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NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-III

COMPANY PETITION NO. (CAA)- 64 (ND)/2022

CONNECTED WITH

COMPANY APPLICATION NO. CA (CAA)-55 (ND)/2022

IN THE MATTER OF SCHEME OF AMALGAMATION:

AMONGST

LUMAX METTALICS PRIVATE LIMITED

... Petitioner No. 1 /Transferor Company

WITH

LUMAX AUTO TECHNOLOGIES LIMITED

... Petitioner No. 2/ Transferee Company

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

ORDER DELIVERED ON: 01.03.2023

SECTION: 230 and 232 of the Companies Act, 2013

Coram:

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

SH. ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

Present:

राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
नई दिल्ली पीठ
New Delhi Bench

For the Petitioners	:	**Mr. Suman Kumar Jha, S. Shiva, Advocates**
For the RD	:	**Mr. Shankari Mishra**
For the OL	:	**Ms. Hemlata Rawat**

ORDER

PER: SH. BACHU VENKAT BALARAM DAS, MEMBER – JUDICIAL

This Petition is preferred jointly by the Transferor Company and Transferee Company under Section 230 to 232 of Companies Act, 2013 read with the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 for the purpose of the approval of the Scheme of Amalgamation (hereinafter referred to as **'Scheme'** for brevity), as contemplated between the Companies, its Shareholders and Creditors. The copy of the Scheme has been placed on record. The Appointed date as fixed for the Proposed Scheme of Amalgamation is 01.04.2022. The details of the Companies proposed to be amalgamated, as placed on record, are given in the following paragraphs.

2. Lumax Mettalics Private Limited, (hereinafter referred to as "Petitioner-1 / Transferor Company-1") was incorporated on 28.11.2013 under the provisions of the erstwhile Companies Act, 1956 as a private company having its registered office presently situated at 2nd Floor, Harbans Bhawan-II, Commercial Complex, Nangal Raya, New Delhi–110046. The Authorized Share Capital of Company is Rs. 10,00,00,000/- divided into 1,00,00,000 equity shares of Rs. 10/- each and the issued, subscribed and paid-up share capital of the Company is Rs. 9,94,74,280/- divided into 99,47,428 Equity shares of Rs. 10/- each. Presently, the Transferor Company is engaged in carrying on the business as manufacturers of, dealers in, importers and exporters, fabricators, hirers, repairers, cleaner, stores and warehouses of Automobile parts, components such as seating mechanism, seating assemblies

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and head restraints, other plastic and sheet metal components, automotive lighting, agricultural implements and their Ancillaries (including motor cars, trucks, buses, tractor dozers, road rollers, motor cycles, cycle cars, motors, scooters, bicycles etc.).

3. Lumax Auto Technologies Limited, (hereinafter referred to as "Petitioner-2 / Transferee Company") was incorporated on the 30.10.1981 under the provisions of the erstwhile Companies Act, 1956 as a Private Limited Company under the provisions of the Companies Act, 1956 with the name & style of Lumax Auto Electricals Private Limited under the jurisdiction of Registrar of Companies, Maharashtra. Thereafter, on 2nd November, 1988, the name of the Transferee Company was changed from Lumax Auto Electricals Private Limited to Dhanesh Auto Electricals Private Limited. Subsequently, on 30th May, 2002, the name of the Transferee Company was changed from Dhanesh Auto Electricals Private Limited to Dhanesh Auto Electricals Limited pursuant to obtaining status of a deemed Public Company. Later, on 2nd August, 2006, the name of the Transferee Company was changed from Dhanesh Auto Electricals Limited to Lumax Auto Technologies Limited. Further, on 8th May, 2019, the registered office of the Transferee Company was shifted from the state of Maharashtra to the state of New Delhi. The Registered office of the Transferee Company is presently situated at 2nd Floor, Harbans Bhawan-II, Commercial Complex, Nangal Raya, New Delhi-110046. The Shares of Transferee Company are listed on BSE Limited and National Stock Exchange of India Limited. The Authorized Capital of the Transferee Company is Rs. 36,10,00,000/- divided into 18,05,00,000 equity shares of Rs. 2/- each. The issued, subscribed and paid up share capital is Rs. 13,63,15,410/- divided into 6,81,57,705 equity shares of Rs. 2/- each. Presently, the company is engaged in carrying on the business as manufacturers of, dealers in, importers and exporters, hirers, repairers, cleaner, stores and warehouses of Automobile parts, agricultural implements and their

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Ancillaries (including motor cars', trucks, buses', tractor dozers', road rollers', motor cycles, cycle cars', motors', scooters', bicycles', carriages and conveyance parts and ancillaries) whether propelled or assisted by means of petrol, motor spirit, steam, gas, diesel oil, electrical, animal or other power.

4. The present Petition has been filed jointly by the Transferor Company and Transferee Company. The Transferor Company is a wholly owned subsidiary of the Transferee Company. Both the 'Transferor Company' and 'Transferee Company' together are called 'Petitioner Companies' hereinafter. Since the Registered offices of both the Companies are situated in Delhi, the jurisdiction lies with this Bench.

5. From the records, it is seen that the First Motion petition was filed by the Petitioner Companies for seeking directions for dispensing with the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of all the Petitioner Companies. It was submitted by the Petitioner Companies that the present Scheme of Amalgamation is between the wholly owned subsidiary company with its holding company. In view of the settled legal position regarding dispensation of the meetings, the Petitioner Companies had relied upon the judgment of the Hon'ble NCLAT dated 18.01.2022 passed in the matter involving amalgamation of Ericsson India Private Limited (Transferor Company) and Ericsson India Global Services Private Limited (Transferee Company) in Company Appeal (AT) No. 148 of 2021. This Tribunal, in the First Motion Application bearing No. CA (CAA) No. 55 (ND) 2022, vide Order dated 18.05.2022 dispensed with the requirement of convening the meetings of the equity shareholders, secured creditors and unsecured creditors of both the petitioner companies.

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6. Subsequent to the order of dispensation of meetings in relation to both the Transferor Company and Transferee Company, the Second Motion petition was moved by the Petitioner Companies in connection with the Scheme of Amalgamation for issuance of notices to the Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi, Registrar of Companies (NCT of Delhi & Haryana), Official Liquidator (Attached to High Court of New Delhi) and to the respective wards of the Income Tax Department and also for publication of notice in respect of the said Scheme. The said petition was admitted and directions were issued vide Order dated 08.06.2022 of this Tribunal, requiring the Petitioner Companies to serve notices to the Regional Director, Registrar of Companies, Official Liquidator and Income Tax Department and also to carry out necessary publication in English and Hindi newspapers with respect to the said Scheme.

7. It is submitted by the Petitioner companies that in compliance of the above stated directions, the Petitioner Companies duly filed Affidavit of Service by confirming that the aforesaid Notices of the present Company Petition were published on 02.08.2022 in Financial Express (English) and Jansatta (Hindi) newspapers Delhi edition. It is further submitted that the Petitioner Companies also served the Notices of the present Company Petition to all the statutory authorities.

8. It is submitted by the Petitioner Companies that the compliance with respect to accounting treatment has been made as certified by the Statutory Auditor of the respective Petitioner Companies. The Statutory Auditors vide their certificates dated 30.04.2022 and 27.04.2022 have certified that the proposed accounting treatment included in the Scheme of Amalgamation of the petitioner companies is in compliance with the applicable Accounting Standards specified under the Section 133 of the Act.

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9. It is submitted by the Petitioner Companies that the Official Liquidator has filed its report dated 22.08.2022 in which it has been stated that on the basis of the information submitted by the Petitioner Companies, the Official Liquidator is of the view that the affairs of the aforesaid Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its members or to the public interest in terms of the provisions of the Companies Act, 2013.

10. The Income Tax Department vide its report dated 01.08.2022 stated therein that they have no objection with respect to the present Scheme of Amalgamation between the Petitioner Companies herein.

11. The Regional Director vide his report dated 12.08.2022 has not objected to the proposed scheme but has made certain observations. The petitioner companies filed an affidavit dated 11.01.2023 in response to the observations made by the Regional Director, the details of which are given below:

Observations of the Regional Director	**Reply of the Petitioner Companies**
Refer to clause 2 (2.2) of Part III of the scheme, the Transferee company may kindly be directed to comply with the provision of section 232(3)(i) of the Companies Act, 2013 in regard to fee payable on its revised authorized share capital, if applicable.	The transferee company will comply with the provisions of section 232(3)(i) of the Companies Act, 2013 with respect to the fee payable on its revised authorized share capital.

The shares of the Transferee Company are listed on BSE Limited and NSE Limited, The Transferee Company may be directed to comply with the applicable SEBI Regulations in this regard.	Petitioner Companies have duly complied with all applicable SEBI regulations.
The total open secured charges for Transferee Company appears to be Rs.28 crore (13 crore from Axis Bank and 15 crore from Bajaj Finance) on MCA21. However, the same doesn't tally with the financial statements submitted by the applicants as on 31.12.2021.	There neither is any open secured charge of Rs. 13 crores in respect of Axis Bank nor is there any such open secured charge of Rs. 15 crores from Bajaj Finance appearing on the MCA 21 portal.

The scheme of the Amalgamation partakes merger of Transferor Company namely Lumax Mettalics Private Limited with Transferee Company namely Lumax Auto Technologies Limited and as per the scheme, the Transferor Company is the wholly owned subsidiary of the Transferee Company. It is found in the scheme that the Appointed Date is 01.04.2022, but on perusal of MCA Portal it is found that the Petitioner Transferor Company has not filed the Statutory Returns viz. Financial Statements & Annual Returns for the F.Y. 2021-22. Since Appointed date is 1.04.2022 and once the order of the Hon'ble Tribunal sanctioning the scheme if filed by the Petitioner Transferor Company with the ROC then the status of the Transferor Company shall be changed from ACTIVE to AMALGAMATED, thereby, no Statutory Returns will be accepted by the system if the Petitioner Company want to file the same. Therefore, it is prayed before the Hon'ble Tribunal to direct the Petitioner Transferor Company to file the Statutory Returns due for the financial year 2021-22 before filing of the order of the Hon'ble Tribunal.	The required statutory returns for the financial year 2021-2022 have been duly filed by the Transferor Company and the requirement of any directions in this regard may be dispensed with.

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12. In view of the foregoing facts and discussion and also in the view of the fact that no sustainable objections have been raised by the Office of the Regional Director, Registrar of Companies, Official Liquidator, Income Tax Department or any other interested party, there does not appear to be any impediment in granting sanction to the Scheme proposed of amalgamation.

13. **Accordingly, in sequel to the above facts and circumstances, sanction is hereby granted to the Scheme of Amalgamation proposed by the Petitioner Companies under Section 230 to 232 of the Companies Act, 2013.**

14. The sanctioned Scheme of Amalgamation shall be binding on the Transferor Company and Transferee Company (Petitioner Companies) and their Shareholders and Creditors. The Petitioner Companies shall remain bound to comply with the statutory requirements in accordance with law.

15. Notwithstanding the above, if at any stage any deficiency is found or violation committed qua any enactment, statutory rule or regulation is found to be committed, the sanction granted by this Tribunal to the Scheme will not come in the way of action to be taken, albeit, in accordance with law, against the concerned persons, Directors and Officials of the Petitioner Companies.

16. 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 other statutory dues, 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 will be made. Further the approval of the Scheme would in no manner affect the tax treatment of the transactions under the Income Tax Act, 1961 or serve as any exemption or defense for the Petitioner Companies against tax treatment in accordance with the provisions of Income Tax Act, 1961.

17. **THIS TRIBUNAL FURTHER DIRECTS** with respect to Transferor company and Transferee company, that:

(i) Upon the sanction becoming effective from the appointed date of amalgamation and arrangement i.e., 1st April, 2022, the Transferor Company shall stand dissolved without undergoing the process of winding up.

(ii) All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Company is entitled to including under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives and concessions;

(iii) All contracts of the Transferor Company, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favor of the Transferee Company and may be enforced by or against it as fully and effectually as if,

instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto;

(iv) All the employees of the Transferor Company shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favorable than those on which they are engaged by the Transferor Company, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;

(v) All liabilities of the Transferor Company, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Companies Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company, as if it had incurred such liabilities.

(vi) All proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company.

(vii) Any person interested or effected shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

18. Further, the Petitioner Companies shall within thirty days of the date of the 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

shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies on the file kept by him in relation to the Transferee Company and the files relating to all the Petitioner Companies shall be consolidated accordingly.

The Company Petition bearing (CAA) 64 (ND)/2022 is ALLOWED in the above terms.

SD/-

(ATUL CHATURVEDI)

MEMBER (T)

SD/-

(BACHU VENKAT BALARAM DAS)

MEMBER (J)

09-03-2023

सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
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