

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

CP/133/CAA/2017
CP/134/CAA/2017
[TCA/65&66/CAA/2017]

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation of

M/s. USUI International Automotive Parts India Private Limited
(Transferor Company)

With

M/s. USUI Susira International Private Limited
(Transferee Company)

Order delivered on: 21.09.2017

Coram:

Ch. Mohd Sharief Tariq, Member (J)

S. Vijayaraghavan, Member (T)

For the Petitioners: Shri S.P Muralikrishnan, Advocate

ORDER

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

1. Under consideration are two Company Petition nos. CP/133&134/CAA/2017 filed under the provisions of the erstwhile 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 TCA/65&66/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. USUI International Automotive Parts India Private Limited (hereinafter referred to as 'Transferor Company') is proposed to be merged, amalgamated and vested with M/s. USUI

Susira International Private Limited (hereinafter referred to as ‘**Transferee Company**’) as a going concern.

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

Particular	Authorised Capital	Issued, S&P Capital	Share-holders	Secured Creditors	Unsecured Creditors
Transferor Company	Rs. 1,10,00,000	Rs. 1,10,00,000	2	Nil	4
Transferee Company	Rs. 27,30,00,000	Rs. 27,27,28,170	2	Nil	181

3. The Transferor Company and the Transferee Company are Private Limited Companies and both are part of USUI group of companies having their registered office in Chennai. Both the companies are operating in the same industries i.e. Automobile industry and the Board of Directors of the petitioner companies vide its resolution dated 19.07.2016 have approved the said scheme of Amalgamation.
4. This Bench vide its order dated 28.04.2017, in TCA/65/CAA/2017 dispensed with the convening and holding of the meeting of the equity shareholders and vide order dated 22.08.2017 dispensed with the convening and holding the meeting of unsecured creditors of the Transferor Company whereas in TCA/66/CAA/2017, dispensed with the convening and holding of the meeting of equity shareholders and ordered for conducting the meeting of unsecured creditors of the

transferee company. The petitioner companies complied with all the orders passed by this Bench.

5. Shri S.P Muralikrishnan, the learned counsel appearing for the Petitioner Companies submitted that the rationale 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, RBI and Income Tax Authority as per the procedure prescribed. However, there has been no objection to the proposed scheme under reference.

8. The Regional Director, Southern Region (In short, '**RD**') in the Report Affidavit (for brevity, '**Report**') dated 24.07.2017 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. It is further submitted that clause 8.1 of the subject scheme provides for the protection of the interest of the employees of the Transferor Company. However, the RD submitted that Clause 11 of the scheme proposes to merge the authorised capital of the transferor company with that of the transferee company, therefore, the transferee company may be directed to file the amended MoA and AoA with the RoC, Chennai for records. The RD has decided not to make any objection to the Scheme and submitted that the petition may be disposed of on merits.
9. In Para 10 of the RD Report, it is further submitted that as per Clause 9.2 of the scheme, the companies have proposed that the intercompany shareholding will be cancelled. The transferor company is holding 6 equity shares in the transferee company which will be cancelled on amalgamation and this cancellation of shares will involve reduction of capital which has not been provided in the scheme, therefore the transferee company may be directed to file an affidavit to this effect.
10. With regard to above observation made by the RD, learned counsel for the petitioner companies submitted that the transferee company

undertakes to file the amended MoA and AoA with the RoC, Chennai. In relation to the reduction of capital, the learned counsel for the petitioner companies has produced an affidavit signed by the Managing Director of the transferee company deposing that capital of the transferee company would be reduced to the extent of the equity shares held by the transferor company.

11. The Official Liquidator (In short, 'OL') in its report dated 21st August, 2017 submitted that M/s. Manian & Narayanan, Chartered Accountants (**Auditor**) appointed by this Bench vide its order dated 28.04.2017 in TCA/65/CAA/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 principles 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 the public. The OL further submits that under Clause 8.1 of Part- C of the proposed scheme, the interest of all the workmen and employees in the service of the Transferor Company are safeguarded. The OL submitted that the petition may be decided appropriately.

12. 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.

- 13.** 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 230 to 232 of the Companies Act, 2013. 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.
- 14.** 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.
- 15.** The Transferee Company is directed to file the amended MoA and AoA with the RoC, Chennai for records.

16. Affidavit signed and filed by the Managing Director of the transferee company in relation to the reduction of capital shall form part of the scheme.
17. 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.
18. 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.
19. 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, Chennai.
20. 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.
21. 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.

22. Accordingly, the Scheme stands sanctioned and
CP/133&134/CAA/2017 stands disposed of.

S. Vijayaraghavan.

(S. Vijayaraghavan)
Member (T)

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

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Ch. Mohd. Sharief Tariq
Member (J)

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