

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING  
HELD ON **03.05.2024** THROUGH VIDEO CONFERENCING

---

**PRESENT:** HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)  
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

---

**APPLICATION NUMBER** : CA(CAA)/51(CHE)/2023  
**PETITION NUMBER** : CP(CAA)/3(CHE)/2024  
**NAME OF THE PETITIONER(S)** : Cafoma Autoparts Pvt Ltd and Other  
**NAME OF THE RESPONDENTS** :  
**UNDER SECTION** : Sec 230-232 of CA, 2013

---

**ORDER**

Present: Ld. Counsel Shri. R Inbaraju for the Applicants.

Vide separate order announced in open court, the scheme is approved.

File be consigned to records.

**Sd/-**

**(VENKATARAMAN SUBRAMANIAM)**  
MEMBER (TECHNICAL)

MG

**Sd/-**

**(SANJIV JAIN)**  
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH - I, CHENNAI**

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of *Scheme of Amalgamation of*

**CP(CAA)/3(CHE)2024 IN CA(CAA)/51(CHE)2023**

**CAFOMA AUTOPARTS PRIVATE LIMITED**

SVK Towers, No. A-24 & 25 Thiru – Vi – Ka Industrial Estate,  
Guindy, Chennai – 600 032

*... 1<sup>st</sup> Petitioner / Transferor Company*

**WITH**

**MM FORGINGS LIMITED**

SVK Towers, No. A-24 & 25 Thiru – Vi – Ka Industrial Estate,  
Guindy, Chennai – 600 032

*... 2<sup>nd</sup> Petitioner / Transferee Company*

*And*

**THEIR RESPECTIVE SHAREHOLDERS**

*Order Pronounced on 3<sup>rd</sup> May 2024*

**CORAM:**

**SANJIV JAIN, MEMBER (JUDICIAL)**

**VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

*For Applicant(s): Inbaraju, Advocate*

**ORDER**

**(Heard Through VC)**

The hearing of this Company Petition has been conducted  
through video conferencing platform.

2. The present Company Petition has been filed by the Petitioner Companies above named for the approval of the Scheme of Amalgamation of **CAFOMA AUTOPARTS PRIVATE LIMITED** (for brevity “Transferor Company ”), with **MM FORGINGS LIMITED** (for brevity “Transferee Company”) under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity ‘the Rules’) (hereinafter referred to as the ‘SCHEME’) pursuant to the Scheme proposed by the Petitioner Companies. *(The said Scheme is also appended at “Annexure O” in respect of the Joint Company Petition typeset).*

3. **1<sup>ST</sup> MOTION APPLICATION – IN BRIEF**

3.1. The Transferor Company and Transferee Company had filed its First Motion Application vide CA(CAA)/51(CHE)/2023 seeking directions as follows:

	<b>EQUITY SHAREHOLDERS</b>	<b>PREFERENCE SHAREHOLDERS</b>	<b>SECURED CREDITORS</b>	<b>UNSECURED CREDITORS</b>
<b>TRANSFEROR COMPANY</b>	To dispense with	To dispense with	To dispense with	To dispense with
<b>TRANSFEEE COMPANY</b>	To dispense with	Not Applicable	To dispense with	To dispense with

3.2. Based on such application moved under Sections 230-232 of the Companies Act, 2013, directions were issued by this Tribunal, vide order dated 05.01.2024, to dispense the meetings of Equity & Preference Shareholder, and Secured & Unsecured Creditors of the Transferor and Transferee Companies. Subsequently the second motion petition was filed before this Tribunal by the petitioner companies on 17.01.2024 for sanction of the Scheme of Amalgamation by this Tribunal.

#### 4. RATIONALE OF THE SCHEME

4.1. The rationale and benefits of the Scheme as submitted by the Learned Counsel for the Petitioner Companies would *inter alia* result in the following benefits;

- (a) Synergies in operation arising from consolidation of various projects leading to efficient utilization of resources;
- (b) Integration of business operations and achieve a simplified corporate structure;
- (c) Garner benefits arising out of economies of large scale and lower operating costs;
- (d) Reducing managerial overlaps, enable cost saving and enable effective utilization of valuable resources which will enhance the management focus thereby leading to higher operational efficiency;

- (e) Post the amalgamation of Transferor Company, the Transferor Company will be dissolved. Consequently, there would be lesser regulatory and legal compliance obligations including accounting, reporting requirements, statutory and internal audit requirements, tax filings, company law requirements, etc. and therefore reduction in administrative costs; and
- (f) Benefit of operational synergies to the combined entity and greater leverage in operations, planning and process optimization

5. In the second motion application filed by the Petitioner Companies, this Tribunal vide order dated 24.01.2024 directed the Petitioner Companies to issue notice to the Statutory / Regulatory Authorities viz. (i) Regional Director (Southern Region), Chennai (ii) RoC, Chennai, (iii) Official Liquidator (iv) Securities Exchange Board of India (SEBI), (v) National Stock Exchange (NSE), (vi) Bombay Stock Exchange and (vi) the jurisdictional Income Tax, and other sectoral regulators, who govern the working of the respective companies, as well as for paper publication to be made in "Business Standard", English (All India Edition) and "Dina Mani" Tamil (Tamil Nadu Edition).

6. In compliance to the said directions issued by this Tribunal, the Petitioner Companies have filed an affidavit of service before the Registry of this Tribunal on 06.03.2024. A perusal of the same discloses that the Petitioner Companies have effected paper publications as

directed by the Tribunal in “Business Standard” (All India Edition) in English and “Dina Mani” (Tamil Nadu Edition) in Tamil on 06.02.2024. It is also seen that notices have been also served to (i) Regional Director, Southern Region, Chennai on 02.02.2024, (ii) Registrar of Companies, Chennai on 02.02.2024, (iii) Official Liquidator on 01.02.2024 (iv) Deputy Commissioner of Income Tax on 02.02.2024, (v) Securities Exchange Board of India (SEBI) on 02.02.2024 (vi) National Stock Exchange (NSE), on 02.02.2024 (vii) Bombay Stock Exchange on 02.02.2024. The proof of the same by way of affidavits have been enclosed with the separate typed set.

Pursuant to the service of notice of the petition, following statutory authorities have responded as follows:

## **7. STATUTORY AUTHORITIES**

### **7.1. REGIONAL DIRECTOR**

The Regional Director, Southern Region (*hereinafter referred to as ‘RD’*) Chennai has filed his Report before this Tribunal on 12.03.2024. It is averred in para 9 of the Report that Clause 14 of Part B of the Scheme states about the protection of employees of the Transferor Companies. It is submitted that the employees of the Transferor Companies shall be deemed to have become staff and employees of the Transferee Company with effect from the

Appointed Date or date of joining, whichever is later without any break in their service and other benefits.

7.1.2. It is further averred in para 10 of the RD Report that the Transferor Company is a wholly owned subsidiary of the Transferee Company and hence, upon the Scheme becoming effective, the entire share capital of the Transferor Company shall get automatically cancelled / extinguished without any further action.

7.1.3. It is further averred that Clause 18 of Part C of the Scheme provides for clubbing of Authorized Share Capital of the Companies, as such the Authorized Share Capital of the Transferor Company shall stand altered and merged with the Authorized Share Capital of the Transferee Company. It is stated that Clause V of the MOA of the Transferee Company shall be altered as the Authorized Share Capital of the Company shall stand enhanced to an amount of Rs.9,00,00,000/- (Rupees Nine Crores only) divided 6,00,00 equity shares of Rs.10/- each amounting to Rs.60,00,000/- and 84,00,000 Preference Shares of Rs.10/- each amounting of Rs.8,40,00,000/-; the said preference share capitals shall reclassify to equity share capital of the Transferor Company i.e., Rs.9,00,00,000/- divided into 90,00,000 equity shares of Rs.10/- each. It is submitted by the RD that the Tribunal may direct the Transferee Company to pay the

difference in fee/stamp duty and also file the amended MOA and AOA with the Registrar of Companies in connection with the proposed increase of Authorised Share Capital.

7.1.4. It is further stated that as per the report of the ROC, Chennai, the Transferor Company has filed their statutory returns upto 31.03.2023 and there are no prosecution/ complaint/ inspection pending against the Transferor Company.

7.1.5. Thus, after examining the Scheme, except the observations made in para 12 of the Report, the Regional Director in his Report has stated that they have decided not to make any objection to the Scheme.

7.1.6. In relation to the objections raised by the RD, it is stated that in terms of Clause – 18.2 of Part B of the Scheme, the Transferee Company has undertaken to pay the differential fee, if any, payable on the enhanced authorized share capital subsequent to the amalgamation.

## **7.2. OFFICIAL LIQUIDATOR**

In relation to the Official Liquidator, (*hereinafter referred to as 'OL'*) to whom the notice was issued has filed the Report before this Tribunal on 13.03.2024 and has stated that they have



appointed M/s. HSA & Associates., Chartered Accountants from the panel maintained by their office to verify into the affairs of the Transferor Company. The Chartered Accountants in their report submitted before the Official Liquidator have observed as follows;

- *According to latest financial statements and other ROC records the Transferor Company has no statutory dues as on date.*
- *As per the records produced, the Transferor Company have not accepted any deposits from the public.*
- *The Transferor Company has been regularly complying with filing of the statutory returns with the Registrar of Companies. As per the information made available to them and on the basis of the records produced, no prosecution has been launched against them / no actions are initiated by the Registrar of Companies as on 31/03/2023*
- *The Chartered Accountants have examined the documents and records available with the company and prima facie, nothing adverse or objectionable issues affecting the interest of the company or its members or creditors or prejudicial to the public interest are noticed.*
- *The company has maintained all the records under the Companies Act, 2013.*
- *The Chartered Accountants have perused various statutory returns maintained by the Transferor Company and report that they are maintained on updated basis. The*

*company have also recorded the relevant transactions and entries which are required to be recorded in the respective statutory registers in accordance with the requirements of Companies Act, 2013.*

7.2.1. Further in Para 5 of the OL report, it is stated that on scrutiny of the records of the Company, the Chartered Accountants are of the opinion that the business of the Company was not carried on with intent to defraud the creditors of the company or any other persons or for any fraudulent purpose attracting the provisions of Section 339 of the Companies Act, 2013. The Chartered Accountants further reported that they have not come across with any act within the meaning of Section 339 of the Companies Act, 2013, wherein the Directors have misapplied or retained or become liable or accountable for any money or property of the company or have been guilty of misfeasance or breach of trust in relation to the Company or have been involved in diversion of funds prejudicial to the interest of the company. In view of the above, the Chartered Accountants are of the opinion that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of its members or public interest.

7.2.2. From the above observations made by the Chartered Accountant, the Official Liquidator has sought to take on record and consider the report of the Chartered Accountant and has also sought to fix the remuneration payable to the Auditor who has

investigated into the affairs of Transferor Company. In this regard, this Tribunal hereby directs the Transferor Company to pay a sum of **₹30,000/- + GST (if applicable) (Rupees Seventy Five Thousand Only Plus GST if applicable)** to the Official Liquidator for the payment of fees payable to the Auditor who has investigated into the affairs of the Transferor Company.

### **7.3. OTHER STATUTORY AUTHORITIES**

7.3.1. In relation to the other statutory authorities to whom notices have been issued, neither they have filed any reply nor raised any objections to the Scheme and in the circumstances, this Tribunal presumes that other statutory Department viz. The Income Tax Department, SEBI, NSE & BSE does not have any objection to the sanction of the Scheme.

7.3.2. Despite notice having been served on 02.02.2024 and paper publication made on 06.02.2024 in Business Standard (All India Edition) in English and Dina Mani (Tamil Nadu Edition) in Tamil, there is no representation from the Department of Income Tax, SEBI, NSE & BSE. This Tribunal in terms of Section 230(5) of the Companies Act, 2013 presumes that the Department of Income Tax does not have any objection to the sanction of the Scheme.

7.3.3. In Company Petition CAA-284/ND/2018 vide Order dated 12.11.2018, the NCLT New Delhi has made the following observations with regard to the right of the IT Department in the Scheme of Amalgamation,

*“taking into consideration the clauses contained in the Scheme in relation to liability to tax and also as insisted upon by the Income Tax and in terms of the decision in RE: Vodafone Essar Gujarat Limited v. Department of Income Tax (2013)353 ITR 222 (Guj) and the same being also affirmed by the Hon’ble Supreme Court and as reported in (2016) 66 taxmann.com.374(SC) from which it is seen that at the time of declining the SLPs filed by the revenue, however stating to the following effect vide its order dated April 15,2015 that the Department is entitled to take out appropriate proceedings for recovery of any statutory dues from the transferor or transferee or any other person who is liable for payment of such tax dues, the said protection be afforded is granted. With the above observations, the petition stands allowed and the scheme of amalgamation is sanctioned.”*

7.3.4. It is seen that the Transferee Company has given an intimation under Regulation 30 read with Regulation 37(6) of SEBI (Listing Obligation and Disclosure Requirements) Regulations 2015 on 17.03.2023 stating that since Cafoma Autoparts Private Limited being wholly owned subsidiary of the MM Forgings Limited, there is no requirement of obtaining any No – objection Letter to the Scheme from the Stock Exchange on which the securities of the companies are listed.

## 8. VALUATION REPORT

8.1. Since the Transferor Company is the wholly owned subsidiary of the Transferee Company, the entire share capital of the company is held by the said Transferee Company. Hence, there is no necessity to obtain a Valuation Report. Upon the Scheme becoming finally effective, the entire share capital of the Transferor Company shall get automatically cancelled / extinguished without any further action. The Transferee Company shall not be required to issue and allot any shares as the Transferee Company and its nominee are themselves the only shareholders of the Transferor Company

## 9. ACCOUNTING TREATMENT

9.1. The Petitioner Companies have stated that the Statutory Auditors of the Petitioner Companies have examined the Scheme and certified that the Petitioner Companies have complied with proviso to Section 230 (7) / Section 232 (3) and the Accounting Treatment contained in the proposed Scheme of Arrangement is in compliance with the Applicable Indian Accounting Standards. The Certificates issued by the Statutory Auditors certifying the Accounting Treatment of the Petitioner Companies are placed at “**Annexure P**”.

9.2. The Learned Counsel for the Petitioner companies has submitted that no investigation proceedings are pending against the Transferor or Transferee Companies under the provisions of the Companies Act, 1956 or the Companies Act, 2013 and no proceedings against the petitioner companies for oppression or mismanagement have been filed before this Tribunal or erstwhile Company Law Board.

## 10. OBSERVATIONS OF THIS TRIBUNAL

10.1. After analyzing the Scheme in detail, this Tribunal is of the considered view that the scheme as contemplated amongst the petitioner companies seems to be *prima facie* beneficial to the Company and will not be in any way detrimental to the interest of the shareholders of the Company. In the absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the Scheme of Arrangement appended at “**Annexure O**” in respect of the Company Petition typeset filed along with the Petition as well as the prayer made therein.

10.2. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law,

against the concerned persons, directors and officials of the petitioners.

10.3. While approving the Scheme as above, it is clarified 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, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

**11. THIS TRIBUNAL DO FURTHER ORDER:**

- (i) That all properties, right and interest of the Transferor Company shall, pursuant to section 232(3) of the Companies Act, 2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the Transferee Company.
- (ii) That all the liabilities, powers, engagements, obligations and duties of the Transferor Company shall pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to the Transferee Company and accordingly the same become the liabilities and duties of the Transferee Company.
- (iii) That the Appointed date for the Scheme shall be **1<sup>st</sup> April 2023**, as stated in the Scheme.
- (iv) That since the Transferor Company is the wholly owned subsidiary of the Transferee Company, upon the Scheme

becoming effective, the entire share capital of the Transferor Company shall get automatically cancelled / extinguished without any further action. The Transferee Company shall not be required to issue and allot any shares as the Transferee Company and its nominee are themselves the only shareholders of the Transferor Company.

- (vi) That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company.
- (vii) That all the employees of the Transferor Company in service on date immediately preceding the date on which the Scheme finally takes effect shall become the employees of the Transferee Company without any break or interruption in their service.
- (viii) That the Transferee Company shall file the revised Memorandum and Articles of Association with the concerned Registrar of Companies, and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company after setting off the fees paid by the Transferor Company.
- (ix) That the Transferor Company and the Transferee Company, shall within thirty days of the date of receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without winding up and the Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file kept



by him in relation to all the Transferee Company and the files relating to the said company shall be consolidated accordingly.

- (x) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

12. Accordingly, the Company Petition stands **allowed** on the aforementioned terms.

**-Sd-**

**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

**-Sd-**

**SANJIV JAIN**  
MEMBER (JUDICIAL)

*Raymond*