

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH,
AT NEW DELHI**

COMPANY PETITION NO. CA (CAA)- 137 (PB) / 2019

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

In the matter of

Scheme of Arrangement by way of Demerger
of
Sharda Motor Industries Limited

.....Demerged Company

WITH

NDR Auto Components Limited

.....Resulting Company

Judgment delivered on: 10.10.2019

CORAM:

CHIEF JUSTICE (Rtd.) M.M. KUMAR, Hon'ble President

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

For Applicants: Mr. Ravi Sharma, Advocate



ORDER

S.K. Mohapatra, Member

1. This joint application has been filed by the Applicant 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 seeking appropriate directions for convening/ dispensing with the respective meetings of shareholders, secured creditors and unsecured creditors of the applicant companies, in connection with the proposed Scheme of Arrangement by way of demerger as contemplated between both the applicant companies. The said Scheme of Arrangement (hereinafter referred to as the "Scheme") has been placed on record along with the application.
2. It is represented that the registered offices of both the applicant companies are situated in New Delhi and therefore the subject matter of this application falls within the Jurisdiction of this Bench.



3. M/s Sharda Motor Industries Limited (Demerged Company) was incorporated on 29.01.1986 under the provisions of the Companies Act, 2013. The present Authorized Share Capital of the Demerged Company is Rs. 50,00,00,000/- divided into 5,00,00,000 Equity Shares of Rs. 10/- each. The present Issued, Subscribed and paid-up Share Capital of the Company is Rs. 5,94,63,260/- divided into 59,46,326 Equity Shares of Rs. 10/- each. The registered office of the Transferor Company is situated at D-188, Okhla Industrial Area, Phase-I, New Delhi-110020.

4. It is submitted that the demerged company has 8580 Equity Shareholders. It is further represented that the demerged company has no secured creditor and 824 unsecured creditors. The certificates of chartered accountant in respect of creditors of the demerged company has been placed on record. As the company has no secured creditor, the requirement of convening of secured creditor's meeting does not arise. In relation to the shareholders and unsecured creditors, the demerged



company seeks issuance of directions to convene their respective meetings in order to obtain their approval in favour of the Scheme.

5. It is pertinent to mention here that the company is seeking directions to dispense with the requirement of sending individual notices to the unsecured creditors having, outstanding dues of Rs. 1,00,000/- or less than Rs. 1,00,000/-, which constitutes only 0.83% of total unsecured debt.

6. M/s NDR Auto Components Limited (Resulting Company) was incorporated on 19.03.2019 under provisions of the Companies Act, 2013. The present Authorized Share Capital of the Transferee Company is Rs. 1,00,000/- divided into 10,000 Equity Shares of Rs. 10/- each. The present Issued, Subscribed and paid-up Share Capital of the Company is Rs. 1,00,000/- divided into 10,000 Equity Shares of Rs. 10/- each. The registered office of the Company is situated at D-188, Okhla Industrial Area, Phase-I, New Delhi-110020.

7. It is submitted that the resulting company has seven Equity Shareholders including 6 nominee shareholders.



The one beneficiary equity shareholder, which beneficially holds 100% shareholding of the company has given its consent affidavit in favour of the Scheme. The consent affidavit of the beneficial equity shareholder has been placed on record. It is further represented that the resulting company has no secured creditor and two unsecured creditors. The certificates of chartered accountant in respect of creditors of the resulting company have also been placed on record. As the company has no secured creditor, the requirement of convening of secured creditor's meeting does not arise. One out of two unsecured creditors holding 96.77% of the total debt has given its consent affidavit in favour of the scheme. In relation to the shareholders and unsecured creditors, the resulting company seeks dispensation from convening and holding of their respective meetings on the ground that beneficial shareholder holding 100% in value and beneficial 100% in number and the unsecured creditor having 96.77% of total debt of the company have given consent affidavits in favour of the Scheme. Needless to say, that under sub-section 9 of Section 230 of the



Companies Act, 2013 meeting of creditors can be dispensed with if creditors having at least 90% in value agree by way of affidavit in favour of the Scheme.

8. We have perused the application and the connected documents / papers filed herewith including the Scheme of Amalgamation.
9. It is seen that the board of directors of both the applicant companies vide board meeting, held on 05.04.2019 have unanimously approved the proposed Scheme of Arrangement. Copy of such resolution passed thereat have been placed on record by the applicant company.
10. The applicant companies have filed their respective Memorandum of Associations and Articles of Associations. The demerged company has also filed their respective latest audited financial statements for the year ending 31.03.2018.
11. It is submitted that the proposed demerger is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013.



12. The applicant companies have submitted that no investigation proceedings have been instituted or pending under Sections 210-226 of the Companies Act, 2013 or under Sections 235-251 of the Companies Act, 1956 against any of the Applicant Companies.

13. Further, it has been stated in the application that the Scheme will be beneficial to both the applicant companies and its shareholders, employees, creditors and other stake holders.

14. The certificates of respective statutory auditors of both the applicant companies have been placed on record confirming that the accounting treatment in the scheme is in conformity with the Accounting Standard notified by the Central Government under Section 2(2) and Section 133 of the Companies Act, 2013.

15. Taking into consideration the application filed jointly by the Applicant Companies the following directions are issued: -

A handwritten signature in black ink, consisting of a stylized 'A' followed by a horizontal line.

A. In relation to the Demerged Company: -

- a. *The meeting of the equity shareholders of the Demerged Company is directed to be held at PHD Chambers of Commerce, PHD House, 4/2 August Kranti Marg, Siri Fort Institutional Area New Delhi-110016, on 20.11.2019 at 12 P.M. The quorum of the meeting shall be 500 in number or 90% in value.*
- b. *The meeting of secured creditors is dispensed with because there is no secured creditor in the company and therefore, the requirement of convening meeting of secured creditors does not arise.*
- c. *The meeting of the unsecured creditors of the Demerged Company is directed to be held at PHD Chambers of Commerce, PHD House, 4/2 August Kranti Marg, Siri Fort Institutional Area New Delhi-110016, on 20.11.2019 at 2:00 P.M. The quorum of the*



meeting shall be 300 in number or 90% in value.

- d. It is pertinent to mention here that the requirement of sending individual notices to the unsecured creditors having, outstanding dues of Rs. 1,00,000/- or less than Rs. 1,00,000/-, which constitutes only 0.83% of total unsecured debt is also dispensed with.

B. In relation to the Resulting Company.

- e. The meeting of the Equity Shareholders is dispensed with as there are only 7 equity shareholders including 6 nominee shareholders, out of which the beneficial shareholder holding 100% in value has given its consent affidavit in favour of the Scheme.

- f. The meeting of secured creditors is dispensed with because there is no secured creditor in the company and



therefore, the requirement of convening meeting of secured creditors does not arise.

g. The meeting of Unsecured creditors is also dispensed with as there are only 2 unsecured creditors in the company, out of which 1 unsecured creditor having 96.77% in value of the total debt, has given its consent affidavit in favour of the Scheme.

C. Mr. Inderjeet Singh, (Advocate) (Mobile No. 9818285641) is appointed as the Chairperson and Mr. Gautam Mukherjee, Advocate (Mobile No. 9903954440) is appointed as the Alternate Chairperson and Mr. Narendra Thakur, Company Secretary (Mobile No. 8800841264) is appointed as Scrutinizer for the aforesaid meetings in terms of direction issued herein.

D. In case the quorum as noted above for the aforesaid meetings are not present at the respective meetings, then the meeting shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the



quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the demerged company at least 48 hours before the meetings. The Chairperson and Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained.

E. The fee of the Chairperson for the aforesaid meetings shall be Rs. 1,50,000/-, the fee of the Alternate Chairperson shall be Rs. 1,25,000/- and the fee of the Scrutinizer shall be Rs. 1,25,000/- in addition to meeting their incidental expenses.

F. The Chairperson will file its reports in respect of all the meetings within a week from the date of holding of the above meetings.

G. That the demerged company shall publish advertisement with a gap of at least 30 days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be



published in Delhi editions of 'Business Standard' English edition and "Business Standard" Hindi edition stating that the copies of the Scheme, the explanatory statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the respective registered office of the Applicant Companies.

H. Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be applicable for the respective meetings of equity shareholders and creditors of the demerged company in terms of the provisions of the Companies Act, 2013 and Rules framed there under.

I. The company shall send notice to the Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, the Income Tax Authorities, Registrar of Companies National Capital Territory of Delhi and Haryana, Official



Liquidator, SEBI, BSE, NSE along with copy of relevant documents and disclosures as required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

J. The Demerged Company shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every shareholders and creditors of the Applicant Company entitled to attend the meetings as mentioned above.

K. The authorized representative of the Demerged Company shall furnish an affidavit of service of notice of the meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

L. All the aforesaid directions are to be complied with by the demerged company strictly in accordance with the applicable law including forms and formats contained in the Companies



(Compromises, Arrangements, Amalgamations)
Rules, 2016 as well as in terms of the provisions of
the Companies Act, 2013.

The application stands allowed in the aforesaid
terms.

Let the copy of the order be served to the
parties.



(M.M. KUMAR)

PRESIDENT



(S. K. MOHAPATRA)

MEMBER (T)

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble
Member (Technical), Sh. S. K. Mohapatra, is not holding Court today.



(Nirmala Vincent)
Court Officer

Deepak Kumar