

**In the National Company Law Tribunal
Division Bench, Chennai**

**TP (HC)/10&11/CAA/2017
[C.A. 992 & 993 of 2016]**

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation of

M/s. Valeo India Private Limited
(Transferor Company)

With

M/s. Valeo Lighting Systems India Private Limited
(Transferee Company)

Order delivered on: 28.07.2017

Coram:


Ch. Mohd Sharief Tariq, Member (J)

S. Vijayaraghavan, Member (T)

For the Petitioners: Shri Pawan Jhabakh, Advocate

ORDER

Per: Ch. Mohd Sharief Tariq, Member (J)

1. Under consideration are two Company Petitions filed under the provisions of erstwhile the Companies Act, 1956 which have been transferred from the Hon'ble High Court of Madras to this Tribunal pursuant to the Companies (Transfer of Pending Proceedings) Rules, 2016 and renumbered as TP (HC)/10&11/CAA/2017. The purpose of the Company Petitions is to obtain sanction of the Scheme of Amalgamation (in short, 'Scheme') by virtue of which M/s. Valeo India Private Limited (hereinafter referred to as 'Transferor Company') is proposed to be merged, amalgamated and vested in M/s. Valeo Lighting Systems India Private Limited (hereinafter referred to as 'Transferee Company') as a going concern. 

2. The details of Share Capital and shareholders, Secured and Unsecured creditors of the Companies are as under:


Particular	Authorised Capital	Issued, S&P Capital	Equity Share-holders	Secured Creditors	Unsecured Creditors
Transferor Company	Rs. 3,610,000,000	Rs. 3,605,247,250	3	Nil	Nil
Transferee Company	Rs. 175,00,00,000	Rs. 174,81,64,000	2	852	259

3. The Transferor Company and the Transferee Company are Private Limited Companies having registered office at Block A, Tecci Park, No. 285, Rajiv Gandhi Salai, Sholinganallur, Chennai- 600119 and the Board of Directors of petitioner companies vide its resolution dated 7th April, 2016 and 7th September, 2016 respectively approved the said scheme of Amalgamation.
4. The Transferor Company is engaged in the business of providing design and engineering services to its group companies across the globe whereas the Transferee Company is engaged in the business of manufacturing and supplying head, rear and fog lamps for the automotive industry. The Hon'ble Madras High Court vide its order dated 07.10.2016, in CA No. 992 of 2016 dispensed with the convening and holding of the meeting of the equity shareholders of the Petitioner Companies. The Transferee Company has produced affidavits of secured and unsecured creditors consenting to the proposed scheme of amalgamation.
5. Shri Pawan Jhabakh, learned counsel appearing for the Petitioner Companies submitted that the rational, reasons and circumstances that have necessitated the proposed scheme are that the amalgamation will enable

consolidation of the business of the two entities into one entity which will facilitate in focused growth, operational efficiency, resulting in more productive utilization of said resources and cost & operational efficiency which would be beneficial to all stakeholders. The learned counsel further submits that no investigation proceedings are pending against the Companies under the provisions of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.

6. Learned Counsel for the Companies has further submitted that the equity shares of the Petitioner companies are not listed with the stock exchange, thus the Companies do not require any compliance of Listing Agreement or any SEBI Rules/regulations.
7. The notices were issued to the statutory authorities viz. Official Liquidator, Regional Director, RoC, Income Tax Authority and CCI as per the procedure prescribed. However, there has been no objection/representation to the proposed scheme under reference.
8. The Competition Commission of India (in short, 'CCI') vide its letter dated 22.05.2017 submitted that before passing an appropriate order, the NCLT may seek an undertaking from the companies involved in the merger/amalgamation that CCI approval is not required for the said scheme.
9. With regard to the observation made by the CCI, the petitioner company has furnished an affidavit dated 08.06.2016 from Mr. Meenakshi Sundaram, the Company Secretary of the petitioner company. In the said affidavit, it has been stated that the proposed amalgamation does not exceed the threshold limits specified under the provisions of the Competition Act,

2002 as revised by S.O No. 675(E) dated 4th March 2016 issued by the Ministry of Corporate Affairs.

10. The Regional Director, Southern Region (In short, 'RD') in its Report Affidavit (for brevity, 'Report') dated 21.06.2017 submitted that as per records of ROC, Chennai, the Transferor Company is regular in filing its statutory returns and no investigation is pending against the company, therefore, RD decided not to make any objection to the Scheme and submitted that the petition may be disposed of on merits. However, in Para 9 of the Report of RD, it has been submitted that Clause 9.2 of the scheme proposes to amend the main and ancillary objects of the transferee company, therefore, the transferee company may be directed to file the amended MoA and AoA with RoC, Chennai for records. It is also submitted that the scheme proposes to change the name of the Transferee Company to that of the Transferor Company, therefore, the transferee company may be directed to file necessary e-forms with the RoC, Chennai
11. With regard to the above observation made by the RD, the learned counsel submitted that the Transferee Company undertakes to comply with the provisions of the Act, 2013 and rules framed thereunder for filing the amended MoA and AoA and e-forms with the RoC, Chennai.
12. The Official Liquidator (In short, 'OL') in its report dated 18th July, 2017 submitted that M/s. Basha & Narasimhan, Chartered Accountants (Auditor) appointed by this Bench vide its order dated 03.04.2017, have scrutinized the books and accounts of the Transferor Company. The said Auditor has broadly reviewed and observed that the Transferor Company has 

maintained and written up all the statutory books in accordance with normally accepted accounting principle and fulfilled the requirements of the Companies Act, 2013 and also the affairs of the company have not been conducted in a manner prejudicial to the interest of its members, creditors or to the public interest.

13. The OL further submits that under Clause 6 of Part- II of the proposed scheme, the interest of all the workmen and employees in the service of the Transferor Company is safeguarded. As per Clause 11.1 of Part- II of the said Scheme, Upon the scheme becoming fully effective, all the shareholders of the Transferor Company as on the Record Date, without any further application or deed shall be allotted, “573,024,725 equity shares of Rs. 10/- each credited as fully paid-up of the Transferee Company in respect of 573,024,725 equity shares of Rs. 10/- each” fully paid up held by them in the Transferor Company.

14. Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any of the creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of Amalgamation will not cast any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed date of the said Scheme is 1st April, 2016.


15. There is no additional requirement for any modification and the said Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the

statutory compliances have been made under section 391 of the Companies Act, 1956. Taking into consideration the above facts, the Company Petition is allowed and the scheme of Amalgamation annexed with the petition is hereby sanctioned which shall be binding on the members, creditors and shareholders.

16. While approving the scheme as above, we further clarify that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.
17. The Transferor Company is directed to deposit Rs.30,000/- within 15 days of receipt of this Order to the OL for making payment to the Auditor, who has investigated into the affairs of the Transferor Company.
18. The Transferee Company is directed to comply with the provisions of the Companies Act, 2013 and rules framed thereunder as has been desired by the RD in its report dated 21st June 2017 for filing the amended MoA & AoA and necessary e-forms with RoC, Chennai.
19. The Company to the said Scheme or other person interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.
20. The Petitioner Companies shall file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.

21. The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies.
22. Upon receiving the certified copy of this order, the RoC, Chennai is directed to place all documents relating to the Transferor Company with that of the Transferee Company and the files relating to the Transferor Company shall be consolidated with the files and records of the Transferee Company.
23. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.
24. Accordingly, the Scheme stands sanctioned and TP (HC)/10&11/CAA/2017 stands disposed of.


(S. Vijayaraghavan)
Member (T)


(Ch. Mohd. Sharief Tariq)
Member (J)