

**THE NATIONAL COMPANY LAW TRIBUNAL**  
**SPECIAL BENCH,**  
**AT NEW DELHI**  
**COMPANY PETITION NO. (CAA)-174 (PB) 2018**

Under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

In the matter of  
Scheme of Amalgamation

of

Shriram Automative Products Limited

..... Transferor Company

WITH

Shriram Pistons & Rings Limited

.....Transferee Company

**Judgment delivered on: 05.03.2019**



05/03/2019

**CORAM:**

**DR. DEEPTI MUKESH, Hon'ble Member (J)**

**Mr. S. K. MOHAPATRA, Hon'ble Member (T)**

For Petitioners

: Mr. Ms. Malini, Adv.

: Mr. Vikas Mishra, Adv.

: Mr. S.P. Singh Chawla, Adv.

: Mr. Shashwat Tripathi, Adv.

For SEBI

: Mr. Abhishek Baid, Adv.

: Mr. Praneet Das, Adv.

For Official Liquidator

: Mr. Swati Kaushal, Adv.

For Income Tax Department

: Mr. Puneet Rai, Adv.



## ORDER

**S. K. Mohapatra, Member**

1. This Joint petition has been filed by the Petitioner Companies under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation of the Transferor Company into Transferee Company. A copy of the Scheme of Amalgamation (hereinafter referred as "Scheme") has been placed on record.
2. The "transferor company", Shriram Automative Products Limited was incorporated on 02.09.1982 under the provisions of companies Act 1956, having its registered office at 4<sup>th</sup> floor, Himalaya House , 23 Kasturba Gandhi Marg, New Delhi-110001.
3. The "transferee company", Shriram Pistons & Rings Limited was incorporated on, 09.12.1963 under the provisions of companies Act 1956, having its registered



office at 3<sup>rd</sup> floor, Himalaya House , 23 Kasturba Gandhi Marg, New Delhi-110001.

4. A perusal of the petition discloses that initially the First Motion joint application seeking direction for dispensing/convening the meeting of Shareholders and Creditors was filed before this Bench vide CA (CAA) No. 148 (PB) 2018 and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, the meetings of Equity Shareholders, secured creditors and unsecured creditors of the transferor company and secured creditors of transferee company were dispensed with, vide order dated 03.10.2018 passed by this Bench. In respect of meetings of Equity Shareholders and unsecured creditors of the transferee company, directions were issued in the same order to convene their respective meetings.

5. Subsequently, on 21.11.2018 the aforesaid two meetings were held in accordance with the order dated 03.10.2018 and the proposed Scheme was unanimously approved by the members present and voting in the said meetings. The reports of the Chairperson and Scrutinizer have been placed on record.



6. On 12.12.2018 the Petitioners were directed to carry out publication in the newspapers 'Business Standard' English Delhi edition as well as in 'Jansatta' Hindi Delhi edition. In addition to the public notice, notices were directed to be served on to the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, the official liquidator, the Income Tax Department and to the other relevant sectoral regulators.

10. It is seen from the records that the Petitioners have filed an affidavit dated 19.01.2019 affirming compliance of the order passed by the Tribunal dated 12.12.2018. A perusal of the affidavit discloses that the petitioners have affected the newspaper publication as directed in one issue of the 'Business Standard' English edition on 02.01.2019 as well as in 'Jansatta' Hindi edition again on 02.01.2019 in relation to the date of hearing of the petition. Further, the petitioners have also affirmed that the copies of petition have been duly served to the Registrar of Companies, Regional Director, Northern Region, Income Tax Department, BSE, NSE, SEBI, RBI and the Competition Commission of India (CCI), in compliance of the order and



*[Handwritten signature]*

in proof of the same acknowledgement made by the respective offices have also been placed on record.

7. The Regional Director has filed its report dated 25.01.2019 in which it has been submitted that

*“Refer to clause 10 of the scheme, the amalgamated company may kindly be advised to comply with the provisions of section 232(3)(i) of the Companies Act 2013 in regard to fee payable on its revised authorized share capital.”*

8. In response to the aforementioned observation of the Regional Director, the petitioner companies have filed an undertaking by way of affidavit dated 30.01.2019 and submitted that:



*“That in response to Para No. 10 of the RD Affidavit, it has been observed that the Amalgamated Company be directed to comply with provisions of Section 232(3) (i) of the Companies Act, 2013 in regard to fee payable on its revised authorized share capital. In respect of the above it is stated that Clause 10 of the Scheme of Amalgamation provides for the same,*

however, I on behalf of the Applicant Companies hereby irrevocably undertake to comply with the provisions of Section 232(3) (i) of the Companies Act, 2013 and further gives my consent that any amount of fees which Transferor Company may have paid at the time of issuing its authorized capital may be set off against the fees payable by the Amalgamated (Transferee) Company on its authorized capital subsequent to the approval of the Scheme of Amalgamation by this Hon'ble Tribunal.”

9. It is thus seen that the transferee company has already filed a suitable undertaking and in view of the same the observation of the Regional Director as well as of the Registrar of Companies has been duly taken care of.

10. The Official Liquidator has filed its report on 21.01.2019 wherein no specific objection has been raised against the approval of the Scheme. It is submitted in the report that the official liquidator has not received any complaint against the proposed Scheme 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 or to public interest.

11. The Department of Income Tax has filed its response on 28.01.2019 and submitted as follows:

*“3. Since, interest of revenue w.r.t future Income Tax demand are sufficiently covered, hence, the department has no objection to the proposed scheme of amalgamation.*

*4. In view of the above, the revenue department may admit following observations / comments / objections to protect the interest of revenue.*

*A. Income Tax Department must be permitted to retain its recourse for recovery in respect of any existing or future tax liabilities of the company or the transferor company, and that this protection must be made explicit by this Court in its final order. There should be no limitation on the power of the Income Tax Department for recovery, including imposition of penalties etc.*





*B. That without prejudice to the above, the approval of the scheme should in no manner affect the tax treatments of the transactions under the Income Tax Act, 1961 or any other applicable taxing statute, nor would sanction of the Scheme or the effect thereof serve as a defence for the companies concerned against tax treatment under the aforementioned statutes.”*

12. It is seen from the report of the Income Tax Department that they have no objection in respect of the present Scheme. However, in order to protect the interest of the revenue it is made clear that there shall be no limitation on the power of the Income tax Department for recovery of pending Income Tax dues if any from petitioner companies, including imposition of penalties etc. as provided in law.

13. It is pertinent to mention here that the petitioner companies have also filed an undertaking by way of affidavit dated 28.01.2019 in response to the letters of Competition Commission of India and submitted as follows:



*“That the Competition Commission of India vide its letter dated 26.11.2018 had given notice under Section 230(5) of the Companies Act, 2013 and the had requested this Hon’ble Tribunal that they may seek an undertaking from the Companies involved that CCI approval is not required for the said Scheme. Copy of the CCI letter dated 26.11.2018 is annexed and marked hereto as Annexure – 1.*

*That the Transferee Company vide its letter dated 20.12.2018 had clarified that the threshold mentioned under Section 5(c)(i)(A) of the Competition Act, 2002 is not applicable on the present Scheme of Amalgamation. Copy of the letter dated 20.12.2018 of Transferee Company is annexed and marked hereto as Annexure – 2.*

*Further, CCI vide its letter dated 26.12.2018 had again served the notice under Section 230(5) of the Companies Act, 2013 to which the Transferee Company vide its letter dated 31.12.2018 had referred to its earlier letter dated 20.12.2018 wherein it was informed that no approval from CCI*



*is required. Copy of the CCI letter dated 26.12.2018 and Transferee Company's letter dated 31.12.2018 is annexed and marked hereto as Annexure – 3 and Annexure – 4.”*

14. It is thus seen that the approval of CCI is not required in respect of the present Scheme.
15. Further, it is seen from the order dated 29.01.2019 that Mr. Pranet Das, Ld. Counsel for SEBI has also submitted that there is no adverse observation against the Scheme.
16. The shareholders of the petitioner companies are the best Judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme of which sanction is sought under Section 230-232 of the Companies Act of 2013 will not ordinarily interfere with the corporate decisions of companies approved by their shareholders and creditors.



17. Right to apply for the sanction of the Scheme has been statutorily provided under Section 230-234 of the Companies Act, 2013 and therefore, it is open to the petitioner companies to avail the benefits extended by statutory provisions and the Rules.
18. In the joint petition it has been affirmed that no proceedings under Section 210 to 227 of the Companies Act, 2013 are pending against the Petitioner Companies.
19. Certificates of respective Statutory auditors of both the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.
20. It has been also affirmed by the petitioner companies that the Scheme is in interest of both the petitioner companies, their shareholders, creditors, employees and all concerned.



21. In view of the foregoing, upon considering the approval accorded by the members and creditors of both the Petitioner companies to the proposed Scheme, and the affidavit filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and no objection of Department of Income Tax, there appears to be no impediment in sanctioning the present Scheme.

22. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.

23. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

24. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.



25. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

26. **THIS TRIBUNAL DO FURTHER ORDER**

- *That the Transferor Company shall stand dissolved without following the process of winding-up; and*
- *That all the property, rights and powers of the Transferor Company, be transferred without further act or deed, to the transferee company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the transferee company.*
- *That all the liabilities and duties of the Transferor Company, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section*



232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and

- That all proceedings now pending by or against the Transferor Company, be continued by or against the transferee company; and
- That all the employees of the Transferor Company in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date shall become the employees of the transferee company on such date without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the transferor company on the said date.
- That Petitioner companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Company for registration and on such certified copy being so delivered the transferor company shall be dissolved and the Registrar of



Company shall place all documents relating to the transferor company registered with him on the file kept by him in relation to the transferee company and the files relating to all the petitioner companies shall be consolidated accordingly; and

- That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

The petition stands disposed of in the above terms.

Let copy of the order be served to the parties.

*Sd/-*  
*[Signature]*  
5/3/19  
**(S. K. MOHAPATRA)**

**Member (T)**



*Sd/-*  
**(DR. DEEPTI MUKESH)**

**Member (J)**

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member (Judicial), Dr. Deepti Mukesh, is not holding Court today.

*[Signature]*  
**(Nirmala Vincent)**  
**Court Officer**

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5/3/2019  
वृ.वि.व. राजू / V.V.B. RAJU  
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