

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, BENCH VI

CA(CAA) – 17/ND/2024

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

IN THE MATTER OF SCHEME OF ARRANGEMENT OF

M/s Spinx Auto India Private Limited

(CIN - U74899DL1995PTC067057)

Property No. 558-A, First Floor Left Portion,

Silver Oak Marg Village Ghitorni,

Near Bakshi Marg Southwest Delhi,

Delhi-110 030

... Applicant Company 1/Demerged Company

AND

M/S Spinx Assets Private Limited

(CIN - U70200DL2023PTC415701)

No. 558-A, First Floor Left Side,

Silver Oak Marg Ghitorni,

Near Bakshi Marg, Gadaipur Southwest Delhi,

New Delhi-110030

... Applicant Company 2/Resulting Company

For the Applicant/Petitioner

Mr. K.D. Sharma, & Ms. Rupali

Kapoor, Advs.

CORAM:

SH. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

ORDER

PER – MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

Order Delivered on: 01.05.2024

1. This is a first motion application filed jointly by the Applicant Company No 1, M/s Spinx Auto India Private Limited (hereinafter referred to as the “Demerged Company / Applicant Company No 1”) and M/s Spinx Assets Private Limited (hereinafter referred to as the “Resulting Company / Applicant Company No 2”) in accordance with Section/s 230-232 of Companies Act, 2013 read with other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) pertaining to the Scheme of Arrangement between the Applicant Companies in relation to the Scheme of Arrangement by way of Demerger (hereinafter referred to as the “SCHEME”) proposed between the applicants.
2. That the Demerged Company and the Resulting Company under the Scheme of Arrangement have their respective registered office in New Delhi

and hence are under the jurisdiction of the National Company Law Tribunal, Bench at New Delhi.

3. The Scheme of Arrangement by way of demerger was approved by Board of Directors of Applicant Companies No. 1 and 2 on 04.12.2023, a copy of the corresponding board resolutions have been duly signed and filed along with the present application.
4. The Applicant Company No.1/Demerged Company – M/s Spinx Auto India Private Limited (CIN - U74899DL1995PTC067057), was incorporated under the provisions of the Companies Act, 1956 as a Private Limited Company vide Certificate of Incorporation dated 03.04.1995, having its registered office at Property No. 558-A, First Floor, Left Portion, Silver Oak Marg, Village Ghitorni, Near Bakshi Farms, New Delhi – 110030. The Share Capital of the Applicant Company No. 1/ Demerged Company is as under

Particulars	Amount (INR)
Authorised Capital	1,00,00,000
Paid up Capital	54,30,000

5. The Applicant Company No. 2/Resulting Company – M/s Spinx Assets Private Limited (CIN U70200DL2023PTC415701), was incorporated under the provisions of the Companies Act, 2013 as Private Limited Company vide Certificate of Incorporation dated 13.06.2023 with the Registrar of Companies, NCT of Delhi & Haryana and having its registered office at Property No. 558-A, First Floor, Left Portion, Silver Oak Marg, Village

Ghitorni, Near Bakshi Farms, New Delhi – 110030. The Share Capital of the Resulting Company is as under

Particulars	Amount (INR)
Authorised Capital	15,00,000
Paid up Capital	1,00,000

6. The Demerged Company as well as the Resulting Company have filed their respective Memorandum and Articles of Association, inter alia delineating their object clauses, as well as their last Audited Annual Accounts statements as on 30.09.2023.
7. The proposed scheme of demerger will entail the following benefits –
 - I. Demerger will enable an independent and optimal growth and development of 'Division No. 1' and 'Division No. 2' through two separate companies and will ensure beneficial results for both the companies, their shareholders, employees, creditors, and all concerned;
 - II. Demerger will enhance the competitive strengths of two diverse businesses including their financial resources;
 - III. The demerger will result in better marketing, management and focus on growing the businesses and will enable implementation of such projects in the respective divisions more effectively and adequately;

- IV. Demerger will enhance the capabilities of the Resulting Company to face competition more effectively and to raise resources for future growth and expansion of the business; and
 - V. Demerger of business and undertaking of the Demerged Company will ensure beneficial results for the applicant companies, their shareholders, creditors, and employees and will not prejudice the interest of any concerned member/creditor or public at large.
8. It has been averred that the Demerged Company has 3 Shareholders. Certificate from the Chartered Accountants certifying list of Shareholders has been annexed. All the shareholders of the aforesaid demerged company have issued their respective consents by way of affidavits, which have been annexed with the application.
9. The Demerged Company has NIL Secured Creditors. Certificate from Chartered Accountants certifying list of creditors was annexed.
10. Further, It has been averred that the Demerged Company has 5 Unsecured Creditors. Certificate from Chartered Accountants certifying list of creditors was annexed. That 99.61 percent unsecured creditors (in value) have given their written consents to the Scheme of Demerger by way of corresponding affidavits, which have been annexed with the present application. In relation to the Shareholders, Secured and Unsecured Creditors, it seeks to dispense with the holding/convening of the meetings as their consent affidavits were placed on record.

11. It has been averred that the Resulting Company has 3 Shareholders. Certificate from the Chartered Accountants certifying list of Shareholders has been annexed. All the shareholders of the aforesaid demerged company have issued their respective consents by way of affidavits, which have been annexed with the application.

12. The Resulting Company has NIL Secured Creditors. Certificate from the Chartered Accountants certifying NIL Creditors was annexed. Hence, the necessity of convening or dispensing the meeting does not arise.

13. Further, It has been averred that that Resulting Company has NIL Unsecured Creditors. Certificate from the Chartered Accountants certifying NIL Creditors was annexed. Hence, the necessity of convening or dispensing the meeting does not arise. In relation to the Shareholders, it seeks to dispense with the holding/convening of the meetings as their consent affidavits were placed on record.

14. The Applicant Companies have stated that the provisions relating to the accounting treatment for the proposed scheme were in conformity with the applicable provisions of the Companies Act, 2013. Certificates from the Statutory Auditor of the Applicant Companies on the accounting treatment, as proposed in the Scheme, were annexed to the application and it is clearly stated that the accounting treatment is in conformity with that prescribed under Section 133 of Companies Act, 2013.

15. The Applicant Companies have stated there are no proceedings for inspection / investigation under the Companies Act, 1956 and Companies Act, 2013 or the Act or any proceedings under any other department of Applicant Companies or their Directors.

16. Taking into consideration the submissions and the documents filed therewith, the following directions are issued forthwith in respect of convening/holding or dispensing with the meetings of the Shareholders. Secured and Unsecured Creditors of Applicant Companies: -

I. In relation to the Demerged Company:

a) With respect to Shareholders: In view of consent affidavits from all the 3 Shareholders, which have been filed, convening the meeting of shareholders/members is dispensed with.

b) With respect to Secured Creditors: Since there are no Secured Creditors of the Demerged Company, hence, the necessity of convening or dispensing the meeting does not arise.

c) With respect to Unsecured Creditors: In view of consent affidavits from 5 Unsecured Creditors, having 99.61 % voting shares, been filed, convening the meeting of Unsecured Creditors is dispensed with.

II. In relation to the Resulting Company:

a) With respect to Equity Shareholders: In view of consent affidavits from all the 3 Shareholders, which have been filed, convening the meeting of shareholders/members is dispensed with.

b) With respect of Secured Creditors: Since there are no Secured Creditors of the Resulting Company, hence, the necessity of convening or dispensing the meeting does not arise.

c) With regard to Unsecured Creditors: Since there are no Unsecured Creditors of the Resulting Company, hence, the necessity of convening or dispensing the meeting does not arise.

1. Notice of this application shall be served on the following:

- i. The Regional Director, Northern Region, Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, New Delhi-110003;
- ii. The Registrar of Companies, NCT of Delhi and Haryana, 4th Floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;
- iii. Concerned office of Income Tax Department of both the Applicant Companies. The notices to Income Tax Authorities shall disclose sufficient details like PAN, ward numbers and assessing officers so that timely and proper reply may be filed.
- iv. Any other sectoral regulators required to be served.

The application stands allowed on the aforesaid term and accordingly disposed off.

- SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)