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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment: 25th July, 2012

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Co. Pet. No. 121/2012

**IN THE MATTER OF SHARDA SEJONG AUTO
COMPONENTS (INDIA) LTD. & ORS.**

Through: Mrs. Malini Sud, Advocate with
Mr. Salil Seth and Ms. Aditi
Sharma, Advocates for Petitioner
Companies
Mr. Rajiv Bahl, Advocate for
Official Liquidator.
Mr. K.S. Pradhan, Deputy
Registrar of Companies for
Regional Director (Northern
Region).

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This second motion joint Petition has been filed under Sections 391(2) and 394 of the Companies Act, 1956 by the abovenamed Petitioner Transferor Company and Transferee Company, seeking sanction of the Scheme of Amalgamation of SHARDA SEJONG AUTO COMPONENTS (INDIA) LIMITED with SHARDA MOTOR

INDUSTRIES LIMITED as amended by the order dated 10.07.2012 passed by this Hon'ble Court.

2. The registered offices of the Petitioner Transferor Company and Transferee Company are situated at New Delhi, within the jurisdiction of this Court.

3. Details with regard to the date of incorporation of Petitioner Transferor and Transferee Company, their authorized, issued, subscribed and paid up capital have been given in the Petition.

4. Copies of the Memorandum and Articles of Association as well as the latest audited Annual Accounts for the year ended 31st March, 2011 of the Petitioner Transferor and Transferee Company have also been enclosed with the Petition.

5. Copies of the resolutions passed by the Board of Directors of the Petitioner Companies, approving the Scheme of Amalgamation have also been placed on record.

6. It has been submitted that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the Petitioner Companies.

7. So far as the share exchange ratio for amalgamation is concerned, the Scheme of Amalgamation provides that, upon the Scheme finally coming into effect, the shares of the Transferor Company (being the wholly owned subsidiary) of the Transferee Company, shall stand cancelled and no new equity shares shall be issued to the shareholders of the Transferor Company in lieu of the shares held by the Transferee Company. Subsequently, upon the coming into effect of this Scheme, the authorized Share Capital of the Transferee Company shall automatically stand increased without any further act, deed or thing on the part of the Transferee Company including payment of stamp duty and fees, if any, payable to the concerned Registrar of Companies under the Companies Act, 1956, by the authorized share capital of the Transferor Company amounting to Rs. 250,000,000/-, which would be reorganized in the following manner:

Particulars	Amount (Rs.) (In Lacs)
Authorised: 50,000,000 Equity Share of Rs. 10/- Each	5000.00
TOTAL	
Issued, Subscribed & Paid-Up 5,946,326 Equity Share of 10/- Each	594.63
TOTAL	594.63

8. The Petitioner Companies had earlier filed C.A. (M) No. 4 of 2012, seeking directions of this Court for dispensation / convening of meetings of their shareholders and the creditors. Vide order dated 04.01.2012 this Court allowed the Application and dispensed with the requirement of convening the meetings of Shareholders of the Transferor Company. The Court also dispensed with the requirement of convening the meetings of the Secured and the Unsecured Creditors of the Transferor Company as there were none. Further, the Court directed that separate meetings of the Shareholders, Secured and Unsecured Creditors of the Transferee Company shall be held on 18.02.2012 at the India Habitat Centre, New Delhi at 11.00 a.m., 2.00 p.m. and 3.30 p.m. respectively. In the meetings directed by this Court, the Scheme was approved unanimously by those who were present and voting.

9. The Transferor and Transferee Company have thereafter, filed the present Petition seeking sanction of the Scheme of Amalgamation. Vide order dated 16.03.2012, notice in the Petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator. Citations were also directed to be published in 'Financial Express' (English Delhi Edition) and 'Veer Arjun' (Hindi Delhi

Edition). Affidavit of Service and Publication has been filed on behalf of the Petitioners Companies on 07.07.2012, showing compliance regarding service of the Petition on the Regional Director, Northern Region and the Official Liquidator and also regarding publication of citations in the aforesaid newspapers on 10.04.2012. Copies of the newspaper's cutting, in original, containing the publications have been filed along with the Affidavit of Service filed on behalf of the Petitioner Companies.

10. An Application being C. A. (M) No. 1254/2012 under Rule 9 of the Company Court Rules, 1959 was also filed on behalf of the Petitioners, *inter alia*, praying as follows -:

*“.....a. pass an order to the effect that typographical error in clause 19.4 in the Scheme of Amalgamation as stated in para 3 above stands corrected; and
b... pass an order stating that date 01.04.2011 will be read in place of 01.04.2013 in clause 19.4.....”*

By an order dated 10.07.2012, passed by the Hon'ble Court the said Application was allowed and it was held that the date mentioned in line 3 of clause 19.4 of the scheme shall read as 01.04.2013 and not 01.04.2011, which was accepted as being an obvious typographical error.

11. Pursuant to the notices issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official Liquidator has filed his Report dated 11.07.2012 wherein he has stated that there is nothing to show that the affairs of the transferor Company have in any manner been conducted prejudicial to the interest of its members or to public interest.

12. In response to the notices issued in the Petition, Mr. K.S. Pradhan, Regional Director (Northern Region) Ministry of Corporate Affairs, has filed his Affidavit dated 11.07.2012. Relying on Clause 7.1 of Part - II of the Scheme of Amalgamation, he has stated that upon sanction of the Scheme of Amalgamation, all the employees of the Transferor Company shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation by the Court.

13. No objection has been received to the Scheme from any other party. Ms. Malini Sud, learned counsel for Petitioner Companies Company, has filed an affidavit dated 24.07.2012, confirming that neither the Petitioner Companies nor has she received any objection pursuant to citations published in the newspapers.

14. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; representation / reports filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law. Certified copy of the order be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of the provisions of sections 391 and 394 of the Companies Act, 1956, and in terms of the Scheme of Amalgamation, the whole or part of the undertakings, the properties, rights and powers of the Transferor Company be transferred to and vest in the Transferee Company, without any further act or deed. Similarly, in terms of the Scheme of Amalgamation, all the liabilities and duties of the Transferor Company be transferred to the Transferee Company, without any further act or deed. Upon the Scheme of Amalgamation coming into effect, the Transferor Company shall stand dissolved

without winding up. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable in accordance with any law or permission / compliance with any other requirement which may be specifically required under any law.

15. The Petitioner Companies would voluntarily deposit a sum of Rs. 1,00,000/- in the Common Pool fund of the Official Liquidator within three weeks from today.

16. The Petition is allowed in the above terms.

17. Order dasti.

INDERMEET KAUR, J

JULY 25, 2012
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