

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 84/2016

Reserved on 30th May, 2016
Date of pronouncement: 3rd August, 2016

In the matter of

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

And

**Application under Sections 391, 392 and 394
of the Companies Act, 1956 read with Rules 6
& 9 of the Companies (Court) Rules, 1959**

Scheme of Amalgamation of:

Panshil Electro Private Limited

Applicant/Transferor Company

WITH

Victora Auto Private Limited

Applicant/Transferee Company

**Through Mr. P. Nagesh with Mr. Anand
M.Mishra, Advocates for the applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391, 392 and 394 of the Companies Act, 1956 read with Rules 6 & 9 of the Companies (Court) Rules, 1959 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Panshil Electro Private Limited (hereinafter referred to as the transferor company) with Victora Auto 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 incorporated under the Companies Act, 1956 on 17th May, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 26th July, 1991 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of SDL Auto Private Limited. The company changed its name to Victora-SDL Auto Private Limited. The company again changed its name to Victora Auto Private Limited and obtained the fresh certificate of incorporation on 21st July, 2011.

5. The present authorized share capital of the transferor company is Rs.2,00,00,000/- divided into 20,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,00,00,000/- divided into 20,00,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each.

The issued, subscribed and paid-up share capital of the company is Rs.2,99,32,160/- divided into 29,93,216 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. The audited balance sheets, as on 31st March, 2015, of the transferor and transferee companies, along with the report of the auditors, have 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 application and the accompanying affidavits. It is claimed by the applicants that the proposed Scheme will result in the establishment of a larger company with large resources, larger capital base and greater capacity to raise funds for expansion, modernization and development of the businesses of the companies concerned. It is further claimed that the Scheme will enable the undertakings and businesses of the said companies to obtain greater facilities possessed and enjoyed by one large company for securing and conducting its business on favourable terms and other benefits.

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 companies in the following ratio:

“01 equity share of Rs.10/- each of the transferee company for every 17.86 equity shares of Rs.10/- each held in the transferor company.”

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

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 3rd December, 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 transferor company has 04 equity shareholders, 02 secured creditors and 02 unsecured creditors. All the equity shareholders, both the secured creditors and both the unsecured creditors have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the transferor company to consider

and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

13. The transferee company has 05 equity shareholders, 08 secured creditor and 05 unsecured creditors, as on 31.12.2015. Learned counsel for the applicants submitted that the debt of two secured creditors namely Toyota Finance Service and Volkswagen Finance Private Limited has been paid in full on 10th March, 2016 and 7th February, 2016 and the debt (car loan) of the third secured creditor namely ICICI Bank Limited amounting to Rs.4 to 5 lakhs is a minuscule amount, which liability will be borne by the transferee company even after the amalgamation. Therefore, presently there are only 06 secured creditors of the transferee company. All the equity shareholders, 05 out of 06 secured creditors and all the unsecured creditors have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

14. In addition to above, as on 31.12.2015, the transferor company has 53 sundry creditors amounting to Rs.2,20,98,355.58/- and the transferee company has 513 sundry creditors having credit value of Rs.67,60,07,146.43/-, relating to goods/services, whose consents have not been placed on record. Learned counsel for the applicants has submitted that the debts of these sundry creditors are being paid off in the normal course of business and the transferee company will continue to pay their dues within its normal payment cycle. He has submitted that the transferee company has sufficient financial resources to pay the amounts due to these sundry creditors and neither the amounts nor any of the rights of these sundry creditors will be varied pursuant to the Scheme. He has further submitted that the transferee company has sufficient net worth and, therefore, the interests of the creditors will not be adversely affected. He has placed on record a certificate issued by Kumar Sanjay & Associates, Chartered Accountants, stating that the net worth of the transferee company, as on 31.12.2015 is Rs.61,49,59,006/-, is sufficient to cover the liabilities towards the sundry creditors of the transferor company, post amalgamation. Learned counsel, therefore, prays that the requirement of convening and holding the meetings of the sundry creditors of the transferor and transferee companies may kindly be dispensed with.

15. A perusal of the audited balance sheet of the transferor and transferee companies, as on 31st March, 2015, reveals that the companies are profit making companies and have reserves and surplus of Rs.40,24,523.19/- and Rs.47,25,18,520/- respectively. Further, as per the certificate of Kumar Sanjay & Associates, Chartered Accountants, the net worth of the transferee company is sufficient to take care of the liabilities of the sundry creditors of the transferor company, post amalgamation. Therefore, the rights of the sundry creditors of the transferor and transferee companies are not likely to be affected and the transferee company will continue to be in a position to discharge all its liabilities, upon sanction of the Scheme of Amalgamation. In view of the above, the requirement of convening and holding the meetings of the sundry creditors of the transferor and transferee companies to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

16. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

August 03, 2016