounting treatment contained in the proposed scheme is in compliance of all the applicable accounting standards notified by the Central Government under Section 133 of the Companies Act.


18. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the documents produced on record, it appears that the requirements of the provisions of Sections 230 and 232 of the Companies Act, 1956 are satisfied. The Scheme appears to be genuine and *bona fide* and in the interest of the shareholders and creditors.

19. In the result, these petitions are allowed. The scheme of amalgamation, which is at Annexure-C to T.P. No.24 of 2017, is hereby sanctioned and it is declared that the same shall be binding on the petitioner-companies, namely, Rubberking Tyres India Private Limited and Rubberking Tyre Quality Products Private Limited, their equity shareholders, creditors and all concerned under the scheme. It is also declared that the petitioner-company, namely, Rubberking Tyres India Private Limited, shall stand dissolved without winding up.

20. The fees of the Official Liquidator are quantified at Rs.10,000/- in respect of T.P.No.25 of 2017. The said fees to the Official Liquidator shall be paid by the Transferee Company.

21. Filing and issuance of drawn up orders are dispensed with. All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by the Registrar of this Tribunal. The

Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme immediately.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court on this 10th day of April, 2017.

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