
(2022) 01 NCLT CK 0005
In the National Company Law Tribunal
Case No : CP (CAA) No.3/Chd/Hry/2021

Comstar Automotive Technologies Private Limited	APPELLANT
Vs	
Sona Blw Precision Forgings Limited	RESPONDENT

Date of Decision : 07-01-2022

Acts Referred:

Companies Act, 2013 — Section 164(2), 230, 232, 232(3)(i)
f Competition Act, 2002 — Section 31(1)
Companies (Auditor and Auditors) Rules, 2014 — Rule 11
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 16

Citation : (2022) 01 NCLT CK 0005

Hon'ble Judges : Harnam Singh Thakur, Member J;Subrata Kumar Dash, Member T

Bench : Division Bench

Advocate : Rohit Khanna, Yogesh Putney

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a joint Second Motion petition filed under Sections 230-232 of the Companies Act, 2013 (for short the 'Act') by the petitioner companies

namely; Comstar Automotive Technologies Private Limited (hereinafter referred to as 'Transferor Company') and Sona BLW Precision Forgings

Limited (hereinafter referred to as 'Transferee Company') in terms of Rule 16 of Companies (Compromises,

Arrangements and Amalgamations) Rules, 2016 (for brevity 'Rules') for the sanction of Scheme of Amalgamation (for brevity 'Scheme') between the petitioner companies.

2. The Petitioner Companies filed First Motion Application bearing CA (CAA) No.5/Chd/Hy/2020 before this Tribunal for seeking directions for

dispensing with the meetings of equity shareholders and secured creditors of the applicant companies.

3. The First motion application was disposed of vide order dated 22.12.2020, with directions to dispense with the meetings of equity shareholders,

secured creditors and unsecured creditors of both the applicant companies. The meetings of equity shareholders and secured creditors were dispensed

with as the consent affidavits have been obtained and placed on record. The meetings of unsecured creditors of both the applicant companies were

dispensed with, subject to compliance of directions to issue notices to unsecured creditors, and to statutory authorities. The Petitioner Companies have

filed a compliance affidavit vide Diary No.00458/4 dated 27.01.2021, wherein notices were issued to unsecured creditors and to statutory authorities

along with newspaper publications.

4. The main objects, date of incorporation, authorized and paid-up share capital, and the rationale of the scheme had been discussed in details in the

order dated 22.12.2020.

5. In the second motion proceedings, certain directions were issued by this Tribunal vide order dated 23.07.2021 and the same were complied by an

affidavit of compliance filed vide diary No.02126/3 dated 09.09.2021 along with newspaper publications in ""Business Standard"" (English) and

Business Standard"" (Hindi) both Haryana Edition on 06.08.2021. The original copies of the newspapers were attached as Annexure-A and B of the

aforesaid affidavit. It is also stated in the aforesaid affidavit that copies of the notices were served upon the Central Government through Regional

Director, Northern Region, Ministry of Corporate Affairs; Registrar of Companies, N.C.T. of Delhi and Haryana; Competition Commission of India

(CCI), Official Liquidator; Reserve Bank of India (RBI) and Income Tax Department, Chandigarh by the petitioner companies. Copies of notices

along with postal receipts sent by the petitioner companies to the aforesaid statutory authorities are attached as Annexure C and D of Diary

No.02126/3 dated 09.09.2021. It is also stated that the Petitioner Company No.2 has sent the notices to the National Stock Exchange of India (NSE),

Bombay Stock Exchange of India (BSE) and Securities and Exchange Board of India (SEBI).

6. It was also deposed by the authorized signatory of the petitioner companies

that pursuant to publications made on 06.08.2021, the petitioner companies have not received any objection to the Scheme of Amalgamation from equity shareholders, preference shareholders, secured creditors and unsecured creditors. It is further deposed that the Petitioner Company No.2 got listed with the National Stock Exchange of India (NSE) and Bombay Stock Exchange of India (BSE) on June 24, 2021, however, the Petitioner Company No.1 is wholly owned subsidiary of Petitioner Company No.2 and therefore, there was no requirement to obtain prior approval from Stock Exchanges and Securities and Exchange Board of India in view of the circulars issued by the SEBI. The copy of affidavit is attached at Diary No.02126/3 dated 09.09.2021.

7. In response to the abovementioned notices, the statutory authorities have furnished their replies.

7.1 The Registrar of Companies (RoC)/Regional Director of Companies (RoC) has filed its report along with the report of the

Regional Director (RD) by diary No.02126/4 dated 22.09.2021. The R.D. in Para 6 of the report has observed that Clause 9 of the

proposed scheme protects the interest of the employees of the Transferor Company.

Further, in Para 9 of the said report, it is stated that as per the RoC, the Transferor Company and Transferee Company have filed annual returns

and balance sheets up to 31.03.2020. It is also stated that no prosecution has been filed, and inspection or investigation has

been conducted in respect of the petitioner companies.

The R.D. in Para 10 has also made the following observation:-

10. That as per Para 32 of the report of RoC, Delhi dated 07.09.2021, the following observations have been made:

a. Refer to clause 13 of the Scheme, the Transferee Company shall comply with Section 232(3)(i) of the Companies Act, 2013 and pay the difference fee on

consolidated authorized share capital of Transferee Company after setting off the fee already paid by the Transferor Companies on their respective capital.

7.2 In reply to the same, the Petitioner Companies have filed an affidavit vide Diary No.02126/7 dated 01.10.2021 and has stated that in respect of the

said observation of the R.D. and RoC, the petitioner

companies undertake that they shall comply with the provisions of Section 232(3)

(i) of Companies Act, 2013 and shall pay the applicable fees, if any,
post the consolidation of the authorized share capital of the Transferee Company
after setting off the fee already paid by the Transferor Company.

8. Official Liquidator

8.1 The Official Liquidator has filed his report vide Diary No.02126/2 dated
07.09.2021. The relevant part of the report is extracted below:

â?|â?|We report that:

In Para (e) It is mentioned that on the basis of the written representations
received from the directors and taken on record by the Board of Directors, none
of the

director is disqualified as on 31.03.2019 from being appointed as a director in
terms of Section 164(2) of the Act.

In Para (g) It is mentioned that with respect to the other matters to be included
in the Auditorâ??s Report in accordance with Rule 11 of the Companies (Auditor
and Auditors) Rules, 2014 (as amended), in our opinion and to the best of our
information and according to the explanations given to us:

i. The company, as detailed in note 34 to the standalone financial statements,
has disclosed the impact of pending litigations on its financial position as at
31.03.2019.

ii. The company did not have any long-term contracts including derivative
contracts for which there were any material foreseeable losses as at 31.03.2019.

iii. There were no amounts which were required to be transferred to the Investor
Education and Protection Fund by the Company during the year ended
31.03.2019.

iv. The disclosure requirements relating to holdings as well as dealings in
specified bank notes were applicable for the period from 8 November 2016,
which are

not relevant to these standalone financial statements. Hence, reporting under
this clause is not applicable.â??

Thus, the Official Liquidator has made no adverse observation against the
petitioner companies.

9. Income Tax Department

9.1â?â The Income Tax Department filed its report vide Diary No.02126/6 dated
17.09.2021 and has stated that demands amounting to â? 30,02,300/-

for Assessment Year 2007-08, ₹ 3,28,67,960/- for Assessment Year 2016- 17 and ₹ 9,31,48,540/- for Assessment Year 2017-18 were outstanding

against the Petitioner Company No.1. Similarly, demands amounting to ₹ 20,01,970/- for Assessment Year 2016-17, ₹ 5,54,55,976/- for Assessment Year 2017-18 and ₹ 16,49,392/- for Assessment Year 2018-19 were outstanding against the Petitioner Company No.2.

9.2 In reply to the same, the petitioner companies filed a joint affidavit vide Diary No.02126/10 dated 08.10.2021 and submitted that as per Clause 9 of

the Scheme of Amalgamation, all pending litigations of the Transferor Company shall stand transferred/mutated to the Transferee Company and any

liability arising pursuant to such litigations shall be payable by the Transferee Company. Further, Clause 4.2 of the Scheme Amalgamation provides

that all the liabilities including contingent liabilities, duties, obligations, undertakings of Transferor Company shall stand transferred to an vested in or

deemed to have been transferred to and vested in Transferee Company with effect from the Appointed Date of 5 July, 2019 or any such other date as

may be approved by the Tribunal upon the Scheme of Amalgamation becoming effective.

9.3 It is further submitted in the aforesaid reply that the Transferee Company undertakes that any outstanding demand of the Transferor Company

that are either in dispute or have not crystalized as the matters have not obtained finality and the demand with respect to the Transferor Company

shall be enforced against the Transferee Company. Accordingly, the interest of the revenue would remain protected and the Transferee Company

reserves its right to appeal as available under Income Tax Law against such order/demand and the Company shall pay all the outstanding tax dues as

and when such demands become payable.

9.4 In any case, this Tribunal is not shutting out the legitimate interest of the income-tax authorities to recover the lawful dues payable by the

transferor companies and the transferee company is not being dissolved, and the scheme provides the savings in relation to the liabilities as well, the

rights of the tax authorities remain intact, and they can proceed against the transferee company in accordance with the law, if any amount is found

due and payable. The Hon'ble National Company Law Appellate Tribunal also in the Ad2Pro Global Creative Solutions P. Ltd. v. Regional Director,

(S.E.R.), Ministry of Corporate Affairs MANU/NL/0469/2019 : [2019] 217 Comp Cas 443 (NCLAT), in Company Appeal (AT) No. 98 of 2019, in

relation to the dues of the income-tax has held in paragraph 7 as follows (page 449):

Admittedly, proceedings are pending in appeal before the Income-tax Appellate Tribunal and depending upon the outcome of such proceedings. The transferee company has undertaken to satisfy all demands emanating from and raised by the competent tax authorities. The scheme having been approved and sanctioned and the same being in consonance with law, no fault can be found with the transferee's undertaking to satisfy all demands raised by the tax authorities as finally

determined by due process. The appellants are justified in maintaining that the tax liabilities would be satisfied by the transferee as determined by the competent forum seized of the matter in accordance with the approved scheme, which admittedly does not come in conflict with any express provision of the Companies Act,

2013. The legitimate interests of the concerned tax authorities have been lawfully protected, and their right to recover the tax dues as determined by the Income-

tax Appellate Tribunal or any other competent forum as the case may remain intact.

9.5 Further in Company petition C.A.A. No. 284/ND/2018 vide order dated November 12, 2018, the National Company Law Tribunal, New Delhi has

made the following observations with regard to the right of the Income-tax 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 Vodafone Essar Gujarat Ltd. v. DIT MANU/GJ/0794/2012 : [2013] 176 Comp Cas 7 (Guj); [2013] 353 ITR 222 (Guj) and the same being also affirmed

by the Hon'ble Supreme Court and as reported in Department of Income-tax v. Vodafone Essar Gujarat Ltd. [2015] 190 Comp Cas 105 (S.C.); [2015] 373 ITR 525

(S.C.); [2016] 66 taxmann.com. 374 (S.C.) from which it is seen that at the time of declining the S.L.P.s 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.

10. Competition Commission of India (CCI)

10.1 The Competition Commission of India filed its report vide Diary No.590 dated 16.09.2019 and Diary No.194 dated 25.01.2021 has stated that the matter with regard to the petitioner companies has been approved by the Competition Commission of India vide its order dated 19.12.2018. The aforesaid order is the part of report of Competition Commission of India. In Para 9 of the order dated 19.12.2018, the Commission approve the combination under Sub-Section (1) of Section 31 of Competition Act, 2002 and stated that the proposed combination is not likely to have any appreciable adverse effect on competition in India.

11. As per the compliance affidavit filed vide Diary No.02126/3 dated 9. 09.2021, the notices were issued to the National Stock

Exchange of India (NSE), Bombay Stock Exchange of India (BSE) and Securities and Exchange Board of India (SEBI) by the Petitioner Company

No.2. The notices were issued and no reply has been received from any of the aforesaid statutory authorities and a substantial time has been lapsed.

Since, no representation/objection is filed, it is presumed that the statutory authorities do not have any objection to the proposed Scheme of

Amalgamation.

12. We have heard the learned counsel for petitioner companies and learned Senior Standing Counsel for the Income Tax Department and perused the record carefully.

13. In the context of the above discussion, the Scheme contemplated between the petitioner companies, appears to be prima facie in compliance with all the requirements stipulated under the relevant Sections of the Companies Act, 2013. In the absence of any objections before us and since all the requisite statutory compliance have been fulfilled, this Tribunal sanctions the scheme of amalgamation appended as Annexure-A1 with the company petition.

14. Notwithstanding the submission that no investigation is pending against the petitioner companies, 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.

15. 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.

16. THIS TRIBUNAL DO FURTHER ORDER:

(i) That all the property, rights and powers of the Transferor Company be transferred, without further act or deed, to the Transferee Company and

accordingly, the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for

all the estate and interest of the Transferor Company but subject nevertheless to all charges now affecting the same;

(ii) That all the liabilities and duties of the Transferor Company be transferred, without further act or deed, to the Transferee Company and

accordingly the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the

Transferee Company;

(iii) That the Appointed Date for the scheme shall be 05.07.2019 as specified in para 1.2 of the Scheme;

(iv) That the proceedings, if any, now pending by or against the Transferor Company be continued by or against the Transferee Company;

(v) That the employees of the Transferor Company shall be transferred to the Transferee Company in terms of the 'Scheme';

(vi) That the Transferee Company shall, without further application, allot to the existing members of the Transferor Company shares of Transferee

Company to which they are entitled under the said Scheme of Amalgamation;

(vii) That the fee, if any, paid by the Transferor Company on its authorized capital shall be set off against any fees payable by the Transferee

Company on its authorized capital subsequent to the sanction of the 'Scheme';

(viii) That the transferee company shall file the revised memorandum and

articles of association with the Registrar of Companies, N.C.T. of Delhi & Haryana 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 Petitioner Companies shall, within 30 days after 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 undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company, and the files relating to the Transferor Company and Transferee Company shall be consolidated accordingly, as the case may be;

(x) That the Transferee Company shall deposit an amount of ₹ 50,000/- (Rupees Fifty Thousand Only) in favour of "The Company Law Tribunal Bar Association" Chandigarh within a period of four weeks from the date of receipt of the certified copy of this order;

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

17. As per the above directions, Form No.CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 formal orders be issued on the petitioners on the filing of the schedule of properties, i.e. (i) freehold property of the Transferor Company (ii) leasehold property of the Transferor Company by way of affidavit. Copy of this order be communicated to the Counsel for the Petitioners.