

**RICO AUTO INDUSTRIES LIMITED**

REGD. & CORP. OFFICE : 38 K.M. STONE, DELHI-JAIPUR HIGHWAY, GURUGRAM -122001, HARYANA (INDIA)
EMAIL : rico@ricoauto.in WEBSITE : www.ricoauto.in TEL.: +91 124 2824000 FAX : +91 124 2824200
CIN : L34300HR1983PLC023187

RAIL:SEC:2017

December 23, 2017

BSE Limited Phiroze Jeejeebhoy Towers Dalal Street Mumbai - 400001 Scrip Code - 520008	National Stock Exchange of India Limited Exchange Plaza, 5 th Floor, Plot No.C/1, G Block Bandra-Kurla Complex, Bandra (E) Mumbai - 400051 Scrip Code – RICO AUTO
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Sub: Order on Scheme of Amalgamation of Uttarakhand Automotives Limited (Wholly Owned Subsidiary) with Rico Auto Industries Limited

Dear Sir/Madam,

In terms of Regulation 30 and other applicable provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, we wish to inform that the Hon'ble National Company Law Tribunal Chandigarh Bench, Chandigarh has approved the Amalgamation of Uttarakhand Automotives Limited, wholly owned subsidiary (Transferor Company) with Rico Auto Industries Limited (Transferee Company) vide its Order No. Company Petition No.240/2016 RT CP (CAA) No.118/Chd/Hry/2017 delivered on 14th December, 2017 (Copy of the order is enclosed).

Further as per the directions in the said order, formal order be issued on filing of the Schedule of property by way of affidavit of transferor Company.

This is for your information and record.

Thanking you,

Yours faithfully,
for Rico Auto Industries Limited


BM Jhamb
Company Secretary
FCS No. 2446

Encl : As above

**IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”**

**COMPANY PETITION NO.240/2016
RT CP (CAA) No.118/Chd/Hry/2017**

**Under Sections 391 to 394 of
Companies Act, 1956.**

In the matter of Scheme of Amalgamation between:

Uttarakhand Automotives Limited,
having its registered office at 38 K.M.
Stone, Delhi-Jaipur Highway, Gurugram,
Haryana – 122001.
CIN: U29253HR2007PLC036910
PAN: AAACU9050D
Income Tax Jurisdiction: Ward 4 (4),
Gurugram – 122016, Haryana.

....Transferor Company/Petitioner No.1

AND

Rico Auto Industries Limited,
having its registered office at 38 K.M.
Stone, Delhi-Jaipur Highway, Gurugram,
Haryana – 122001.
CIN: L34300HR1983PLC023187
PAN: AAACR8724R
Income Tax Jurisdiction: CIR I(1),
JCIT-I/CIT-1,LDH, Aayakar Bhawan,
Rishi Nagar, Ludhiana.

....Transferee Company/Petitioner No.2

Order delivered on: 14.12.2017

**Coram: Hon’ble Chief Justice (Retd) Shri M.M.Kumar, President, NCLT
Hon’ble Mr. Justice R.P.Nagrath, Member(Judicial)**

For the petitioner:

Mr. Atul V. Sood, Advocate

For Official Liquidator and
Regional Director, Northern
Region, MCA, New Delhi:

Mr. D.K.Singh, Official Liquidator

Per: R.P.Nagrath Member (Judicial)

JUDGMENT

This is a joint Second Motion Petition filed by the petitioner companies for approval of the 'Scheme' of Amalgamation (for brevity the 'Scheme') of Uttarakhand Automotives Limited (for brevity P-1 Company/Transferor Company) with Rico Auto Industries Limited (for brevity P-2 Company/Transferee Company). The joint petition is maintainable in terms of sub-rule (2) of Rule 3 of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 (for short to be referred here-in-after as the 'Rules').

2. The petitioner companies filed CA No.132/2017 for amendment of the petition to correctly describe the ward numbers of the Income Tax Jurisdiction under which these companies are being assessed. The application has been allowed and the amended memo of parties was taken on record vide order dated 11.09.2017.

3. The petitioner companies filed First Motion Company Petition No.158/2016 in the Hon'ble Punjab and Haryana High Court with a prayer for dispensing with the meeting of equity shareholders, secured and unsecured creditors of petitioner companies in view of the fact that the Transferor Company is a wholly owned subsidiary of Transferee Company and also on account of consent letters of equity shareholders, secured and unsecured creditors of P-1 Company being placed on record. In view of the above, vide orders dated 07.11.2016 Annexure P-9, the said meetings were dispensed with. It was observed by the Hon'ble High Court as under:

“ Thus, in view of the consent 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.”

4. Thereafter, the instant Second Motion Petition was filed under Sections 391 to 394 of the Companies Act, 1956 corresponding to Sections 230 and 232 of the Companies Act, 2013 for sanction of the ‘Scheme’ in the Hon’ble Punjab and Haryana High Court.

5. While the instant joint petition was still pending in the Hon’ble High Court, it was transferred to this Tribunal as per Section 3 of the Companies (Transfer of Pending Proceedings) Rules, 2016 in view of coming into force of the Rules, which came into effect from 15.12.2016.

6. Separate affidavits dated 19.04.2017 of the authorised representatives of both the companies were filed on 09.05.2017. It was stated that P-1 company has no other sectoral regulator and in respect of P-2 Company, which is a listed company whose shares are listed on BSE and NSE based on the requirement of SEBI (Listing Obligations and Disclosure Requirements) Regulation 2015. It was further stated that there is no other Sectoral Regulator of P-2 Company.

7. When the matter was listed on 11.05.2017, notice was directed to be issued to the Central Government through, Official Liquidator, Registrar of Companies, NCT of Delhi/ Haryana; Commissioners of Income Tax, Rewari, Ludhiana and Gurgaon; SEBI, NSE and BSE and other regulator(s), if any. Notice was also directed to be published in the 'Indian Express' (English) and 'Dainik Bhaskar' (Hindi), NCR/Haryana Edition.

8. The affidavit of service/compliance was filed by the Authorised Signatory of both the companies. The notice was published on the website of the Transferee Company (Annexure 11). The notice was also served on the SEBI, NSE and BSE, the original acknowledgement receipt is also enclosed with the affidavit as Annexure 6, 7 and 8 respectively. The notice was published in 'Indian Express' (English Edition) and 'Dainik Bhaskar' (Hindi edition) dated 22.06.2017 (Annexure 9 and 10 respectively). Copies of the paper publications were also attached.

9. When the matter was listed on 31.08.2017, it was observed that notice to Income Tax Office of the Ward at Gurugram has been sent instead of Commissioner of Income Tax as directed in the order dated 11.05.2017. It was also submitted that the land situated at Uttarakhand

relates to the transaction for which the company is assessed at Gurugram. The authorised representative of both the companies filed affidavit dated 06.10.2017 stating therein that the notice of petition along with Scheme and Report of Regional Director was sent to the Chief Commissioner of Income Tax, Gurugram within whose jurisdiction the transferor company is being assessed. The postal receipt along with tracking report is annexed as Annexure-1 (Colly) to suggest that service to Chief Commissioner of Income Tax was effected on 03.10.2017, with the affidavit dated 07.09.2017 in proof of service of Commissioner of Income Tax, Ludhiana (Annexure A-1) was filed in respect of Transferee Company. No representation has been received to the proposed Scheme from the Income Tax Department.

10. The learned counsel for the petitioner companies also filed certificate of Company's Auditors dated 29.06.2017 in order to comply with the provisions of proviso to sub-section (3) of Section 232 and proviso to sub-section (7) of Section 230 of the Companies Act, 2013, certifying that the accounting treatment adopted in the Scheme complies with the Accounting Standards specified under Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies (Accounts) Rules, 2014 (as amended) and other generally accepted accounting principles.

11. We have heard the learned counsel for the petitioner companies, Official Liquidator for himself and the Regional Director, Ministry of Corporate Affairs and perused the record with their assistance.

12. The main objects of the Transferor Company are to carry on the business of manufacturing, assembling, buying, selling, exporting,

importing and dealing in wholesale and in retail in Automobile Parts, Two Wheeler Parts, Passenger Car Parts, Tractor Parts, Auto Electronic and Electrical Parts and Engineering items and assemblies and also to carry on the business of designing and engineering of all kinds of automotive components for the Automobile Industry including computer aided designs and/or any other system of designing and research and development for the Automobile/Automotive Industry and/or any other industry etc.

13. The Transferor Company was incorporated on 04.06.2007 under the provisions of the Companies Act, 1956 as a private limited company in the name of 'Uttarakhand Automotives Private Limited'. Subsequently, vide special resolution of the shareholders of the Transferor Company passed in its general meeting on 31.08.2007, the name of Transferor Company was changed to its present name i.e. 'Uttarakhand Automotive Limited' and a fresh certificate of incorporation was issued by the Registrar of Companies, National Capital Territory of Delhi and Haryana dated 29.09.2007.

14. As on 31.03.2016, the authorised, issued, subscribed and paid-up share capital of the Transferor Company is as follows:

Particulars	(In Rs.)
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)

15. The main objects of the Transferee Company are to carry on the business of manufacturing, buying, selling, exporting, importing & dealing in whole sale and in retail in automobile parts, tractor parts and auto electrical parts, and also to carry on the business as exporters/importers, trader & dealers of articles, whether industrial, commercial or domestic etc.

16. The Transferee Company was incorporated on the 07.03.1983 in the name of 'Rico Auto Industries Private Limited' with registered office situated in the State of Punjab. Subsequently, the Transferee Company was converted into public limited company and its name was changed to its present name i.e. 'Rico Auto Industries Limited' with effect from 10.04.1985. Subsequently, the registered office of the Transferee Company was shifted from the State of Punjab to the State of Haryana and Transferee Company was given a fresh Certificate of Incorporation by the Registrar of Companies, National Capital Territory of Delhi and Haryana on 28.01.1986. The registered office of the Transferee Company was again shifted to 38 K.M. Stone, Delhi-Jaipur Highway, Gurgaon, Haryana-122001 with effect from 30.01.2017. The Transferee Company is a listed Company.

17. As on 31.03.2016, the authorised, issued, subscribed and paid-up share capital of the Transferee Company is as follows:

Particulars	(In Rs.)
AUTHORISED SHARE CAPITAL	
25,00,00,000 Equity Shares of ₹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	₹30,00,00,000/- (Rupees Thirty Crores only)
ISSUED, SUBSCRIBED AND PAID-UP SHARE CAPITAL	
13,52,85,000 equity shares of ₹1/- each, fully paid-up	₹13,52,85,000/- (Rupees Thirteen Crores Fifty Two Lakhs Eighty Five Thousands only)

18. The audited financial statements of the petitioner companies as on 31.03.2016 are at Annexure P-3 and P-5 (Colly) respectively.

19. It is stated that there has been no change in the share capital of both the companies subsequent to 31.03.2016.

20. The registered office of both the companies is situated at Gurugram in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

21. The Scheme (Annexure P-1) was approved by the Board of Directors of the Transferor Company vide resolution dated 04.02.2016 and that of Transferee Company on 05.02.2016 copies of which are at Annexures P-6 and P-7 respectively. The rationale behind the proposed Scheme is as follows:

“Since the Transferor Company is a wholly owned subsidiary of the Transferee Company, amalgamation contemplated in the present Scheme will ensure optimized legal structure, more aligned with the business of the Transferee Company and will also reduce the number of legal entities within the group so as to achieve significant

cost savings and other administrative benefits, few of which are stated hereunder:

- a) The significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Company and Transferee Company;*
- b) Concentrated effort and focus by the senior management to grow the business by elimination of duplicative communication and burdensome coordination efforts across multiple entities;*
- c) Elimination of administrative functions and multiple record-keeping, thus resulting in reduced expenditure;*
- d) Creation of a focused platform for future growth of the Transferee Company being engaged, amongst other things, in the business of manufacturing auto components.*
- e) Improvement in competitive position of the Transferee Company as a combined entity and also achieving economies of scale.”*

22. The interest of the employees has also been taken care of and it is laid down in Clause 3.22 of the Scheme as under:

“3.22 Upon coming into effect of the Scheme:

- a) All the employees (if any) in the service of the Transferor Company immediately preceeding the Effective Date shall become employees of the Transferee Company on the basis that:*
 - (i) their services shall be deemed to have been continuous and not been interrupted by reasons of the said transfer.*

(ii) *The terms and conditions of their services after such transfer shall not in any way be less favourable to them than those applicable to them immediately preceding the transfer.*

(b) *It is expressly provided that as far as the provident fund, employee state insurance plan, scheme, gratuity scheme, superannuation scheme, compensated absences scheme or any other special scheme(s) or fund(s) created or existing, (if any), for the benefit of the employees of the Transferor Company is concerned, upon coming into effect of the Scheme, the Transferee Company shall stand substituted for the Transferor Company for all purposes whatsoever, related to the administration or operation of such schemes and intent that all the rights, duties, powers and obligation of the Transferor Company in relation to such schemes shall become those of the Transferee Company. It is clarified that the services of the employees (if any) of the Transferor Company will be treated as having been continuous for the purpose of the aforesaid schemes.”*

23. The report of the Official Liquidator was filed along with forwarding letter dated 06.07.2017 wherein it was stated that the net profit of Transferor Company in its Balance Sheet as on 31.03.2016 has been shown as ₹8,62,88,746/- as compared to ₹1,70,53,857/- for the year ending 31.03.2015. It is admitted that with effect from 01.12.2007, the Transferor Company is the wholly owned subsidiary of Transferee Company.

24. In the report by way of affidavit dated 07.07.2016 of Mr. Mahesh Kumar, Regional Director (In-charge), Northern Region, Ministry of Corporate Affairs, New Delhi, it was stated that there is no foreign/non-

resident interest in the Transferor Company. The Transferee Company is listed company and it has NRI shareholders holding 2.24% in the shareholding pattern as on 31.03.2017. In this regard, we would say that as per Balance Sheet for the year ending 31.03.2016, the Transferee Company holds 100% of the shareholding of the Transferor Company and even in the event of amalgamation, the shares of Transferor Company shall stand cancelled without any allotment. The petitioner companies in any case shall have to comply with the provisions of FEMA/RBI Regulations. In the reply by way of affidavit of the authorised representative of the petitioners, it is stated that no prosecution proceedings have been instituted before any court on account of the violation of the Companies Act, FEMA/IPC/SEBI Act/RBI Act against either of the Companies or its Directors.

25. Report of the Registrar of Companies also filed in the instant case with the forwarding letter dated 31.08.2017 and taking into account the report of the Registrar of Companies, the Regional Director has filed his affidavit. The averment which was highlighted in the reply is that soon after incorporation of the Transferor Company, its entire share capital was acquired by the Transferee company. The Transferee Company has provided a loan of ₹13.25 crores to the Transferor Company, which was mainly utilized for the purchase of 16.65 acres of land owned by the Transferee Company for a sum of ₹12.66 crores.

26. It is further stated that post the appointed date, the Transferee Company has again purchased the land merely for consideration of ₹4.60 crores and accordingly unsecured loan of ₹8.67

crores has been proposed to be adjusted/waived as per the Balance Sheet as on 31.03.2016. The only observation of the Regional Director is that the above adjustment/waiver of loan and interest thereon may be clarified by the Company.

27. In response thereto, the authorised representative of the petitioner companies filed reply by way of affidavit dated 24.08.2017 in response to the observations of the Regional Director stated as under:

“(b) Both the Transferor and Transferee Company acknowledge and confirm that the effect of transfer of land held for sale by the Transferor Company, as appearing in the books of accounts of the Company as at 31st March, 2015 to the Transferee Company after the Appointed Date but before the approval of this Scheme by the Board of Directors of both the Transferor and Transferee Company and adjustment of the sale consideration of the said land against the loan outstanding payable by the Transferor Company to the Transferee Company, shall accrue to the Transferee Company as if the same was carried on account and in trust for the Transferee Company after the Appointed Date.”

28. It was further stated as under:

*“(iv) That during the year 2006, the Transferee Company enticed by various benefits in the offerings, though of setting up a greenfield project (“**Project**”) in Uttarakhand for manufacturing and assembling of automobile parts, two wheeler parts, passenger car parts, tractor parts, auto electronic and electric parts and engineering items and assemblies. There was an anticipation by the board of directors of the Transferee Company that tax incentives*

offered by the Government of Uttarakhand will lead to development of more industries in the region of Sitarganj, Uttarakhand which will improve the availability of raw material, cheap labour etc. for manufacturing of auto components at low operating costs. It was also anticipated that leading vehicle manufacturing companies will set up units in Uttarakhand and the auto components manufactured by Transferee Company can be supplied to such vehicle manufacturing companies in Uttarakhand itself. The Transferee Company, in view of the above anticipation, applied for and was thereafter, in June, 2006 allotted an industrial land situated at Plot No.9, Block D, Eldeco SIDCUL, Industrial Park, Sitarganj (Uttarakhand) (“Land”).

(v) That in order to have a more focused approach and for optimum utilization of resources for development of the Project, the Transferee Company in July, 2007 thought it appropriate to transfer the said land in favour of Transferor Company, its wholly-owned subsidiary at the market price of the land prevailing at that time. A board resolution dated 24.07.2007 in this regard was passed by the Transferee Company. A copy of the said board resolution dated 24.07.2007 is annexed herewith as Annexure 1. A board resolution was also passed by the Transferor Company, the wholly-owned subsidiary of Transferee Company for purchase of land from its parent company i.e. Transferee Company on 01.12.2007. A copy of the said board resolution dated 01.12.2007 is annexed herewith as Annexure 2.

(vi) Since Transferor Company had not commenced any business activity and did not have adequate resources and funds to develop the Project, the Transferee Company transferred the said land to the Transferor Company and

the sale consideration of ₹12,66,00,000/- (Rupees Twelve Crore and Sixty Lakh only) was treated as interest bearing loan granted to the Transferor Company in the books of both the petitioner companies.”

29. Regarding the lesser amount of consideration for re-purchase of the land, it is stated that the value of the industrial land in Uttarakhand as prevailed in the year 2014 had substantially fallen from the value of the land it could fetch in the year 2007-08. The substantial fall in value was because of many factors including withdrawal of the facilities given to the industries by the Government of Uttarakhand and the slow development of the industries in the said region. Thereafter in December, 2014, the said land was agreed to be transferred from Transferor Company, the wholly-owned subsidiary of Transferor Company to the Transferee Company almost at the prevailing market value of ₹4,59,77,187/-. It was also agreed between the Transferor Company (i.e. wholly owned subsidiary) and the Transferee Company (i.e. holding company) that the said sale consideration of ₹4,59,77,187/- shall be adjusted against the outstanding loan payable by the Transferor Company (wholly-owned subsidiary) to the Transferee Company (holding company). Consequent to such transfer of land, the Transferee Company i.e. holding company also decided to waive off the remaining amount of loan of ₹8,66,73,126/- recoverable along with interest accrued from its wholly owned subsidiary i.e. Transferor Company as the Transferor Company and no resources to pay the loan and interest. The said amount of waiver of liability was duly considered as income in the books of the Transferor Company.

30. In terms of the aforesaid assertions, it is stated that the above facts are related to the notes of the financial statements for the financial year ending 31.03.2015 and to the notes of financial statements for the next financial year.

31. It was stated that there was no active business of the Transferor Company and consequent upon the Transfer of the land, there is no plan to pursue in business activities separately.

32. Learned counsel for the petitioner companies contended and rightly so that this is easy transfer of the land by way of subsidiary and wholly-owned company, which should have no adverse impact on the process of amalgamation. We are of the view that if there was any tax evasion on that account, it was for the Income Tax Department to file representation or raise objections. Copy of the report of Regional Director was sent to the concerned Commissioner of Income Tax and no representation was filed in this Tribunal to the proposed Scheme. In any case, if any such liability is found and in case of any individual liability, the proceedings in that connection may, however, still continue despite the approval of the Scheme.

33. In view of the above, there is no impediment in the sanction of the Scheme. The Scheme (Annexure P-1) is approved. While approving the 'Scheme' as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of any stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which

may be specifically required under any law. With the sanction of the Scheme, all the equity shares held by the Transferee Company and its nominees in the Transferor Company shall stand cancelled and the Transferor Company shall stand dissolved with the process of winding up.

THIS TRIBUNAL DO FURTHER ORDER

- (i) That all the property, rights and powers of the Transferor Company stand transferred, without further act or deed to the Transferee Company and accordingly, the same shall pursuant to sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Company, but subject nevertheless to all charges now affecting the same; and
- (ii) 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 sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company; and
- (iii) That all the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and
- (iv) That all the employees of the Transferor Company shall be transferred to the Transferee Company in terms of the 'Scheme'; and

- (v) That the fee, if any, paid by Transferor Company on its authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme'; and
- (vi) That the Petitioner Companies do, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the Transferee Company and the files relating to Transferor and Transferee Companies shall be consolidated accordingly, as the case may be; and
- (vii) That the Transferee Company shall deposit an amount of ₹60,000/- (Rupees Sixty Thousand only) as cost with the Pay and Accounts Office in respect of office of Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi within a period of five weeks from the date of receipt of certified copy of this order.
- (viii) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

34. As per the above directions and Form No.CAA 7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the Applicants on filing of the Schedule of Property i.e. (i) freehold property of the Transferor Company; and (ii) leasehold property of the Transferor Company by way of affidavit of the Transferor Company.

Sd/-
(Chief Justice M.M.Kumar)
President, NCLT

Sd/-
(Justice R.P. Nagrath)
Member(Judicial)

December 14, 2017
Ashwani