

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH: C-IV

CA(CAA)-43/MB/2024

In the matter of
Sections 230 to 232 and other applicable
provisions of the Companies Act, 2013

and

In the matter of
The Scheme of Amalgamation of
BKT Tyres Limited
*(Transferor Company/
Applicant Company-1)*

with

Balkrishna Industries Limited
*(Transferee Company/
Applicant Company-2)*

And their respective Shareholders.

BKT Tyres Limited
[CIN: U35990MH2007PLC171411]

... Applicant Company-1/
Transferor Company

Balkrishna Industries Limited
[CIN: L99999MH1961PLC012185]

... Applicant Company-2/
Transferee Company

(hereinafter collectively referred to as the 'Applicant Companies')

Order pronounced on: **01.07.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearance :

For the Applicants

: Mr. Haabil Vahanvaty a/w Mr. Peshwan
Jehangir, Mr. Mehul Shah, Mr. Aman
Yagnik, Mr. Jamsheed Dadachanji,
Ms. Roselin Sara Alex & Ms. Ishrita



Bagchi i/b Khaitan & Co., Advocates.

ORDER

1. This is an Application filed on 08.03.2024 jointly by BKT Tyres Limited and Balkrishna Industries Limited under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013, seeking directions of this Bench for Scheme of Amalgamation of **BKT Tyres Limited** (Transferor Company) with **Balkrishna Industries Limited** (Transferee Company) and their respective shareholders.
2. The Applicants state that the Board of Directors of the First and Second Applicant Companies in their respective meetings held on 23.01.2024 and 24.01.2024 respectively have approved the Scheme. They also submit that the First Applicant Company is a wholly owned subsidiary of the Second Applicant Company. The Appointed Date for the Scheme is 1st April 2024.
3. The Applicants submit that the *Transferor Company* is engaged in the business of manufacturing and dealing in rubber, tyres, tubes, flaps, other rubber products and materials which are being used or capable of being used in tyres, tubes and flaps. The *Transferee Company* is engaged in the business of manufacturing and selling of "Off-Highway Tyres" in the specialist segments such as agricultural, Industrial & Construction, Earthmovers & Port, Mining, Forestry, Lawn & Garden and All-Terrain Vehicles.



4. **Rationale:**

The Applicant Companies submit that the circumstances that have necessitated the Scheme and some of the major benefits which would accrue from the Scheme are as follows:

“The Transferee Company is desirous of consolidating the assets and liabilities of the Transferor Company pursuant to the amalgamation. The Scheme provides for the amalgamation of the Transferor Company with the Transferee Company and will result in the following benefits:

- (a) *Streamlining of the corporate structure and consolidation of assets and liabilities of the Transferor Company within the Transferee Company;*
- (b) *Availing easier financial support for the businesses of the Transferor Company;*
- (c) *More efficient utilization of capital for enhanced development and growth of the consolidated business in one entity;*
- (d) *Enabling opportunities for employees of the Transferor Company and the Transferee Company, to grow by bringing them in a common pool;*
- (e) *Easier implementation of corporate actions through simplified compliance structure;*
- (f) *Improve management oversight and bring in operational efficiencies;*
- (g) *Cost savings through legal entity rationalisation and consolidation of support functions, business processes, elimination of duplicate expenses, etc.; and*
- (h) *Reduction of administrative responsibilities, multiplicity of records and legal & regulatory compliances;*



The Scheme is therefore in the interest of the Transferor Company, the Transferee Company, their respective shareholders and all other stakeholders of the companies."

5. The First Applicant Company states that the Authorized, Issued, Subscribed and Paid-up Share Capital of the Company as on 31.01.2024 is as under:

Particulars	Amount (in Rs)
<u>Authorised Share Capital</u>	
7,50,000 Equity Shares of Rs. 10/- each	75,00,000
TOTAL	75,00,000
<u>Issued, Subscribed and Paid-up Share Capital</u>	
6,00,000 Equity Shares of Rs. 10/- each	60,00,000
TOTAL	60,00,000

6. The Second Applicant Company states that the Authorized, Issued, Subscribed and Paid-up Share Capital of the Company as on 31.12.2023 is as under:

Particulars	Amount (in Rs)
<u>Authorised Share Capital</u>	
44,50,00,000 Equity Shares of Rs. 2/- each	89,00,00,000
TOTAL	89,00,00,000
<u>Issued, Subscribed and Paid-up Share Capital</u>	
19,33,17,190 Equity Shares of Rs. 2/- each	38,66,34,380
TOTAL	38,66,34,380



7. **Consideration:**

The Applicants submit that as the First Applicant Company is a wholly owned subsidiary of the Second Applicant Company there shall be no issue of shares as consideration for the amalgamation of the Transferor Company with the Transferee Company.

8. The First Applicant Company submits that there are Seven (7) Equity Shareholders holding 100% equity shares of the Company. The Applicant further submits that all the Equity Shareholders of the First Applicant Company have given their consent in the form of affidavits approving the proposed Scheme.

In view of the consent Affidavits, the meeting of the Equity Shareholders of the First Applicant Company is hereby dispensed with.

9. The Second Applicant Company submits that there are 1,25,341 Equity Shareholders in the Transferee Company. It is submitted that the interest of the Equity Shareholders of the Second Applicant Company will not be adversely affected by the proposed Scheme. The First Applicant Company is a wholly owned subsidiary of the Second Applicant Company. Thus, the entire economic interest of the First Applicant Company is held by the Second Applicant Company. Hence, upon the Scheme becoming effective, *inter alia* in recognition of the fact that the Act prohibits a company from holding its own shares and hence, no shares of the Second Applicant Company shall be issued and allotted in lieu or exchange of the holding of Second Applicant Company in the



First Applicant Company and the entire share capital of the First Applicant Company held by the Second Applicant Company shall stand cancelled.

10. It is further submitted that the Scheme does not adversely affect the rights and interests of the members or creditors of the Second Applicant Company and does not involve a re-organization of issued and paid up share capital of the Second Applicant Company. Pursuant to the Scheme, the First Applicant Company shall stand transferred to and vested in the Second Applicant Company as a going concern and accordingly, all assets, permits, contracts, liabilities, loan, employees, duties and obligations of the First Applicant Company would be transferred to the Second Applicant Company in the manner provided in the Scheme. As on date, the assets of the Second Applicant Company exceed its liabilities and would be sufficient to discharge the liabilities in future, in the ordinary course of business. The assets and liabilities of the First Applicant Company will be transferred to the Second Applicant Company under the Scheme and the shareholding and other rights of the members of the Second Applicant Company will remain unaffected as no new shares are being issued and there is no change in the capital structure. The Counsel for the Applicant Companies further submits that both companies, i.e. the First Applicant Company and the Second Applicant Company have highly positive net-worth and post-merger, the combined entity will continue to have a strong positive net-worth. The net-worth certificates of the both Applicant Companies as on 31.12.2023



issued by an independent chartered accountant are filed with an Additional Affidavit on behalf of the Applicant Companies.

11. The Counsel for the Applicant Companies submitted that the Hon'ble High Court of Judicature at Bombay had in the case of **Mahaamba Investments Limited v/s. IDI Limited**, reported at (2001) 105 Company Cases page 16 to 18, *inter alia*, observed and held that if the Scheme of Amalgamation provides for no issue of equity shares to the members of the transferor companies, being wholly owned subsidiaries of the transferee company, and the creditors of the transferee company are not likely to be affected by the Scheme, a separate Petition by the transferee company was not necessary. Further, the Hon'ble High Court of Judicature at Bombay in an unreported judgement in the case of **Bon Limited dated March 12, 2010 in Company Scheme Petition No. 123 of 2010**, reiterated that a separate petition by the transferee company would not be necessary, if the Scheme, by way of transfer of undertaking, does not (a) involve the re-organisation of the capital of the transferee company; and (b) affect the rights of the members or creditors of the transferee company, as between themselves and the company. The said observations are squarely applicable to the proposed Scheme wherein the First Applicant Company is the wholly owned subsidiary of the Second Applicant Company, and the First Applicant Company is being merged into the Second Applicant Company. Similar view has also been taken by the Hon'ble Delhi High Court in the case of **In re Sharat Hardware Industries P. Ltd.**, reported at (1978) 48 Com Cas 23; the Hon'ble High



Court of Madras in the case of **In re Santhanalakshmi Investments (P) Ltd.**, reported at (2005) 129 Company Cases page 789 to 792; and the Hon'ble High Court of Andhra Pradesh in the case of **In re Nebula Motors Ltd.**, reported at 45 SCL 143. In fact, this Hon'ble Tribunal has in its order dated 4 September, 2017, in **Company Scheme Application No. 243 of 2017** relating to amalgamation of wholly owned subsidiaries namely, **Windermere Properties Private Ltd, Haddock Properties Private Ltd, Grandeur Properties Private Limited, Winchester Properties Private Limited and Pentagram Properties Private Limited with Housing Development Finance Corporation Limited**, *inter alia*, observed and held that when transferor companies are wholly owned subsidiaries of the transferee company and the financial position of the transferee company is highly positive and merger is not affecting the rights of the applicant shareholders or creditors, allowing transferee company to obtain approval of the scheme without taking shareholders' approval is permissible under law and held that transferee company need not hold any meeting either with its creditors or members.

In view of the above, the requirement to convene and hold meeting of the Equity Shareholders of the Second Applicant Company is dispensed with. Further, the Second Applicant Company is directed to serve notice to all its Equity Shareholders inviting representations, if any, thereto by RPAD / speed post and by email. Representations, if any, shall be filed before this Tribunal with a copy to the Second Applicant Company within 30 (thirty) days from the date of receipt of such notice, failing



which, it shall be presumed that they have no objection to the proposed Scheme.

12. The Applicant Companies further submit that the Applicant Companies have no Preference Shareholders as on the date of filing of the present Company Scheme Application.

As there are no Preference Shareholders in the Applicant Companies, no meeting(s) of the Preference Shareholders are to be convened.

13. The First Applicant Company submits that there are no Secured and Unsecured Creditors in the First Applicant Company.

As there are no Secured and Unsecured Creditors in the First Applicant Company, no meetings of Secured and Unsecured Creditors are to be convened.

14. The Second Applicant Company submits that as on April 30, 2024, it has only One (1) Secured Creditor having an outstanding amount of Rs.5,36,04,30,000/-. The Applicant further submits that the sole secured creditor has given its consent to the proposed Scheme in the form of affidavit.

In view of the consent Affidavit, the meeting of the secured Creditor of the Second Applicant Company is hereby dispensed with.

15. The Counsel for the Second Applicant Company submits that as on



December 31, 2023, the Second Applicant Company has 1243 Unsecured Creditors having an outstanding value of Rs.30,66,33,91,626. It is submitted that the Second Applicant Company has a positive net-worth and the Scheme will not affect or adversely impact the rights of the Unsecured Creditors of Second Applicant Company, since post Scheme, the assets of the Transferee Company will be sufficient to discharge its liabilities. It is further submitted that pursuant to the proposed Scheme, the Unsecured Creditors of the Second Applicant Company, post the Scheme, will be paid off in the ordinary course of business as and when their dues are payable. Further, the Second Applicant Company submits that the present case is similar to the facts in **CSA No. 243 of 2017** in the matter of **Housing Development Finance Corporation Limited**, and therefore, the Second Applicant Company is not required to convene a meeting of its Unsecured Creditors for approval of the Scheme.

In view of the above, the requirement to convene and hold meeting of the Unsecured Creditors of the Second Applicant Company is dispensed with. Further, the Second Applicant Company is directed to serve notice to all its Unsecured Creditors inviting representations, if any, thereto by RPAD/speed post and by email. Representations, if any, shall be filed before this Tribunal with a copy to the Second Applicant Company within 30 (thirty) days from the date of receipt of such notice, failing which, it shall be presumed that they have no objection to the proposed Scheme.



16. The Applicant Companies are directed to serve notice along with copy of Scheme under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 upon the -
- i. Central Government through the office of Regional Director, Western Region (MCA), Mumbai;
 - ii. Jurisdictional Registrar of Companies;
 - iii. Jurisdictional Income Tax Authority within whose jurisdiction the respective Applicant Company's assessments are made, clearly indicating PAN of the concerned Company;
 - iv. the concerned Nodal Officer in the Income Tax Department having jurisdiction over such authority;
 - v. concerned Goods and Service Tax Authorities;
 - vi. concerned Official Liquidator (in case of Transferor Company);
 - vii. Securities and Exchange Board of India (only in the case of the Second Applicant Company);
 - viii. BSE Limited (only in the case of the Second Applicant Company);
 - ix. National Stock Exchange of India Limited (only in the case of the Second Applicant Company); and
 - x. Any other Sectoral/Regulatory Authorities relevant to the Applicant Companies or their business.
17. The above notice shall be served through Registered Post AD/Speed Post and by e-mail pursuant to Section 230(5) of the Companies Act, 2013 and rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The said notice will contain a statement



that “If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme”.

18. The Applicant Companies will submit –
 - a. details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any;
 - b. details of all Letters of Credit sanctioned and utilized as well as Margin Money details, if any.
 - c. list of pending IBC cases, if any;
19. The Applicant Companies shall host notices along with the copy of the Scheme on their respective websites, if any.
20. The Appointed Date is 1st April 2024.
21. The Applicant Companies to file an Affidavit of Service and Compliance Report within 10 working days after serving notice to all the Regulatory Authorities as stated above.
22. With the above directions, CA(CAA)-43/2024 are **allowed** and disposed of.

Sd/-
Anu Jagmohan Singh
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)

01.07.2024/pvs