IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 275/2015

Reserved on 18th August, 2015
Date of pronouncement: 21st September, 2015

In the matter of
The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

Petition under Sections 391 to 394 of the Companies Act, 1956

Scheme of Amalgamation of:

ZF Components Investment Private Limited
Petitioner/Transferor Company

WITH

ZF India Private Limited
Non-Petitioner/Transferee Company

Through Mr. Abhishek Seth, Advocate for the petitioners
Ms. Aparna Mudiam, Assistant Registrar of Companies for the Regional Director
Mr. Rajiv Bahl, Advocate for the Official Liquidator

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner/transferor company seeking sanction of the Scheme of Amalgamation of ZF Components Investment Private Limited (hereinafter referred to as the petitioner/transferor company) with ZF India Private Limited (hereinafter referred to as the transferee company).

2. The registered office of the petitioner/transferor company is situated at New Delhi, within the jurisdiction of this Court. However, the registered office of the transferee company is situated at Maharashtra, outside the jurisdiction of this Court. Learned counsel for the petitioner submitted that a separate petition will be filed by the transferee company in the court of competent jurisdiction for sanction of the Scheme of Amalgamation in respect of the transferee company.

3. The petitioner/transferor company was originally incorporated under the Companies Act, 1956 on 28th March, 2001 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Sona Investment Limited. The company changed its name to Sona Investment Private Limited and obtained the fresh certificate of incorporation on 25th July, 2005. The company again changed its name to ZF Components Investment Private Limited and obtained the fresh certificate of incorporation on 23rd July, 2013.

4. The present authorized share capital of the petitioner/transferor company is Rs.25,00,000/- divided into 1,50,000 Class ‘A’ equity shares of Rs.10/- each aggregating to Rs.15,00,000/- and 1,00,000 Class ‘B’ equity shares of Rs.10/- each aggregating to Rs.10,00,000/-. The present issued, subscribed and paid-up share capital of the company is Rs.7,36,500/- divided into 36,455 Class ‘A’ equity shares of Rs.10/- each

aggregating to Rs.3,64,550/- and 37,195 Class ‘B’ equity shares of Rs.10/- each aggregating to Rs.3,71,950/-.

5. Copies of the Memorandum and Articles of Association of the petitioner/transferor company and the transferee company have been filed on record with the application, being CA(M) 44/2015, earlier filed by the petitioner. The audited balance sheets, as on 31st March, 2014, of petitioner/transferor company and the transferee company, along with the report of the auditors, had also been filed.

6. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavit. It is submitted by the petitioner that the amalgamation will enable pooling of resources of the companies to their common advantage resulting in more productive utilization of the said resources, faster and effective decision making and its implementation, cost and operational efficiencies, which would be beneficial to all the stakeholders. It is further claimed that the amalgamation would result in improving the net worth of the transferee company enabling further growth and development of the business of the transferee company.

7. So far as the share exchange ratio is concerned, the Scheme provides that the entire issued, subscribed and paid-up share capital of the petitioner/transferor company is held by the transferee company along with its nominee. Therefore, no shares of the transferee company shall be allotted in lieu or exchange of its holding in the transferor company and the share capital of the transferor company shall stand cancelled.

8. It has been submitted by the petitioner that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner/transferor company.

9. The Board of Directors of the petitioner/transferor company and the transferee company in their separate meetings held on 30th August, 2014 and 23rd May, 2014 respectively have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the petitioner/transferor company and the transferee company have been placed on record.

10. The petitioner/transferor company had earlier filed CA (M) No. 44/2015 seeking directions of this court to dispense with the requirement of convening the meetings of its equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the

Scheme of Amalgamation. Vide order dated 29th April, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meeting of the equity shareholders of the petitioner/transferor company, there being no secured or unsecured creditor of the petitioner/transferor company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

11. The petitioner/transferor company has thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 18th May, 2015, 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 'Indian Express' (English) and ‘Jansatta’ (Hindi) editions. Affidavit of service has been filed by the petitioner showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 14th July, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

12. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 28th July, 2015

wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner and that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

13. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 10th August, 2015. Relying on Clause 8.1 of the Scheme, 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. He has further submitted that in Clause 15.3 of the Scheme, it has been stated that upon the Scheme becoming effective, the transferee company shall account for the amalgamation of the transferor company as per the pooling of interest method of accounting stipulated by Accounting Standard-14 Accounting for Amalgamation as stated in the Companies (Accounting Standards) Rules, 2006. He further submitted that in Clause 16.1 of the Scheme, it has been stated that upon this scheme becoming effective, the transferor company shall stand dissolved without the process of winding up.

14. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner company in the affidavit dated 14th August, 2015 of Mr. T.H. Gopalakrishnan, authorized signatory of the petitioner/transferor company has submitted that neither the petitioner company nor their counsel have received any objection pursuant to the citations published in the newspapers on 14th July, 2015.

15. Considering the approval accorded by the equity shareholders of the petitioner company to the proposed Scheme of Amalgamation, there being no secured or unsecured creditors of the petitioner company, and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, subject to sanction of the Scheme of Amalgamation in respect of the transferee company from the court of competent jurisdiction, sanction is hereby granted to the Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956. The petitioner company will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the appointed date of Amalgamation,

i.e. 1st April, 2014, the transferor company shall stand dissolved without undergoing the process of winding up.

16. Learned counsel for the Official Liquidator prays that costs may also be imposed keeping in view the fact that the matter has involved examination of extensive records and prioritized hearings. He submits that at least costs of Rs.1,00,000/- should be paid by the petitioner. Learned counsel for the petitioner states that the same is acceptable to him. Looking to the circumstances, the petitioner shall deposit a sum of Rs.1,00,000/- by way of costs in the Common Pool Fund of the Official Liquidator, within two weeks.

17. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

September 21, 2015