

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI.**

Arguments heard on 20.03.2017

Orders passed on 22.03.2017

TP (HC)/CAA/1/2017, TP (HC)/CAA/2/2017 and TP (HC)/CAA/3/2017

(Under Sections 391 to 394 of the Companies Act 1956 r/w Sections 100 to 103 of the Companies Act, 1956 and Section 52 of the Companies Act, 2013)

**In the matter of Scheme of Amalgamation and Arrangement
between**

**M/s. Drive India Enterprise Solutions Limited
(Demerged Company)**

and

**M/s. TVS Commutation Solutions Limited
(Transferor Company)**

and

**M/s. TVS Logistics Services Limited
(Resulting/Transferee company)**

and

Their respective Shareholders and creditors.

Represented by : Counsel M/s. T. K. Bhaskar and Vikram P. Jain

CORUM

**ANANTHA PADMANABHA SWAMY & CH MOHD SHARIEF TARIQ,
MEMBERS (JUDICIAL)**

O R D E R

CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL) :- (ORAL)

1. Under consideration are three Company Petitions 389/2016, 390/2016 and 391/2016 originally filed before Hon'ble High Court of Madras which stood transferred to NCLT and renumbered as TP(HC)/CAA/1/2017, TP(HC)/CAA/2/2017 and TP(HC)/CAA/3/2017 respectively. These Petitions have been filed in relation to the Scheme of Arrangement and Amalgamation

(hereinafter called as “**Scheme**”) between M/s. Drive India Enterprise Solutions Limited (hereinafter called as “**demerged company**”), M/s. TVS Commutation Solutions Limited (hereinafter called as “**transferor company**”), M/s. TVS Logistics Services Limited (hereinafter called as “**resulting/transferee company**”) and their respective shareholders and creditors. We take all the three Petitions together for passing a common Order.

2. Initially, in CP 389/2016, the Company Application Nos. 932/2016 to 935/2016, in CP No. 390/2016, Company Application Nos. 930/2016 and 931/2016 and in CP No. 391/2016, Company Application Nos. 936/2016 to 938/2016, have been filed before Hon’ble High Court of Madras under Sections 391 to 394 of the Companies Act, 1956 along with other applicable provisions of the said Act.

3. In relation to the above stated Applications, the Hon’ble High Court of Madras have dispensed with the meeting of the creditors and the shareholders vide its Order dated 20.10.2016. Thereafter, in the said Company Petitions, the Hon’ble High Court of Madras vide its Order dated 18.11.2016 admitted the Petitions for hearing wherein the notices were issued to the stakeholders and direction were given for making advertisement, one in English newspaper and the other in vernacular language, and it was also ordered to put a notice on the Court Notice Board and the Registered Offices of the Petitioner Companies.

4. Pursuant to the Order of Hon'ble High Court dated 18.11.2016, some of the shareholders have filed responses/ no objections. The Regional Director, Ministry of Corporate Affairs, Chennai, while giving no objection has stated that it has been decided not to make any objection to the Scheme except the observations made in para 8 of their Affidavit. In para 8 of the Affidavit it is mentioned that there is a complaint against the demerged company that has been received by the Ministry of Corporate Affairs and the Ministry has ordered for enquiry under Section 206 (4) of the Companies Act 2013 which is under progress before ROC, Chennai.

In relation to the information that has been provided under Para 8 of the Affidavit of the Regional Director, Ministry of Corporate Affairs, Chennai, the Counsel for the Petitioner submitted that the matter is under investigation, and on completion of the same, the demerged company will be available for the purpose of making compliance with any direction that may be given by the investigating agency.

The Counsel for the Petitioner relied on a judgement passed by the Hon'ble Bombay High Court in **Zee Telefilms Limited, In re** reported in **(2005) 125 Comp Cas 297**, wherein a similar issue was dealt with and the Learned Single Judge declined to grant leave under Section 391 of the Companies Act 1956. The said Order was challenged in Appeals wherein the Appellate Court observed that *'the Regional Director in his Affidavit did not object to the Scheme of Demerger of the transferor company into the transferee company and it is needless to say that those proceedings will continue in accordance with the law'*.

5. Based on the ruling relied upon by the Counsel for the Petitioner, we believe that the Regional Director, Ministry of Corporate Affairs in his Affidavit has not objected to the Scheme, but, placed on record the fact pertaining to the investigation ordered by the Ministry of Corporate Affairs against the demerged company under Section 206 (4) of the Companies Act, 2013. Thus, we form opinion that the investigation, which is in progress could be concluded in accordance with the law against the demerged company. The demerged company is only transferring a part of its business to the resulting company and the demerged company will continue with its remaining parts of the business. We have also seen that no other objection has been filed in relation to the said Scheme between the Applicant Companies. The report of the Official Liquidator is also very clear and all the requirements of law seem to have been fulfilled for the purpose of sanctioning the Scheme under consideration.

6. It may briefly be stated that the Board of Directors of the Demerged Company viz., M/s. Drive India Enterprise Solutions Limited in its meeting held on 08.12.2015 has approved the said Scheme under which the 'Services Business Undertaking' of the Demerged Company is demerged, transferred and vested into Resulting/ Transferee company viz. **M/s. TVS Logistics Services Limited**. Later on, the transferor company viz., **M/s. TVS Commutation Solutions Limited** will get merged with the transferee company.

7. It is worthwhile to mention that the Scheme provides that all debts, liabilities, contingent liabilities, duties and obligations, nature and description attributed to the demerged undertaking shall, without any further acts or deeds and/are be transferred to or be deemed to be transferred to the resulting company. It is further provided in the Scheme that the entire equity shares of the demerged company is held by the resulting company and its nominees, and therefore, upon coming into effect of the Scheme and in consideration for the transfer of the demerged undertaking having been effected as provided in the Scheme, no fresh equity shares will be issued by the resulting company to the equity share holders of the demerged company.

8. It has also been provided that with effect from the demerger 'Appointed Date' and upon the Scheme becoming effective, 29,10,400 equity shares of Rs.10/- each attributable to the demerger undertaking being transferred to the resulting company shall be cancelled. The Scheme further provided that the Scheme upon becoming effective and transfer of the demerged undertaking to the resulting company, the excess of liabilities over book value of assets after adjustments, shall be recorded and adjusted against the reserves and surplus of the resulting company. The Appointed Date is 31.03.2016 which is subject to change that may be effected by the Board of Directors of the transferor company and the transferee company. It has further been provided that the assets of the transferor company shall be transferred to and vested in and /or deemed to be transferred to and vested in the transferee company, without any further act or deed or instrument, pursuant to the provisions of Section 394 of the Companies Act 1956, and other applicable provisions of the said Act. The Scheme also provides

that the transferor company viz., M/s. TVS Commutation Solutions Limited shall be dissolved without the process of winding up on the Scheme becoming effective in accordance with the provisions of the Act and the Rules made there under. In short, the said Scheme is not going to affect the shareholders and the creditors. The accounting standard is stated to have been followed in accordance with the established practices and procedure.

9. This Tribunal has perused the proposed Scheme filed along with the Company Petitions and find that the said proposed Scheme is not prejudicial to the interests of any person or entity, who has a stake/interest in the Petitioner Companies and that the Scheme as framed is not violative of any statutory provisions and that it is fair, just, sound and is not contrary to any public policy or public interest and all the statutory provisions appear to have been complied with, and this Tribunal having also observed that “this order will not be construed as an order granting exemption from payment of stamp duty or, taxes or, any other charges, if any, 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.

10. In the light of the above, and the details which have been provided in the said Scheme between the Applicant Companies, we are persuaded to grant sanction. Accordingly, we allow all the three Company Petitions and sanction the said Scheme between the companies, without any modification, which shall be binding on the Petitioner Companies, their shareholders and the creditors.

11. The Petitioner Companies to the said Scheme or other persons 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. Accordingly, order of sanction of the Scheme shall be prepared by the Registrar as per the form provided under Companies (Compromises, Arrangements and Amalgamation) Rules, 2016. The Petitioner Companies shall file with the Registrar of Companies a certified copy of this Order within 30 days from the date the copy of this order is received.



(K. ANANTHA PADMANABHA SWAMY)
(MEMBER (JUDICIAL))



(CH. MOHD. SHARIEF TARIQ)
(MEMBER (JUDICIAL))