

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

CP (CAA)/30 & 31 (CHE) 2023 in CA (CAA)/1/CHE/2023

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of *Scheme of Amalgamation*

Of

SUNFAST TVS LIMITED

REGISTERED OFFICE AT

98A, VII FLOOR

DR. RADHAKRISHNAN SALAI

MYLAPORE

CHENNAI- 600 004.

...Petitioner Company/Transferor Company-1

And

TVS ENGINEERING LIMITED

REGISTERED OFFICE AT

98A, VII FLOOR

DR. RADHAKRISHNAN SALAI

MYLAPORE

CHENNAI- 600 004.

... Petitioner Company / Transferor Company-2

And

SUNDRAM FASTENERS LIMITED

REGISTERED OFFICE AT

98A, VII FLOOR

DR. RADHAKRISHNAN SALAI

MYLAPORE

CHENNAI- 600 004.

... Non-Applicant/Transferee Company

AND IT'S SHAREHOLDERS

Order Pronounced on 19th February 2024

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant(s):TK Bhaskar,Advocate.

ORDER

(Heard through –VC-)

This Company Petition has been filed by the Petitioner Companies above named for approval of the Scheme of Amalgamation of **SUNFAST TVS LIMITED** (for brevity “Transferor Company-1”) with **TVS ENGINEERING LIMITED** (for brevity “Transferor Company-2”) along with **SUNDRAM FASTENERS LIMITED** (for brevity “Transferee Company/Non Applicant”) 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 attached as **Page No 357-377** along with the petition typeset.

3. 1ST MOTION APPLICATION – IN BRIEF

3.1. The Transferor Company and Transferee Company had filed the First Motion Application vide CA(CAA)/1/(CHE)/2023 seeking directions as follows

	EQUITY SHAREHOLDERS	SECURED CREDITORS	UNSECURED CREDITORS
Transferor Company-1	To dispense with	To dispense with	To dispense with
Transferor Company-2	To dispense with	To dispense with	To dispense with

Non –Applicant Transferee	To dispense with	To dispense with	To dispense with
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3.2. Based on the application moved under Sections 230-232 of the Companies Act, 2013, directions were issued by this Tribunal, vide order dated **19.06.2023** and meetings of the equity shareholders, secured creditors and unsecured creditors of Transferor Company 1 & 2 were dispensed with.

3.3 Based on the memo filed by the Petitioner vide SR No 714 dated 14.02.2023 filed in CA/CAA/1/CHE/2023, the necessity of Transferee Company (as its the Holding Company of Transferor Company-1 and Transferor Company-2) filing a separate application was *dispensed with* vide order dated **19.06.2023**. Further this Tribunal dispensed with the meetings of Equity shareholders, Secured Creditors, Unsecured Creditors of the Non-Applicant/Transferee Company vide order dated **19.06.2023**.

Subsequently, the second motion petition was filed before the Tribunal by the petitioner companies on **03.07.2023** for sanction of the Scheme of Amalgamation by this Tribunal.

4. RATIONALE OF THE SCHEME

The Board of Directors of Transferor Companies and Transferee Company believe that the proposed scheme would, inter alia, have the following benefits :

1. *The amalgamation will enable product diversification and growth to the Transferee company.*
2. *This will facilitate expansion of the business of Transferor companies by using the customer base of the Transferee company.*
3. *As a combined entity, the amalgamation will help in widening the product offering to the existing strategic customers of both the transferor as well as the transferee company.*
4. *Will help in achieving consolidation, greater integration and flexibility that will maximize overall shareholders value and improve the competitive position and negotiating power of the combined entity.*
5. *Improves organizational capability and leadership, arising from the pooling of human capital who have the diverse skills, talent and vast experience to complete successfully in an increasingly competitive industry.*
6. *Cost savings are expected to flow from more focussed operational efforts, rationalization, standardization and simplification of business process, elimination of duplication and rationalization of administrative expenses.*
7. *The amalgamation will result in reduction of multiplicity of entities, thereby reducing compliance cost of multiple entities viz., statutory filings, regulatory compliances, labour law/establishment related compliances.*

Further under the scheme no arrangement has been proposed to be entered into with the creditors, either secured and or unsecured creditors of the Transferor companies and or the Transferee company. No compromise is offered under this scheme to any

of the creditors of the Transferor companies or the Transferee company. The liability towards the creditors of the Transferor Companies and/or the Transferee Company under the Scheme, is neither being reduced nor being extinguished but shall be assumed and discharged by the Transferee Company in its ordinary course of business.

5. In the second motion application filed by the Petitioner Companies, this Tribunal vide order dated **02.08.2023** 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) the Jurisdictional Income Tax Department, and other sectoral regulators*, who may govern the working of the respective companies, as well as for paper publication to be made in *“Business Standard” (All India Edition)”, English and “Dina Malar” Tamil (Tamil Nadu Edition).*

6. In compliance to the directions issued by this Tribunal, the Petitioner Companies filed an affidavit of service before the Registry on 11.09.2023. A perusal of the same discloses that the Petitioner Companies effected paper publications as directed by the Tribunal in *“The New Indian Express” (All India Edition) in English and “Dina Malar” (Tamil Nadu Edition) in Tamil* on 01.09.2023 respectively. It is seen that notices have been served to:-

S.No	Statutory authorities	Date of Notice
1.	Regional Director, Southern Region, Chennai.	12.08.2023
2.	Registrar of Companies, Chennai	12.08.2023
3.	Official Liquidator	12.08.2023
4.	Income Tax Department	12.08.2023

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

7. STATUTORY AUTHORITIES

7.1. REGIONAL DIRECTOR

7.1.1 The Regional Director, (*hereinafter referred to as 'RD'*) Southern Region, Chennai has filed the report dated 28.12.2023 and the same is as follows:

Para	Observations
9	As per Clause 8 of Part II of the scheme provides for the protection of staff, workmen and employees who are on the payrolls of the Transferor Companies, employees/personnel engaged on contract basis and contract labourers and interns/trainees of the Transferor Companies are on its payrolls shall become employee of the Transferee Company with effect from the effective date.
10	As per Clause 11 in Part-II of the Scheme, upon the Scheme

	<p>coming into effect that since Transferor Companies are the wholly owned subsidiaries of the Transferee Company, upon sanction of scheme by this Tribunal, all the equity shares held by the Transferee Company and its nominees of the Transferor Companies shall be cancelled and extinguished as on the appointed date and there will be no issue and allotment of equity shares of the Transferee company to the shareholders of the Transferor companies.</p>
12	<p>Clause 14 of Scheme provides for dissolution of the Transferor Companies, without being wound up.</p>
13	<p>As per the report dated 27.12.2023 of ROC, Chennai, the Transferor Companies 1 and 2 and Transferee Company are regular in filing their statutory returns and filed up to financial year ending 31 March 2023.</p> <p>ROC, Chennai has further stated that there is no prosecution/complaint/inspection or investigation pending against the Transferor Companies 1 and 2 and Transferee Company. Further, it is also reported that the Transferor Companies 1 and 2 are wholly owned subsidiaries of Transferee Company. However, as per MCA portal, the Transferor Company 1 i.e., <i>M/s. Sunfast TVS Limited has not filed e-form MGT-6 for disclosing the beneficial interest as required under Section 89(6) of the Companies Act, 2013.</i> Hence, <i>the Transferor Company has to undertake to file MGT- 6 for compliance of Section 89(6) of the Companies Act, 2013 and also undertake to file adjudication application</i></p>

	<i>before the Registrar of Companies, Tamil Nadu, Chennai for violation of Section 89 (6) of the Companies Act, 2013 read with Rules made therein.</i>
14	It is stated that, the Transferee Company i.e., M/s.Sundram Fasteners Limited is a listed entity and listing in NSE and BSE. The Transferee Company vide letter dated 8.11.2022 intimated the proposed scheme of Amalgamation to NSE and BSE under Regulation 30 and 37 of the SEBI(Listing obligations and Disclosure requirements) Regulations, 2015.

7.1.2 It is stated by the RD that, after examining the scheme he has decided not to make any objection to the Scheme except in para 13 of this report and it is therefore prayed that this Tribunal may dispose of the matters on merits and pass such order/orders as deemed fit and proper.

7.1.3 In response to the objections made by the RD in para 13 of the Report, the Ld. Counsel for the Petitioner companies have filed a reply affidavit vide SR No 292 dated 17.01.2024 and the same is as follows

- (i) It is stated in para 3 & 4 of the affidavit that the petitioner companies have inadvertently overlooked to file MGT 6 as mentioned by the RD in the Report and the same was not wilful or wanton. Further it is stated that, the said e-form has been filed on 04.01.2024.

(ii) In para 5 of the said application, the Petitioner Company also undertakes to file an adjudication application with the Registrar of Companies, Chennai, as directed by the Regional Director in his Report.

7.2. OFFICIAL LIQUIDATOR

(i) The Official Liquidator, (*hereinafter referred to as 'OL'*) to has filed the Report on 14.11.2023. It is stated that, they have appointed Bala & Co, Chartered Accountants from the panel maintained by their office to verify into the affairs of the Transferor Company. OL in the report has observed as follows;

Para	Observations
4B	According to the Latest Financial Statements and other ROC records there were no Statutory dues as on date
4C	As per the records produced the companies have not accepted any deposits from the Public.
4D	The Companies have been regularly complying with the filing of the Statutory Returns with the Registrar of Companies and there is no prosecution launched against them/no actions are initiated by the Registrar of Companies.

4E	Upon examination of records and documents available with the companies and prima facie, nothing adverse or objectionable issues affecting the interest of the Companies or its members or creditors or prejudicial to the public interest were noticed
4F	The companies have maintained all the statutory records on updated basis and as required under the Companies Act, 2013. The Companies have recorded relevant transactions and entries which are required to be recorded in the respective Registers in accordance with the requirements of Companies Act
5	That on examination/ scrutiny of the books of accounts, records, registers, etc., produced by the Transferor Company, the Chartered Accountants had opined that the business of the Transferor Company has not been carried on with the intent to defraud the creditors or any other person or for any fraudulent purpose attracting the penal provisions of Section 339 of the Companies Act, 2013. Neither has any person or Officer or Director of the company misapplied or diverted or retained or become liable or accountable for any money or property of the company or has been found guilty of any misappropriations, breach of trust in

	relation to the company under section 340 of the Companies Act, 2013 and further, the affairs of the Transferor Company has not been conducted in a manner prejudicial to the interest of its members or creditors or public.
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(ii) The Official Liquidator has sought to take on record the above observations 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 **Rs. 40,000/- + GST (Rupees Forty Thousand Plus GST)** to the Official Liquidator for the payment of fees payable towards the Auditor who has investigated into the affairs of the Transferor Company.

7.3. INCOME TAX AUTHORITIES

(i) Despite private notice having been served and Public Notice issued in Business Standard (All Indian Edition) in English and Dina Malar (Tamil Nadu Edition) in Tamil on 24.08.2023, there is no representation from the Department of Income Tax. 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. Deemed Consent.

(ii) 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.”

7.4. OTHER STATUTORY AUTHORITIES

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. In these circumstances, this Tribunal presumes that other statutory

Departments do not have any objection to the sanction of the Scheme.
Deemed consent.

8. ACCOUNTING TREATMENT

8.1. 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 on record before this Tribunal.

8.2 It is stated 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.

9. OBSERVATIONS OF THIS TRIBUNAL

9.1. 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 as **page 357-377** with the Company Petition as well as the prayer made therein.

9.2. 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.

9.3. 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.

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

- (i) That all properties, right and interest of the Transferor Companies 1-2 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 **01.04.2023** as mentioned in clause 1.1.3 of the SCHEME itself.
- (iv) That as per Clause 11 in Part-II of the Scheme, upon the Scheme coming into effect that since Transferor Companies 1-2 are the wholly owned subsidiaries of the Transferee Company, upon sanction of scheme, all the equity shares held by the Transferee Company and its nominees of the Transferor Companies 1-2 shall be cancelled and extinguished as on the appointed date and there will be no issue and allotment of equity shares of the Transferee Company to the shareholders of the Transferor Companies 1-2.
- (v) That all proceedings now pending by or against the Transferor Companies 1-2 be continued by or against the Transferee Company.
- (vi) That all the employees of the Transferor Companies (1-2) 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.

- (vii) That the Transferee Company shall file the revised Memorandum and Articles of Association with the 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 Companies (1-2).
- (viii) That the Transferor Companies (1-2) 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 Companies (1-2) shall be dissolved without winding up and the Registrar of Companies shall place all documents relating to the Transferor Company (1-2) registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said company shall be consolidated accordingly.
- (ix) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

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

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Vinita Varshini. K

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)