

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

% *Date of Judgment: 18.7.2012*

+ CO. PET. No.153/2010

DUA AUTO COMPONENTS PRIVATE LIMITED

.....Transferor Company No.1

AND

ACME AUTO PRIVATE LIMITED

.....Transferee Company No.2

Through: Mr. P.Nagesh and Mr.Rishi Sood,
Advocates for petitioner Companies.
Mr.K.S.Pradhan, Dy. Registrar of
Companies for the Regional Director.
Mr.Rajiv Bahl, Advocate for the
Official Liquidator.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This second motion joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner Companies seeking sanction of the Scheme of Arrangement (for Short Scheme) of Dua Auto Components Private Limited (Transferor Company with Acme Auto Private Limited (Transferee Company)).

2. The registered office of the petitioner Transferor and Transferee Companies are situated at New Delhi, within the jurisdiction of this

Hon'ble Court.

3. The petitioner companies had earlier filed C.A. (M) No.44 of 2010 seeking directions of this Court for dispensation of meetings. Vide order dated 17th March 2010, this Court allowed the application and dispensed with the requirement of convening meetings of share holders of the Petitioner Companies and Secured creditors, Unsecured creditors of the Transferee company. There were no secured and unsecured Creditors of the Transferor Company.

4. The petitioner Transferor companies have thereafter filed the present petition seeking sanction of the Scheme of Arrangement vide order dated 16.04.2010, 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 "The Statesman" (English, Delhi Edition) and "Veer Arjun" (Hindi Delhi Edition). Affidavit of service and publication has been filed by the petitioners showing compliance regarding service of the petition on the Regional Director, Northern Region and the Official Liquidator and also regarding and also regarding Publication of Citations in the aforesaid Newspapers on 28th October 2010, copies of the news papers cuttings in

original, containing the publications have been filed with the affidavit of service.

5. 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 01.09.2011 wherein he has stated in Para 3 that the income tax authorities have seized certain records for 2009-2010, documents, books of accounts including all statutory books and records of the Petitioner Companies on 26th March 2010 and said records were not available for verification. Further in Para 17 of the report present authorized Capital of Transferee Company is not sufficient to accommodate issue of shares to the shareholders of Transferor Companies. Further, in terms of Para 1.1.8 Part III of the Scheme of Arrangement with effect from the effective date, authorized Share Capital of the Transferor Company shall get clubbed with the Authorized share Capital of the Transferee Company. However, Post merger Authorized Capital will also not be sufficient to accommodate issue of new shares to the members of the Transferor Company.

6. In reply to the following observations, an affidavit dated 5th

September 2011 has been filed on behalf of the Petitioner Companies by Mr. Rajeev Dhingra, Director of Transferor and Transferee Companies, wherein it is submitted that in terms of Para 3.13 Part II of the scheme with effect from the appointed date Transferee Company shall bear the burden and the benefits of any legal or other proceedings initiated by or against the Transferor Company. It is further submitted that pursuant to the approval of the Scheme, the proceedings, if any, initiated by the income tax authorities against the Transferor Company shall be enforced against the Transferee Company. It is also submitted that the Transferee Company undertakes that it shall take necessary steps to increase its Authorized share capital on or before the effective date so as to make it sufficient for allotment of shares to the shareholders of Transferor Companies in consideration of amalgamation.

7. In response to the notices issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his affidavit/report dated 23rd November 2010. Relying on clause 3.15 of Part-II of the Scheme of Arrangement, he has stated that, upon sanction of the Scheme of Arrangement all the employees of the Transferor company shall become the employees of Transferee Company without

any break of interruption in their services upon sanctioning of the Scheme of arrangement by the Hon'ble Court.

8. Further, the Hon'ble High Court vide its order dated 28.03.2012 directed the official Liquidator to meet the Assistant Commissioner of Income tax to inspect the records of the Petitioner Companies and furnish the response to the Second Motion Petition. The Official Liquidator has filed his report dated 16th July 2012 stating that the Official Liquidator on the basis of documents and other information is of the view that the affairs of the Company do not appear to have been conducted in a manner prejudicial to the interest of members.

9. It is submitted that the Petitioner Companies undertakes to abide with the conditions as mentioned in the scheme of arrangement.

10. No objection has been received to the Scheme of Arrangement from any other party, Mr. Rajeev Dhingra, Director of Transferor and Transferee Companies has filed an affidavit dated 5th September 2011 confirming that neither the petitioner companies nor their Legal Counsel has received any objection pursuant to the citations published in the newspapers.

11. Even today, during the course of hearing, Mr. K.S. Pradhan

Deputy Registrar of Companies for Regional Director (Northern Region), Mr. Rajiv Behl appearing for the Official Liquidator state that they have no objection to the present scheme being sanctioned.

12. In view of the approval accorded by the Shareholders and the Creditors of the petitioner Companies, representations/ 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 is hereby granted to the Scheme of Arrangement. Consequently sanction is hereby granted to the Scheme of Arrangement under Section 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 receipt of the same. In terms of the provisions of Section 391 and 394 of the Companies Act, 1956 and in terms of the Scheme, the whole or part of the undertaking, the property, 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, all the liabilities and duties of the Transferor Company be transferred to

Transferee company without any further act or deed. Upon the Scheme 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.

13. Learned counsel for the petitioners states that 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. The statement is accepted.

14. The petition is allowed in the above terms.

15. Order dasti.

INDERMEET KAUR, J

JULY 18, 2012
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