

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

CSP 666/230-232/NCLT/MB/MAH/2017

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Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Divgi TorqTransfer Private Limited

.....Petitioner in CSP 666/2017
(Transferor Company)

M/s. Divgi Metalwares Private Limited

.....Petitioner in CSP 667/2017
(Transferee Company)

Petitions Heard on : 18.08.2017

Order delivered on : 21.09.2017

Coram :

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

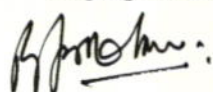
For the Petitioner :

Mr. Hemant Sethi, Advocate i/b. Hemant Sethi & Co., Advocates for the Petitioners.

Per : Bhaskara Pantula Mohan, Member (J)

ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation between M/s Divgi TorqTransfer Private Limited (Transferor Company), with M/s Divgi Metalwares Private Limited, (Transferee Company).
2. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. Transferor Company is presently engaged in the business of manufacturing products & components for 4WD vehicles.
4. The Transferee Company is presently engaged in the business of manufacturing high precision automotive gears & other automotive components.



5. This Scheme of Amalgamation will result in various benefits viz.

- (i) *Synergies in administration and marketing and business operations.*
- (ii) *Achieving economies of scale.*
- (iii) *Pooling of the human talents in terms of manpower, management, administration and marketing which would result in savings of costs.*
- (iv) *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.*
- (v) *Lesser regulatory / procedural compliance.*
- (vi) *Integrate, rationalize and streamline the management structure of the merged business.*
- (vii) *Amalgamation of the companies would eliminate duplication of work, administrative services, and will result in cost savings.*
- (viii) *Cost saving in fees/ duties payable on statutory and procedural compliance.*
- (ix) *Facilitate inter transfer of resources and costs and optimum utilization of assets.*
- (x) *Synchronizing of efforts to achieve uniform corporate policy.*
- (xi) *To reflect the consolidated net worth of these companies in one balance sheet.*

6. The Authorised Share Capital of the Transferor Company is ₹ 5,00,00,000/- comprising of 50,00,000 Equity Shares of ₹ 10/- Each.

7. The Issued, Subscribed and Paid-up Share Capital of the Transferor Company is ₹ 4,39,16,260/- comprising of 43,91,626 Equity Shares of ₹ 10 Each.

8. The Authorised Share Capital of the Transferee Company is ₹ 5,40,00,000/- comprising of 5,40,000/- Equity Shares of ₹ 100/- each.

9. The Issued, Subscribed and Paid-up Share Capital of the Transferee Company is ₹ 5,38,86,800/- comprising of 5,38,868 Equity Shares of ₹ 100/- each.

10. The averments made in the petitions and the submissions made by the Learned Representative for the Petitioners are:

for the Petitioners:

- a) The Petitioner Companies had 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 undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.
- b) The Regional Director has filed his report on 31st July, 2017 stating therein, save and except as stated in paragraph IV (1) to (10), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said affidavit, it is stated that:-

(1) The tax implication if nay arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee company after giving effect to the scheme. the decision of the Income Tax Authority is binding on the Petitioner Company.

(2) It is submitted that the Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities dated 03.05.2017 for comments. This directorate has issued reminder dated 12.07.2017.

(3) Certificate by the company's Auditor stating that the Accounting treatment if any proposed in the Scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies CT, 2013 is to be submitted.

(4) Petitioner in clause 15 of the scheme has inter alia has mentioned that the name of the transferee company will be changed to and replaced with the name of the transferor company upon the scheme becoming effective.

In this regard Petitioner company to undertake to file requisite form with the Registrar of companies and to comply with the procedural requirements with the regard of availability of name as per the provisions of the Act, 2013 read with the rules.

(5) Chairman Reports to be submitted.



(6) *Petitioner in clause 11 of the Scheme has inter alia mentioned that the employees of the Transferor Company shall not be entitled to the employment policies of the transferee company nor shall be entitled to any scheme or benefits available or applicable to any of the employees of the transferee company unless otherwise determined by the transferee company.*

In this regard, petitioner companies have to undertake to protect the interest of employee.

(7) *Petitioner in clause 1.8 has inter alia mentioned that Indo star means Indostar Capital Finance Limited a NBFC incorporated under the Act, 1956 and registered with RBI. In clause 1.9 it is mentioned that Indo star facility shall mean term loan facility aggregating to Rs. 80,00,00,000/- granted by the Indo star facility to the transferee company on the terms and conditions of the facility agreement dated 9.5.2016 executed inter alia between Indostar, DMPL, and Catalyst Trusteeship Limited as the security trustee.*

In this regard, Petitioner company has to mention relevance of the above clauses with the scheme.

(8) *It is submitted that in the explanatory statement of Petitioner Transferor Company at point 10(iv)(9) amount due to unsecured creditors as on 31.12.2016 mentioned at point 10(v) (9) amount due to unsecured creditors as on 31.12.2016 mentioned as 5,46,87,227 crores but in balance sheet on 31.03.2016 it is given in rupees as well in explanatory statement of Petitioner Transferee Company at point 10(v)(9) amount due to unsecured creditors as on 31.12.2016 mentioned as 27,793,288 crores but in balance sheet on 31.03.2016 it is given in rupees.*

(9) *Petitioner Company in clause 12 of the scheme inter alia mentioned that the appointed date of 1.4.2016 the transferee company held 40% of the equity share capital of the transferor company and the balance 60% of the equity share capital was acquired pursuant to the Share Purchase Agreement with Borg-Warner Automotive South Asia Corporation dated 10.08.2017 the transferor company is 100% subsidiary of the transferee company. Therefore, the Appointed date should be postponed to 01.04.2017.*



(10) Petitioner company in clause 12 of the scheme inter alia mentioned that 60% of the equity share capital was acquired pursuant to Share Purchase Agreement with Borg-Warner Automotive South Asia Corporation dated 10.08.2016.

In this regard, Petitioner Company need to submit copy of notice served to RBI.

- c) Apropos observations made in paragraph IV (1) & (2) of the Report of Regional Director is concerned, the Petitioner Companies undertake to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
- d) Apropos observations made in paragraph IV (3) of the Report of Regional Director is concerned, the Counsel for Petitioners sub it that certificate of the Auditor as required under Section 133 of the Companies Act, 2013 forms part of the Petitions and is annexed as **Annexure - H**.
- e) Apropos observations made in paragraph IV (4) of the Report of Regional Director is concerned, in so far as name of Transferor company will become the name of the Transferee Company. The Transferee Company undertakes to file requisite form with the Registrar of Companies and to comply with procedural requirements to the extent applicable.
- f) Apropos observations made in paragraph IV (5) of the Report of Regional Director is concerned, the Counsel for the Petitioners clarifies that the Chairman's report is annexed to the Petitions as **Annexure-G**.
- g) Apropos observations made in paragraph IV (6) of the Report of Regional Director is concerned, the Counsel for the Petitioners clarify that in term of clause 11.1. of the Scheme all the employees of the Transferor Company in service on the Effective Date shall become the employees of the Transferee Company on such date without any break or interruption in service and on terms and conditions as to remuneration not less favourable than those subsisting with reference to the Transferor Company as on the said date. The interest of the employees is in no way compromise.



- h) Apropos observations made in paragraph IV (7) of the Report of Regional Director is concerned, the Counsel for the Petitioners clarify that Indostar are a creditor of the Transferee Company. The clauses 1.8, 1.9 and 20 is to confirm that upon the Scheme coming into effect, the liability due towards IndoStar as per the terms and conditions of the Facility Agreement shall continue by the Transferee Company. Further, in accordance with the minutes of the order of Company Scheme Application No. 440 of 2017, a notice of the scheme was also served upon IndoStar.
- i) Apropos observations made in paragraph IV (8) of the Report of Regional Director is concerned, the Counsel for the Petitioners submits that the word 'Crores' was inadvertently published in the explanatory statement at point 10 (v) (g). The amount in the explanatory statement should be read as amount in Rupees, and not in Rupees Crores. Accordingly, in the explanatory statement of Petitioner Transferor Company at point 10 (v) (g) amount due to unsecured creditors as on 31.12.2016 is to be read as ₹ 5,46,87,227 only. In explanatory statement of Petitioner Transferee Company at point 10(v)(g) amount due to unsecured creditors as on 31.12.2016 is to be read as ₹ 27,793,288 only.
- j) Apropos observations made in paragraph IV (9) of the Report of Regional Director is concerned, the Counsel for the Petitioners submit that as on the date of the Board Meetings, the Transferor Company was a wholly-owned subsidiary of the Transferee Company. Accordingly, the Scheme with the Appointed Date as 1st April 2016 has been unanimously approved by all the shareholders of the Petitioner Company. Therefore, 1st April 2016 has been taken into consideration as Appointed Date. Further the Appointed Date is only a cut-off date as to when the Scheme would be made effective.
- k) Apropos observations made in paragraph IV (10) of the Report of Regional Director is concerned, the Counsel for the Petitioners submit that in so far as acquisition of shares pursuant to Share Purchase Agreement with Borg-Warner Automotive South Asia Corporation dated 10.08.2016 all regulatory compliances were done at the time of acquisition of shares and therefore nothing further is required to be done, therefore the question of notice to RBI does not arise.
- l) The Official Liquidator has filed his report dated 10th August, 2017 and stating therein that, the affairs of the Transferor Company have been
- Approved:*

conducted in a proper manner and accordingly the Transferor Company may be dissolved without winding up. Further it is submitted that, the Scheme is not prejudicial to the interest of public or shareholders.

- m) No objector has approached, neither to the Petitioners nor before Tribunal, to oppose this Scheme of Amalgamation.

11. From the material on record, the Scheme of Amalgamation 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 Companies, **do Order that:**

- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Company be transferred to the Transferee Company and accordingly the same shall pursuant to S. 232 of the Companies 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) Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation 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 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.
- d) The Petitioner Companies to lodge a copy of this Order and the Scheme duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the Order.



- e) Each Petitioner Companies to pay cost of ₹ 25,000/- to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- f) Transferor Company i.e. Petitioner in CSP No. 666 of 2017 to pay cost of ₹ 25,000/- to the Official Liquidator, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- g) All authorities concerned, to act on a copy of this Order along with Scheme duly Certified by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- h) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
- i) The Scheme is sanctioned and the appointed date of the Scheme is fixed as, 1st April, 2016.

12. Ordered accordingly.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Dated : 21.09.2017

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)