

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III**

Item No.102
CA.CAA-55(ND)/2022

IN THE MATTER OF:

M/s. Lumax Mattalics Pvt Ltd with Lumax Auto Technologies Ltd

.....APPLICANT/PETITIONER

SECTION

U/s 230/232

Order delivered on 18.05.2022

CORAM:

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

**SHRI NARNEDER KUMAR BHOLA
MEMBER (TECHNICAL)**

PRESENT:

For the Applicant : Adv. Suman Kumar Jha and Adv. S. Shiva for applicant companies

For the Respondent :

ORDER

Counsel for the Petitioner Companies is present. Under the present petition, the Scheme of Amalgamation between the wholly owned subsidiary Company with the holding Company is proposed.

It is seen that in the Transferor Company, which is a subsidiary Company, there are only two Shareholders and the said Shareholders have given No objection by way of individual Affidavits to the present Scheme of Amalgamation. The same has been seen by us and and taken on record.

Further, as regards the consent of the Secured/Unsecured Creditors of the Company is concerned, the Counsel for the petitioner Companies submits that the holding Company is having positive networth after Amalgamation Scheme is approved by this Tribunal. He further made a reference to the Judgment dated 18.1.2022 of the Hon'ble NCLAT in the Company Appeal (AT) No.148 of 2021 involving amalgamation of Ericsson India Private Limited (Transferor Company) and Ericsson India Global Services Private Limited (Transferee



Counsel

Company) to strengthen his arguments in case where the Amalgamation is proposed to be carried out between wholly owned Subsidiary Company and the holding Company, the consent of Secured/Unsecured Creditors may not be necessary. He further submits that in the aforesaid Judgment of the NCLAT, the circumstances of the said case are similar to the circumstances of the present petition under consideration before this Tribunal. In particular, he has drawn our attention to Para 2 & 6 of the said Judgment dated 18.1.2022.

We have gone through the contents of the said Judgment and we are convinced that in the said case, the concerned Companies were also holding Company and Subsidiary Company as also the financial condition/networth of the said Companies are also positive even after Amalgamation.

In the present case before us, the Counsel has taken us through various averments made in the petition which indicate that the Amalgamation is proposed between the wholly owned Subsidiary Company and the networth of the holding Company after Amalgamation shall be positive. With this background, the Counsel seeks exemption from holding the meetings of the Secured/Unsecured Creditors of the Companies under consideration. He further submits that in any event, the holding Company will honour the liability of the Subsidiary Company towards Secured/Unsecured Creditors.

In view of above, we are inclined to agree with the submissions made by the Counsel. Therefore, we exempt the Companies from holding meetings of their Secured/Unsecured Creditors in terms of Section 230-232 of the Companies Act, 2013.

We have also seen the declaration filed with the National Stock Exchange in terms of SEBI Regulations' Master Circular dated 23.11.2021. In terms of the said Circular, the Scheme of Amalgamation between the Subsidiary Company and the holding Company are not required to be filed and only intimation is to be given to the Stock Exchange. The said requirement has been complied with by the petitioners Companies.

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Contd.

We also exempt from holding the meetings of the Shareholders of the Transferee Company as prayed for.

The present petition stands disposed of in terms of the above order.

-sd-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

-sd-

(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

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SURJIT SINGH
18.05.2022