

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 160/2016

Reserved on 27th May, 2016

Date of pronouncement: 19th July, 2016

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 read with Rules 67 to 87
of the Companies (Court) Rules, 1959**

Scheme of Amalgamation of:

Denso Auto Body Parts India Private Limited

Petitioner/Transferor Company

WITH

Denso Haryana Private Limited

Petitioner/Transferee Company

**Through Mr. Satwinder Singh,
Mr.N.P.S. Chawla, and Mr. Gaurav
Verma, Advocates 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 joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 read with Rules 67 to 87 of the Companies (Court) Rules, 1959 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Denso Auto Body Parts India Private Limited (hereinafter referred to as the transferor company) with Denso Haryana Private Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this court.

3. The transferor company was originally incorporated under the Companies Act, 1956 on 22nd August, 2012 with the Registrar of Companies, Tamil Nadu at Coimbatore under the name and style of Pricol Components Limited. The company changed its name to Denso Pricol India Limited and obtained the fresh certificate of incorporation on 20th May, 2013. The company again changed its name to Denso Pricol India Private Limited and obtained the fresh certificate of incorporation on 23rd February, 2015. The company finally changed its name to Denso Auto Body Parts India Private Limited and obtained the fresh certificate of incorporation on 10th April, 2015. Thereafter, the company shifted its registered office from the State of Tamil Nadu to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 20th July, 2015.

4. The transferee company was incorporated under the Companies Act, 1956 on 21st August, 1997 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.23,00,00,000/- divided into 2,30,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.22,24,88,970/- divided into 2,22,48,897 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.2,40,01,00,000/- divided into 24,00,10,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,35,93,50,050/- divided into 23,59,35,005 equity shares of Rs.10/- each.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 21/2016, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2015, of the transferor and transferee companies, along with the report of the auditors, had also been filed.

8. 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 claimed that the proposed amalgamation will lead to more efficient utilization of capital and help achieve a streamlined structure. It is further claimed that the

proposed amalgamation will lead to greater efficiency in fund management and deployment for the transferee company, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholders value.

9. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall issue and allot equity shares to the shareholders of the transferor company in the following ratio:

“09 equity shares of Rs.10/- each fully paid up of the transferee company for every 05 equity shares of Rs.10/- each fully paid up held by the shareholders in the transferor company.”

10. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the transferor and transferee companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 26th November, 2015 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The petitioner companies had earlier filed CA (M) No. 21/2016 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 9th February, 2016, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and unsecured creditors of the transferor and transferee companies, there being no secured creditors of the petitioner companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 26th February, 2016, 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 'Business Standard' (English) and 'Jansatta' (Hindi) Delhi editions. Affidavit of service has been filed by the petitioners 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 19th March, 2016 and 21st March, 2016 respectively. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

14. 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 20th May, 2016 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.

15. 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 25th May, 2016 stating therein that the ROC in his report has not made any adverse comments to the Scheme of Amalgamation and that the Regional Director has no objection to the proposed Scheme.

16. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 24th May, 2016 of Mr. Satwinder Singh, Counsel of the petitioner companies, have submitted that neither the petitioner companies nor their counsel

have received any objection pursuant to the citations published in the newspapers on 19th March, 2016 and 21st March, 2016.

17. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation 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, 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 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 May, 2016, the transferor company shall stand dissolved without undergoing the process of winding up.

18. Learned counsel for the Official Liquidator prays that costs of at least Rs.1,00,000/- should be paid by the petitioners keeping in view the fact that the matter has involved examination of extensive records and

also prioritized hearings. Learned counsel for the petitioner company states that the same is acceptable to him. As already directed vide order dated 27.05.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

18. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

July 19, 2016