

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”**

**CA(CAA)No.17/Chd/Hry/2017**

**Under Sections 230 to 232  
of the Companies Act, 2013**

**In the matter of:**

**Talbro's Motors Pvt.Ltd.**

Having its registered office at  
14/1, Mathura Road,  
P.O.Amar Nagar,  
Faridabad-121003

...Applicant/Transferor Company

And

**Talbro's International Pvt.Ltd.**

having its registered office at  
400, Udyog Vihar Phase-III,  
Gurgaon (Gurugram)  
Haryana -122016.

...Applicant/Transferee Company

**Order delivered on: 15.11.2017**

**Coram: Hon'ble Mr.Justice R.P.Nagrath, Member (Judicial)**

For the Applicant

Companies

:

- 1.Mr. Vikas Mohan Gupta, Advocate
2. Mr.Deepak Diwan, Advocate

**ORDER (Oral)**

This is the joint application filed by M/s Talbro's Motors Private Limited (Transferor Company) and M/s Talbro's International Private Limited (Transferee Company), both companies together referred hereinafter as the 'Applicant Companies', in respect of Scheme of Amalgamation (for short, the 'Scheme') of Transferor company with the Transferee Company under

Sections 230-232 of the Companies Act, 2013 (for brevity, the 'Act') read with Rule 3 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, the 'Rules') and supported by affidavits of the Authorised Representative of the Applicant Companies for seeking orders/directions for dispensing with all the meetings. The registered office of Transferor Company is situated at Faridabad and that of Transferee Company at Gurgaon (Gurugram) and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

2. The Board of Directors of the Transferor Company passed a resolution dated 06.07.2017 (Annexure A-1) approving the Scheme and authorising Mr.Sajive Bhatia and Mr.Ramesh Kumar Munjal, Directors of the Company severally to take necessary steps in filing the application and to do all necessary acts in the progress of the matter. Vide the same resolution, the company authorised 5 Advocates severally to act on behalf of the company before National Company Law Tribunal and two of those Advocates are Mr. Vikas Mohan Gupta and Mr.Deepak Diwan representing the applicant companies before this Tribunal. Similarly, vide resolution of Board of Directors of Transferee Company dated 06.07.2017 (Annexure A-11) the company authorised Mr.Navin Juneja and Mr.Sajive Bhatia, Directors of the company severally and the aforesaid Advocates. The application is supported by the affidavits filed in respect of both these companies by Mr.Sajive Bhatia, one of the authorised signatories of these companies.

3. Annexure A-10 at page 126 of the paper book is the list of the Directors in support of the contention that Mr.Sajive Bhatia and Mr.Ramesh

Kumar Munjal are the only directors of the company and page 373 (Annexure A-21) is the list of Directors of the Transferee Company showing that there are 5 Directors of the company including Mr. Navin Juneja, and Mr. Sajive Bhatia.

4. The Transferor Company was incorporated on 21.05.1986 with the Registrar of Companies, NCT of Delhi and Haryana and has changed its address from Delhi to Faridabad w.e.f. 22.06.2017. Certificate of Incorporation of the company is at Annexure A-2 issue by the ROC, NCT of Delhi and Haryana and certificate in respect of change of address is at page 42 of the paper book. With this certificate, the Memorandum and Articles of Association of the company have also been annexed.

5. As per Memorandum and Articles of Association, the main objects of the Transferor Company are to carry on business of manufactures of dealers in hirers, repairs, cleaners, stores and warehouses of automobiles, motorcars, lorries and vans, motor cycles, cycles-cars, motors, scooters, carriages, amphibious vehicles and vehicles suitable for propulsion on land, sea or in the air or in any combination thereof and vehicles of all description (all hereinafter comprised in terms of motor and other things), whether propelled or assisted by means of petrol, spirit, steam, gas, electrical, animal or other power and of engines, chassis, bodies and other components, spare and accessories and to carry on business of garage keepers, motor parts dealers and suppliers of and dealers in petrol, oils, greases, lubricants, gas and to supply motive/electric and other power of motors and other things connected therewith etc.

6. The Transferor Company has Authorised Share Capital of ₹1.00 crore comprising of 10 lakhs equity shares of ₹10/- each and the Issued, Subscribed and Paid-up Share Capital of ₹59,76,640/- comprising of 5,97,664 equity shares of ₹10/- each as on 31.03.2016. It is also stated that there has been no change in the Authorised, Issued, Subscribed and Paid-up share capital of the company thereafter till the filing of this application. The audited balance sheet of the company as on 31.03.2016 is at Annexure A-3. Supplementary accounting statements for the period ending 31.03.2017 is at Annexure A-4. It is undertaken that the audited financial statements for the year ending 31.03.2017 would be attached after the first motion petition is disposed of. This undertaking is in respect of both the applicant companies and the same has been taken on record.

7. It is further stated that the Transferor Company is the subsidiary of Transferee Company and has 7 equity shareholders as per the list at Annexure A-5 at page 96 of the paper book. Out of the total number of 5,97,664 equity shares of the company, the Transferee Company holds 5,48,716 shares constituting 95.81% of the shareholding.

8. The Transferee Company was incorporated on 22.02.1980 in the name of Talbros Steerlinks Limited. The name was changed to QH Talbors Limited on 08.08.1985 and it was further changed to Talbros International Limited on 15.02.2016 under the Companies Act, 2013 with the Registrar of Companies, NCT of Delhi and Haryana and was further converted as a Private Limited company and renamed as Talbros

International Private Limited on 12.08.2016, having its Registered Office at 400, Udyog Vihar Phase-III, Gurgaon, Haryana -122016.

9. The main objects of the Transferee Company are to carry on the business of manufacturers, importers, exporters and otherwise traders, dealers either in wholesale or retail, of accessories and spare parts for all kinds of vehicles and automobiles and to carry on the business of real estate including the sale, purchase or, advertise for sale or purchase, assist in selling or purchasing and find or introduce purchaser or vendors of and to manage land building and other property whether belonging to the company or not, and to let out any portion of any premises for residential, trade or business purposes, or other private or public purposes, and to collect rents, and income there from etc.

10. The Authorised Share Capital of the Transferee Company as on 31.03.2016 is ₹11,05,00,000/- divided into 1,10,50,000 equity shares of ₹10/- each. The issued, paid-up and subscribed capital of the Transferee Company is ₹6,53,77,110/- divided into 65,37,711 equity shares of ₹10/- each.

11. It is stated that there is no re-structuring exercise as contemplated under Section 230(2) of the Act in respect of both these companies.

12. Annexure A-13 is the audited balance sheet of the Transferee Company upto 31.03.2016 and supplementary unaudited accounting statements for the year ending 31.03.2017 is at Annexure A-14. It is further submitted that subsequent to that there has been no substantial change in

the financial position of the Transferee Company. The list of the shareholders of Transferee Company is at Annexure A-15 and as per the list, major shareholding is held by Mr.Naresh Talwar and Mr.Umesh Talwar who are holding 35.75% and 24.69% respectively of the shareholding. The other major shareholder of the company is M/s Talbros Automotive Components Ltd. holding 18.85% of the shareholding which is also a group company of the applicants.

13. This joint application has been filed with the prayers inter alia :-
  - i. Passing an order dispensing with the requirement of convening the meetings of the equity shareholders /members of Applicant No.1/ Transferor Company and Applicant No.2/Transferee Company;
  - ii. Passing an order dispensing with the requirement of convening the meetings of the Secured and Unsecured Creditors of Applicant No.1/Transferor Company and Applicant No.2/Transferee Company;
  - iii. Passing such other orders or directions as this Tribunal may deem fit in the facts and circumstances of the present case.
14. I have heard learned counsel for the petitioners and perused the records.
15. Learned counsel for the petitioners submits that out of 7 shareholders of Transferor Company three have not furnished their consent affidavits. They are Smt.Nirmal Diwan holding 10 shares with 0.01% of the shareholding; M/s Krinshaw Holding Ltd. having 470 shares with 0.07% of

the shareholding; and M/s Pentlow Investment & Holding Ltd. with 469 shares having 0.07% of the shareholding. Rest of the shareholders have furnished their no objection by way of affidavits to the proposed Scheme and to the prayer for dispensation of holding meeting of the equity shareholders.

16. In respect of Talbros International Pvt. Ltd. the Transferee Company has 91.81% shares of the Transferor Company and the affidavit is furnished by Mr.Sajive Bhatia, Director of the said company. The resolution dated 06.7.2017 of the Board of Directors is at page 103 of the paper book. Transferee Company has resolved not to have any objection to the dispensing with the meeting of the shareholders or to the approval of the Scheme.

17. There is another affidavit of the authorised representative of the Transferor Company to the effect that this company does not have any secured creditor. The Chartered Accountant of the company has also issued a certificate in this regard (Annexure A-7).

18. There are 2 unsecured creditors of the Transferor Company namely, Beacon Sales Private Limited and M/s Gyan Enterprises Private Limited (page 116). There is a Board resolution of these companies at Annexure A-9 along with affidavits of the authorised signatories of these companies having no objection to the proposed Scheme and to the prayer for dispensing with the service of notices to them. M/s Beacon Sales Private Limited has authorised any of its Directors to furnish no objection on behalf of the company and the affidavit has been submitted by Mr.Sajive Bhatia.

19. Similarly, vide Board resolution dated 26.7.2017 in respect of M/s Gyan Enterprises Private Limited it has authorised any of its Directors to sign no objection certificate on behalf of the company and dispensing with the requirement of the meeting of the unsecured creditors of the company. There is the affidavit of Asha Burman, Director of M/s Gyan Enterprises furnishing no objection /consent to the Scheme.

20. When the matter was listed on 03.11.2017, it was directed that the petitioner companies shall file list of directors of the corporate unsecured creditors of Transferor Company and to remove such defects, if any in respect of other creditors of the Transferee Company. The petitioners filed the compliance affidavit dated 11.11.2017 vide Diary No.2586. Along with this affidavit, list of directors of both unsecured creditors of Transferor and Transferee Companies have been attached as at Annexure B and C respectively. Mr. Sajive Bhatia is one of the directors of M/s Beacon Sales Private Limited and Ms. Asha Burman is one of the directors of M/s Gyan Enterprises Private Limited who have furnished their respective consents and no objection to the Scheme.

21. The list of shareholders of Transferee Company is at Annexure A-15 (Page 219). The list of shareholders Annexure-M has also been attached with another affidavit dated 11.11.2017 of Mr.Sajive Bhatia entered vide diary No.2585 dated 13.11.17. Learned counsel for petitioners submits that out of the list Sartaj Sahni, holding 142858 shares constituting 2.03% of the shareholding and Shripati Ram Maurya, holding 26 shares only out of the total 70,38,211 number of shares have not given their consents, whereas



rest of the shareholders have given their consent by way of affidavits. Learned counsel for petitioners also represents that in respect of the shareholders who are minors namely, Virat Talwar, Jai Vir Talwar, Ananya Talwar etc. the affidavits of no objection have been given by their respective guardians. It is submitted that shareholding of all these minors constitutes virtually 0% of the total shareholding as they are only holding from 12 to 15 shares each.

22. The corporate shareholders of Transferee Company are Talbros Automotive Components Ltd., Talbros Motors Pvt.Ltd. out of whom, Talbros Motors Pvt.Ltd. is the Transferor Company and has already adopted the Scheme. However, on behalf of the Transferor Company, there is an affidavit of Mr.Sajive Bhatia, authorised representative of the company at page 270 of the paper book giving consent/no objection to the Scheme and authority letter and Board resolution dated 06.7.2017 of the company in this regard is at page 268 of the paper book.

23. M/s Talbros Automotive Components Ltd. vide Board resolution dated 23.08.2017 has resolved to give consent/no objection to the Scheme and authorised any of the directors of the company to sign the No Objection Certificate. In this regard, there is the affidavit of Mr.Navin Juneja, authorised signatory who has furnished affidavit at page 266 of the paper book. List of directors of Talbros Automotive Components Ltd. is at Annexure-L of the additional affidavit dated 11.11.2017 filed vide diary No.2585 and that the name of Mr. Navin Juneja appears in the list as one of the director/authorised signatory.

24. The list of secured creditors of Transferee Company is at page 281 which is part of Annexure A-17 (colly), the certificate of Chartered Accountant of the company, stating that there are the only 3 secured creditors of the Transferee Company.

25. Learned counsel for petitioners referred to Annexure A-18 (colly) 'Management Delegation by Managing Director & CEO' of Yes Bank, one of the secured creditors, on the basis of resolution of the Board of Directors of the Bank in the meeting held on 22.10.2013. Vide which power has been given to MD and CEO of Yes Bank to further sub-delegate the power to officials of the Bank. Accordingly, Mr.Neeraj Adhikari, Group Executive Vice President and Mr.Amandeep Thakur, Vice President have been severally authorised to give consent to the Scheme of Amalgamation between the petitioner companies. There is the affidavit of Mr.Amandeep Thakur at page 284 of the paper book giving his no objection and waiver of the meeting of the secured creditors.

26. Learned counsel for petitioners also referred to Power of Attorney executed by Senior Executive Vice President of HDFC Bank in favour of Mr.Gaurav Sarda, presently working as Deputy Vice-President. There is the affidavit of Mr.Gaurav Sarda at page 296 of the paper book giving no objection from HDFC Bank to the sanction of the proposed Scheme.

27. The other secured creditor is Bajaj Finance Ltd. and for that the learned counsel for petitioners referred to the resolution of the company dated 27.10.2016 at page 298 giving authority to various officers and one of

the persons authorised is Mr. Rajat Kumar Singh, Zonal Sales Manager. By this resolution, Board of Directors of the company has authorised various officials including Mr. Rajat Kumar Singh to execute loan documents and other related documents on behalf of the company in respect of the commercial lending business. The petitioners have filed affidavit of Mr. Rajat Kumar Singh at page 299 giving no objection to the proposed Scheme of Amalgamation. The authorised representative of the Transferee Company has furnished the affidavit dated 07.09.2017 (page 302) to the effect that these affidavits have been received from the secured creditors.

28. So far as the unsecured creditors of Transferee Company are concerned, Annexure A-19 (page 303) is the certificate of Chartered Accountant stating that there are 19 unsecured creditors. Learned counsel stated that out of these 19 unsecured creditors, 18 have given affidavits of no objection and one Mr. S.N.Dhawan & Co.LLP has not given the consent. There is an amount of unsecured debt to this company to the tune of ₹1,11,000/- only as on 07.8.2017 out of the total debt of ₹9,86,38,810/-. Learned counsel further represented that all the other unsecured creditors have given their consent/no objection with the affidavits of respective authorised representatives and the resolution of the Board of Directors of each of the corporate unsecured creditors at pages from 306 to 372 Annexure A-20 (colly). Learned counsel further represents that along with affidavit dated 11.11.2017 the petitioner companies have attached list of directors of all the unsecured creditors of the Transferee Company in order

to contend that the affidavits have been furnished by the respective authorised representatives.

29. The rationale behind the Scheme is described as under :-

- a. The proposed merger/amalgamation is to provide comprehensive solutions at economical price to the customers across the manufacturing sectors, while sustaining a rewarding work environment and managing businesses more efficiently and effectively and for better coordination of the business activities;
- b. The proposed merger/amalgamation is in line with current global trends to achieve size, scale, integration and greater financial strength and flexibility. The consolidated entity is likely to achieve higher long term financial returns that could be achieved individually by the Transferee Company and to easily avail the finances required for their expansion and projects and to better negotiate the lending terms and conditions with the banks, financial institutions, etc;
- c. To derive the benefit of synergies arising out of consolidation of business, such as, enhancement of net worth of the combined business;
- d. Improved alignment of debt and cash flows and enhancement in earnings and cash flows visibility;
- e. Integration of the manufacturing and other facilities of the Transferor Company and the Transferee Company will

contribute to the enhanced competitiveness for the consolidated entity;

- f. The interest of the existing employees of the Transferor Company shall be protected with continuity of employment, better utilisation of manpower and an opportunity for enhancement of technical knowledge and expertise being provided;
- g. The proposed amalgamation will enable reduction in managerial overlaps, which are necessarily involved in running multiple entities. The managerial expertise would be combined giving the additional thrust to the Transferee Company.
- h. The plant and machinery and other assets of the Transferor Company would augment the asset base and thereby result in the optimal utilisation of the resources and greater revenue inflow;
- i. The Transferee Company will offer a strong financial structure to all creditors including the creditors of the Transferor Company.

30. As per the Scheme (Annexure A-22 at page 374) the Appointed Date has been stated as 01.04.2017. The Scheme further provides that all the assets and properties of the Transferor Company whether movable or immovable, tangible, real, corporeal or incorporeal, present, future or contingent wherever situated, whether current or fixed, movable or immovable, tangible or intangible, real or personal, corporeal or incorporeal,

present, future or contingent, as on the Appointed Date and all debts, liabilities including contingent liabilities, sundry creditors, bank liabilities in whatsoever form, duties, undertakings, charges and obligations, etc. of the Transferor Company as on the Appointed Date shall be transferred to the Transferee Company.

31. The Scheme also takes care of the employees of the Transferor Company and Clause 3.14(a) of the Scheme says as under :-

“(a) TIPL undertake to engage, on and from the Effective Date, all the employees of the TMPL on the same terms and conditions on which they are engaged as on the Effective Date by the TMPL without any interruption of service as a result of the transfer. TIPL agrees that the services of all such employees with the TMPL up to the Effective Date shall be taken into account for the purposes of all benefits to which the said employees may be eligible, including for the purpose of payment of any bonus, retrenchment compensation, gratuity and other terminal /retirement benefits.

(b) The accumulated balances, if any, standing to the credit of the employees and officers of the TMPL in the existing Provident Fund, Gratuity Fund and Superannuation Fund, of which they are members, will be transferred to such Provident Fund, Gratuity Fund and Superannuation Fund nominated by TIPL and /or such new Funds to be established and caused to be recognised by the concerned authorities by TIPL. Pending the

transfer as aforesaid, the Provident Fund, Gratuity Fund and Superannuation Fund dues to the said employees and officers of the TMPL would be continued to be deposited in the existing Provident, Gratuity and Superannuation Funds respectively. This shall be binding on the Managers of such funds, if any.

32. Learned counsel further represents that valuation report of shares has also been annexed which is at Annexure A-22. On the basis of aforesaid reports, it is revealed that the shareholders of Transferor Company shall be issued and allotted shares in the Transferee Company in the following manner:

“3 equity shares of TIPL of ₹10/- each fully paid up for every 10 equity shares of TMPL of ₹10/- each fully paid up.”

33. In view of the above, following directions are issued with respect to calling, convening and holding of the meeting of shareholders, secured and unsecured creditors or dispensing with the same as well as issue of notice including by way of newspaper publications in relation to the applicant companies –

A) In relation to Transferor Company:

- i. Meeting of equity shareholders is dispensed with as there are 7 shareholders and the consent of 4 shareholders who constitute 99.85% shareholding, on affidavits have been obtained.
- ii. Meeting of the secured creditors is also dispensed with as there are no secured creditors.

- iii. Meeting of unsecured creditors is also dispensed with as all the unsecured creditors have given their consents by way of affidavit and they are placed on record.

B) In relation to Transferee Company:

- i. Meeting of equity shareholders is dispensed with as there are 21 shareholders and 19 of whom have given their consent by way of affidavits which are placed on record.
- ii. Meeting of the secured creditors is also dispensed with as all of them have given their consent by way of affidavit.
- iii. Meeting of unsecured creditors is dispensed with as 17 out of 19 unsecured creditors have given their consent by way of affidavits which are placed on record.

34. It is stated in the affidavits dated 11.11.2017 furnished by Mr.Sajive Bhatia in respect of both the companies that the companies have not accepted any deposits nor issued debentures. It is also stated in the affidavit dated 16.09.2017 of the authorised representative of both the companies that these companies are not listed companies and are not NBFCs. Further that there is no other Sectoral Regulator of the companies. The Accounting Statements as on 31.08.2017 have also been annexed. There are the certificates of Auditors of both the companies at Annexure-24. At page 398 is the certificate from the Auditor of Transferor Company to the effect that on examination of the Scheme it conforms with the Accounting Standards prescribed under Section 133 of the Act. Similar certificate in respect of Transferee Company is at page 399 of the paper book.



35. It has also been stated that no investigation or proceedings under the Companies Act, 2013 or the Companies Act, 1956 are pending against both these companies.

36. In view of the above, the application stands allowed. It is, however, observed that while moving the second motion petition, the applicant companies shall make a specific prayer for sending the notices of hearing to the statutory authorities including the Income Tax Department and other Regulator(s), if any.

Sd/-  
(Justice R.P.Nagrath)  
Member (Judicial)

November 15, 2017  
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