

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH – III**

**C.A. (CAA)/ 50 (MB)/ C-III/ 2024**

In the matter of the Companies Act,  
2013

And

In the matter of Sections 230 to 232  
and other applicable provisions of the  
Companies Act, 2013

And

In the matter of the **Scheme of Amalgamation** by way of Merger by Absorption of DANA INDIA PRIVATE LIMITED (First Application Company or 'Transferor Company') with GRAZIANO TRASMISSIONI INDIA PRIVATE LIMITED ('Second Applicant Company' or 'Transferee Company') and their respective shareholders (**'Scheme'**)

**DANA INDIA PRIVATE LIMITED**, a company incorporated under the Companies Act, 1956, having its registered office at Sr. No. 279/1, Rasoni Industrial Park, Hinjewadi Ph-II, Vill, Man, Mulshi Pune, Maharashtra India, 411057

[CIN: U74999PN2000PTC015131]

... First Applicant Company /  
Transferor Company

**GRAZIANO TRASMISSIONI INDIA PRIVATE LIMITED**, a company incorporated under the Companies Act, 1956, having its registered office at Survey No. 279, Rasoni Industrial Park, Hinjewadi Phrase 2 Maan, Taluka Mulshi Pune, Maharashtra, India, 411057

[CIN: U34300PN1997PTC202633]

...Second Applicant Company /  
'Transferee Company'

*(Hereinafter collectively referred to as 'Applicant Companies')*

**Order pronounced on 06.05.2024**

Coram:

**Ms. Lakshmi Gurung** : Member (Judicial)  
**Sh. Charanjeet Singh Gulati** : Member (Technical)

*Appearances:*

For Applicant Companies : Adv. Hemant Sethi, i/b Hemant  
(through physical hearing) Sethi & Co., Advocates

**Per: Sh. Charanjeet Singh Gulati, Member (Technical)**

**ORDER**

1. The Professional for the Applicant Companies submits that the present Scheme of Amalgamation by way of Merger by Absorption of DANA INDIA PRIVATE LIMITED ('First Application Company' or 'Transferor Company') with GRAZIANO TRASMISSIONI INDIA PRIVATE LIMITED ('Second Applicant Company' or 'Transferee Company') and their respective shareholders ('Scheme') under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and rules & regulations framed thereunder.
2. **Nature of Business:**
  - 2.1. The **First Applicant Company** is primarily engaged in the business of designing and assembling of automobile axles, transfer cases and components for Off-highway and commercial vehicles.
  - 2.2. The **Second Applicant Company** is primarily engaged in the business of manufacturing of gears, synchronizers and transaxles for automobile industry.
3. The Board of Directors of the First Applicant Company and Second Applicant Company have approved the Scheme vide Board resolutions dated **04.03.2024** and **01.03.2024** respectively. The Appointed Date for the Amalgamation is **1<sup>st</sup> April 2024**.
4. As on the date of approval of the Scheme by the Board of Directors, the entire Equity Share Capital of the Transferor Company is held by the

Transferee Company along with its nominee. Accordingly, the Transferor Company is a Wholly Owned Subsidiary of the Transferee Company.

5. The **Rationale of the Scheme:**

- a *The Amalgamation will enable pooling of resources of the Companies involved in Amalgamation to their common advantages, resulting in more productive utilization of all the resources and achieving economies of scale resulting into cost and operational efficiencies, which would be beneficial for all the stakeholders.*
- b *The Amalgamation would create a stronger sustainable business by giving opportunity to fully leverage assets, capabilities, experience, expertise and infrastructure of all the Companies resulting into cost savings and higher profitability levels.*
- c *The Amalgamation would bring greater management focus and would help in achieving uniform corporate policies and faster I effective decision making and its implementation.*
- d *The Amalgamation would, result in reducing number of legal entities and help in avoiding duplication of regulatory and procedural compliances and consequently result into saving of time, efforts, resources and cost involved in such compliances.*
- e *Post-Amalgamation, the Transferee Company will have better financial and operational prospects. The Amalgamation will result in consolidation of business of the Companies resulting in expansion of business and create greater value to all stakeholders. The Amalgamation shall be beneficial and in the best interests of the shareholders, creditors, employees of the Companies involved, and all concerned.*

6. The Authorised, Issued, Subscribed and Paid-up Share capital of Applicant Companies as per Audited Financial Statement as on 31.01.2024 are as follows:

6.1. **Paid-up Share capital of First Applicant Company/ First Transferor Company:**

Particulars	Amount in (Rs.)
<b>Authorised Share Capital</b>	
3,00,00,000 (Three Crore) Equity Shares of Rs. 10 each	30,00,00,000
<b>Total</b>	<b>30,00,00,000</b>
<b>Issued, Subscribed and Paid-up Share Capital</b>	
11525984 (One Crore Fifteen Lakh Twenty- Five Thousand Nine Hundred and Eight Four) Equity Shares of Rs. 10/- each	11,52,59,840
<b>Total</b>	<b>11,52,59,840</b>

6.2. **Paid-up Share capital of Second Applicant Company/ Transferee Company:**

Particulars	Amount in (Rs.)
<b>Authorised Share Capital</b>	
9,70,00,000 (Nine Crore Seventy Lakh) Equity Shares of Rs. 10/- each	97,00,00,000
<b>Total</b>	<b>97,00,00,000</b>
<b>Issued, Subscribed and Paid-up Share Capital</b>	
3,61,18,794 Equity Shares of Rs. 10/- each	36,11,87,940
<b>Total</b>	<b>36,11,87,940</b>

Subsequent to the date of approval of the scheme by the Board of Directors, there has been no change in the authorised, issued, subscribed and paid-up share capital of the Applicant companies.

7. **MEETINGS OF FIRST APPLICANT COMPANY:**

7.1. There are 2 (Two) Equity Shareholders in the First Applicant Company and the copy of the certificate from the Independent Chartered

Accountant certifying the list of Equity Shareholders obtained by the First Applicant Company is annexed as Annexure 'K' (Page No. 299). The **First Applicant Company** has procured the consent affidavits from all the Equity Shareholders which are annexed as Annexure 'L' (Colly.) (Page Nos. 300-310) to the Company Scheme Application.

- 7.2. In view of the fact that all the Equity Shareholders of the respective First Applicant Company have given their consent affidavits to the Scheme, the meeting of the Equity Shareholders of the First Applicant Company is hereby **dispensed with**.
- 7.3. There are no Secured Creditors in the First Applicant Company. Therefore, the question of holding the meeting of Secured Creditors of the First Applicant Company does not arise. The copy of certificate of the Chartered Accountant certifying **No Secured Creditors** of the First Applicant Company as on 29.02.2024 is annexed as Annexure 'M' (Page No. 311) to the Company Scheme Application.
- 7.4. There are 513 (Five Hundred Thirteen) Unsecured Creditors in the First Applicant Company amounting to Rs. 3,61,46,13,886/- (Rupees Three Hundred Sixty-One Crores Forty-Six Lakhs Thirteen Thousand Eight Hundred Eighty-Six only). The copy of the certificate from the Independent Chartered Accountant certifying a list of Unsecured Creditors in the First Applicant Company is annexed as Annexure 'N' (page no. 312 -326) to the Joint Company Scheme Application. The Counsel for the Applicant Companies submitted that the Scheme is for arrangement between the Applicant Companies and shareholders of the Applicant Companies as contemplated under Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Act as there is no compromise and/or arrangement with unsecured creditor, and that the unsecured creditor of the First Applicant Company would be paid in the normal course of business and as per

the agreed terms and are not called upon to make any sacrifices, hence their interests are not getting affected in any way. The present Scheme is in no manner prejudicial to the interests of the unsecured creditor of First Applicant Company. The Net Worth of the Transferor Company as on 31.01.2024 is Rs 3,02,94,62,000/-. Copy of the Net Worth certificate is annexed as Annexure 'R1' (page no.348-350) of the Company Scheme Application. Further the Counsel for the Applicants relies upon decision of this Bench passed in **CA(CAA)/205/MB-III/2023 in TVS Industrial & Logistics Parks Private Limited**; In view of the fact that there is no arrangement with the unsecured creditors, the meeting of the unsecured creditors of First Applicant Company to seek their approval to the Scheme is dispensed with.

- 7.5. The First Applicant Company is hereby directed to issue individual notices to its unsecured creditors by courier or registered post or speed post or hand delivery or through email, at their last known address or email address as per the records available with the First Applicant Company with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such intimation to the Tribunal with copy of such representations shall simultaneously be served upon the First Applicant Company.

**8. MEETINGS OF SECOND APPLICANT COMPANY:**

- 8.1. There are 4 (Four) Equity Shareholders in Second Applicant Company, a list of which is annexed as Annexure 'O' (page no. 327) to the Joint Company Scheme Application. After the Scheme being sanctioned, no new shares would be issued or allotted as consideration pursuant to merger to the members of the First Applicant Company by the Second Application Company. Further, the Scheme does not affect the rights and interests of the members of the Second Applicant Company and does not involve any re-organization of the share capital of Second

Applicant Company. Also, the Scheme will not result in dilution of share-holding of the Second Applicant Company. Accordingly, the scheme does not affect the rights and interests of the members of the Second Applicant Company.

- 8.2. Therefore, the Meeting of the Equity Shareholders of the Second Applicant Company is hereby **dispensed with**.
- 8.3. There are no Secured Creditors in the Second Applicant Company. Therefore, the question of holding the meeting or sending notices to the Secured Creditors of the Second Applicant Company does not arise. The copy of certificate of the Chartered Accountant certifying **No Secured Creditors** of the Second Applicant Company as on 29.02.2024 is annexed as Annexure 'P' (Page No. 328) to the Company Scheme Application.
- 8.4. There are 591 (Five Hundred Ninety-One) Unsecured Creditors in the Second Applicant Company amounting to Rs. 3,50,50,53,694/- (Rupees Three Hundred Fifty Crores Fifty Lakhs Fifty-Three Thousand Six Hundred Ninety-Four only). The copy of the certificate from the Independent Chartered Accountant certifying a list of Unsecured Creditors in the Second Applicant Company is annexed as Annexure 'Q' (page no. 329 -347) to the Joint Company Scheme Application. The Counsel for the Applicant Companies further submitted that the rights of the unsecured creditor of the Second Applicant Company/ Transferee Company are not affected since there will be no reduction in their claims and the assets of the Second Applicant Company/ Transferee Company, post-amalgamation, will be more than sufficient to discharge their claims. The Net Worth of the Transferee Company is and will continue to remain highly positive, a copy of the Net Worth certificate is annexed as Annexure 'R1' and Annexure 'R2' (page no.348-353) of the Company Scheme Application. No undertaking of

the Second Applicant Company/ Transferee Company is being parted away or being disposed-off and hence provisions of Section 180 of the Companies Act, 2013 are not applicable. Further, under the Scheme there is no compromise or arrangement with the shareholders or the creditors of the Second Applicant Company/ Transferee Company. Therefore, the proposed Scheme is not prejudicial to the interest of the creditors of the Second Applicant Company/ Transferee Company. In view of the above, no reconstruction or arrangement is proposed by the Second Applicant Company/ Transferee Company either with its shareholders or with its creditors.

8.5. The Second Applicant Company is hereby directed to issue individual notices to its unsecured creditors by courier or registered post or speed post or hand delivery or through email, at their last known address or email address as per the records available with the Second Applicant Company with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such intimation to the Tribunal with copy of such representations shall simultaneously be served upon the Second Applicant Company.

9. The meeting of the Equity shareholders and Creditors of the Second Applicant Company are hereby dispensed with in view of the fact that the Transferor Company is a wholly owned subsidiary of the Transferee Company. Reference was made to judgment of Hon'ble High Court of Judicature at Bombay in the case of **Mahaamba Investments Limited V/s. IDI Limited (2001) 105 Company Cases** page 16 to 18 inter alia observed and held that if the Scheme of Amalgamation provides for no issue of equity shares to the members of the transferor company, being a wholly owned subsidiary of the transferee company and the creditors of the transferee company, are not likely to be affected by the scheme, a separate Petition by the transferee company was not necessary. The



Hon'ble National Company Law Appellate Tribunal in the case of **DLF Phase-IV Commercial Developers Limited & Ors**, In Company Appeal (AT) No. 180 of 2019, **Ambuja Cements Limited**, In Company Appeal (AT) No. 19 of 2021, and **Patel Engineering Limited**, In Company Appeal (AT) No. 137 of 2021, Company Scheme Application No. 911 of 2014 in case of a **Eurokids India Private Limited** passed by SJ Kathawalla, (J) of Bombay High Court and in Company Appeal (AT) No 109 of 2023 in case of **Reliance Industries Limited** in the similar facts have taken similar view.

10. In the view of the above facts submitted by the Professional for the Applicant Companies, the meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Companies are hereby **dispensed with**.
11. There are no proceeding pending against the Applicant Companies under Sections 210 - 217, 219, 220, 223, 224, 225 of the Companies Act, 2013 and Sections 250, 250A and 251 of the Companies Act, 1956. No winding up petition is pending against the Applicant Companies either under Companies Act, 1956 /Companies Act, 2013 and no insolvency proceedings are pending against the Applicant Companies.
12. As on 31.01.2024, there are Pending Litigations, Corporate guarantees, bank guarantees and other contingent Liabilities, in the First Applicant Company and the Second Applicant Company as per Annexure 'J1' and 'J2' of the Joint Company Scheme Application.
13. The Applicant Companies are directed to serve notices by RPAD/ Speed Post/ Hand Delivery and email, of present Application along with its enclosures upon: -

- (i) The Central Government through the office of **Regional Director**, Western Region, Ministry of Corporate Affairs, Mumbai;
  - (ii) Jurisdictional **Registrar of Companies**;
  - (iii) The concerned **Income Tax Authority** within whose jurisdiction the Applicant Companies are assessed to tax;
  - (iv) The **Nodal Officer** of Income Tax Department at Pr. Chief Commissioner of Income Tax (CCIT), Aaykar Bhavan, Sadhu Vaswani Square, Pune-411001;
  - (v) The concerned **GST Authorities**; within whose jurisdiction the Applicant Companies are assessed to tax u/GST Law;
  - (vi) The **Official Liquidator**, Bombay High Court (for Transferor Companies).
14. The Applicant Companies shall host the notices along with a copy of the Scheme on their respective website, if any.
15. That the Applicant Companies to file an Affidavit of Service of the directions given by the Tribunal in the Registry for service of notice to the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.
16. Ordered accordingly.

Sd/-

**CHARANJEET SINGH GULATI**  
**MEMBER (TECHNICAL)**  
(Saayli, LRA)

Sd/-

**LAKSHMI GURUNG**  
**MEMBER (JUDICIAL)**