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IN THE NATIONAL COMPANY LAW TRIBUNAL BENGALURU BENCH

C.P (CAA) No. 13/BB/2018
U/S 230 to 232 of the Companies Act, 2013

Order Delivered on: 26th April, 2018

Coram: Hon'ble Shri Rajeswara Rao Vittalana (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

IN THE MATTER OF SCHEME OF AMALGAMATION

BETWEEN

ABC BEARINGS LIMITED (Transferor Company)

AND

TIMKEN INDIA LIMITED (Transferee Company)

AND

THEIR RESPECTIVE SHAREHOLDERS

Timken India Limited
39-42, Electronic City,
Phase II,
Hosur Road,
Bengaluru – 560 100

- Petitioner Company/Transferee Company

Parties Present : 1) Perikal K Arjun, J Sagar Associates, Level 3, Prestige Obelisk, No.3
Kasturba Road, Bengaluru – 560001
Advocate for the Petitioner Company
2) Mrs. Sinchana M.R, Advocate, Standing Counsel
Representative for the Registrar of Companies & Regional Director

Per: Hon'ble Shri Ashok Kumar Mishra, Member (Technical) – Author

Heard on: 16.02.2018, 28.03.2018, 10.04.2018



ORDER

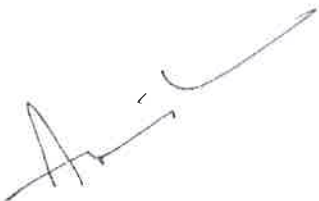
The Company Petition is filed on behalf of the Petitioner Company/Transferee Company under Section 230 and 232 of the Companies Act, 2013 praying to order for sanctioning the Scheme of Amalgamation whereby **ABC BEARINGS LIMITED** (Transferor Company) is being merged with **TIMKEN INDIA LIMITED** (Petitioner Company/Transferee Company) so as to be binding on the Petitioner Company/Transferee Company, its shareholders and creditors.

The averments made in the Company Petition are briefly described hereunder:-

The Petitioner Company/Transferee Company seeks an order for sanctioning the Scheme of Amalgamation of **ABC BEARINGS LIMITED** (Transferor Company) with **TIMKEN INDIA LIMITED** (Petitioner/Transferee Company). The Scheme of Amalgamation is shown as **Annexure-A**.

The Petitioner Company/Transferee Company was incorporated on 15th June, 1987 under the name and style as Tata Timken Limited with the Registrar of Companies, Calcutta. Subsequently, the registered office of the Petitioner Company/Transferee Company was shifted from the State of West Bengal to the State of Bihar on 12th December, 1996. Thereafter, the name of the Petitioner Company /Transferee Company was changed to **Timken India Limited** on 2nd July, 1999. Consequently, the registered office of the Petitioner/Transferee Company was shifted from the State of Jharkhand (Erstwhile Bihar) to the State of Karnataka on 10th November, 2008 vide CIN No. **L29130KA1996PLC048230**. The registered office of the Petitioner Company/Transferee Company is situated at 39-42, Electronic City, Phase II, Hosur Road Bangalore-560100.

The Petitioner Company/Transferee Company's Objects as set out in its Memorandum of Association *inter alia* include to research and develop, manufacture, purchase for resale, sell, import and export, trade in, assemble, distribute, service, overhaul, repair and undertake maintenance of, all kinds of anti-friction bearings and other goods and



products, raw materials, components, tools, accessories, parts, semi-finished and complete units of any of the foregoing or any combination there of and devices and consumables (including devices and consumables used for the reduction of friction), whether or not related, and including, without limitation, those manufactured or used in any kind of plant, machinery (stationery or mobile and whether functioning alone or in conjunction with one or more other machines), equipment or process. The Copy of Certificate of Incorporation, Memorandum & Articles of Association of the Petitioner Company/Transferee Company is shown in **Annexure-B**.

The Authorised Share Capital of the Petitioner Company/Transferee Company as stated in the petition is Rs. 1,010,000,000/- divided in to 75,000,000 equity share of Rs. 10/- each and 2,600,000 9% Cumulative Redeemable Preference Shares of Rs. 100/- each. The issued share capital of the Petitioner Company/Transferee Company as stated in the petition is Rs. 680,151,340 divided into 68,015,134 equity shares of Rs. 10/- each. The subscribed and fully paid up share capital of the Petitioner Company/Transferee Company as stated in the petition is Rs. 679,757,840/- divided into 67,975,784 equity shares of Rs. 10/- each. The subscribed and partly paid up share capital of the Petitioner Company /Transferee Company as stated in the petition is Rs. 1,30,000/- divided into 24,200 equity shares of Rs. 10/- each (net of call in arrears). The Copy of Audited Financials of the Petitioner Company /Transferee Company as on 31st March, 2017 is shown in **Annexure-C**.

The Transferor Company was incorporated on 30th May, 1961 under the name and style of The Antifriction Bearings Corporation Limited with the Registrar of Companies, Maharashtra. Subsequently, the name of the company was changed to **ABC BEARINGS LIMITED** on 27th September, 2002. The Registered office of the Transferor Company is situated at 402-B, Poonam Chambers, Dr. Annie Besant Road, Worli, Mumbai - 400018 I and CIN No. is **L29130MH1961PLC012028**.

The Transferor Company 's Objects as set out in its Memorandum of Association *inter alia* include to carry on all or any of the business of importing, exporting, dealing, manufacturing, buying, selling and distributing and generally dealing in ball bearings, cylindrical roller bearings, spherical roller bearings, taper roller bearings, aircraft bearings,

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taper roller thrust bearings and any type of common or special bearings, steel rollers and steel balls for paint industries and other uses any other articles and things allied or otherwise. The Copies of Certificate of Incorporation, Memorandum & Articles of Association of the Transferor Company is shown in **Annexure-D**.

The authorised share capital of the Transferor Company as on 31st March, 2017 is Rs. 12,00,00,000/- divided in to 1,20,00,000 equity share of Rs. 10/- each. The issued, subscribed and paid-up share capital of Rs. 11,55,00,000/- divided in to 1,15,50,000 equity shares of Rs.10/- each. The Copy of Audited Financials of the Transferor Company as on 31st March, 2017 and is shown in **Annexure-E**.

The Board of Directors of the Petitioner Company/Transferee Company and Transferor Company approved and adopted the Scheme of Amalgamation at its respective meeting held on 4th July, 2017. The copies of Board Resolution of the Petitioner/Transferee Company and Transferor Company are shown in **Annexure-F** and **Annexure-G** respectively.

The Petitioner Company /Transferee Company had filed Company Application No. CA(CAA) 85/BB/2017 for convening the meeting of its equity shareholders and unsecured creditors. This Tribunal vide order dated 14th December, 2017 allowed the application and ordered for the convening of meetings of Equity Shareholders and Unsecured Creditors of the Petitioner Company/Transferee Company for the purpose of considering the Scheme of Amalgamation and, if thought fit approving the same, with or without modifications. The Petitioner Company /Transferee Company was directed to convene Equity Shareholders and Unsecured Creditors meeting (s) on 1st February, 2018 at 10:00 A.M. and 02:00 P.M. respectively to be held at Tangerine Conference Hall, Lemon Tree Hotel, Plot No. 54/B/55A, Hosur Main Road, Electronic City, Phase 1, Bangalore- 560100. The Copy of the Order of this Tribunal is filed with the **memo dated 9th February, 2018**.

It is stated in the Petition that as per the orders of this Tribunal notices of the meetings were sent individually to the 51,261 equity shareholders as on 28th December,



2017 and 307 unsecured creditors amounting to a value of Rs. 129,45,99,607/- as on 30th November, 2017 together with a copy of the Scheme and of the statement required under Section 231, 232 read with Section 230 of the Companies Act, 2013 and a form of proxy. Further, it is stated that as directed by the said Order, notice of the meeting was also advertised in English in "The Hindu" and in Kannada in "Udayavani" on 30th December, 2017.

The Petitioner Company /Transferee Company, adhering to the NCLT order dated 14.12.2017 convened the Equity Shareholders and Unsecured Creditors meeting on 01.02.2018 and accordingly it is stated that:

- Meeting of the equity shareholders of the Petitioner Company /Transferee Company was attended personally and by proxy by 68 number of equity shareholders and through emote e-voting and postal ballot by 280 equity shareholders, and the total number of their shares is 5,57,44,642 equity shares of Rs. 10/- each, representing 81.98% of the total value of shares of the Petitioner Company /Transferee Company. The Scheme was taken as read with the consent of the shareholders present, and it was resolved by the majority as follows:

***"RESOLVED THAT** pursuant to the provisions of Sections 230 to 232 of the Companies Act, 2013 (including any statutory modification(s) thereof for the time being in force) and other applicable provisions of the Memorandum and Articles of Association of the Company and subject to the approval of the National Company Law Tribunal at Bengaluru and Mumbai and subject to such other approvals and permissions, which may be prescribed or imposed by the respective Benches of the Hon'ble National Company Law Tribunal or by any regulatory or other authorities, while granting such consents, approvals and permissions, which may be agreed to by the Board of Directors of the Company (hereinafter referred to as "Board" which term shall be deemed to mean and include one or more committee(s) constituted/ to be constituted by the Board or any other person authorized by it to exercise its power including the powers conferred by this resolution), the arrangement embodied in the Scheme of Amalgamation and Arrangement between ABC Bearings Limited*



("Transferor Company") and Timken India Limited ("Transferee Company") and their respective shareholders and creditors (hereinafter referred to as "Scheme") placed before this Meeting and initialed by the Chairman of the Meeting for the purpose of identification, be and is hereby approved.

RESOLVED FURTHER THAT any Director of the Company and the Company Secretary be and hereby severally authorized to do all such acts, deeds, matter and things, as he/she may, in his/her absolute discretion deem requisite, desirable, appropriate or necessary to give effect to this resolution and effectively implement the arrangement embodied in the Scheme and to accept such modifications, amendments, limitations and/or conditions, if any, which may be required and/or imposed by the Bengaluru Bench and Mumbai bench of the Hon'ble National Company Law Tribunal while sanctioning the arrangement embodied in the Scheme or by any authorities under law, or as may be required for the purpose of resolving any doubts or difficulties that may arise in giving effect to the Scheme, as the Board may deem fit and proper".

- Meeting of the unsecured creditors of the Petitioner Company/Transferee Company was attended by 37 in number, and the total value of their debts is Rs. 109,63,04,749/- as on 30th November, 2017. The Scheme was taken as read with the consent of the unsecured creditors present and it was resolved unanimously as follows:

RESOLVED THAT pursuant to the provisions of Sections 230 to 232 of the Companies Act, 2013 (including any statutory modification(s) thereof for the time being in force) and other applicable provisions of the Memorandum and Articles of Association of the Company and subject to the approval of the National Company Law Tribunal at Bengaluru and Mumbai and subject to such other approvals and permissions, which may be prescribed or imposed by the respective Benches of the Hon'ble National Company Law Tribunal or by any regulatory or other authorities, while granting such consents, approvals and permissions, which may be agreed to by the Board of Directors of the Company (hereinafter referred to as "Board" which

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term shall be deemed to mean and include one or more committee(s) constituted/ to be constituted by the Board or any other person authorized by it to exercise its power including the powers conferred by this resolution), the arrangement embodied in the Scheme of Amalgamation and Arrangement between ABC Bearings Limited ("Transferor Company") and Timken India Limited ("Transferee Company") and their respective shareholders and creditors (hereinafter referred to as "Scheme") placed before this Meeting and initialed by the Chairman of the Meeting for the purpose of identification, be and is hereby approved.

RESOLVED FURTHER THAT any Director of the Company and the Company Secretary be and hereby severally authorized to do all such acts, deeds, matter and things, as he/she may, in his/her absolute discretion deem requisite, desirable, appropriate or necessary to give effect to this resolution and effectively implement the arrangement embodied in the Scheme and to accept such modifications, amendments, limitations and/or conditions, if any, which may be required and/or imposed by the Bengaluru Bench and Mumbai bench of the Hon'ble National Company Law Tribunal while sanctioning the arrangement embodied in the Scheme or by any authorities under law, or as may be required for the purpose of resolving any doubts or difficulties that may arise in giving effect to the Scheme, as the Board may deem fit and proper".

- Mr. Sanjay Koul, who was appointed as the Chairman by this Tribunal, presided as the Chairman of all meetings and reported the result of the meetings to this Tribunal on 2nd February, 2018. Copies of the Chairman's reports fir meetings of equity shareholders and unsecured creditors are shown as **Annexure-K and Annexure-L**.

The Petitioner/Transferee Company filed this petition bearing CP (CAA) No.13/BB/18 before this Tribunal for sanctioning the scheme of amalgamation on 2nd February, 2018.

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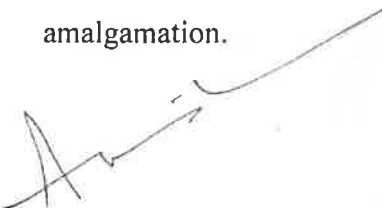


This Tribunal vide order dated 16th February, 2018 in CP (CAA) No.13/BB/18 directed the Petitioner Company/Transferee Company to issue notices on the following authorities: (i) Regional Director, Ministry of Corporate Affairs, South-East Region; (ii) Register of Companies, Karnataka; (iii) Deputy Commissioner, Income Tax; (iv) National Stock Exchange Limited; and (v) Bombay Stock Exchange Limited and also to have an advertisement of the Notice of Petition to be carried out in the 'Hindu' (English Daily) and 'Udayavani' (Kannada Daily) and stating that the next date of hearing was on 28th March, 2018.

The Counsel for the Petitioner Company/Transferee Company has filed an Affidavit dated 27th March, 2018 of the authorized signatory of the Petitioner Company/Transferee Company stating that, in pursuance to the order of this Tribunal 16th February, 2018 notices have been sent to Regional Director, Ministry of Corporate Affairs, South-East Region, Register of Companies, Karnataka, Deputy Commissioner, Income Tax Assessing Officers of the Petitioner Company/Transferee Company, National Stock Exchange Limited, Bombay Stock Exchange Limited and Securities Exchange Board of India, and that the advertisement of the Notice of Petition carried out in the 'Hindu' (English Daily) and 'Udayavani' (Kannada Daily) stating that the next date of hearing was on 28th March, 2018.

The Registrar of Companies, Karnataka has furnished his letter No. ROCB/LEGAL/CAA-3/2017 in the matter of scheme of amalgamation of M/s ABC Bearings Limited (Transferor Company) and M/s Timken India Limited (Transferee Company) and has forwarded the report dated 23.02.2018 to the Regional Director, Ministry of Corporate Affairs, South-East Region, Hyderabad making the following observations:

- a. There are no prosecutions, complaints, technical scrutiny/inspection pending in this office on the petitioner companies.
- b. Financial statements of the Transferee Company for the year 2016-2017 have not yet been filed.
- c. The MoA of the Transferee Company does not contain the provision that relates to amalgamation.

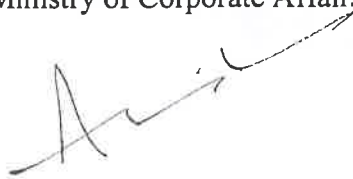


- d. Method of accounting has not been mentioned in the Scheme.
- e. The petition of the company may be decided on merits.

The Registrar of Companies, Karnataka on behalf of the **Regional Director, Ministry of Corporate Affairs, South-East Region, Hyderabad** has filed his report by way of an Affidavit of the Registrar of Companies, Karnataka dated 27th March, 2018 in CP (CAA) No.13/BB/18 making the following observations:

- a. The ROC, Bangalore in his report dated 23.02.2018 has stated that the Memorandum of Association of the Transferee Company does not contain the enabling provision for amalgamation. However, it is observed that the Clause (B)(1) enables the same. ROC has also reported that the method of accounting is not mentioned in the Scheme. However, Clause 14 of the Scheme states that the Accounting Treatment will be in accordance with IND AS-103. Hence, no further consideration of these observations may be required.
- b. The Scheme does not mention about the Appointed Date.
- c. Clause 12 of the Scheme provides that for every 8 shares of the Transferor Company, 5 new equity shares of the Transferee Company will be issued which is supported by a Valuation Report dated 4.7.2017 certified by M/s. SSPA & Company, Chartered Accountants, Mumbai.
- d. In Clause 15.1 of the Scheme, the Petitioner Transferee Company has sought complete waiver of the fee and stamp duty payable on account of consolidation of the authorized share capital of the transferor company and transferee company which is not acceptable in view of the provisions of Sec. 232(3)(i) of Companies Act, 2013. The Transferee Company has to pay the differential fee and stamp duty on the increase of authorized capital after setting off the fee if any paid to the transferor company.

The Counsel for the Petitioner Company/Transferee Company has filed an Affidavit dated 10th April, 2018 of the Authorised Signatory of the Petitioner/Transferee Company in CP (CAA) No.13/BB/18 furnishing his observations on the report of the Regional Director, Ministry of Corporate Affairs, South-East Region, Hyderabad, as follows:



- a. Re. Para 3(b) of the Affidavit: The Appointed Date has been defined under Paragraph No. 1 (General Definitions and Interpretations) of the Scheme, as the opening hours of business on the date on which the last of the Sanction Orders in passed or such other date as the NCLT may direct. As appointed Dated is provided for under the Scheme, this observation would not survive. The Hon'ble NCLT may consider to fix the Appointed Date as May 1, 2018, being the opening date of the month closest to the date of the affidavit.
- b. Re. Para 3(d) of the Affidavit: The Transferee Company agrees to pay the differential fee and stamp duty, if any, in the event there is an increase in the authorized share capital after setting off the fee paid by the Transferor Company.

The Advocate for Securities Exchange Board of India in the memo dated 10th April, 2018 has filed an Observation Letter dated 2nd November, 2017 of the Additional General Manager, SEBI, Bombay Stock Exchange Limited with respect to the Scheme, making the following observations:

- a. The Stock Exchange shall ensure that additional information, if any, submitted by the Company, after filing the scheme with the stock exchange, and from the date of receipt of this letter is displayed on the websites of the listed company and the stock exchanges.
- b. Stock Exchange(s) to ensure compliance with the SEBI Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017.
- c. The Company shall duly comply with various provisions of the SEBI Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017.
- d. Stock exchange shall advise the company that the observations of SEBI/Stock Exchanges shall be incorporated in the petition to be filed before the National Company Law Tribunal (NCLT) and the company is obliged to bring the observations to the notice of NCLT.
- e. It is to be noted that the petitions are filed by the company before NCLT after processing and communication of comments/observations on draft scheme by SEBI/stock exchange. Hence, the company is not required to send notice for



representation as mandated under Section 230(5) of Companies Act, 2013 to SEBI again for comments/observations/representation.

The Petitioner Company /Transferee Company has furnished the observation letters issued by National Stock Exchange Limited and Bombay Stock Exchange Limited evidencing their no-objection to the scheme of amalgamation. Copies of the observations letters of National Stock Exchange Limited and Bombay Stock Exchange Limited are shown as **Annexure-H and Annexure-J** respectively.

Further the Counsel for the Petitioner Company/Transferee Company in the memo dated **2nd February, 2018** has filed an Affidavit of the authorised signatory of the Petitioner Company/Transferee Company that there are no other regulatory authorities to whom notice is required to be issued in respect of the Petition.

The Petitioner Company/Transferee Company has furnished the certificate of the Chartered Accountant stating that the Accounting Treatment detailed in the Scheme is in accordance with the provisions of Section 133, Companies Act, 2013. A copy of this certificate of the Chartered Accountant and copy of the valuation report in respect of the share exchange ratio has shown in **Annexure-M and memo dated 2nd February, 2018** respectively.

After hearing the counsel for the Petitioner Company /Transferee Company and also considering the materials on records the scheme appears to be fair, reasonable and is not detrimental against the Members or Creditors or contrary to public policy and the same can be approved.

THIS TRIBUNAL DO FURTHER ORDER

While Approving the Scheme, we make clear 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 specially required under any law.

The whole of the property, rights and powers of the Transferor Company be transferred without further act or deed to the Petitioner Company/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 for all the state and interest of the Petitioner Company therein but subject nevertheless to all the charges now affecting the same; and

All the liabilities including taxes and charges, if any, and duties of the Transferor Companies be transferred without further act or deed to the Petitioner Company/Transferee Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013 be transferred to and become the liabilities and duties of the Petitioner Company/Transferee Company; and

All proceedings now pending by or against the Transferor Company, if any, be continued by or against the Petitioner Company/Transferee Company; and

In line with Regional Director's observation dated 27.03.2018, the Petitioner Company/Transferee Company has to pay the differential fee and stamp duty/ other taxes and dues as will be applicable on the Assets basis or on the increase of Authorised Capital whichever is higher after setting off the fee, if any, paid by Transferor Company.

In line with the Observation Letter No. CFD/DIL/NR/AV/AP/OW/26925/2017 of the Additional General Manager, SEBI, Bombay Stock Exchange Limited dated 2nd November, 2017, the Petitioner Company/Transferee Company shall ensure compliance with the SEBI Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017.

The tax implications, if any, arising out of the scheme is subject to final decision of concerned Tax Authorities and the decision of the concerned Tax Authorities shall be binding.



The Petitioner Company/Transferee Company shall within thirty days of the date of the receipt of this order cause a certified copy of this order along with a copy of scheme of Amalgamation to be delivered to the Registrar of Companies for registration in accordance with Rule 25 (7) of Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.

The order of this Tribunal shall come into effect, subject to passing of the order in case of Transferor Company, ABC BEARINGS LIMITED (Registered in Maharashtra) by National Company Law Tribunal, Mumbai bench.

The Scheme shall be effective from the appointed date as mentioned in the Affidavit of the Petitioner Company/Transferee Company dated 10th April, 2018 i.e. 1st May, 2018.

The Petitioner Company/Transferee Company should ensure compliance of the affidavit dated 10th April, 2018.

The Transferor Company or its authorised signatory is directed that after the completion of the process of Amalgamation to handover the possession of the books of accounts and other relevant documents of the Transferor Company to the Petitioner Company/Transferee Company for the purpose of Section 239 of the Companies Act, 2013.

Any person shall be at the liberty to apply to this Tribunal in the above matter for any directions that may be necessary.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL



CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL


Deputy Registrar
National Company Law Tribunal
Bengaluru Bench

27/4/18

