

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I), CHANDIGARH**

CA (CAA) No.13/Chd/Hry/2024

(1st Motion)

Under Sections 230 to 232 read with Section 66 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

IN THE MATTER OF SCHEME OF AMALGAMATION AND ARRANGEMENT OF:

Redbus India Private Limited,

with its registered office at

19th Floor, Epitome Building No.5,

DLF Cyber City, DLF Phase III,

Gurugram, Haryana 122002.

PAN: AAHCP1178L

CIN: U72900 HR2012 PTC 090199

..... Amalgamating Company/ Applicant Company No.1

And

Makemytrip (India) Private Limited,

with its registered office at

19th Floor, Tower A/B/C, Epitome Building No.5,

DLF Cyber City, DLF Phase III,

Gurugram, Haryana 122002.

PAN: AADCM5146R

CIN: U63040 HR 2000 PTC 090846

..... Amalgamated Company/ Applicant Company No.2

And

Their Respective Shareholders and Creditors

Order delivered on: 04.07.2024

**Coram: HON'BLE SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE SH. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**

Present: -

For the Applicant: Mr. Deepak Suri, Mr. Sanjeev Kumar Jain, Mr. K.V. Singhal,
Advocates

**Per: Sh. Harnam Singh Thakur, Member (Judicial)
Sh. Umesh Kumar Shukla, Member (Technical)**

ORDER

This is a Joint First Motion Application filed vide Diary No. 01120 dated 28.03.2024 by the Applicant Companies namely; **Redbus India Private Limited** (hereinafter referred to as the "Amalgamating Company" or "Applicant Company No.1") and **MakeMyTrip (India) Private Limited** (hereinafter referred to as the "Amalgamated Company" or "Applicant Company No.2") (hereinafter collectively referred to as the "Applicant Companies") under the provisions of Section 230 to 232 read with Section 66 of the Companies Act, 2013 (hereinafter referred as the "Act") read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (hereinafter referred as the "Rules") seeking Orders/directions to dispense with the convening of the meetings of the Equity Shareholders and Unsecured Creditors of the Applicant Companies and dispense with the issue of public notice thereof or Alternatively directing to issue individual notices to convene meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Companies and issue public notice thereof; and issue individual Notices to the Central Government, Registrar of Companies, Income Tax Department and Official Liquidator seeking their representation, if any, in connection with the Scheme; and

permitting filing of application, petition and other documents for the purpose of sanctioning of the Scheme. A copy of the Scheme has been annexed along with the Application as Annexure A-1.

2. The registered offices of the Applicant Companies are situated in the State of Haryana and, therefore, this Application is under the territorial jurisdiction of this Bench.

3. The Facts of the case, as stated in the Application, are as below:

- (i) The Applicant Company No.1 was incorporated on 23.03.2012 as a private limited company under the provisions of the Companies Act, 1956 in the name of M/s PVJ Ecommerce Private Limited with registered office at F-130, GF, Street No.7, Pandav Nagar, New Delhi in the State of Delhi. Its name was changed to ibibo Group Private Limited and fresh certificate of incorporation was issued by Registrar of Companies, NCT of Delhi and Haryana (hereinafter referred to as the "RoC") on 08.01.2014. Subsequently, the registered office of the company was changed from the State of Delhi to Haryana and fresh certificate of incorporation was issued by RoC on 16.10.2020. Thereafter, the name of the company was changed to Redbus India Private Limited and fresh certificate of incorporation was issued by RoC on 03.05.2023. At present, the company has its registered office at 19th Floor, Epitome Building No.5, DLF Cyber City, DLF Phase III, Gurugram, Haryana 122002. Its Authorized and issued, subscribed & paid up share capital as on 31.12.2023 is Rs.20,717,557,990/- divided into 2,071,755,799 equity shares of Rs.10/- each and Rs.13,317,474,290/- divided into 1,331,747,429 equity shares of Rs.10/- each respectively. It is

presently engaged inter alia in the business of booking bus ticketing and other ancillary activities under the "RedBus" brand through e-commerce, web application solutions and internet-related services in India. The objects for which it was established as set out in Clause III (A) of its Memorandum of Association are as follows:

"To function as a travel agent for offering through online and off-line modes, to individuals, families, large groups, businesses and any other persons or group of persons, various travel, accommodation and tourism services."

Clause III.B.24 of its Memorandum of Association permits and authorizes the amalgamation of the Applicant Companies.

- (ii) The Applicant Company No.2 was incorporated on 13.04.2000 as a private limited company under the provisions of the Companies Act, 1956 in the name of Travel By Web Private Limited with registered office in the State of Delhi. Its name was changed to MakeMyTrip (India) Private Limited and fresh certificate of incorporation was issued by the RoC on 23.06.2002. Subsequently, the registered office of the company was changed from the State of Delhi to Haryana and fresh certificate of incorporation was issued by RoC on 10.11.2020. At present, the company has its registered office at 19th Floor, Tower AIB/C, Epitome Building No.5, DLF Cyber City, DLF Phase III, Gurugram, Haryana 122002. It was incorporated on 13.04.2000. Its Authorised and issued, subscribed & paid-up share capital as on 31.12.2023 is Rs.4,850,000,000/- divided into 485,000,000 equity shares of Rs.10/-each and Rs.4,041,481,730/- divided into 404,148,173 equity shares of Rs.10/- each respectively. It has been engaged in the business of providing travel products and solutions offering its customers the wide range of travel related services including air ticketing, tours and packages,

hotel reservation services, rail ticketing, etc. The objects for which it was established as detailed in Clause III (A) of its Memorandum of Association, inter alia, are as follows:

"To function as a travel agent for offering through online and off-line modes, to individuals, families, large groups, businesses and any other persons or group of persons, various travel, accommodation and tourism services."

Clause III.B.24 of its Memorandum of Association permits and authorizes the amalgamation of the Applicant Companies.

- (iii) The copy of the Master Data of Applicant Company No. 1 and the Applicant Company No. 2 have been annexed with the Application as Annexure A-2 and Annexure A-7 respectively. The copy of Memorandum and Articles of Association along with the certificate(s) of incorporation of the Applicant Company No. 1 and the Applicant Company No. 2 have been annexed with the Application as Annexure A-3 and Annexure A-8 respectively.

- (iv) The copy of the Audited Financial Statements as on 31.03.2023 of the Applicant Company No. 1 and Applicant Company No. 2 have been annexed with the Application as Annexure A-4 and Annexure-A-9, respectively. The unaudited provisional statement as on 31.12.2023 containing the details of assets and liabilities of the Applicant Company No.1 and Applicant Company No. 2 have been annexed with the Application as Annexure A-5 and Annexure A-10 respectively. Subsequent to the date of the aforesaid unaudited accounts, no substantial change has occurred in the financial position of Applicant Company No.1 and Applicant Company No.2.

- (v) The Applicant Company No. 1 is the subsidiary of Ibibo Group Holdings (Singapore) Pte. Ltd., which is further completely owned by MakeMyTrip Limited, Mauritius (“MMYT”), a company incorporated in Mauritius with its ordinary shares listed at Nasdaq Global Market in United States. Also, the Applicant Company No.2 is the subsidiary of MMYT.
- (vi) None of the Directors of the Applicant Company No.1. and Applicant Company No.2 have any material interest in the said Scheme and further, there is no shareholding in the Applicant Company No.1. and Applicant Company No.2 of their respective directors. The list of Board of Directors of the Applicant Company No.1. and the Applicant Company No.2 have been annexed with the Application as Annexure A-6 and Annexure A-11 respectively.
- (vii) The respective Board of Directors of the Applicant Companies in the meeting held on 14.03.2024 have approved the proposed Scheme. The certified true copies of the Board resolutions passed by the Applicant Companies have been annexed with the Application as Annexure A-12 (Colly).
- (viii) The said Scheme has been proposed to achieve the following objectives:
- i. Consolidation of KEY Indian business Indian business of MMYT presently being undertaken in Applicant Company No.1. and Applicant Company No.2 for various commercial synergies, including the ease of raising fund for the business and operational purposes from public, private, banking or institutions by way of debt or issuance of equity or other securities.*
 - ii. The combination of the businesses and subsequent reorganization of capital structure will result in operational synergies, cost optimization and increased revenue realisation.*

- iii. The shareholders of both companies, Applicant Company No.1. and Applicant Company No.2, will be able to participate in the consolidated businesses of the group*
- iv. The Applicant Companies are closely held directly or indirectly by MMYT. With a view to streamline shareholding and control of Applicant Company No.2, the management of the Applicant Companies have proposed to reorganize the capital structure of Applicant Company No.2.*
 - (a) Upon the Scheme becoming effective, Applicant Company No.2 would be able to better represent its shareholding pattern and voting rights. This Scheme would be value accretive to the shareholders as well, as their holding would yield better results.*
 - (b) The Scheme will result in making the Applicant Company No.2 's financial position leaner and rationalized.*
 - (c) The Scheme, if approved by the shareholders and this Hon'ble Tribunal, would provide greater flexibility to Applicant Company No.2 in raising funds either from the capital market or from any bank/ financial institutions in the form of equity or debt. depending on the business needs of Applicant Company No.2.*
- v. The Scheme does not involve any financial outlay/ outgo, therefore it would not affect the ability or liquidity of the Applicant Companies to meet its obligations/ commitments in the normal course of business and the Scheme would not in any way adversely affect the ordinary operations of Applicant Companies.*

(ix) The proposed Scheme under the provisions of the Act is not opposed to public policy and is beneficial, advantageous and not prejudicial to the interest of the shareholders, creditors, employees and other stakeholders of the companies involved.

(x) Upon the coming into effect of this Scheme, and in consideration of the transfer and vesting of the Applicant Company No.1 with the Applicant Company No.2, the Applicant Company No. 2 shall, immediately following such transfer and vesting of the Applicant Company No.1 into Applicant Company No.2, without any further application, act, instrument or deed, issue and allot on a proportionate basis equity shares to all the equity shareholders of Applicant Company No.1, whose names appear in the register of members on the Record Date, in the following manner:

3,333 equity shares of Applicant Company No.2 of face value of Rs.10/- each fully paid up, for every 1,00,000 equity share of Applicant Company No.1 of Rs.10/- each fully paid up.

The share entitlement ratio for issue of shares by Applicant Company No. 2 to shareholders of the Applicant Company No. 1 have been fixed on a fair and reasonable basis based on the structure of the Scheme as proposed and based on the Fair equity share exchange ratio report dated 13.03.2024 issued by Nikhil Gupta, Registered Valuer, IBBI Registration No. IBBIIRV/0312019112540 (annexed with the Application as Annexure-A-27)

- (xi) Upon coming into effect of this Scheme and with effect from the Appointed Date, the paid-up equity share capital of Applicant Company No. 2 shall stand reduced by Rs.45,00,00,000/-, which shall be effected by cancellation and reduction of 45,000,000 equity shares of Rs.10/- each proportionately held by the equity shareholders of Applicant Company No.2 and no consideration shall be paid or shall accrue to the equity shareholders of Applicant Company No.2. Upon the Scheme coming into effect, the equity shares held by the shareholders of Applicant Company No.2 to the extent referred above shall get cancelled, extinguished and annulled on and from the Effective Date without any further application, act, instrument or deed and entire negative balance of retained earnings of Applicant Company No.2 as on Appointed Date shall be adjusted against capital reserve and the unadjusted balance if any shall be adjusted against the securities premium account as on the said date, which shall be effected as a part of the Scheme itself and the order of this Hon'ble Tribunal sanctioning this Scheme shall be deemed to be an order under Section 66

of the Companies Act 2013, or any other applicable provisions, confirming the reduction. The proposed reduction of the paid-up equity share capital of the Applicant Company No.2 does not involve either a diminution of liability in respect of unpaid share capital or any payment of the paid up share capital to the shareholders of the Applicant Company No.2.

- (xii) The Scheme is in no way, a Scheme of compromise or arrangement with the creditors, as all the creditors will be paid in full as and when their respective amounts fall due in the usual course and it is not a Scheme of Corporate debt restructuring as envisaged under Section 230 (2) of the Act.
- (xiii) The accounting treatment as proposed in the Scheme is in conformity with the accounting standards as prescribed under Section 133 of the Companies Act, 2013. The certificates from Statutory Auditors in relation to the accounting treatment as required under section 133 of the Companies Act, 2013 for the Applicant Companies are collectively annexed with the Application as Annexure A-28 (Colly).
- (xiv) The Scheme refers to the services and benefits of employees of the Applicant Companies, by virtue of Clause 7 of the Scheme. The Clause 8 of the Scheme sets out the procedure of continuity and institution of legal proceeding(s).
- (xv) Since the business of the Applicant Companies does not fall in either prohibited or restricted sectors under Foreign Exchange Management Act, 1999, therefore, the transfer of entire business and undertaking of the Applicant Company No. 1 to the Applicant Company No.2 does not require

any approval from the Reserve Bank of India under the provisions of the Foreign Exchange Management Act, 1999.

(xvi) Since the Applicant Companies are private companies, the transfer of the entire business and undertaking of the Applicant Company No. 1 to the Applicant Company No.2 does not require the approval from the Securities Exchange Board of India under the provisions of the Securities Exchange Board of India, 1992.

(xvii) The Applicant Companies are not required to give any notice to or seek any approval from the Competition Commission of India (hereinafter referred to as the "CCI") for amalgamation of Business and Undertaking of the Applicant Company No.1 with the Applicant. Company No.2, as the Applicant Companies are part of the same business group. In light of the aforementioned, notice under sub-section (2) of section 6 of the Competition Act, 2002 is not required to be filed with the CCI concerning the amalgamation of the Applicant Company No.1 with the Applicant Company No.2 within the same group.

(xviii) Upon the Scheme becoming effective, the tax liabilities or obligations of the Applicant Company No.1 shall be borne by the Applicant Company No.2 and the demand of Income Tax Department, if any, arises in future in respect of assessment proceedings of the Applicant Company No.1, the same would be borne by the Applicant Company No. 2 after complying with procedures and provisions of Income Tax Act, 1961 and rules made thereunder. The carry forward of unabsorbed depreciation and accumulated business losses of the Applicant Companies, if any, pursuant

to amalgamation shall be subject to the applicable provisions of Income Tax Act, 1961 including Section 72A and Section 79 of the Income Tax Act, 1961.

(xix) There are no other material legal proceedings or litigation pending before any court of law or tribunal against the Applicant Companies, which may have an adverse impact on the Scheme. The list of the pending legal proceedings against the Applicant Company No.1 and Applicant Company No. 2 have been annexed with the Application as Annexure A-30 and Annexure A-29 respectively.

(xx) The Applicant Company No.1 and the Applicant Company No.2 does not have any Debenture Holders. The certificates from M/s Nikhil Gupta, Chartered Accountants certifying that the Applicant Company No. 1 and the Applicant Company No.2 does not have any Debenture Holders have been annexed with the Application as Annexure A-16 and Annexure A-23 respectively.

(xxi) No proceedings under Section 235 to 251 of the Companies Act, 1956 and/ or under Section 206 to 229 of the Companies Act, 2013 are pending or instituted against any of the Companies and the Scheme is not otherwise opposed to Public Policy or interests of the members of the Applicant Company No. 1 and the Applicant Company No.2. There is no winding-up petition pending in any Court in India/ National Company Law Tribunal against the Applicant Companies.

(xxii) The Applicant Companies have sought dispensing with convening, holding and conducting of Meetings of Equity Shareholders of the Applicant

Companies as 100% Equity Shareholders of the Applicant Companies have given their consent to the implementation of the Scheme, without any modification/ amendment. The Applicant Company No.1 have 2 Equity Shareholders namely ibibo Group Holdings (Singapore) Pte. Ltd. and MakeMyTrip Limited holding 99.99% and 0.01% of the shareholdings respectively. The Applicant Company No.2 have 2 Equity Shareholders namely MakeMyTrip Limited, Mauritius and ibibo Group Holdings (Singapore) Pte. Ltd. holding 70.63% and 29.37% of the shareholdings respectively. These Equity Shareholders of Applicant Company No.1 and Applicant Company No.2 have approved the Scheme by way of an affidavit and have also given their written consent for seeking dispensation from convening and holding the meeting of its Equity Shareholders for consideration and approval of the Scheme. The certificates dated 22.03.2024 of Nikhil Gupta, Proprietor, Gupta Nikhil & Co., Chartered Accountants, certifying the list of Equity Shareholders of the Applicant Company No.1 and Applicant Company No.2 as on 20.03.2024 have been annexed with the Application as Annexure A-13 and Annexure A-20 respectively. The consent affidavits of the Equity Shareholders of the Applicant Company No.1 and Applicant Company No.2 have been annexed with the Application as Annexure A-14 (colly) and Annexure A-21 (colly) respectively.

(xxiii)The Applicant Company No.1 and Applicant Company No.2 do not have any Preference Shareholders, hence there is no requirement of obtaining any consents. The certificates dated 22.03.2024 of Nikhil Gupta, Proprietor, Gupta Nikhil & Co. certifying that the Applicant Company No. 1

and Applicant Company No.2 do not have any Preference Shareholders as on 20.03.2024 have been annexed with the Application as Annexure A-15 and Annexure A-22 respectively.

(xxiv) The Applicant Company No. 1 and Applicant Company No.2 do not have any Debenture Holders, hence there is no requirement of obtaining any consents. The certificates dated 22.03.2024 of Nikhil Gupta, Proprietor, Gupta Nikhil & Co. certifying that the Applicant Company No. 1 and Applicant Company No.2 do not have any Debenture as on 20.03.2024 have been annexed with the Application as Annexure A-16 and Annexure A-23 respectively.

(xxv) The Applicant Company No.1 has 1 Secured Creditor (ICICI Bank Limited) amounting to a total secured credit of Rs.43,413,493/- and Applicant Company No.2 has 2 Secured Creditors (ICICI Bank Limited and HDFC Bank Limited) amounting to a total secured credit of Rs.252,814,690/-. The certificates dated 22.03.2024 of Nikhil Gupta, Proprietor, Gupta Nikhil & Co. certifying the list of secured creditors of the Applicant Company No.1 and Applicant Company No.2 as on 20.03.2024 have been annexed with the Application as Annexure A-17 and Annexure A-24 respectively. The consent affidavits from Secured Creditors of the Applicant Company No.1 and Applicant Company No. 2 have not been annexed along with the Application. Subsequently, Applicant Companies filed the Company Application No. 88(CH)2024 vide Diary No. 01253 dated 12.04.2024 in which the Applicant Companies have sought for dispensing with convening, holding and conducting of Meetings of the Secured Creditors of the Applicant Company No.1 and Applicant Company No.2, as all

Secured Creditors of the Applicant Company No.1 and Applicant Company No.2 have provided their consent to the implementation of the Scheme. The consent affidavits of the Secured Creditors have been annexed with the CA. The Tribunal, vide its Order dated 19.04.2024 has disposed of the CA and tagged it with the main petition for further reference purposes.

(xxvi) The Applicant Companies have sought dispensing with convening, holding and conducting of Meetings of the Unsecured Creditors of the Applicant Company No.1 and Applicant Company No.2, as Unsecured Creditors representing 90.01% in value of the unsecured credit of the Applicant Company No.1 and Unsecured Creditors representing 91.03 % in value of the unsecured credit of the Applicant Company No.2 have given their consent to the implementation of the Scheme, without any modification/ amendment. The Applicant Company No.1 has 3714 Unsecured Creditors amounting to a total secured credit of Rs.2,96,55,47,742/-, out of which 3 Unsecured Creditors aggregating to an unsecured credit of Rs.2,66,91,92,376/-, representing 90.01 % in value of the total unsecured credit have given letters of consent/ no objection to the implementation of the Scheme, without any amendment/modification. Applicant Company No.2 has 30655 Unsecured Creditors amounting to a total unsecured credit of Rs.25,84,35,82,473/-, out of which 11 Unsecured Creditors aggregating to an unsecured credit of Rs.23,52,48,60,597 representing 91.03 % in value of the total unsecured credit have given letters of consent/ no objection to the implementation of the Scheme, without any amendment/modification. The certificates dated 22.03.2024 of Nikhil Gupta, Proprietor, Gupta Nikhil & Co. certifying the list of Unsecured

Creditors of the Applicant Company No.1 and Applicant Company No.2 as on 20.03.2024 have been annexed with the Application as Annexure A-18 and Annexure A-25 respectively. The consent letters and affidavits of the Unsecured Creditors of the Applicant Company No. 1 and Applicant Company No.2 and their supporting Board Resolutions have been annexed with the Application as Annexure A-19 (colly) and Annexure A-26 (colly) respectively.

(xxvii) There are no sectoral regulators, which regulate the field of business in which the Applicant Companies operate. However, notice has to be sent to: (a) the Central Government through jurisdictional Regional Director; (b) jurisdictional Registrar of Companies; (c) the relevant Jurisdictional Assessing Officer of the Income Tax Department; (d) and the jurisdictional Official Liquidator, seeking their representation if any, in connection with the Scheme and the Applicant Companies may be directed to issue individual notice to them.

4. The Applicant Companies, in the check list filed along with the CA have furnished the present status of consent of the Shareholders, Secured Creditors and Unsecured Creditors as below:

Name of the Applicant Companies	Shareholders along with their consent				Creditors along with their consents					
	Equity Shareholder (A)	Consent of (A) with calculations	Preference Shareholders (B)	Consent of (B) with calculations	Debenture Holders (C)	Consent of (C) with calculations	Secured Creditors (D)	Consent of (D) with calculations	Unsecured Creditors (E)	Consent of (E) with calculations
Amalgamating Company/ Applicant Company No. 1	Two (2)	100% consents received Annexure A-14 at Page 370 to 383 of Volume 3.	Nil	Not Required	Nil	Not Required	1 (one)	100% Annexure - 1 at page 10 to 18 of Company Application	3714 (2,96,55,48,198/-)	90.01% consents received Annexure A19 at page no. 510 to 538 of Volume 4.
Amalgamated Company/ Applicant Company No. 2	Two (2)	100% consents received Annexure A-21 at Page 542 to 555 of Volume 4.	Nil	Not Required	Nil	Not Required	2 (two)	100% consents received Annexure - 1 at page 19 to 80 of Company Application	30655 (25,84,35,82,473/-)	91.03% consents received Annexure A-26 at Page 1038 to 1124 of Volume 8.

5. This Tribunal, vide its Order dated 19.04.2024 gave the following directions to the Applicant Companies:

“On perusal of the records, it is seen that there are number of private complaints pending against Redbus India Pvt. Ltd. and there may be some criminal complaints also, so Ld. Counsel for the Petitioner Company No. 1 is directed to place on record the separate list of the private complaints including the criminal complaints, if any, against the Petitioner Company No. 1, i.e. Redbus India Pvt. Ltd. and a specific affidavit on behalf of Petitioner Company No. 2 under Section 230(2) of the Companies Act, 2013 stating that all the private complaints except the criminal complaints will be the responsibility and liability of the petitioner No. 2 i.e. resulting company and the said affidavit be signed by the Authorized Signatory after passing specific regulation to that effect by the management of Petitioner company No. 2 within one week.

At the same time, Ld. Counsel for the Petitioner is directed to file the audited provisional accounts to the date of the list of equity shareholders, secured and unsecured creditors, and the affidavit specifying the provisions under which they are exempted for issuing the notice under the Competition Commission of India giving related details thereon within one week.”

5.1 In pursuance of order dated 19.04.2024, the compliance affidavits have been filed by the Applicant Company No. 1 vide Diary No. 1120/3 dated 01.05.2024 and by the Applicant Company No. 2 vide Diary No. 1120/4 dated 30.04.2024. The same were taken on record vide Order dated 03.05.2024.

5.2 In the compliance affidavit, it has been submitted by the Applicant Company No.1 that there are no investigations or proceedings, other than those disclosed in the list of pending legal proceedings filed by/against the Applicant Company No.1 (annexed as Annexure-30 at page no. 1209 of Volume 9 of the Company Scheme Application). Further, there are no legal proceedings pending against the Applicant Company No.1, which may be detrimental or may have an adverse impact on the proposed Scheme. The Applicant Company No.1 also furnished the list of private complaints as Annexure A-2 of the Compliance affidavit and submitted that there are no criminal complaints filed by or against it. The Applicant Company No.1, in its role as a technology platform acts as a facilitator to enable transactions between the bus

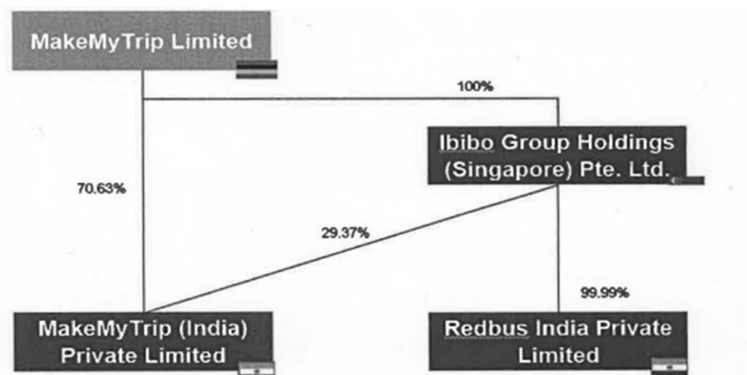
operators and the customers, and does not assume any liability or responsibility for the operations of the bus operator. It also submitted that the MACT Case No. 183/2024-DLCTOI0028962024 is pending adjudication before the Claim Tribunal under Section 166 of the Motor Vehicles Act 1988 and the name of the Applicant Company No.1 has not been mentioned in the related First Information Report ("FIR") No. 0284 dated 12.10.2023 filed at Police Station Fatehabad, District Agra (copy of the FIR as received by the Applicant Company No.1 from the bus operator agency has also been attached as Annexure A-3 with the affidavit).

5.3 The Applicant Company No.1 also furnished the Unaudited Management Certified Provisional Financial Statements as at 20.03.2024 (for the period 01.04.2023 to 20.03.2024) as Annexure A-4 with the affidavit.

5.4 In the Compliance affidavit, it has been submitted by the Applicant Company No.2 that there are no investigations or proceedings, other than those disclosed in the list of pending legal proceedings filed by/against the Applicant Company No.2 (annexed as Annexure -29 at page no. 1141 of Volume 9 of the Company Scheme Application). Further, there are no legal proceedings pending against the Applicant Company No.2, which may be detrimental or may have an adverse impact on the Scheme proposed. It has expressly clarified and reaffirmed that all legal proceeding in relation to private complaints pending by or against the Applicant Company No.1 shall be instituted or as the case may be, continued by or against the Applicant Company No.2 consequent to clause 8 of the Scheme coming into effect. A specific resolution to this effect has been passed by the Board of Directors of the Applicant Company No.2 (a copy of Board Resolution dated 26.04.2024 has been annexed as Annexure A-2 with the affidavit).

5.5 The Applicant Company No.2 has also furnished the Unaudited Management Certified Provisional Financial Statements as at 20.03.2024 (for the period 01.04.2023 to 20.03.2024) as Annexure A-3 with the affidavit.

5.6 In the compliance affidavit filed by Applicant Company No.1 as well as Applicant Company No.2, it has been submitted that the present Scheme of Amalgamation is covered under clause 9 of the categories of combinations mentioned in Schedule I to the Combination Regulations i.e. merger or amalgamation of enterprise in which more than 50% shares or voting rights in each of such enterprises are held by enterprise(s) within the same group. In the present case, the Applicant Company No.1 as well as Applicant Company No.2 are direct or indirect subsidiaries of MakeMyTrip Limited Mauritius. Further, Applicant Company No.1 as well as Applicant Company No.2 are part of the MakeMyTrip Limited, Mauritius group and their financial results are consolidated with MakeMyTrip Limited, Mauritius. Therefore, the present combination between the Applicant Company No.1 as well as Applicant Company No.2 falls within the purview of Clause 9 of Schedule 1 mentioned above and consequently, does not require to give any notice to the CCI. A chart depicting the shareholding pattern of the Applicant Companies has also been provided in the affidavit as below:



5.7 It is further submitted in the affidavit filed by Applicant Company No.1 as well as Applicant Company No.2 that the Ministry of Corporate Affairs, vide Notification No.

S.O. 1131(E). dated 07.03.2024 (annexed as Annexure A-I with the affidavit) has prescribed that where (i) the value of assets being acquired, taken control of, merged or amalgamated is not more than Rs.450 Crore or (ii) turnover is not more than Rs.1,250 Crore, enterprises forming part of such mergers and amalgamations are exempt from the provisions of Section 5 of the Competition Act, 2002. The Turnover of the Applicant Company No.1, as per the audited financial statements dated 31.03.2023 is Rs.567.89 Crore, which is below the above de-minimis threshold. Therefore, in addition to the reasons stated above, the present Scheme of Amalgamation between the Applicant Company No.1 and the Applicant Company No.2 is also exempted from the requirement of giving notice to the CCI on account of the above Notification read with Section 5 of the Competition Act, 2002.

6 This Tribunal, vide its Order dated 03.05.2024 gave the directions to the Applicant Companies to file a short note regarding other liabilities, which have been excluded, which was filed by the Applicant Companies vide Diary No. 1120/5 dated 16.05.2024.

ANALYSIS AND FINDINGS

7 It is noted that the proposed scheme is a composite scheme of amalgamation and arrangement under Sections 230-232, Section 66 and other applicable provisions of the Companies Act, 2013 and provides for (i) Amalgamation of redBus India Private Limited with MakeMyTrip (India) Private Limited; and (ii) Reduction of Capital of MakeMyTrip (India) Private Limited (reduction of paid-up equity share capital by Rs.45,00,00,000/- and adjustment of entire negative balance of retained earnings against capital reserve and balance unadjusted balance against the securities premium account). There are certain requirements under section 66 of the Companies

Act, 2013 read with NCLT (Procedure for Reduction of Share Capital of Company) Rules, 2016, which needs to be complied with by the Applicant Companies.

8 Since this is the First Motion Application seeking order for dispensation/ convening of the meetings of shareholders/ creditors, the analysis has been limited to that extent and other issues would be analysed at the time of Second Motion Petition of the Applicant Companies.

9 Accordingly, the directions of this Bench in the present case are as under:

- I. The meetings of the Equity Shareholders of both the Applicant Companies and the requirement of issue and publication of notices are dispensed with keeping in view the shareholding and ownership pattern and the fact that all the Equity Shareholders of the Applicant Companies have consented to the waiver of the meeting to be convened for sanctioning of the Scheme.
- II. The meetings of the Secured Creditors of both the Applicant Companies and the requirement of issue and publication of notices are also dispensed with keeping in view the fact that all Secured Creditors of the Applicant Companies have consented to the waiver of the meeting to be convened for sanctioning of the Scheme.
- III. The meeting of the Unsecured Creditors of both the Applicant Companies are dispensed with keeping in view the fact that the Un-Secured Creditors of Applicant Company 1 and Applicant Company 2 representing the value of 90.01% and 91.03% of the total unsecured debt, respectively have given their consents, by way of affidavits, to the Scheme and have also waived

the requirement of convening their meeting for considering and approving the Scheme under sections 230 to 232 of the Act.

- IV. The Applicants companies are directed to file an affidavit (refer Para 8 of this Order) that the proposed scheme is in compliance of the requirements under section 66 of the Companies Act, 2013 read with NCLT (Procedure for Reduction of Share Capital of Company) Rules, 2016, while filing the Second Motion Petition.
- V. The Applicant Companies shall in compliance of sub- section (5) of Section 230 of the Act and Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form No. CAA-3 along with copy of the Scheme, Explanatory Statement, copy of this order, Accounting Statements and the disclosures mentioned in Rule 6 of the “Rules” to
 - a. Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi at B-2 Wing, 2nd Floor, Paryavaran Bhawan, CGO Complex, New Delhi 110003.
 - b. Registrar of Companies, National Capital Territory of Delhi and Haryana, 4th Floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;
 - c. Official Liquidator (attached to Punjab and Haryana High Court);
 - d. Concerned Income-tax authority having jurisdiction over the Applicant Companies;
 - e. Such other Sectoral Regulator(s) governing the business of the Applicant Companies, if any,

stating that the report on the same, if any, shall be sent to this Tribunal within a period of 30 days from the date of receipt of such notice and copy of such report shall be simultaneously sent to the applicant companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

All the aforesaid directions are to be complied with strictly in accordance with the applicable laws including forms and formats contained in the Rules as well as the provisions of the Companies Act, 2013 by the Applicant Companies.

10 In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition in accordance with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 15 days after the expiry of period of 30 days as mentioned in Section 230(5) of the Companies Act, 2013.

11 A copy of this order be supplied to the learned Counsel for the Applicant Companies.

Sd/-
(Umesh Kumar Shukla)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

July 04, 2024
Vishesh