IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP No.158 of 2016 (O&M)
Date of Decision: 07.11.2016

IN THE MATTER OF:

SCHEME OF AMALGAMATION

UTTARAKHAND AUTOMOTIVES LIMITED

. . . . Transferor Company/Petitioner Company-I

And

RICO AUTO INDUSTRIES LIMITED

. . . . Transferee Company/Petitioner Company-II

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.Atul V. Sood, Advocate, for the petitioner-companies.

Mr.Deepak Aggarwal, Advocate, for the Official Liquidator.

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RAKESH KUMAR JAIN, J.

CA No.575 of 2016

Application is allowed.

Audited Balance Sheet for the year 2015-16 is placed on record.

CA Nos.151, 452 and 574 of 2016

Applications are allowed as prayed for.

CP NO.158 OF 2016

This petition is filed under Section 391 to 394 of the Companies Act, 1956 [for short 'the Act'], duly supported by affidavits of the Petitioner-Companies, seeking dispensation of the meetings of the Equity Shareholders, Secured and Unsecured Creditors of the Petitioner-Companies.

The registered offices of the petitioner-Companies are situated at Gurgaon, Haryana within the jurisdiction of this Court.

The main objects of the Transferor Company/Petitioner Company-I and Transferee Company/Petitioner Company-II are detailed in their respective Memorandum and Articles of Association, which are annexed with the petition as Annexures P-2 (Colly) and P-4 (Colly), respectively.

The Board of Directors of Transferor Company/Petitioner Company-I and Transferee Company/Petitioner Company-II have approved the Scheme in their respective meetings held on 4.2.2016 and 5.2.2016, respectively vide Resolutions annexed with the petition as Annexures P-6 & P-7, respectively.

As on 31.03.2016, the share capital of the Transferor Company/Petitioner Company-I is as under: -

Particulars	***(in ₹)***
Authorised Share Capital	
2,40,00,000 equity shares of ₹10/- each	*₹24,00,00,000/- (Rupees Twenty Four Crores Only)*
Issued, subscribed and Paid-up Share Capital	
4,10,000 equity shares of ₹10/- each, fully paid up	*₹41,00,000/- (Rupees Forty One Lakhs only)*

It has been mentioned in the petition that subsequent to 31.3.2015 and till the date of filing of the petition there has been no change in the position of the share capital of the Transferor Company/Petitioner Company-I.

As on 31.03.2016, the share capital of the Transferee Company/Petitioner Company-II is as under: -

Particulars	***(in ₹)***
Authorised Share Capital	
25,00,00,000 equity shares of Re.₹1/- each	*₹25,00,00,000/- (Rupees Twenty Five Crores Only)*
50,00,000 Redeemable Preference Shares of ₹10/- each	*₹5,00,00,000/- (Rupees Five Crores only)*
Total	*Rs.30,00,00,000/- (Rupees Thirty Crores only)*
Issued, Subscribed and paid-up share capital	
13,52,85,000 equity shares of Re.1 each, full paid up	*₹13,52,85,000/- (Rupees Thirteen Crores Fifty Two Lakhs Eighty Five Thousands only)*

It has been mentioned in the petition that subsequent to 31.3.2015 and till the date of filing of the petition there has been no change in the position of the share capital of the Transferee Company/Petitioner Company-II.

It is averred in the petition that as on 31.5.2016, the Transferor Company/Petitioner Company-I has 07 (Seven) Equity Shareholders, as per the list attached with the petition as Annexure P-8, and all of them have given their consent and approved the Scheme. Their consent letters in this regard are attached as Annexure P-9 (Colly).

As on 31.5.2016, the Transferor Company/Petitioner Company-I has 'Nil' Secured Creditor. The certificate issued in this regard by Monika Aashish & Co., Chartered Accountants is annexed with the petition as Annexure P-10.

As on 31.5.2016, the Transferor Company/Petitioner Company-I has 01 (One) Unsecured Creditor, as per the list certified by Monika Aashish & Co., Chartered Accountants, and the said Unsecured Creditor has given its consent and approved the Scheme vide Annexure P-12. The certificate issued by the Chartered Accountant along with list is attached with the petition as Annexure P-11.

It is further averred in the petition that as on 31.5.2016, the Transferee Company/Petitioner Company-II has 49,195 (Forty Nine Thousand One Hundred Ninety Five) Equity Shareholders. List of top 100 Equity Shareholders along with shareholding pattern of the Transferee Company/Petitioner Company-II is attached with the petition as Annexure P13 (Colly).

As on 31.5.2016, the Transferee Company/Petitioner Company-II has 9 (Nine) Secured Creditors. The certificate issued in this regard by Monika Aashish & Co., Chartered Accountants is annexed with the petition as Annexure P-14.

As on 31.5.2016, the Transferee Company/Petitioner Company-II has 1002 (One Thousand and Two) Unsecured Creditors, as per the list certified by Monika Aashish & Co., Chartered Accountants attached with the petition as Annexure P-16.

It is further averred in the petition that one of the claimant SBER Bank, to whom the transferee Company has already paid/discharged the debt in full, has claimed that an amount of ₹35,22,252 (Rupees Thirty Five Lakhs Twenty Two Thousand Two Hundred Fifty Two Only) is due from the Transferee Company/Petitioner Company-II and in this regard, negotiations with the said bank for settlement of the claimed amount is under Process. It is further averred that SBER Bank has provided its consent to the proposed Scheme, which is attached with the petition as Annexure 15 (Colly).

In para No.7 of the petition it has been averred that the Transferee Company is a public listed company and its equity shares are presently listed on the Bombay Stock Exchange Limited and on the National Stock Exchange of India Limited. It is submitted that each of the stock exchange as mentioned above have given their observation letter to the proposed Scheme which are enclosed with the petition as Annexure P-17 (Colly).

It is averred in the petition that the Transferor Company/Petitioner Company-I is wholly a owned subsidiary of the Transferee Company/Petitioner Company-II.

In para No.21 of the petition, following averments have been made: -

> *"21. It is most respectfully submitted that this Hon'ble Court may also consider dispensing with the requirement of convening with the meetings of equity shareholders, unsecured creditors and secured creditors of the Transferee Company for considering and approving the Scheme as required under Section 391 (1) of the Companies Act, 1956 and may also consider for dispensing with the requirement of filing the second motion*

petition by the Transferee Company before this Hon'ble Court in terms of Sections 391 to 394 of the Companies Act, 1956 for the sanction of the Scheme, for the reasons stated hereunder: -

a) That the transferor Company is a wholly owned subsidiary of the transferee Company and based on the provisions of the Scheme there shall be no issuance or allotment of shares of the Transferee Company in consideration for the amalgamation of the Transferor Company with and into the Transferee Company as the entire issued, subscribed and paid-up share capital of the Transferor Company is held only by the Transferee Company (including its nominees) and upon coming into effect of the Scheme, the said shares of Transferor Company as held by the Transferee Company shall stand cancelled;

b) That the Transferor Company is just an extended arm of the Transferee Company as both the Transferor Company and the Transferee Company are entitled to undertake similar business activities and *even the financials of the Transferor Company are consolidated with the financials of the Transferee Company in terms of the requirements of law;*

c) That it is further pertinent to mention that no compromise or arrangement, as referred to in Section 391(1) of the Companies Act, 1956, is proposed under the present Scheme and as a reason thereof, even after giving effect to the provisions of the Scheme, the rights of equity shareholders, secured creditors and unsecured creditors of the Transferee Company shall not be adversely affected or prejudiced;

d) That the proposed Scheme does not involve re-organization of the share capital of the Transferee Company and no additional shares are proposed to be issued in terms of the Scheme. Thus, the members are creditors of the Transferee Company would not be adversely affected pursuant to sanction being granted to the Scheme.

e) That the amalgamation of the Transferor Company with the Transferee Company does not contemplate extinction or *reduction of liability of any of the creditors of the Transferee Company. Further, neither the terms of payment nor the terms of credit, as available presently to the creditors of the Transferee Company, are proposed to be altered under the Scheme and accordingly, as a reason thereof, the Scheme would not affect the rights of any of the creditors of the Transferee Company and no sacrifice or waiver is called from them."*

In support of the aforesaid averments and with regard to dispensation of meetings of Equity Shareholders, Secured and Unsecured Creditors of the Transferee Company/Petitioner Company-II and exemption for not filing the second motion petition by the Transferee Company/Petitioner Company-II, learned counsel for the Petitioner-Companies has placed reliance on the various judgments as mentioned in para No.23 of the petition which has been dealt with by this Court in CP No.153 of 2013 in the matter of "Liberty Retail Revolutions Limited with Liberty Shoes Limited", decided on 22.11.2013.

Thus, in view of the consents given by all the Equity Shareholders and Unsecured Creditors of the Transferor Company/Petitioner Company-I convening of their meetings are hereby ordered to be dispensed with. There is 'Nil' Secured Creditor of the Transferor Company/Petitioner Company-I, therefore, there is nothing to convene their meeting.

Since, the Transferor Company/Petitioner Company-I is wholly owned subsidiary of the Transferee Company/Petitioner Company-II and no new shares are being issued & rights of Equity shareholders are not being diluted and there is no compromise being entered with the Secured and Unsecured Creditors and also in terms of the judgment passed by this Court in CP No.153 of 2013 in the matter of "Liberty Retail Revolutions Limited with Liberty Shoes Limited", decided on 22.11.2013, convening of the meetings of the Equity Shareholders, Secured and Unsecured Creditors of the Transferee Company/Petitioner Company-II are also ordered to be dispensed with.

Insofar as non-filing of 2nd motion petition by the Transferee Company/Petitioner Company-II is concerned, I am not inclined to dispense with the filing of the 2nd motion petition by the Transferee Company/Petitioner Company-II.

This petition is disposed of accordingly. The Transferor Company/Petitioner Company-I and Transferee Company/Petitioner Company-II shall now be at liberty to move Second Motion petition.

(RAKESH KUMAR JAIN)
07.11.2016 **JUDGE**
Vivek