Sharda Motor Industries Ltd.

SMIL:BSE/NSE: 2019-20/1603 **March 16, 2020**

BSE Limited
Department of Corporate Services
PherozeJeejeebhoy Towers
Dalal Street, Mumbai - 400 001
(SCRIP CODE - 535602)

National Stock Exchange of India Limited
Exchange Plaza, 5th Floor
Plot No. C/1, G Block
Bandra - Kurla Complex, Mumbai - 400 051
(Symbol - SHARDAMOTR) (Series - EQ)

Sub: Update over the Scheme of Arrangement ("Scheme") between Sharda Motor Industries Limited ("the Company") and NDR Auto Components Limited and their respective Shareholders and Creditors

Dear Sir/ Madam,

In continuation to our Letter No. SMIL: BSE/NSE: 19-20/2002, dated February 20, 2020 and in pursuant to Regulation 30 of the (Listing Obligations & Disclosure Requirements) Regulations, 2015 and other applicable provisions, if any, we are pleased to inform that the effective date for the Scheme of Arrangement between Sharda Motor Industries Limited and NDR Auto Components Limited and their respective Shareholders and Creditors is March 16, 2020, being the date of filing the Certified Copy of Order of the National Company Law Tribunal ("NCLT") dated February 20, 2020 (certified true copy received on March 11, 2020) with the Registrar of Companies, Ministry of Corporate Affairs in Form INC-28. The Copy of NCLT order is enclosed herewith.

This is for your information and records.

Thanking You,

Your's Faithfully

For **Sharda Motor Industries Limited**

SHARDA MOTOR INDUSTRIES LTD. NEW DELHI

Divyang Jain
Asst. Company Secretary

Encl. as above

Regd. Office : D-188, Okhla Industrial Area, Phase-I, New Delhi - 110 020 (INDIA)
Tel.: 91-11-47334100, Fax : 91-11-26811676
E-mail : smil@shardamotor.com, Website : www.shardamotor.com
CIN NO-L74899DL1986PLC023202

THE NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH,

AT NEW DELHI

CAA-164 (PB) /2019

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

488

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11.3.2020
DD/DR/AR/Court Officer
National Company Law Tribunal
New Delhi

In the matter of

Scheme of Arrangement

Between

Sharda Motor Industries Limited

..... Petitioner-1/ Demerged Company

AND

NDR Auto Components Limited

..... Petitioner-2/ Resulting Company

Judgment pronounced on: 20.02.2020

Coram:

SH. B.S.V. PRAKASH KUMAR, HON'BLE ACTG. PRESIDENT

SH. S. K. MOHAPATRA, HON'BLE MEMBER (TECHNICAL)

Present:

For the Petitioner: Mr. K. M. Gupta, Advocate

For the RD (NR) : Ms. Tania Sharma, Advocate

National Company Law Tribunal
Principal B.

ORDER

S. K. Mohapatra, Member

1. This Joint petition has been filed by both 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 Arrangement as contemplated between the demerged company and the resulting company. Copy of the said Scheme of Arrangement (hereinafter referred as the "Scheme") has been placed on record.

2. The "Demerged Company", Sharda Motor Industries Limited is a company incorporated on 29.01.1986 under the provisions of the Companies Act, 1956 having its registered office at D-188, Okhla Industrial Area, Phase-I, New Delhi – 110020.

3. The "Resulting Company", NDR Auto Components Limited is a company incorporated on 19.03.2019 under the provisions of the Companies Act, 2013 having its registered office at D-188, Okhla Industrial Area, Phase-I, New Delhi – 110020.

4. A perusal of the petition discloses that initially the First Motion application seeking convening / dispensation from convening the meetings of Shareholders and Creditors of the petitioner companies was filed before this Bench vide Company Application CAA No. 137 (PB)/2019. 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 resulting company and secured creditors of demerged company were dispensed with, and the meetings of Equity Shareholders, and Unsecured Creditors of the demerged company were directed to be convened vide order dated 10.10.2019 passed by this Bench.

5. Subsequently, the aforesaid meetings were duly convened on 20.11.2019 and the Scheme was unanimously approved by the members present in the said meetings. The reports of Chairperson and Scrutinizers have been placed on record.

6. Thereafter, on 02.01.2019 the Petitioners were directed to carry out publication in the newspapers "Business Standard" (English, Delhi edition) and "Business Standard" (Hindi, Delhi edition). In addition to the public notice, notices were directed to be served on the Regional Director (Northern Region),

Registrar of Companies, NCT of Delhi and Haryana, the Income Tax Department including BSE, NSE and SEBI and to the other relevant sectoral regulators.

7. It is seen from the records that the Petitioners have filed an affidavit dated 30.01.2020 affirming compliance of the order passed by the Tribunal dated 21.11.2019. A perusal of the affidavit discloses that the petitioners have effected the newspaper publication as directed in one issue of the 'Business Standard' English edition on 20.01.2020 as well as in 'Business Standard' Hindi edition on 20.01.2020 in relation to the date of hearing of the petition. Further, the affidavit discloses that copies of petition have been duly served to the Registrar of Companies, Regional Director, Northern Region, SEBI, BSE, NSE and Income Tax Department in compliance of the order and in proof of the same acknowledgement made by the respective offices have also been enclosed.

8. The Regional Director has filed its representation on 13.01.2020 in which it is stated that the resulting company and demerged company have filed Annual Returns and Balance Sheets upto 31.03.2018 and no prosecution has been filed and

no inspection or investigation has been conducted in respect of any of the petitioner companies.

9. Despite opportunity afforded to the Department of Income Tax, no reply has been filed by the Department of Income Tax till date. It is pertinent to mention here that the Department of Income Tax should have filed their response within 30 days from the date of receipt of such notice as per the provisions of sub-section 5 of Section 230 of the Companies Act, 2013, failing which it is provided in the said Section that it shall be presumed that the authority has no representation to be made in respect of the Scheme. In view of the above inference can be taken that the Department of Income Tax has no observation against the Scheme.

10. However the Demerged Company has filed an Affidavit dated 10.02.2020 and 17.02.2020 submitting as follows:-

> *" a. Upon the coming into effect of the Scheme and the transfer and vesting of the Automobile Seating Undertaking of SMIL in NACL through demerger, consideration for the transfer of the Automobile Seating Undertaking as per clause 12.1 of the Scheme is in the following proportion namely:*

"for every 1 (One) equity share of face value of INR10/ (Rupees Ten only) each held in SMIL as on the Record Date, the equity shareholders of SMIL shall be issued 1 (One) equity share of face value INR10/- (Rupees Ten only) each credited as fully paid-up in NACL"

a. *It is further submitted that the provisions of this Scheme has been drawn up to comply with the conditions relating to "Demerger" as defined under Section 2(19AA) of the Income-tax Act.*

b. *That it is confirmed that any proceeding / stay/ appeal to any matter shall remain unaffected post the sanction of Scheme.*

c. *That the sanction of the Scheme shall not abate any demand and penalty, if any levied thereon.*

d. *That SMIL shall comply with the provisions of the Income Tax Act, 1961 as applicable, post the sanction of the Scheme.*

e. *That the tax authorities of SMIL shall not be prejudicially impacted on account of the proposed demerger."*

11. Additionally, the Resulting Company has also filed Affidavit dated 10.02.2020 and 17.02.2020 stating that:-

" (a) Upon the coming into effect of the Scheme and the transfer and vesting of the Automobile Seating Undertaking of SMIL in NACL through demerger, consideration for the transfer of the Automobile Seating Undertaking as per clause 12.1 of the Scheme is in the following proportion namely:

"for every 1 (One) equity share of face value of INR10/- (Rupees Ten only) each held in SMIL as on the Record Date, the equity shareholders of SMIL shall be issued 1 (One) equity share of face value INR10/- (Rupees Ten only) each credited as fully paid-up in NACL"

b) *It is further submitted that the provisions of this Scheme have been drawn up to comply with the conditions relating to "Demerger" as defined under Section 2(19AA) of the Income-tax Act.*

c) *That provisions of section 72(A)(2) of the Income Tax Act 1961 of the Act is not per se applicable as there are no brought forward losses/ unabsorbed depreciation which are being transferred to the Resulting Company pursuant to demerger.*

d) *That it is confirmed that any proceeding / stay/ appeal to any matter shall remain unaffected post the sanction of Scheme.*

e) *That there are no pending demands/ proceedings as on date and that the sanction of the Scheme shall not abate any demand and penalty, if any levied thereon.*

f) *That NACL shall comply with the provisions of the Income Tax Act, 1961 as applicable, post the sanction of the Scheme.*

g) *That NACL shall remain in existence post the Scheme and that the tax authorities of NACL shall not be prejudicially impacted on account of the proposed demerger.*

h) *In response to the observation made by the Income Tax Department, the resulting company unconditionally undertakes to honor the liability relating to any tax demand, as may be finally determined as per the provisions of Income tax Act, 1961 in the future in respect of the resulting company.*

i) *The resulting company undertakes that the payment of income tax shall not be hampered in any way as a result of the demerger between demerged and resulting company."*

12. It is thus seen that the interest of revenue has been duly protected through aforesaid undertakings tendered by the petitioner companies. Be that as it may, it is however clarified that there shall be no limitation on the power of the Income tax

Department for recovery of pending Income Tax dues, including imposition of penalties etc. from both the petitioner companies as provided in law.

13. In the joint petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.

14. 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.

15. The shareholders of the applicant companies are the best Judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by the 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 shareholders and creditors.

16. In the case of Hindustan Lever Employees Union Vs. Hindustan Lever Limited (1995) 5 SCC 491 the three Judges Bench of Hon'ble Supreme Court held that:

> *" A company court does not exercise appellate jurisdiction over a scheme and its jurisdiction is limited to ascertaining fairness, justness and reasonableness of the Scheme and to ensure that neither any law has been violated or public interest compromised in the process."*

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 applicant companies to avail the benefits extended by statutory provisions and the Rules.

18. It has also been affirmed in the petition that Scheme is in the interest of Demerged Company and the Resulting Company including their shareholders, creditors, employees and all concerned.

19. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, and the report filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and no Objections of BSE and NSE and also in the absence of any objection against the Scheme; there appears to be no impediment in sanctioning the present Scheme.

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

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

22. 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.

23. 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.

24. **THIS TRIBUNAL DO FURTHER ORDER**

i. *That all the property, rights and powers of the Demerged Company in respect of Demerged Undertaking be transferred without further act or deed to the Resulting Company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 be transferred to and vest in the Resulting Company.*

ii. *That all the liabilities and duties of the Demerged Company in respect of Demerged Undertaking be transferred without further act or deed to the Resulting Company and accordingly the same shall be in pursuance to Section 232 of the Act and become the liabilities and duties of the Resulting Company;*

iii. *With the issue and allotment of the new equity shares by NACL to the equity shareholders of SMIL in accordance with clauses 12 of the Scheme, in the books of NACL, all the equity shares issued by NACL to SMIL and held by SMIL shall stand cancelled,*

extinguished and annulled on and from the Effective Date.

iv. *That all the employees of the Demerged Company in respect of Demerged Undertaking 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 Resulting Company on such date without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the demerged company on the said date.*

v. *That both the 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 Companies for registration and on such certified copy being so delivered the Registrar of Companies shall place all documents relating the demerged undertaking of demerged company registered on the file kept by him in relation to the Resulting Company; and*

vi. *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-

(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT

-Sd-

(S. K. MOHAPATRA)
MEMBER (T)

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DD/DR/AR/Court Officer
National Company Law Tribunal
New Delhi

11.3.2020
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003

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