

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH**

CA (CAA) No.8/Chd/HP/ 2017

Date of Order: 05.05.2017

**Coram: HON'BLE MR.JUSTICE R.P.NAGRATH,
MEMBER (JUDICIAL).**

In the matter of :

Him Teknoforge Limited
(CIN : U28910HP1989PLC008963)
Village Billanwali, Labana, Baddi,
Distt. Solan, Himachal Pradesh-173205
..Applicant / Transferor Company

Gujarat Automotive Gears Limited
(CIN : L29130HP1971PLC000904)
Village Billanwali, Baddi,
Distt. Solan, Himachal Pradesh-173205
. Applicant / Transferee Company

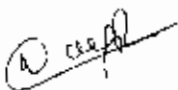
Petition under Sections 230-232 read with section 66 and other applicable provisions of the Companies Act, 2013.

Present : Mr. Anil Kumar Aggarwal, Advocate for Applicants

ORDER

R.P. NAGRATH,J MEMBER (JUDICIAL) (ORAL):

This application has been jointly filed by Him Teknoforge Limited, i.e. Transferor Company and Gujarat Automotive Gears Limited i.e. Transferee Company under Sections 230-232 read with Sections 66 and other applicable provisions of the Companies Act, 2013 supported by the affidavits of the Authorised Representatives of applicant companies for seeking appropriate orders /directions for convening and holding of the meetings of the equity shareholders, secured creditors and unsecured creditors of the transferor and the transferee companies in connection with



the proposed Scheme of Amalgamation (hereinafter referred to as the "Scheme") between Him Teknoforge Limited and Gujarat Automotive Gears Limited.

2. It is further prayed that the requirement of meeting of only the unsecured creditors whose debt as on 31.12.2016 is below ₹ 1,00,000/- may be dispensed with as they constitute less than 1.5% of the outstanding dues in respect of transferor-company whereas it is less than 4% in respect of transferee-company. It is also prayed that joint notices of the meetings may be issued to the Central Government through the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; Registrar of Companies, Himachal Pradesh; Official Liquidator attached to the High Court of Himachal Pradesh; Income Tax authorities; SEBI; Bombay Stock Exchange and such other statutory or sectoral regulator (s)/ authorities which this Tribunal may deem appropriate. The affidavit (Annexure A-22) sworn in by Mr. Rajiv Aggarwal, Director of both the companies and Managing Director of the transferee-company, the Authorised Representative as per the Board resolution, states that the notice to the RBI or Competition Commission of India is not required because the companies are not the non-banking financial companies nor they are covered under the provisions of the Competition Commission of India. Learned counsel for the applicant-companies filed two separate affidavits dated 28.04.2017 of Mr. Rajiv Aggarwal, Authorised Representative of both the companies stating therein that there is no other Sectoral Regulator(s) in respect of both the companies.

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3 It is represented that Rajiv Aggarwal, Director of transferor company and Managing Director of transferee company has been authorized by separate resolutions dated 20.12.2016 (Annexure A-1 and Annexure A-2) of the applicant companies to file the instant application and to do all acts, deeds, matters and things as may be necessary in the matter.

4. The learned counsel represents that the transferor company was incorporated in the name Him Teknoforge Private Limited under the Companies Act, 1956 on 11.01.1989. It was subsequently converted into a public limited company pursuant to Section 31 of the Companies Act, 1956 w.e.f. 26.11.1993 vide order dated 06.12.1993 and its name was changed to Him Teknoforge Limited. The registered office of the Company is situated at Village Billanwali, Labana, Baddi, Distt. Solan, Himachal Pradesh. The certificate of incorporation of transferor-company of the year 1989 along with Memorandum and Articles of Association is at Annexure A-3.

5. The learned counsel further represents that the transferor company is engaged in the business of manufacturing of auto parts and accessories, forgings, castings, stampings, fabrications, foundry items and other related activities. The main objects of the company are set out in Clause III(A) of the Memorandum of Association of the company (Annexure A-3).

6. The authorized share capital of the transferor company is ₹30.00 crores divided into 3 crore equity shares of ₹10/- each. The issued, subscribed and paid-up share capital of the company is ₹28,95,23,070/- divided into 2,89,52,307 equity shares of ₹10/- each. The equity shares of the company are not listed in any stock exchange.

7. The learned counsel represents that the Transferee-Company was incorporated as a public limited company in the name of Gujarat Automotive Gears Limited under the Companies Act, 1956 on 27.03.1971.

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The certificate of incorporation issued by Registrar of Companies, Gujarat along with the Memorandum and Articles of Association is at Annexure A-10. The registered office of the company was initially in Gujarat. It was subsequently shifted to the State of Himachal Pradesh. The registered office of the Company is situated at Village Billanwali, Baddi, Distt. Solan, Himachal Pradesh.

8. The learned counsel further submits that the transferee company is engaged in the business of manufacturing of automotives, industrial gears and other related activities. The main objects of the company are set out in Clause III(A) of the memorandum of association of the company (Annexure A-10).

9. The authorized shared capital of the transferee-company as on 31.03.2016 is ₹1.00 crore divided into (i) 21,25,000 equity shares of ₹2/- each (ii) 7,500 9.5% cumulative redeemable preference shares of Rs.100/- each and (iii) 5,00,000 unclassified shares of ₹10/- each. The issued, subscribed and paid-up share capital of the company is ₹35,00,000/- divided into 17,50,000 equity shares of ₹2/- each. The equity shares of the company are listed on the Bombay Stock Exchange.

10. It is further submitted that the Board of Directors of the transferor company and the transferee company in their meetings held on 20.12.2016 have unanimously approved the 'Scheme'. The copies of the resolutions of the two companies are appended with the application as Annexure A-1 & A-2 respectively. It is represented that no investigation or proceedings under the Companies Act, 1956 or the Companies Act, 2013 are pending against the transferor-company and the transferee-company.

11. Learned counsel for the applicant companies represent that as per the Scheme, the corporate debt restructuring is not contemplated and thus there is no requirement to enter into the exercise as required by Section 230 (2) of the Act. The Learned counsel rather represents the Scheme in fact provides for transfer of all the assets and liabilities of



transferor company to the transferee company. It is further represented that this application is maintainable in view of Rule 3(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for short to be referred to as the 'Rules'). The learned counsel further submits that the registered offices of the transferor and the transferee companies is situated at Village Billanwali, Baddi (HP) and thus this Tribunal has the territorial jurisdiction to entertain and dispose of the instant application.

12. The Learned counsel for the applicant companies has also represented that the accounts of both the applicant companies has been prepared and audited for the financial year ending on 31.03.2016 which are attached with the application as Annexures A-4 and A-11 respectively. Further, the provisional/unaudited Financial Statements of both the companies have been prepared up to 31.12.2016 which are attached with the application as Annexures A-5 and A-12 respectively. These provisional Financial Statements have been authenticated by the Chartered Accountant.

13. The Learned counsel further submits that the share entitlement ratio and the share exchange ratio under the scheme have been determined in accordance with the valuation report dated 20.12.2016 (Annexure A-19) issued by M/s. R.J. Rath & Co., Chartered Accountants as per the settled principles of valuation. He further submits that fairness opinion report dated 20.12.2016 (Annexure A-20) on the share allotment ratio has been issued by M/s Pantomath Capital Advisors Pvt. Ltd., SEBI registered category-I merchant bankers.

14. It is represented that the rationale can be described as under:-

- i) *To enable both the companies to consolidate their business operations and provide significant impetus to their growth since both the companies are engaged in the similar areas of business enabling the amalgamated entity to reach at higher orbit;*

- ii) *To result in enhancing the scale of operations and reduction in and / or optimization in overheads costs, administrative, managerial and other expenditure, operational rationalisation, organisational efficiency, and optimal utilization of various resources and also benefitting from economies of scale;*
- iii) *To result in improved shareholder value benefitting all shareholders investors of both the companies as the combined amalgamated company will have improved financial structure, larger cash flows and stronger consolidated revenue and profitability;*
- iv) *To consolidate the managerial expertise of the companies' involved thereby giving additional strength to the operations and management of the amalgamated company resulting into expansion of the existing business; and*
- v) *Simplification of group structures.*

15. The Learned counsel submits that the transferor company has 51 shareholders as on 31.03.2017 (Annexure A-6) and it has 7 secured creditors and 596 unsecured creditors as on 31.12.2016 as per Annexure A-7 & Annexure A-8 respectively. He seeks appropriate orders/directions for convening and holding of the meetings of shareholders, secured creditors and unsecured creditors of the transferor company. He submits that two secured creditors namely State Bank of Patiala and State Bank of Bikaner & Jaipur have merged with the State Bank of India w.e.f. 01.04.2017 and therefore the authorized representative of State Bank of India will represent them in the meeting.

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16. As regards the unsecured creditors, he further submits that there are 596 unsecured creditors with total outstanding of ₹81,31,03,922/-, out of which 186 unsecured creditors are those whose outstanding is ₹1.00 lac or more and their total outstanding is ₹80,16,42,243/- which constitutes 98.59% of the total outstanding of unsecured creditors. The remaining 410 unsecured creditors are those whose value of outstanding is less than ₹1.00 lac and their total outstanding is ₹1,14,61,679/- which constitutes only 1.41% of the total outstanding of unsecured creditors. Learned counsel prays that meeting of only those unsecured creditors be convened whose value of outstanding as on 31.12.2016 is ₹1.00 lac or more. The learned counsel refers to Rule 5 (e) of the Rules to contend that this Tribunal is empowered to determine the value of creditors whose meeting has to be held.

17. I am, however, of the view that Transferor-Company is merging into Transferee-Company and therefore the interest of all the creditors of Transferor-Company have to be safeguarded irrespective of the amount of debt and that seems to be the intention of Legislature under the provision of Section 230 (3) of the Act and sub-rule (2) of Rule 6 and the Rules. Exemption to some extent may be considered in case of small value of creditors of Transferee-Company. So the above contention cannot be sustained.

18. The Learned counsel for Applicant further represents that the transferee company is a listed company and its equity shares are listed on the Bombay Stock Exchange. It has 3096 shareholders as per list Annexure A-13 as on 31.03.2017 and has 3 secured creditors (Annexure A-14) and 117 unsecured creditors (Annexure A-15) as on 31.12.2016.

19. Learned counsel seeks appropriate orders/directions for convening and holding of the meetings of shareholders, secured creditors and unsecured creditors of the transferee company. However, as regards the unsecured creditors, he further submits that there are 117 unsecured creditors with total outstanding of ₹4,65,85,264/-, out of which 42 unsecured creditors are those whose outstanding is ₹1.00 lac or more

(Signature)

and their total outstanding is ₹.4,48,19,970/- which constitutes 96.21% of the total outstanding of unsecured creditors. The remaining 75 unsecured creditors are those whose value of outstanding is less than ₹1.00 lac and their total outstanding is ₹17,65,294/- which constitutes only 3.79% of the total outstanding of unsecured creditors. He prays that meeting of only those unsecured creditors be convened whose value of outstanding as on 31.12.2016 is ₹1.00 lac or more. I find the amount of ₹1.00 lac is on the higher side for the purpose of determining the value of those unsecured creditors whose meeting is to be held. I, however, agree that it will be sufficient to convene and hold the meeting of only those unsecured creditors whose outstanding is ₹50,000/- or above as they represent sufficiently large proportion of the outstanding amount of unsecured creditors of the transferee-company and I would allow this submission.

20. Keeping in view the aforesaid discussions, following directions for calling/convening and holding meetings of equity shareholders, secured creditors and unsecured creditors of the transferor company and the transferee company at Hotel Sip-n-Dine, SCO 16-A, Sector 7-C, Madhya Marg, Chandigarh as suggested by learned counsel for the applicants for which suitable arrangements shall be made for sufficient space at the responsibility of the applicant companies.

21. The notice of the following meetings shall be issued by the transferor or transferee companies as applicable :-

i) In relation to the transferor company:-

- a) Meeting of shareholders of transferor company be convened at 2.00 p.m. on 22.06.2017 at Hotel Sip-n-Dine, SCO 16-A, Sector 7-C, Madhya Marg, Chandigarh subject to the notice of the meeting being issued well before the stipulated period.

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b) Meeting of secured creditors of transferor company as on 28.02.2017 be convened at 3.30 p.m. on 22.06.2017 at Hotel Sip-n-Dine, SCO 16-A, Sector 7-C, Madhya Marg, Chandigarh subject to the notice of the meeting being issued well before the stipulated period; and

c) Meeting of the unsecured creditors as on 28.02.2017 be convened at 4.30 p.m. on 22.06.2017 at Hotel Sip-n-Dine, SCO 16-A, Sector 7-C, Madhya Marg, Chandigarh subject to the notice of the meeting being issued well before the stipulated period.

ii) In relation to the transferee company:-

a) Meeting of shareholders of transferee company as on 28.04.2017 be convened at 2.00 p.m. on 23.06.2017 at Hotel Sip-n-Dine, SCO 16-A, Sector 7-C, Madhya Marg, Chandigarh subject to the notice of the meeting being issued well before the stipulated period.

b) Meeting of secured creditors of transferee company as on 28.02.2017 be convened at 3.30 p.m. on 23.06.2017 at Hotel Sip-n-Dine, SCO 16-A, Sector 7-C, Madhya Marg, Chandigarh subject to the notice of the meeting being issued well before the stipulated period; and

c) Meeting of unsecured creditors, whose outstanding balance as on 28.02.2017 is ₹50,000/- or above, of transferee company be convened at 4.30 p.m. on 23.06.2017 at Hotel Sip-n-Dine, SCO 16-A, Sector 7-C, Madhya Marg, Chandigarh subject to the notice of the meeting being issued well before the stipulated period.

iii) The quorum of the meeting of shareholders of transferor company shall be ten in number or 25% in value in terms of the total issued

equity share capital of the company whichever is higher. It is also directed that if the required quorum is not present at the commencement of the meeting, then the meeting would be adjourned for thirty minutes and thereafter the persons present in the meeting, either in person or through proxy, would be treated as proper quorum.

- iv) The quorum of the meeting of secured creditors of transferor company shall be 3 in number or 25% in value in terms of the total secured debt of the company, whichever is higher. It is also directed that if the required quorum is not present at the commencement of the meeting, then the meeting would be adjourned for thirty minutes and thereafter the secured creditors present in the meeting, either in person or through proxy, would be treated as proper quorum. The State Bank of India is allowed to represent for the secured debts of State Bank of Patiala and State Bank of Bikaner & Jaipur at the meeting since both the latter banks have merged into State Bank of India.
- v) The quorum of the meeting of unsecured creditors of transferor company shall be 25 in number or 25% in value in terms of the total unsecured debt of the company, whichever is higher. It is also directed that if the required quorum is not present at the commencement of the meeting, then the meeting would be adjourned for thirty minutes and thereafter the unsecured creditors present in the meeting, either in person or through proxy, would be treated as proper quorum.
- vi) The quorum of the meeting of shareholders of transferee company shall be 25 in number or 25% in value in terms of the total issued equity share capital of the company whichever is higher. It is also directed that if the required quorum is not present at the commencement of the meeting, then the meeting would be

adjourned for thirty minutes and thereafter the persons present in the meeting, either in person or through proxy, would be treated as proper quorum.

- vii) The quorum of the meeting of secured creditors of transferee company shall be 2 in number or 25% in value in terms of the total secured debt of the company, whichever is higher. It is also directed that if the required quorum is not present at the commencement of the meeting, then the meeting would be adjourned for thirty minutes and thereafter the secured creditors present in the meeting, either in person or through proxy, would be treated as proper quorum.
- viii) The quorum of the meeting of unsecured creditors of transferee company shall be 15 in number or 25% in value in terms of the total unsecured debt of the company, whichever is higher. It is also directed that if the required quorum is not present at the commencement of the meeting, then the meeting would be adjourned for thirty minutes and thereafter the unsecured creditors present in the meeting, either in person or through proxy, would be treated as proper quorum.

22. The applicant companies are directed to prepare list of all secured creditors as on 28.02.2017 and unsecured creditors of the transferor-company as on 28.02.2017 and unsecured creditors of the transferee-company with outstanding value of ₹50,000/- or more as on 28.02.2017 and of all the shareholders as on 28.04.2017 for issuing notices to them. Justice (Retd.) S.K.Jain (Mobile No. 9815080260), Address: #1278, Sector 18, Chandigarh is appointed as the Chairperson for all the meetings of the shareholders, secured and unsecured creditors of both the applicant companies to be called under this order and the relevant law and shall be paid a consolidated fee of ₹ 1 00 lac (Rupees one lac only) for his services as the Chairperson.

Mr. Nitin Jain, Advocate (Mobile No. 9815227788), Address: 52, Sector 8-A, Chandigarh is appointed Alternate Chairperson for all the meetings of the shareholders, secured and unsecured creditors of both the applicant companies and shall be paid a consolidated fee of ₹ 50,000/- for his services as the Alternate Chairperson. The Scrutinizer for all the meetings shall be Mr. Kanwaljit Singh, Company Secretary, CP No. 5870 (Mobile No. 9915343212), Address: # 3051, Sector 71, Mohali-160071 who shall be paid a consolidated fee of ₹ 50,000/- in lump sum for rendering his services.

23. It is further directed that individual notices of the meetings of the shareholders of the transferor company and secured and unsecured creditors of the transferor and transferee companies shall be sent by the respective applicant companies in Form No. CAA.2 through registered post or speed post or through courier services or e-mail, 30 days in advance before the scheduled date of the meeting and it is further directed that as per the relevant rules applicable, the notices shall indicate the day, date, the place and the time of the meeting as aforesaid. It is further directed that individual notices of the meetings of the shareholders of the transferee company, which is a listed company, shall be sent by speed post or registered post or through courier services and also through registered e-mail if available with the company to such shareholders who hold 1000 or more equity shares in the transferee company. Notice to the shareholders who hold less than 1000 equity shares shall be sent by speed post or registered post or through courier services or through their registered e-mail. A copy of scheme of amalgamation, copy of explanatory statement required to be sent under the Companies Act, 2013 and the prescribed form of proxy and any other documents as may be prescribed under the Act shall be sent along with the notice.

24. Voting by proxies is permitted and will be considered for the purpose of computing the quorum of the aforesaid meetings, provided that the proxy is in prescribed form and duly signed by the person entitled to

attend and vote at the said meeting, or by his Authorised Representative, is filed with the registered office of both the companies at least 48 hours of the meetings. The Chairperson or Alternative Chairperson appointed in the aforesaid meetings shall verify that the proxy registers are properly maintained.

25. That the applicant companies shall jointly publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date and the place and time of the meetings as aforesaid, to be published in the "Financial Express" (English) and "Jan Satta" (Hindi) stating that the copies of scheme of amalgamation, the explanatory statement required to be furnished pursuant to section 230-232 of the Companies Act, 2013 and the form of the proxy shall be provided free of charge at the registered office of the applicant companies. The applicant companies shall also publish the notice on their respective websites. In the case of transferee company, the notice shall also be published on the websites of SEBI and the Bombay Stock Exchange where the shares of the company are listed.

26. The Applicant-companies shall individually and in compliance of Section 230 (5) of the Act and Rule 8 of the Rules send notices in Form No. CAA.3 along with a copy of the 'Scheme', the explanatory statement including disclosures mentioned in Rule 6 to the Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs; the Registrar of Companies, Himachal Pradesh; the Official Liquidator attached to the Hon'ble High Court of Himachal Pradesh; and the concerned Income Tax Authorities. The transferee company shall also send notices to the Securities and Exchange Board of India and to the Bombay Stock Exchange, where the shares of the transferee company are listed. It shall be stated in these notices that the representations, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representations shall be simultaneously sent to the concerned companies,



failing which it shall be presumed that they have no objection to the proposed scheme.

27. It shall be the responsibility of the respective companies to ensure that the notices are sent under the signatures and supervision of the authorized representative of each company. The authorized representative (s) of the applicant companies shall furnish affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

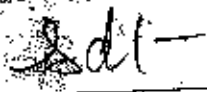
28. Voting for the meetings of shareholders of the transferor company and of the secured creditors and unsecured creditors of the transferor and transferee companies shall be allowed on the proposed scheme by voting in person or by proxy, through ballot. Voting for the meeting of shareholders of the transferee company, its shares being listed on Bombay Stock Exchange, shall be allowed on the proposed scheme through electronic means or through postal ballot or by voting in person or through proxy at the meeting. The shareholders who have cast their votes through electronic means or postal ballot prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again.

29. The Chairperson shall be responsible to report the results of the meetings to the Tribunal in Form no. CAA.4 as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 7 days of the conclusion of the meetings. He would be fully assisted by the authorized representative of the companies and the Scrutinizer, who will assist the Hon'ble Chairperson and Alternate Chairperson in preparing and finalizing the reports.

30. The application stands allowed in the aforesaid terms. It is directed that the learned counsel/ authorized representative of the applicant companies shall deliver the copy of this order to the



Chairperson, Alternate Chairperson and Scrutinizer immediately. A copy of this order be supplied to the counsel for the applicant companies forthwith.


(Justice R.P. Nagrath)
Member (Judicial)

May 05, 2017
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