

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

C.P.(CAA)/32(MB)/2024

c/w

C.A.(CAA)/213(MB)/2023

*In the matter of the Companies
Act, 2013*

And

*In the matter of
Sections 232 r/w Section 230
and other applicable provisions of
The Companies Act, 2013*

And

*In the matter of
Scheme of Merger by
Absorption*

Mahindra Heavy Engines Limited
CIN: U35914MH2007PLC169753

... Petitioner Company 1 /
Transferor Company 1

Mahindra Two Wheelers Limited
CIN: U35911MH2008PLC185462

... Petitioner Company 2 /
Transferor Company 2

Trringo.Com Limited
CIN: U01409MH2016PLC281449

... Petitioner Company 3
Transferor Company 3

Mahindra & Mahindra Limited
CIN: L65990MH1945PLC004558

... Petitioner Company 4/
Transferee Company

(“collectively referred as Petitioner Companies”)

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Order delivered on 07.05.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

Appearances (through)

For the Applicant(s) : Mr. Hemant Sethi a/w Ms. Tanaya
Sethi & Ms. Devanshi Sethi i/b
Hemant Sethi & Co.

ORDER

1. Heard learned Counsel for the Petitioners and the representative of the Regional Director Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition except otherwise stated hereunder.
2. The sanction of the Tribunal is sought under Sections 232 r/w Section 230 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, to the Scheme of Merger by Absorption of **Mahindra Heavy Engines Limited** ("Transferor Company 1") and **Mahindra Two Wheelers Limited** ("Transferor Company 2") and **Trringo.com Limited**

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(“Transferor Company 3”) with **Mahindra and Mahindra Limited** (“Transferee Company”) and their respective shareholders (“Scheme”).

3. The Transferor Company 1 is engaged in manufacturing and sales of engines, other auto components for vehicles and gensets; the Transferor Company 2 is engaged in dealing in parts required for the range of two wheelers, passenger light motor vehicles and commercial vehicles manufactured and sold by the Transferee Company; the Transferor Company 3 is engaged in the business of organized farm equipment rentals through a franchisee-based model; and the Transferee Company is engaged in the business of manufacture and sale of tractors, general-purpose utility vehicles, light commercial vehicles, three-wheelers and trucks and buses.
4. The proposed Scheme of Merger by Absorption was approved unanimously by the Board of Directors of the respective Petitioner Companies on 4th August 2023. A certified true copy of Board Resolution of respective Petitioner Companies approving the Scheme are annexed with Company Scheme Petition. The Board of Directors of the respective Petitioner Company believe that the Scheme is in the best interests of the respective entities and their respective stakeholders.
5. The Appointed Date for the Scheme of Merger by Absorption is 1st day of April 2023.
6. The Petitioner Companies states that the joint Company Scheme Petition have been filed in consonance with the order dated 20th December 2023, passed by this Tribunal in the connected Company Scheme Application bearing

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7. The Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary Affidavits of compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted by the Petitioner Companies.
8. By sanction of this Scheme of Merger by Absorption the Petitioner Companies will be able to achieve the following:

Rationale of the Scheme of Merger by Absorption:

- Managements of the Transferor Companies and the Transferee Company believe that it is beneficial, advantageous, not prejudicial and in the best interests of all the stakeholders to consolidate the group companies;
- The following benefits will accrue pursuant to the Scheme:
 - i. Consolidation of businesses of the Transferor Companies and the Transferee Company;
 - ii. Reduction in number of companies and regulatory compliances thereof;
 - iii. Streamlining the holding structure;
 - iv. Ease of management;
 - v. Reduction of operating and administrative costs; and
 - vi. Leveraging on synergies on consolidation.

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9. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Report dated 31.03.2024 making certain observations (“**Report**”). The Petitioner Companies have submitted/undertaken that: -
- a. The Petitioner Companies shall pass such accounting entries in compliance with IND-AS 103 which are necessary in connection with the Scheme to comply with applicable Accounting Standards. Further, para 15(b) of the Scheme provides the detailed accounting treatment which has also been certified by the statutory auditors vide their certificate dated 4th August, 2023;
 - b. The scheme follows the requirements as clarified vide Circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs;
 - c. The remaining fee and stamp duty, if any, after setting-off of the fees already paid by the Transferor Companies on their respective authorised capital, shall be paid by the Transferee Company on the increased authorized capital subsequent to the amalgamation;
 - d. The Scheme does not affect the rights and interests of the members of the Transferee Company and does not involve any reorganization of the issued, subscribed and paid-up share capital of the Transferee Company. Pursuant to the Scheme, all assets of the Transferor Companies would be transferred to the Transferee Company. The assets and liabilities of the Transferor Companies will be appropriated under the Scheme by the

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Transferee Company and the shareholding and other rights of the members of the Transferee Company will remain unaffected as no new shares are being issued and there is no change in the issued, subscribed and paid up capital structure;

- e. The Petitioner companies shall comply with the directions of the I.T. Department and GST Department, if any and reply/deal with the same as per the prevailing law;
- f. The Scheme enclosed to the Company Application and the Company Petition are one and the same and there is no discrepancy or no change has been made to the same;
- g. The Transferee Company shall comply with any rules made under FEMA/FERA Act, in connection to the Scheme, if any and reply/deal with the same as per the prevailing law and to the extent applicable;
- h. The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company; and
- i. The Transferor Companies involved in the Scheme of Amalgamation are wholly owned subsidiaries of the Transferee Company, wherein the Transferee Company along with its nominees holds the entire equity share capital of the respective Transferor Companies. Accordingly, the Transferor Companies 1, 2 and 3 state that there is no significant beneficial owner in the

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Transferor Companies. However, the Transferor Companies have filed Form BEN-2 for reporting the Transferee Company as their holding company.

10. Mr. Bhagwati Prasad, Deputy Director, Office of Regional Director (WR), Mumbai appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.
11. The Official Liquidator has filed his report on 28th March 2024, inter alia stating their observations. The Transferor Companies have filed an Affidavit in rejoinder to the report filed by the Official Liquidator with this Tribunal on 4th April 2024 providing clarification/undertakings to the observations made by the Official Liquidator. The clarifications and undertakings given by the Transferor Companies are accepted.
 - a. The Transferee Company undertake that the necessary remaining fee and stamp duty, if any, after setting-off of the fees already paid by the Transferor Companies on its respective authorised capital, shall be paid by the Transferee Company on the increased authorized capital subsequent to the amalgamation.;
 - b. The Transferor Company 1 has made all payments to MSME suppliers within the prescribed period of 45 days of it becoming due. Further attached herewith as “Annexure A1 and A2” are copies of form MSME-1 filed by Transferor Company 2 with the ROC for half year ended 31st March 2023 and 30th September 2023.

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It is further clarified, that the rights of the creditors (incl. MSME suppliers) will not be affected as the assets of the Transferee Company post sanctioning the Scheme will be sufficient to pay off all the creditors in the ordinary course of business and as per applicable law.

12. Upon the Scheme becoming effective, *no consideration shall be payable by the Transferee Company and the shares of the Transferor Companies held by the Transferee Company (or its nominee shareholders) will stand cancelled, without any further act, instrument or deed and pursuant to merger.*
13. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P.(CAA)/32(MB)/2024 filed by the Petitioner Companies are made absolute in terms of prayers clause of the said Company Scheme Petition.
14. The Scheme of Merger by Absorption is hereby sanctioned, and the appointed date of the Scheme is fixed as 1st day of April 2023. The Transferor Companies will be dissolved without winding up.
15. The Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-Form INC-28, within 30 days from the date of receipt of order, duly certified by the designated Registrar of this Tribunal.
16. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this Scheme and it shall be

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open to the Income Tax Authorities to take necessary action to deal with, in relation to tax or any other kind of obligations of Transferor Company against the Transferee Company, as permissible under the Income Tax Laws.

17. The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the designated Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the certified copy of order.
18. All concerned regulatory authorities to act on a copy of this Order duly certified by the Registry of this Tribunal, along with a copy of the Scheme.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)