

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
PRINCIPAL BENCH
NEW DELHI**

Company Application No.CA (CAA) 76/PB/2019 and Company

Application No.CA (CAA)19/PB/2019

Judgment dated: 14/05/2019

Coram:

CHIEF JUSTICE (Rtd.) SHRI M.M. KUMAR,

HON'BLE PRESIDENT

&

MR. S.K. MOHAPATRA,

MEMBER (TECHNICAL)

In the matter of:

Sections 230-232 and other applicable provisions of the Companies Act, 2013
read with Companies (Compromises, Arrangements, and Amalgamations)
Rules, 2016.

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

BETWEEN

1. LUMAX DK AUTO INDUSTRIES LIMITED

...Transferor Company/...-Applicant Company

AND



2. LUMAX AUTO TECHNOLOGIES LIMITED

... Transferee Company/Applicant Company

For the Applicants: Shri Sanjay Grover, PCS

ORDER

M.M. KUMAR, PRESIDENT

1. These are two applications filed by the applicant companies under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (for brevity 'The Act') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'The Rules') in relation to the Scheme (for brevity the "SCHEME") proposed between the applicants.
2. An Affidavit in support of the application sworn for and on behalf of the transferor and the transferee company has been filed by one Mr. Anil Tyagi and Ms. Ankita Gupta respectively, being the authorized representatives.
3. It is represented that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. Learned Counsel has taken us through the averments made in the application as well as the typed set of documents annexed there with.

It is further represented that the application filed by the applicants is maintainable in view of Rule 3(2) of the Rules.



4. In relation to the Transferor Company, it has been represented that the company has 7 equity shareholders. We are further apprised that the Amalgamating / Applicant Company No.1 has one Secured Creditor and 370 Unsecured Creditors. In relation to the Shareholders and Creditors Transferor Company seeks a direction for dispensing with convening and holding of meetings for the purpose of obtaining their approval to the proposed Scheme.
5. In relation to the Transferee Company, it has been represented that company has 14,808 Equity Shareholders, two Secured Creditors and 755 Unsecured Creditors who have already placed their consent-affidavits on record. In relation to the shareholders and creditors, Transferee Company seeks a direction for convening the meetings for the purpose of obtaining their approval to the proposed Scheme.
6. The above application has been placed before us and this Tribunal proceeds to entertain the same. We have perused the application and the connected documents filed along with the Scheme contemplated amongst the Applicant Companies.
7. Transferor Company was incorporated on 07.05.1997 under the provisions of the Companies Act, 1956. The authorised share capital of the Company is

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21,10,00,000/- only divided into 2,11,00,000 equity shares of Rs.10 each and issued, subscribed and paid-up share capital of the Applicant Company-1 is 4,24,03,130 only divided into 42,40,313 equity shares of Rs.10 each.

8. Transferee Company was incorporated on 30.10.1981 under the provisions of Companies Act, 1956. The authorised share capital is Rs. 15,00,00,000 divided 7,50,00,000 equity shares of Rs.2 each and the Issued, subscribed and paid-up share capital of the Transferee Company is Rs. 13,63,15,410 divided into 6,81,57,705 equity shares of Rs. 2 each.

9. The Board of Directors of the Applicant Companies vide separate meetings have unanimously passed resolutions and approved the proposed Scheme of Arrangement as contemplated above and copies of resolutions have also been placed on record by the Companies.

10. Taking into consideration the application and the documents filed therewith, we propose to issue the following directions with respect to calling, convening and holding of the meetings of the Shareholders, Secured and Unsecured Creditors or dispensing with the same which are as follows:-

A. In relation to the Transferor Company:

i. With respect to Shareholders:



It is represented by the Company that all the Shareholders in the Company have already placed their consent affidavits on record. Hence, the necessity of convening and holding a meeting is obviated.

ii. With respect to Secured Creditors:

Since it is represented by the Company that there is one Secured Creditor in the Company, who has already placed his consent-affidavit on record. Therefore the necessity of convening and holding a meeting is obviated.

iii. With respect to Unsecured Creditors:

It is represented by the Company that there are 370 Unsecured Creditors, 150 out of which holding 91.38% in value have already placed their consent-affidavits on record. Hence, the necessity of convening and holding a meeting is obviated.

B. In relation to the Transferee Company:

i. With respect to Shareholders:

It is represented by the Company that there are 14,808 Shareholders.

Meeting to be held on 12.07.2019 at 12 Noon at the venue to be



decided by the parties. The Quorum of the meeting shall be two thousand (2000).

ii. With respect to Secured Creditors:

Since it is represented by the Company that there are two Secured Creditors in the Company. Meeting to be held on 12.07.2019 at 2.30 PM at the venue to be decided by the parties. The Quorum of the meeting shall be two.

iii. With respect to Unsecured Creditors:

Since it is represented by the Company that there are 755 Unsecured Creditors in the Company. Meeting to be held on 12.07.2019 at 3.00 PM at the venue to be decided by the parties. The Quorum of the meeting shall be Two hundred (200).

C. In case the Quorum as noted above for the above meetings of the applicant companies are not present, in the meetings, then the meetings shall be adjourned for half an hour, and thereafter, the person present shall be deemed to constitute the quorum. For the purpose of computing the quorum, the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, are duly filed with registered office of the applicant companies at least 48



hours before the meetings. The Chairperson and the Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained.

D. Shri Ajay Bhagwati, Advocate (Mobile No.9816002722) is appointed as the Chairperson, Shri Sanjeev Singhal, Chartered Accountant (Mobile No.9810106300) appointed as Alternative Chairperson for the meetings of Applicant Companies as has been directed to be convened by this Tribunal.

E. The fee for the Chairperson for the aforesaid meetings shall be two lacs and the fee for the Alternate Chairperson shall be Rs.1 lac in addition to meeting their incidental expenses. Mr. Mayank Bansal, Chartered Accountant (Mobile No.9023913337) is appointed as a Scrutinizer for Applicant Companies and would be entitled to fee of Rs. One lac for his services in addition to meeting his incidental expenses. The Chairperson will file their reports within two weeks from the date of holding of the above said meetings.

F. The individual notices of the said meetings shall be sent as required and prescribed by the Companies Act, 2013 through registered post or speed post or through courier or through e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, place and time as

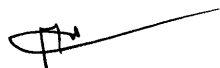


aforesaid, together with a copy of scheme of arrangement, a copy of explanatory statement. The prescribed form of proxy shall be sent along with and in addition to the above documents, any other documents as may be prescribed under the Act may also be duly sent with the notice.

G. That the applicant companies shall publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date, place and time as aforesaid, to be published in the English Daily '**Business Standard**' and Hindi Daily '**Jansatta**' stating the copies of Scheme, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Applicant Companies.

H. Voting shall be allowed on the proposed Scheme by voting in person or by proxy, as may be applicable to the respective companies under the Act and rules framed there under. The Chairperson shall be responsible to report the result of the meeting to this Tribunal within two weeks of the conclusion of the meeting with regard to the proposed scheme.

I. The Companies shall individually send notice to the Central Government, the Income Tax Authorities, concerned Registrar of Companies, NCT of Delhi & Haryana, Official Liquidator, Income Tax Department, SEBI, BSE,



NSE and any sectoral regulators who may have significant bearing on the operation of the applicant companies along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.


J. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

The application stands allowed in the aforesaid terms.



(M.M. KUMAR)

PRESIDENT



(S.K. MOHAPATRA)

MEMBER (TECHNICAL)

(vidya)

14/05/2019