

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
TRANSFERRED COMPANY SCHEME PETITION NO 107 OF 2017
IN
HIGH COURT COMPANY SCHEME PETITION NO 603 OF 2016

In the matter of the Companies Act,
2013;

AND

In the matter of Sections 391 to 394 of the
Companies Act, 1956 (corresponding sections
230 to 232 of the Companies Act 2013);

AND

In the matter of Scheme of Amalgamation of
Lear Oragadam Automotive India Private
Limited (“Transferor Company”) and Lear
Automotive India Private Limited (“Transferee
Company”) and their respective shareholders

Lear Oragadam Automotive India Private Limited...Petitioner Company

Called for Hearing

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

Mr. Kamal Harjani, Deputy Director in the office of Regional Director.

Coram: B.S.V. Prakash Kumar, Member (Judicial)

Date: 1 March 2017

MINUTES OF ORDER

1. Heard the learned counsel for the Petitioner Company. No objector has come before the court to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Court is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of Lear Oragadam Automotive India Private Limited with Lear Automotive India Private Limited and their respective shareholders.
3. The Learned Counsel for the Petitioner states that the Petitioner Company and the Transferee Company are engaged in the business of manufacturing automotive interior and seating systems for Automotive Industry.

4. Learned Counsel for the Petitioner states that the Scheme will result into the following benefits:
 - (i) Synergies in procurement, manufacturing, administration and marketing operations;
 - (ii) Achieving economies of scale;
 - (iii) Avoiding duplication of efforts, costs and resources;
 - (iv) Lesser regulatory / procedural compliance;
 - (v) Integrate, rationalize and streamline the management structure of the merged business;
 - (vi) Simplification of shareholding structure;
 - (vii) 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, if needed;
 - (viii) Pooling of the human talents in terms of manpower, management, administration and marketing which would result in savings of costs;
 - (ix) Facilitate inter transfer of resources and costs and optimum utilization of assets;
 - (x) Synchronizing of efforts to achieve uniform corporate policy; and
 - (xi) Ease in decision making.
5. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to the Company Scheme Petition filed by the Petitioner Company.
6. Learned Counsel appearing on behalf of the Petitioner Company further states that since the Transferor Company is a wholly owned subsidiary of the Transferee Company and all the shares of the Transferor Company are presently held by the Transferee Company along with its nominee, and after the Scheme being sanctioned, no new shares are required to be issued to the member of the Transferor Company by the Transferee Company and there is no reorganization of the Share Capital of the Transferee Company and also in view of the judgement of the Hon'ble High Court of Judicature at Bombay in the case of **Mahaamba Investment Limited V/s. IDI Limited** (2001) 105 Company Cases, filing of a separate Company Summons for Direction and Company Scheme Petition by Lear Automotive India Private Limited , the Transferee Company was dispensed with by order dated 1st July, 2016 passed in CSD No. 517 of 2016.
7. The Learned Counsel appearing on behalf of the Petitioner Company further states that the Petitioner Company has complied with all requirements as per directions of the Court/ Tribunal and the necessary affidavits of compliance has been filed in the Court. Moreover, the Petitioner Company through its Counsel

undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Company is accepted.

8. The Official Liquidator has filed his report on 10th November 2016 stating that the affairs of the Transferor Company have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved.
9. The Regional Director has filed an Report dated 24th February 2017 stating therein, save and except as stated in paragraph IV(a) to (d) , it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs IV, of the said Report it is stated that:

(a) The submission made by the Company at Para 15.1.4 of the Scheme is found contrary to the AS-14. The Company stated in the said Para that the Debit difference between the Book Value of Assets, Liabilities and Reserves of the Transferor Company and value of Investment in the Equity Share Capital of the Transferor Company be adjusted against the Reserves of the Transferor Company and value of Investment in the Equity Share Capital of the Transferor Company be adjusted against the Reserves in the books of Transferee Company. Whereas amongst others as per Para No.17 of AS-14 "on deduction of consideration from the Net Assets of the Transferor Company by the Transferee company , if the result of the computation is negative, the difference is debited to Goodwill arising on amalgamation and dealt with in the manner stated in paragraphs 19-20 of the said AS and if the result of the computation is Positive, the difference is credited to "Capital Reserve". The Petitioner Company may be directed to make above compliance of AS-14.

(b) In addition to compliance of As-14, the Transferee company shall pass such Accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting standards such as AS-5 etc. and ensure that the Financial statement of the Transferee Company does not impair the true and fair value of the financial statements of the Transferee Company after post amalgamation.

(c) As regards Para No.8 of the Scheme, it is stated that after the Effective Date, the Transferee Company shall be entitled to vary the terms and conditions as to employment and remuneration of the staff, workmen, employees or other labour of the Transferor Company on the same basis as it may do for the staff, workmen, employees or other labour of the

Transferee Company but these shall not be less favourable to the employees/workmen of the Transferor Company, prior to amalgamation, (d) The tax implication, if any 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 Companies.

10. As far as the observations raised by the Regional Director in paragraph IV(a) of the Report, the Petitioner Company through its Counsel undertakes that in compliance of AS-14, on the Scheme becoming effective, surplus, if any arising out of the Scheme shall be credited to the Capital Reserve account of the Transferee Company and deficit, if any shall be debited to Goodwill account of the Transferee Company.
11. In so far as observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Company through its Counsel undertakes that the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with Accounting Standard – 14 or any other applicable Accounting Standard such as Accounting Standard – 5.
12. In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Counsel for the Petitioner clarifies that all the employees of the Transferor Company shall become the employees of the Transferee Company and the variation in the terms of employment of the employees of the Transferor Company post sanctioning of the Scheme shall not be less favourable to the employees/workmen of the Transferor Company, prior to amalgamation and such modifications shall not result in reduction in benefits to the employees of Transferor Company.
13. As far as the observations made in paragraph IV(d) of the Report of Regional Director is concerned, the Petitioner submits that the Petitioner is bound 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.
14. Mr. Kamal Harjani, Deputy Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region Mumbai for Regional Director are satisfied with the undertakings given by the Petitioner Company. The said undertaking given by the Petitioner Company are accepted.
15. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

16. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No 107 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clause (a) of the respective Petition.
17. Petitioner Company is 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.
18. The Petitioner Company to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, 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.
19. The Petitioner Company to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay to be paid within four weeks from the date of Order.
20. Costs to be paid within four weeks from today.
21. Filing and issuance of the drawn up order is dispensed with.
22. All authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Deputy Director/Registrar National Company Law Tribunal, Mumbai Bench.
23. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

B.S.V. Prakash Kumar, Member (Judicial)