

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.A.(CAA)/41 (MB)/2024

In the matter of
The Companies Act, 2013 (18 of 2013)
and
Section 232 r/w Section 230 and Section
66 of
The Companies Act, 2013 and other
applicable provisions of the Companies
Act, 2013
read with the Companies (Compromises,
Arrangements and Amalgamations) Rules,
2016;

In the matter of
Composite Scheme of Amalgamation
of

Fifth Gear Ventures Limited

CIN: U74999MH2015PLC357932

...Applicant Company 1/
Transferor Company

Mahindra First Choice Wheels Limited

CIN: U64200MH1994PLC083996

...Applicant Company 2/
Transferee Company

Order delivered on 14.05.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances (through)

For the Applicant Company : Mr. Hemant Sethi a/w

Ms. Devanshi Sethi i/b
Hemant Sethi & Co.

ORDER

1. Heard the learned Counsel for the Applicant Companies.
2. The present scheme is a Composite Scheme of Amalgamation and Arrangement under Section 232 r/w Section 232 read with Section 66 of the Companies Act, 2013 and other applicable provisions of the Companies Act 2013 (including any statutory modification or re-enactment or amendment thereof), as may be applicable, between **Fifth Gear Ventures Limited** (Transferor Company) with **Mahindra First Choice Wheels Limited** (Transferee Company) and their respective shareholders followed by capital reduction of Mahindra First Choice Wheels Limited.
3. The First Applicant Company is, inter alia, currently engaged in the business of operating an automotive web for car and bike for retail sale as well as comparison services worldwide and the Second Applicant Company is inter alia, engaged in the business of facilitating trading in used vehicles through its Franchise network and electronic platform and providing allied products and services, including online pricing guidance, used vehicles inspection services for insurance.
4. The proposed Scheme will be beneficial to the Applicant Companies, their respective shareholders and creditors, employees and other stakeholders and the Rationale for the Scheme –

Rationale of the amalgamation:

- a. MFCWL's business strategy is to drive phygital (i.e. using physical plus digital channels) auto transactions for its customers. Though the journey initiates on Car&Bike.com (which is operated by FGVL) in researching, identifying and booking used vehicles, the journey culminates using MFCWL's Superstores and Franchisee dealerships to complete the transactions of these vehicles. A closer working integration is critical for a smooth customer experience and for the company to identify the areas of friction and effort. Hence, merger of both entities would enable better end to end control of activities under one entity, ensuring better identification responsibility & accountability resulting in synergies and cost cutting due to simplified and unified workflow under one entity.
- b. Brand integration: MFCWL has started the process to integrate its two large consumer facing brands – Car & Bike and Mahindra First Choice Wheels. Going forward, as approved by the Board, Car & Bike will be the primary consumer facing brand. The Mahindra First Choice endorsement will continue for a pre-defined interval at storefronts, certification & warranty products to inspire consumer trust.
- c. Operational simplicity: In line with above strategy, all process, systems and organization also need tight integration and coordination. Housing the teams and capabilities under a single company will help achieve this simplicity.
- d. Management has internally discussed and analyzed benefits that could arise on consolidation of the Transferor Company

with Transferee Company due to the similar nature of businesses of the Transferor Company. The benefits of the amalgamation to the respective companies and other stake holders of respective companies, inter-alia, are mentioned below:

- Consolidation of businesses of the group;
- Optimal and efficient utilization of capital;
- Reduction in number of companies and regulatory compliances thereof;
- Streamlining the group structure;
- Ease of management;
- Integration and efficiency of operations, economies of scale and financial position;
- Reduction of overheads including administrative, managerial, and other expenditure, optimal utilization of resources; and
- Greater financial strength and flexibility for the merged entity.

Rationale of Capital Reduction:

The accumulated losses of the Transferee Company have substantially wiped off the value represented by its share capital and hence, has given rise to the need for re-adjustment of capital in its books of accounts.

5. The Transferor Company is a wholly owned subsidiary of the Transferee Company. Accordingly, upon the Scheme becoming effective, no consideration shall be payable by the Transferee Company and the shares of the Transferor Company held by the

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Transferee Company (or its nominee shareholders) will stand cancelled, without any further act, instrument or deed and pursuant to merger.

6. The Composite Scheme of Amalgamation and Arrangement was approved unanimously by the Board of Directors of the respective Applicant Companies on 24th January 2024. The Board of Directors of the respective Applicant Company believe that the Scheme is in the best interests of the respective entities and their respective stakeholders including its shareholders, employees, and creditors. The Appointed Date for the Composite Scheme of Amalgamation and Arrangement is 1st day of April 2024.
7. The share capital of Transferor Company as on 31st December, 2023 is as under:

Particulars	Amount in Rs
Authorized Share Capital	
5,00,000 equity shares of Rs. 10 each	50,00,000
Total	50,00,000
Issued, Subscribed and Paid-up Share Capital	
3,37,405 equity shares of Rs.10 each	33,74,050
Total	33,74,050

The equity shares of the Transferor Company are not listed on any Stock Exchange.

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Subsequent to the above date, there has been no change in the authorized, issued and paid up share capital of the Transferor Company.

8. The share capital of Transferee Company as on 31" December, 2023 is as under:

Particulars	Amount in Rs
Authorized Share Capital	
9,50,00,000 Ordinary (Equity) Shares of Rs. 10 each	95,00,00,000
7,50,00,000 0.001% Non-Cumulative Compulsorily Convertible Preference Shares of Rs. 10 each	75,00,00,000
Total	1,70,00,00,000
Issued, Subscribed and Paid-up Share Capital	
9,34,76,531 Ordinary (Equity) Shares of Rs. 10 each	93,47,65,310
1,26,00,000,0.001 % Non-Cumulative Compulsorily Convertible	12,60,00,000
Less: 29,30,401 Equity shares of Rs. 10 each, paid up and issued to ESOP Trust but not yet allotted to employees	(2,93,04,010)
Total	103,14,61,300

There has been no change in the capital structure of the Transferee Company subsequent to 31" December,2023 till the date of approval of the Scheme by the Board of the Transferee Company..

9. The Counsel for the Applicant Companies respectfully submits that, the First Applicant Company is a wholly owned subsidiary of the Transferee Company and the Transferee Company holds entire equity shares in its name except for 1 equity share each with the six joint holders holding jointly in the First Applicant Company as on 15th January 2024. All the Equity Shareholders (including the joint shareholders) of the First Applicant Company have given their Consent Affidavits for approval of the scheme. In view of the fact that, the First Applicant Company has obtained the Consent Affidavits from all its Shareholders, the meeting of the Equity Shareholders of the First Applicant Company is hereby dispensed with.

10. The Second Applicant Company (Transferee Company) holds the entire equity shares in its name except for 1 equity share each with the six joint holders holding jointly in the First Applicant Company (Transferor Company) as on 15th January 2024. Thus, almost the entire economic interest of the Transferor Company is already held by the Transferee Company. Further, the Scheme does not affect the rights and interests of the members of the Transferee Company and does not involve any re-organisation of the issued, subscribed and paid-up share capital of the Transferee Company. Pursuant to the Scheme, all assets of the Transferor Company would be transferred to the Transferee Company. The assets and liabilities of the Transferor Company will be appropriated under the Scheme by the 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. Further, the Transferee Company has obtained the Consent Affidavits from all its 25 (Twenty Five) Equity Shareholders and 1 (one) Non-Cumulative Compulsorily Convertible Preference Shareholders (“Shareholders”) and annexed it with the Additional Affidavit filed with this Tribunal on 2nd April 2024. In view of the fact that, the Second Applicant Company has obtained the Consent Affidavits from all its Shareholders, the meeting of the Equity Shareholders of the Second Applicant Company are hereby dispensed with.

11. The Counsel for the Applicant Companies submits that the Applicant Companies has NIL Secured Creditors as on 31st December 2023. Accordingly, the question of convening and holding a meeting of Secured Creditors of respective Applicant Companies does not arise and is hereby dispensed with.

12. The Counsel for the Applicant Companies submits that as on 31st December 2023 Applicant Company 1 has 50 (Fifty) unsecured creditors amounting to INR 6,39,36,963/- (INR Six crore thirty nine lakhs thirty six thousand nine hundred and sixty three only) and payables and provisions unidentified to specific party of INR 6,32,39,162/- (INR Six crore thirty two lakhs thirty nine thousand one hundred and sixty two only). The present Scheme is an arrangement between the Transferor Company and the Transferee Company and their respective Shareholders as contemplated under Section 230(1)(b) of the Companies Act, 2013 and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013 as there is no

compromise and/or arrangement with the unsecured creditors as no sacrifice is called for. The rights of the unsecured creditors of Transferor Company will not be affected as all the unsecured creditors of the Transferor Company would be paid off as per their terms of payment or in the ordinary course of business, as the case may be. Accordingly, the meeting(s) of the Unsecured Creditors of the Applicant Company 1 is dispensed with. However, this bench hereby directs the Applicant Company 1 to issue notice to all its Unsecured Creditors via Courier or Registered Post Acknowledgement Due (RPAD) and Hand Delivery and through E-mail, at their last known addresses as per the records of the respective Applicant Company 1 with a direction that they may submit their representation with this tribunal, if any, within thirty days. It will be clear that if no representation is received by this Tribunal, it will be presume that none of the parties have objected to the scheme.

13. As far as the Applicant Company 2 (Transferee Company) is concerned, the Scheme does not affect the rights and interests of the creditors of the Transferee Company and does not involve any re-organisation of the issued, subscribed and paid up share capital of the Transferee Company. Pursuant to the Scheme, all assets of the Transferor Company would be transferred to the Transferee Company. The assets and liabilities of the Transferor Company will be appropriated under the Scheme by the Transferee Company and post-merger, the creditors of the Transferee Company should not be affected by the Scheme being approved.

14. It is respectfully submitted that the Hon'ble High Court of Judicature at Bombay in the case of Mahaamba Investments Limited V/s. IDI Limited (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 company, being a wholly owned subsidiary 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. The Hon'ble National Company Law Appellate Tribunal in the case of DLF Phase-IV Commercial Developers Limited & Ors, In Company Appeal (AT) No. 180 of 2019, Ambuja Cements Limited, In Company Appeal (AT) No. 19 of 2021, and Patel Engineering Limited, In Company Appeal (AT) No. 137 of 2021, Company Scheme Application No. 911 of 2014 in case of a Eurokids India Private Limited passed by SJ Kathawalla,(J) of Bombay High Court and in Company Appeal (AT) No 109 of 2023 in case of Reliance Industries Limited , Company Appeal (AT) No. 109 of 2023] dated 11th May, 2023 in the similar facts have taken similar view.
15. Further, the Transferor Company and Transferee Company have a positive net worth of **INR 1,928.33 lakhs and INR 27,288.10 lakhs** as per their respective audited financial statements for year ended 31st March 2023.
16. In view of the above facts and circumstances, the meeting(s) of the Unsecured creditors, including requirement to issue any notice to the shareholders and creditors of the Transferee Company is dispensed with.

17. The Applicant Companies are directed to serve notices along with copy of scheme upon: -

- (a) the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra,
- (b) Registrar of Companies, Mumbai
- (c) Income Tax Authorities within whose jurisdiction the respective applicant companies are assessed to tax
- (d) The Official Liquidator, Nagpur
- (e) Principal Chief Commissioner of Income tax being the Nodal Authority, at Aayakar Bhavan, Mumbai;

with a direction that they may submit their representations, if any, within a period of 30 (thirty) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the respective Applicant Companies.

18. The Notice shall be served through by Registered Post-AD, Speed Post and email along with copy of Scheme and state that *“If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme”*. It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the noticee.

19. The Applicant Companies will submit –

- i. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any.
- ii. List of pending IBC cases, if any, along with all other

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litigation;

- iii. pending against the Applicant Companies having material impact on the proposed Scheme.
- iv. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any.

20. The Applicant Companies to file an affidavit of service within 10 working days after serving to notice to all the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Justice V.G. Bisht
Member (Judicial)