

IN THE NATIONAL COMPANY LAW TRIBUNAL,

NEW DELHI, COURT-III

COMPANY PETITION NO. (CAA)- 54(ND)/2023

CONNECTED WITH

COMPANY APPLICATION NO. (CAA) -5(ND)/2023

(Under Section 230-232 and other applicable provisions of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016)

IN THE MATTER OF SCHEME OF ARRANGEMENT

BETWEEN

M/s. SPACK AUTOMATIVES PRIVATE LIMITED

..... Petitioner Company No.1/ Demerged Company

AND

M/s. GATORCORP AUTOMOTIVES PRIVATE LIMITED

..... Petitioner Company No.2/ Resulting Company

AND

THEIR RESPECTIVE CREDITORS AND SHAREHOLDERS

Order Pronounced On: 19.04.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Divyam Agarwal, Mr. Aniket Aggarwal Advs.

For the RD : Ms. Shankari Mishra, Adv.

For the IT Dept. : Mr. Parth Semwal and Abhishek Maratha, Advs.

For the OL : Ms. Hemlata Rawat and Mr. Rahul Bhatt, Advs.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Second Motion Petition has been filed jointly by the M/s. Spack Automotives Private Limited (Petitioner Company No.1/Demerged Company) and M/s. Gatorcorp Automotives Private Limited (Petitioner Company No. 2/Resulting Company) under Sections 230-232 of the Companies Act, 2013 (“**Act**”) read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (“**Rules**”) for the Sanction of the proposed Scheme of Arrangement between the Demerged Company and Resulting Company and their respective shareholders and creditors.
2. The Petitioner Company No. 1 namely M/s. Spack Automotives Private Limited bearing CIN: U34101DL1991PTC043570 was incorporated on 20.03.1991 under the Companies Act 1956 with the Registrar of Companies, Delhi & Haryana under the name of M/s. DCM Automotive Limited, which was later changed to M/s. Spack Automotives Limited vide Certificate of Incorporation dated 23.04.1997. The Demerged Company was subsequently converted to a Private Company and accordingly, its name was changed to M/s. Spack Automotives Private Limited vide fresh Certificate of Incorporation dated 30.01.2012. The Registered Office of the Demerged Company is situated at 45, First Floor, Okhla Industrial Estate, Phase-3, New Delhi-110020.

The Authorised Share Capital of the Petitioner Company No. 1 at the time of filing of this Application is Rs.8,00,00,000/-(Rupees Eight Crore Only) divided into 80,00,000 (Eighty Lakh) Equity Shares of Rs. 10/- (Rupees Ten Only) each. The Issued, Subscribed and Paid-up Share Capital is Rs. 4,92,44,000/-(Rupees Four Crore Ninety Two Lakh Forty Four Thousand Only) divided into 49,24,400 (Forty Nine Lakh Twenty Four Thousand Four Hundred) Equity Shares of Rs. 10/- (Rupees Ten Only) each.
3. The Petitioner Company No. 2 namely M/s. Gatorcorp Automotives Private Limited bearing CIN: U34100DL2022PTC400805 was incorporated on 28.06.2022 under the Companies Act 2013 with the Registrar of Companies, Delhi & Haryana as a Private Company.

The Registered Office of the Resulting Company is situated at 45, First Floor, Okhla Industrial Estate, Phase-3, New Delhi-110020.

The Authorised Share Capital of the Petitioner Company No. 2 at the time of filing of this Application is Rs.10,00,000/-(Rupees Ten Lakh Only) divided into 1,00,000 (One Lakh) Equity Shares of Rs. 10/- (Rupees Ten Only) each. The Issued, Subscribed and Paid-up Share Capital is Rs. 2,00,000/- (Rupees Two Lakh Only) divided into 20,000 (Twenty Thousand) Equity Shares of Rs. 10/- (Rupees Ten Only) each.

4. The Registered Office of the Petitioner Companies is situated in the NCT of Delhi and therefore, it is under the jurisdiction of the National Company Law Tribunal, New Delhi.
5. It is stated that the Petitioner Companies has jointly moved the necessary second motion Petition being **CP(CAA)-54(ND)/2023** on 01.08.2023, connected with the first motion Application being **CA(CAA)-5(ND)/2023**, before the National Company Law Tribunal, New Delhi.
6. The Scheme has been approved by the Board of Directors of the Petitioner Companies at their respective Board Meetings held on 18.10.2022.
7. The Petitioner Companies submit that the proposed scheme would have the following benefits:-

The Demerged Company has two (2) distinct and separate businesses i.e., **Seating Business** (manufacturing and selling of seating systems) and **Foam Business** (manufacturing and selling of seat cushion PU foam pads) which require specialized management focus. As such, the management of the Demerged Company has examined the relative business strengths and the potential commercial and other synergies of the Demerged Undertaking (as defined in the Scheme) and Retained Business (as defined in the Scheme) and proposes to demerge the Demerged Undertaking (as defined in the Scheme). Post Demerger, the Demerged Company will be able to focus on the said business of the company, as the same requires different expertise and focus, planning, business strategies and decision making. The Resulting Company will be able to focus its expertise solely on the Demerged Undertaking.

8. With the advancement of the technology in the two businesses carried out by the Demerged Company, the Demerged Company may have to collaborate or enter into joint ventures with different companies specializing in the manufacturing of seating systems and seat cushion PU foam pads. Further, the two businesses may attract a different set of strategic investors going forward. Therefore, the Demerger is intended to enable: -

- i. *“collaboration or joint ventures with different technology partners and augment the growth of the two businesses;*
- ii. *a more efficient, effective, focused strategy for management, and*
- iii. *utilization of resources and talent for both the Demerged Company and Resulting Company.”*

9. The rationale and the objectives of the Scheme are as follows :-

a) Transfer and vesting of the Demerged Undertaking from the Demerged Company to the Resulting Company

With effect from the Appointed Date and upon the Scheme coming into effect, the Demerged Undertaking (as defined in the Scheme) (including all accretions and appurtenances) shall, in accordance with Section 2(19AA) of the Income Tax Act, 1961, without any further act, instrument or deed, be and stand demerged from the Demerge Company and transferred to and vested in or be deemed to be transferred to and vested in the Resulting Company as a going concern, so as to vest as to vest in the Resulting Company, all the assets, rights, titles, interests and liabilities pertaining to the Demerged Undertaking, pursuant to and as contemplated under the Scheme.

b) Transfer of employees of the Demerged Undertaking from the Demerged Company to the Resulting Company

Upon the Scheme becoming effective, all permanent employees of the Demerged Undertaking (as defined in the Scheme) of the Demerged Company in service on the Effective Date shall be deemed to have become the employees of the Resulting Company with effect from the Appointed Date without any interruption in their service as a result of

the transfer of the Demerged Undertaking to the Resulting Company, on the same terms and conditions of employment as were with the Demerged Company. On the basis of continuity of service, the terms and conditions of their employment with the Resulting Company shall not be less favourable than those applicable to them with reference to the Demerged Undertaking of the Demerged Company on the Effective Date.

c) Settlement of consideration under the Scheme

Upon the Scheme becoming effective and in consideration of vesting of the Demerged Undertaking (as defined in the Scheme) from the Demerged Company to the Resulting Company, the Resulting Company shall, without any further application, act, instrument or deed and without any payment by the shareholders, issue and allot equity shares, credited as fully paid-up, to the shareholders of the Demerged Company, holding fully paid-up equity shares in the Demerged Company and whose names appear in the register of members of the Demerged Company on the Record Date or to such of their respective heirs, executors, administrators or other legal representative or other successors in title as on the Record Date in the following manner/ratio:

"1 (One) fully paid-up equity share of Rs. 10 (Rupees Ten only) each of the Resulting Company shall be issued and allotted for every 4 (Four) fully paid-up equity shares of Rs. 10 (Rupees Ten only) each held in the Demerged Company ("Share Entitlement Ratio")."

The aforesaid exchange ratio has been arrived at on the basis of valuation report dated 17.10.2022 prepared by M/s. Samarth Valuation LLP.

d) Automatic increase in the authorised share capital of the Resulting Company:

As an integral part of the Scheme, and upon the Scheme becoming effective, the authorised share capital of the Resulting Company shall stand suitably increased without any further act, instrument or deed

on the part of the Resulting Company for the purpose of issue of shares, such that upon the effectiveness of the Scheme, the authorised share capital of the Resulting Company shall be INR 2,00,00,000/- (Indian Rupees Two crores) divided into 20,00,000 (Twenty lakhs) equity shares of INR 10/- (Indian Rupees Ten) each. Pursuant to the Scheme, the Resulting Company shall file the requisite forms with the Registrar of Companies for alteration of its authorized share capital and pay the requisite fees.

10. This Adjudicating Authority vide order dated 25.07.2023 has dispensed the requirement of convening the meetings of the shareholders, secured and unsecured creditors of the Petitioner Companies.
11. The Second Motion petition was moved by the Petitioner Companies in connection with the Scheme of Arrangement for issuance of notices. This Tribunal vide order dated 21.08.2023 directed to issue notice to all the Statutory Authorities, namely, the Regional Director (Central Government) - Ministry of Corporate Affairs, Registrar of Companies, NCT of Delhi and Haryana - Ministry of Corporate Affairs, and Income Tax Department.
12. It is submitted by the Petitioners that in compliance of the above-stated directions, the Petitioners duly filed an Affidavit of Service dated 06.09.2023 by confirming that the aforesaid Notices of the present Company Petition were published on 30.08.2023 in Business Standard (English Edition) and in Business Standard (Hindi Edition) on 30.08.2023 Delhi edition. It is further submitted that the Petitioner Companies also served the Notices of the present Company Petition to all the statutory authorities through E-mail and Speed Post on 29.08.2023 as per the direction given by this Tribunal dated 21.08.2023.
13. The Regional Director along with the Registrar of Companies vide it's report dated 19.12.2023 has not objected to the proposed scheme of the arrangement but has made certain observations. The Petitioner companies have filed their Reply dated 02.02.2024 in response to the observations made by the Regional Director and Registrar of Companies, wherein the Petitioner Companies have been duly addressed and clarified by the Petitioners.

14. The Petitioner Companies in its Additional Affidavit dated 15.02.2024 in response to the Counter Affidavit dated 05.02.2024 filed by the Income Tax Department undertakes to pay the income tax dues of the Petitioner Companies, if any, subject to its rights conferred under law.
15. The Certificates of respective Statutory Auditors of both the petitioner companies, have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Demerger is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.
16. No investigation proceedings have been instituted and are pending in relation to either of the Petitioner Companies under Sections 235 to 251 of the Act or under Sections 206 to 229 (Chapter XIV) of the Act. To the knowledge of each of the Petitioner Companies, no winding-up petition (including under Section 433 read with Section 434 of the Companies Act, 1956) and/or insolvency proceedings have been filed/instituted and are pending against either of the Petitioner Companies. None of the directors of the Petitioner Companies have any material interest in the Scheme except to the extent of their directorships and shareholding in the Petitioner Companies.
17. The Petitioner Companies in its general affidavit dated 28.12.2022 affirming that all material facts relating to the company, such as the latest financial position of the company been disclosed and there are no material changes subsequent to the financial statements disclosed in the Scheme; the Scheme is not per se related to or proposed for the Reduction of Capital, however the same is applicable to the extent of cancellation of existing shares held by the Demerged Company in the Resulting Company; and the Scheme is not a corporate debt restructuring scheme and hence a creditor's responsibility statement and other requirement under the said section is not applicable to the present case.
18. It is submitted by the Petitioner Companies that this Second Motion Petition is made bona fide and in the interest of justice and no one will be prejudiced if orders are made/or directions are given as prayed for.

19. Analysis and Finding

- i.** After considering the reports of the Statutory Authorities and the reply of Petitioner Companies thereof, we are of the considered view that the Scheme is not prejudicial to the interest of the equity shareholders and creditors of the Petitioner Companies and the Scheme will be beneficial to the Petitioner Companies and their respective shareholders and creditors.
 - ii.** The shareholders of the Petitioner Companies are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by this Tribunal for the reason that it is not a part of the judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme of which sanction is sought under Section 230-232 of the Companies Act of 2013, will not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors.
 - iii.** It has also been affirmed in the petition that the Scheme is in the interest of both the Petitioner Companies, their respective shareholders, creditors, employees and all concerned.
 - iv.** Upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, there appears to be no impediment in sanctioning the present Scheme.
20. Consequently, the sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013 with the following directions: -
- i.** The appointed date in the Scheme of Arrangement is the date approved by the Tribunal. We approve the “Appointed Date” to be 1st April, 2023.
 - ii.** The Petitioners shall always remain bound to comply with the statutory requirements in accordance with law.
 - iii.** Notwithstanding the sanction, if there is any deficiency found or, violation committed, qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken in accordance with the law, against the concerned persons, directors and officials of the petitioners.

- iv. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.
21. This Tribunal does further order: -
- i. That all properties, rights and powers of Demerged Undertaking be transferred without further act or deed to the Resulting Company and accordingly, the same shall pursuant to Section 230-232 of the Companies Act, 2013 be transferred to and vested in the Resulting Company for all intents, purposes and interest of the Demerged Undertaking subject nevertheless to all changes now affecting the same; and
 - ii. That all the liabilities, (if any) and powers, engagements, obligations and duties of the Demerged Undertaking shall pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to the Resulting Company and accordingly the same become the liabilities and duties of the Resulting Company; and
 - iii. That all proceedings now pending by or against the Demerged Undertaking shall be continued by or against the Resulting Company; and
 - iv. That the Petitioner Companies, shall within thirty days of the date of the receipt of this order cause certified copy of this Order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Demerged Undertaking shall be deemed to be transferred; and
 - v. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
22. Accordingly, the present Scheme of Arrangement stands **sanctioned** and **CP(CAA)/54(ND)/2023** stands **disposed of** in the above terms.

Let copy of the order be served to the parties.

-Sd-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-Sd-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**