

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

**CP NO.103/2016
RT CP(CAA) NO.110/Chd/Hry/2017**

**Under Sections 391 to 394
of the Companies Act, 1956**

In the matter:

GMAX Auto Limited,
having its registered office at
Plot No.GP-9, HSIDC Industrial Area,
Sector-18, Gurgaon,
Haryana – 122 0015

**...TRANSFEROR COMPANY/
PETITIONER NO.I**

AND

A.G. Industries Private Limited,
having its registered office at
Plot No.GP-9, HSIDC Area,
Sector-18, Gurgaon,
Haryana-122 015

**...TRANSFeree COMPANY/
PETITIONER NO.II**

Order delivered on: 23.10.2017

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

For the petitioner:	1. Mr. Atul V. Sood, Advocate
	2. Mr. K.P.S. Kohli, Advocate
For Official Liquidator and Regional Director:	Mr. Deepankur Sharma, Advocate.

JUDGEMENT (Oral)

This is a joint Second Motion petition filed by the Petitioner-Companies for approval of the ‘Scheme’ of amalgamation (for brevity, the ‘Scheme’) of petitioner No.1 Company, GMAX Auto Limited, the Transferor-Company with Transferee-Company, i.e., A.G. Industries Pvt. Ltd. The

Transferor Company is a wholly owned subsidiary of the Transferee Company.

2. The Petitioner-Companies filed First Motion petition No.36 of 2016 with the Hon'ble Punjab and Haryana High Court with a prayer for dispensing with the meeting of shareholders of both the Petitioner Companies and for directions to convene the meetings of the secured and unsecured creditors of both the Petitioner Companies. Accordingly, the Hon'ble High Court of Punjab & Haryana vide order dated 23.02.2016 read with order dated 06.04.2016, in view of the consent given by all 7 equity shareholders of the Transferor Company and the consent given by all 3 equity shareholders of the Transferee Company, was pleased to dispense with convening the meeting of equity shareholders of both the Petitioner Companies. Further, vide the said orders, the Hon'ble High Court issued directions for convening the meetings of secured and unsecured creditors of both the Petitioner Companies on 07.05.2016.

3. The meetings of secured and unsecured creditors of both the Petitioner Companies were accordingly held on 07.05.2016 at Plot No.GP-9, HSIDC Area, Sector-18, Gurgaon (Haryana), wherein the respective secured and unsecured creditors of the Transferor and Transferee Companies approved the scheme with 100% majority, present and voting.

4. Thereafter, this Second Motion Petition was filed under Sections 391 to 394 of the Companies Act, 1956 corresponding to Sections 230 and 232 of the Companies Act, 2013 for sanction of the 'Scheme'.

5. When the matter was listed on 31.05.2016 in the Hon'ble Punjab and Haryana High Court, notice was directed to be published in 'Indian Express'

(English) and 'Jansatta' (Hindi) both Delhi/NCR Editions and in the official Gazette of Government of Haryana. It was also ordered to be uploaded on the official website of the Official Liquidator. The affidavit of compliance dated 27.10.2016 was filed by the learned counsel for the petitioner-companies in the Registry of Hon'ble High Court.

6. It was submitted by the learned counsel for the petitioner-companies that the notice was published in the Indian Express and Jansatta (Hindi) dated 11.08.2017 and notice of petition was also published in the official Gazette of Government of Haryana dated 23.08.2016 (Annexures A-1, A-2 and A-3 respectively). Notice of petition was also uploaded on the website of the Official Liquidator on 26.10.2016. The compliance affidavit dated 27.10.2016 of the counsel for the petitioner-companies was filed along with newspaper clippings and gazette notification and the letter dated 15.07.2016 addressed to the Official Liquidator for uploading on the official website as Annexure A-4.

7. Notice of hearing was also directed to be sent to the Regional Director, Ministry of Corporate Affairs, New Delhi and the Official Liquidator. Report by way of Affidavit of Mr. Narinder Kumar Bhola, Regional Director, Northern Region, Ministry of Corporate Affairs dated 24.08.2016 was filed. The Official Liquidator also filed his report with forwarding letter dated 4.11.2016. 8. The reports dated 13.5.16 and 10.5.16 of the Chairperson of the meetings, along with all the relevant annexures and documents, was filed in the Hon'ble Punjab and Haryana High Court. The affidavit along with the relevant annexures and the report of the Chairperson are attached with the record of first motion petition.

8. The reports dated 13.05.2016 and 10.05.2016 of the Chairperson of the meetings along with all the relevant annexures and documents was filed in the Hon'ble Punjab and Haryana High Court. The affidavit along with the relevant annexures and the report of the Chairperson are attached with the record of first motion petition.

9. When the matter was listed on 24.05.2017, the petitioner-companies filed audited balance sheets for the financial year 2015-16 of both the companies with affidavits of Mr. Anil Prasad and Aniesha Munjal, authorised representative of transferor and transferee-companies, respectively. It was also directed to file certificates of companies' auditors in terms of proviso to sub-section (3) of Section 232 of the Companies Act, 2013. The same was filed on the next date of hearing i.e. 31.05.2017 along with affidavit of the authorised representatives of both the companies stating therein that all the liabilities including Income Tax liabilities of the transferor-company shall be taken over by the transferee-company. Subsequently fresh certificates of companies' Auditors were filed in order to comply with the requirement of proviso to sub-section (7) of Section 230 and proviso to Section 232 (3) of the Act

10. It is stated that the authorised share capital of the Transferor Company as on 31.03.2015 was ₹ 2,00,00,000/- (Rupees two crores) divided into 20,00,000 equity shares of ₹10/- each with its issued, subscribed and paid-up share capital of ₹ 5,00,000/- (Rupees five lacs) divided into 50,000 equity shares of the same value. The authorised share capital of the transferee-company as on 31.03.2015 is ₹ 6,00,00,000/- (Rupees six crores) divided into 60,00,000 equity shares of ₹10/- each and issued, subscribed

and paid-up share capital of ₹ 4,99,50,000/- (Rupees four crores ninety nine lacs, fifty thousand) divided into 49,95,000 equity shares of the same value.

11. The Transferor-Company was incorporated on 20.10.2011 vide certificate of incorporation No. U34300HR2011PLC044147 with the Registrar of Companies, NCT of Delhi and Haryana. Copy of certificate of incorporation issued by the Registrar of Companies together with Memorandum and Articles of Association is at Annexure P-2 (colly).

12. The Transferee-Company was incorporated on 19.08.1991 vide certificate of incorporation No. 05-31878 of 1991-92 by the Registrar of Companies, Delhi and Haryana. Copy of certificate of incorporation issued by the Registrar of Companies together with Memorandum and Articles of Association is at Annexure P-4 (colly).

13. The registered office of both the Petitioner-Companies is situated at Gurgaon in the State of Haryana and, therefore, the matter falls within the territorial jurisdiction of this Tribunal.

14. It is stated that the main objects of the Transferor-Company are to carry on the business of manufacturing, buying, selling, importing, exporting, repairing, hiring, fabrication job work and dealing in all types of automobile parts, tractor parts, auto electric parts, cycle parts, all kind of sheet metal and tabular and machined components thereof.

15. It is further stated that the main objects of the Transferee-Company are to carry on the business of manufacturers, buyers, processors, dealers, importers, exporters, commission agents, jobwork, suppliers, distributors, wholesale and retail dealers of aluminium pressure die casting, tools casting and turned parts of ferrous and non-ferrous metal and other jobwork related

or connected therewith and to manufacture, trade, deal, market, import, export, commission agents, suppliers, distributors, consignment agents or otherwise dealing in all types of paints, varnish, thinner, resins, dyes, solvents, chemicals, organic and inorganic surface active agents and paints, heavy water chemicals and all sorts of bye-products and concentrates made thereof etc.

16. I have heard the learned counsel for the Petitioners, the learned counsel representing the Official Liquidator and the Regional Director and perused the record with their able assistance.

17. The circumstances and/or reasons which justify and/or necessitate the propounding of the Scheme are, *inter alia*, as follows:-

- (a) *Both the Transferor Company and the Transferee Company belong to the same group and Transferor Company is a wholly owned subsidiary of the Transferee Company.*
- (b) *The said Scheme has been proposed, inter alia, to eliminate multiplicity of companies by merging the Transferor Company into the Transferee Company, so as to be able to work more cohesively, efficiently and effectively as a single unit and thereby bring about overall economy and reduction in costs and at the same time enable better management of the business and operations.*
- (c) *The proposed Scheme will result in simplification of the group structure, elimination of multiplicity of companies and consolidation of businesses thereby causing reduction in overheads and other expenses, reduction in administrative and procedural work, better and more productive utilization of various resources and will enable the undertakings concerned to effect internal economies and achieve business synergies.*

- (d) *The said Scheme will enable the companies concerned to rationalise and streamline their management, business and finances and lead to the better and more economic control, running and management of their businesses and undertakings.*
- (e) *The said Scheme will result in the formation of a larger company with larger resources and a larger capital and financial base and will enable the undertakings and business of the said companies to obtain greater facilities and impetus possessed and enjoyed by one large company compared to a number of smaller companies for raising capital and securing and conducting business on favourable terms and other benefits and pursue the business of the amalgamated company with more strength and aggression.*
- (f) *The said Scheme will contribute in furthering and fulfilling the objects of the companies concerned and enable optimum growth and development of their combined business and in general will have beneficial results for the companies concerned, their shareholders, employees and all concerned.*
- (g) *The amalgamation will contribute in furthering and fulfilling the objectives and business strategies of both the companies thereby accelerating growth, expansion, development of the business and the amalgamation will strengthen the business activities and will enable the companies to face competition and emerge as a stronger company.*
- (h) *The Transferor Company and the Transferee Company are both engaged mainly in the business of Manufacturing of wide range of plastic components for the automotive sector. The Scheme is intended to provide greater business focus, both in the Transferor Company and the Transferee Company.*

- (i) *The Amalgamation of Transferor Company and Transferee Company will increase valuation of the Business and also result in optimum utilization of capital, assets and facilities.*
- (j) *The merger under this Scheme would enable focused business approach for the maximisation of benefits to all the shareholders and opportunity for growth.*
- (k) *The merger would help to achieve economies of scale, administrative and operational rationalization, organizational efficiencies and optimal utilization of resources.*
- (l) *The merger would enable the management of the Transferee Company to have a focused attention to the Business Undertaking.*

18. The interest of employees of the Transferor-Company have also been taken care of and it is provided as under:-

“12.1 On the Scheme becoming operative, all staff and employees of Transferor Company in service on the Effective Date, shall be deemed to have become staff and employees of Transferee Company on such date without any break or interruption in their service and on the terms and conditions of their employment not less favourable than those subsisting with reference to Transferor Company as on the said date.

12.2 It is expressly provided that, on the Scheme becoming effective, the Provident Fund, Gratuity Fund, Pension Fund, Superannuation Fund or any other Special Fund or Trusts created or existing for the benefit of the staff, workmen and employees of Transferor Company shall become trusts / funds of Transferee Company for all purposes whatsoever in relation to the administration or operation of such Fund or Funds or in relation to the obligation to make contributions to the said Fund or Funds in accordance with the provisions thereof as per the

terms provided in the respective Trust Deeds, if any, to the end and intent that all rights, duties, powers and obligations of Transferor Company in relation to such Fund or Funds shall become those of Transferee Company. It is clarified that the services of the staff and employees of Transferor Company will be treated as having been continuous for the purpose of the said Fund or Funds.”

19. It is further provided in the Scheme that any suit, actions and proceedings of whatever nature by or against the Transferor Companies pending as on effective date shall be continued and enforced by or against the Transferee Company in the same manner and to the same extent as the same would or might have continued against the Transferor Companies in the absence of the Scheme.

20. As per the ‘Scheme’ the appointed date is 01.04.2015 or such other date as may be directed by the Appropriate Authority. The Transferor Company is a wholly owned subsidiary of the Transferee Company therefore the share exchange ratio is not required to be determined.

21. In his report dated 04.11.2016 the Official Liquidator has not raised any objections to the proposed Scheme. It has been observed in the Report that since Transferor Company is a wholly owned subsidiary of the Transferee Company and the former will stand dissolved pursuant to the Scheme, no consideration shall be paid by the Transferee Company pursuant to the amalgamation and accordingly, the entire investments in the Transferor Company held by Transferee Company shall stand cancelled. The Report of Official Liquidator also concludes that the affairs of the

Transferor Company have not been conducted in a manner prejudicial to the interest of its member, creditors or to the public interest.

22. Similarly, Mr. Narinder Kumar Bhola, Regional Director, Northern Region, Ministry of Corporate Affairs by way of his affidavit dated 24.08.2016 has observed that the Transferor Company is a wholly owned subsidiary of the Transferee-Company and the Petitioner-Companies may be directed to disclose as to how the shares of the Transferor-Company held by the Transferee-Company will be treated pursuant to the Scheme. It has been contended by the counsel for the Petitioners that it is apparent that since the Transferor company is being dissolved and the Transferee Company, being the parent company, no shares can be allotted, particularly, in view of proviso to Section 232(3)(b).

23. The Regional Director, Northern Region, Ministry of Corporate Affairs has also stated that notice was issued to Income Tax Department vide letter dated 04.08.2016 and no comments have been received from the Department. The Registrar of Companies has not made any adverse observations and accordingly not objected to the 'Scheme'.

24. There is also a certificate by the Auditors of the companies that the accounting treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards prescribed under section 133 of the Companies Act, 2013 in order to comply with the requirements of proviso to sub-section (7) of section 230 and proviso to sub-section (3) of section 232 of the Companies Act, 2013.

25. It has also been stated that no investigation or proceedings under Section 235 to 251 of the Companies Act, 2013 or the Companies Act, 1956

are pending against any of the petitioner companies. The statements of these companies is contained in Para 21 in respect of the Petitioner Companies.

26. In view of the above, there is no impediment in the sanction of the Scheme. The Scheme (Annexure P-1) is approved. While approving the Scheme, it is clarified that this order should not be construed as an order in any way granting exemption from payment of any stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law. With the sanction of the Scheme, the Transferor Company/Petitioner No.1 shall stand dissolved without undergoing the process of winding up.

AND THIS TRIBUNAL DO FURTHER ORDER:

- i) That all the property, rights and powers of the Transferor Company/ Petitioner Company No. 1 be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Company but subject nevertheless to all charges now affecting the same; and
- ii) That all the liabilities and duties of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to

sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company; and

iii) That all the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and

iv) That all the employees of the Transferor Company shall be transferred to the Transferee Company in terms of the 'Scheme'; and

v) That the fee, if any, paid by the Transferor Company No.1 and Transferor Company No.2 on its authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme'; and

vi) That the Petitioner Companies do, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company (Petitioner No. 1) shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to these Transferor Company registered with him on the file relating to the Transferee Company and files relating to the

said Transferor, Transferee Companies shall be consolidated accordingly, as the case may be; and

vii) That the Transferee Company shall deposit an amount of ₹ 60,000/- (Rupees sixty thousand only) out of which ₹ 30,000/- (Rupees thirty thousand only) be deposited in the NCLT Bar Association Fund with its Bank Account and the remaining ₹ 30,000/- (Rupees thirty thousand only) with the Official Liquidator within a period of five weeks from the date of receipt of certified copy of this order; and

viii) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

27. As per the above directions and Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued to the petitioners on filing of the Schedule of Property i.e. (i) freehold property of the Transferor-Company; and (ii) leasehold property of the Transferor-Company, by way of affidavit of Transferor-Company.

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

October 23, 2017
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