IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 548 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 479 OF 2015

Mubea Automotive India Private Limited....Petitioner Company

With

COMPANY SCHEME PETITION NO.549 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 480 OF 2015

Mubea Suspension India Private Limited....Petitioner Company

In the matter of Companies Act, 1956;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation of Mubea Automotive India Private Limited with Mubea Suspension India Private Limited and their respective shareholders

Called for hearing

Mr. Hemant Sethi, i/b M/s Hemant Sethi & Co. Advocate for the Petitioner Company
Mr. P. Khosla, i/b Mr. A.A. Ansari for Regional Director.

Mr. S. Ramakantha, Official Liquidator Present

CORAM: S. C. Gupte, J.

DATE: 30^{th} October, 2015

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation and nor any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to the Scheme of Amalgamation of Mubea Automotive India Private Limited with Mubea Suspension India Private Limited and their respective shareholders.

3. The Learned Counsel for the Petitioners states that both the Petitioner Companies in Company Scheme Petition No. 548 of 2015 and Company Scheme Petition No. 549 of 2015 are presently engaged in the business of Manufacturing and distribution of suspension springs and related components.

4. Learned Counsel for the Petitioners states that the Scheme will result into following benefits namely With a view to maintain a simple corporate structure, eliminate duplicate corporate procedures, facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations. Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.

5. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The Learned Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

7. The Learned Counsel appearing on behalf of the Petitioners has stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Companies undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rules made there under whichever is applicable. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 8th October, 2015 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Court.

9. The Regional Director has filed an Affidavit on 27th October, 2015 stating therein, save and except as stated in paragraphs 6 (a) to 6 (e) thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) to 6 (e) of the said Affidavit, the Regional Director has stated that:-

“6. That the Deponent further submits that,

(a) Clause 11.6 of the Scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to the compliance of Accounting Standard – 14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.

(b) With reference to clause 11.4 and 11.5 of the scheme, it is submitted that, surplus if any arising out of the scheme be credited to Capital Reserve Account of Transferee Company and deficit if any be debited to goodwill account of Transferee Company.

(c) Clause 17 of the scheme provides for change of name of Transferee Company. In this connection Transferee Company may be directed to comply with the provisions of section 21/23 of the Companies Act 1956 corresponding to new section 13 read with 16 of the Companies Act, 2013 in respect of filing of necessary forms with the Registrar of Companies and the proposed new name will be allowed subject to availability of the same, by the Registrar of Companies since under the computerized MCA 21 System of allotting the names, it is systematically not possible to reserve the names. Therefore, the name if available at the time of filing of such application shall be made available by the Registrar of Companies, Pune.

(d) The equity share capital of both the Transferor and Transferee Companies are held by foreign body corporate as its shareholders. Hence for allotment of new shares by the Transferee Company to the shareholders of Transferor Company, the Transferee Company may be

directed to comply with FEMA / RBI regulations as applicable in this regard.

(e) That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the Scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company.

10. As far as observations made in paragraph 6(a) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company through their Counsel undertakes to comply and follow the accounting treatment such as AS-14, AS-5 and other applicable accounting standards which are necessary in connection with the scheme.

11. As far as observations made in paragraph 6 (b) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company through their Counsel undertakes that surplus, if any arising out the scheme shall be credited to Capital Reserve Account of Transferee Company and the deficit, if any arising, shall be debited to Goodwill Account of the Transferee Company.

12. As far as the observations made in paragraph 6 (c) of the Affidavit of Regional Director is concerned, the Petitioner/ Transferee Company through their Counsel undertakes to comply with the provisions of section 21/23 of the Companies Act 1956 corresponding to new section 13 read with 16 of the Companies Act, 2013 in respect of filing of necessary forms with the Registrar

of Companies and the proposed new name will be allowed subject to availability of the same, by the Registrar of Companies at the time of making such application by the Transferee Company.

13. As far as observations made in paragraph 6(d) of Affidavit of the Regional Director, the petitioner through their counsel submits that the Transferee Company shall comply with the provisions of FEMA, RBI regulations as may be applicable.

14. In so far as observations made in paragraph 6(e) of the Affidavit of the Regional Director, the Petitioners clarifies that the approval of the Scheme by this Court will not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the Scheme and all issues arising out of the Scheme will be met and answered in accordance with law.

15. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director, Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the Petitioner Company. The said undertakings given by the Petitioner Company are accepted.

16. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

17. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 548 of 2015 and 549 of 2015 are made absolute in terms of the prayer clause (a) of the respective Company Scheme Petition.

18. The Petitioner Companies are directed to lodge a copy of this order and Scheme duly authenticated by the Company Registrar, High Court, Bombay, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of Order.

19. Petitioner is directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.

20. The Petitioners in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and Petitioner Company in Company Scheme Petition No. 548 of 2015 to pay cost of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

21. Filing and issuance of the drawn up order is dispensed with.

22. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. Gupte, J.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of the original signed order.

Uploaded By: Shankar Gawde, Stenographer