

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH - III**

C.A.(CAA)/16/MB/2024

In the matter of the Companies Act, 2013;
AND

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

AND

In the matter of **Scheme of Merger by
Absorption** of Sahyadri Automotive Private
Limited (First Applicant Company/
Transferor Company) with Kalpataru
Hoteliers Private Limited (Second Applicant
Company/ Transferee Company) and their
respective Shareholders (**Scheme**)

Sahyadri Automotive Private Limited, a
Private Limited Company incorporated
under the Companies Act, 1956 having its
Registered Office situated at 517A/E Ward,
Shivaji Park, Kolhapur-416001,
Maharashtra, India.

CIN: U29150PN1987PTC045679

...Transferor Company /
First Applicant Company

Kalpataru Hoteliers Private Limited, a
Private Limited Company incorporated
under the Companies Act, 1956 having its
Registered Office situated at 517/1/A,
Shivaji Park, Kolhapur-416001,
Maharashtra, India.

CIN: U55101MH1978PTC020581

...Transferee Company /
Second Applicant Company

(Hereinafter collectively referred to as 'Applicant Companies')

Order pronounced on 06.06. 2024

Coram:

SMT. LAKSHMI GURUNG, HON'BLE MEMBER (JUDICIAL)

SHRI. CHARANJEET SINGH GULATI, HON'BLE MEMBER (TECHNICAL)

Appearances:

For the Applicants: Mr. Ajit Singh Tawar a/w Mr. Kushal Kumar i/b Ajit
Singh Tawar & Co.

ORDER

Per: SH. CHARANJEET SINGH GULATI, MEMBER (TECHNICAL)

1. The Learned Counsel for the Applicant Companies submits that the present Scheme is a **Scheme of Merger by Absorption** of Sahyadri Automotive Private Limited (“First Applicant Company” or “Transferor Company”) with Kalpataru Hoteliers Private Limited (“Second Applicant Company” or “Transferee Company”) and their respective Shareholders (the “**Scheme**”) under the provisions of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013.

2. Nature of Business:

- 2.1. The First Applicant Company is engaged in the business of manufacture, assemble, buy, sell, distribute, import, export, alter, remodel, hire, exchange, repair, service, and deal in buses, bus bodies, motor vehicles, passenger cars, jeeps, chassis, motor vans, modular vans, integral coaches, tippers, dumpers, firefighting vans, ambulances, school buses, executive vans, oil tankers, chemical carriers, earth movers, refrigerated vans, luxury coaches, air conditioned vans, milk vans, cash vans, postal vans, security vans, laboratory and soil test vans, audio-visual vans, mobile dispensaries, mobile restaurant vans, caravans, and all the present and future types of auto vehicles and bodies, motor cycles, scooters and any other vehicles equipped with modern equipments, whether propelled by using gas, petroleum, diesel oil, steam, oil, vapour, electricity or any other motive or mechanical power. Currently the First Applicant Company has no business activity and is almost inoperative.
- 2.2. The Second Applicant Company is engaged in the business of owning, acquiring, operating conducting or running residential & other types of hotels, motels, restaurants, cafes, lodging, and

boarding houses, refreshment rooms, teahouses, coffee houses liquor bars, soft drinks bars, cold drink houses, ice-creams bars, food stalls, and fruit stalls, milk bars and or other places for selling and consumption of liquid refreshments of all types and varieties.

3. The Learned Counsel for the Applicant Companies submits that the Board of Directors of the Applicant Companies in their respective meetings held on 12th January, 2024 has approved the proposed Scheme.
4. The Appointed Date is **1st April, 2023**.
5. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies as on 31st March, 2023 are as under:

5.1. First Applicant Company

Particulars	Amount (Rs.)
Authorised Share Capital 15,000 Equity Shares of Rs. 100 each.	15,00,000
Total	15,00,000
Issued, Subscribed and Paid-up Share Capital 10,000 Equity Shares of Rs.100/- each.	10,00,000
Total	10,00,000

5.2. Second Applicant Company

Particulars	Amount (Rs.)
Authorised Share Capital 30,000 Equity Shares of Rs.100/- each	30,00,000
Total	30,00,000
Issued, Subscribed and Paid-up Share Capital 24,505 Equity Shares of Rs. 100/- each	24,50,500
Total	24,50,500

6. The Learned Counsel for the Applicant Companies further submits that the rationale for the Scheme are as follows:

- a. *Both the Transferor Company and the Transferee Company are a part of the same group. The Transferor Company and Transferee Company are not engaged in the similar line of business. The Transferor Company was carrying on its business activity for a long period of time and hence the combining of experience and expertise would help in achieving business diversion and expansion, operational efficiency, streamlining the business operations and reduction in compliance cost and hence it is proposed to inter-alia amalgamate the Transferor Company into the Transferee Company. The proposed amalgamation will also result in following benefits:*
- b. *Consolidation of the Transferor Company and the Transferee Company will achieve simplified corporate structure, rationalize the number of entities and result in a single entity with combined businesses.*
- c. *Provide an opportunity to leverage combined goodwill and build a stronger sustainable business. Specifically, it will enable optimal utilization of existing resources and provide an opportunity to fully leverage assets, capacities, experience and infrastructure of the Transferor Company and Transferee Company.*
- d. *Reducing managerial overlaps involved in operating multiple entities, enable cost savings and effective utilization of valuable resources which will enhance the management focus thereby leading to increase in operational and management efficiency; integrate business functions; eliminate duplication and rationalization of administrative expenses.*
- e. *Synchronization of efforts to achieve uniform corporate policy, greater integration, business diversification and flexibility for the Transferee Company.*
- f. *Upon completion of the Merger, the Transferor Company will be dissolved. Consequently, there would be lesser regulatory and legal compliance obligations including accounting, reporting requirements, statutory and internal audit compliance requirements, tax filings, company law compliances, etc. and therefore reduction in administrative costs.*

Consideration:

7. As per the valuation report issued by Sunil Abhyankar & Associates, Chartered Accountants who is a Registered Valuer vide Registration No. IBBI/RV/07/2019/12424, the consideration proposed are as under:

Upon coming into effect of the Scheme, and in consideration for the transfer of and vesting of the properties, assets, liabilities, and Undertaking of the Transferor Company in the Transferee Company in terms of this Scheme, the Transferee Company shall, without any further act or deed allot to the shareholders of the Transferor Company "0.49 fully paid-up equity share of KHPL against 1.00 fully paid-up equity share held in SAPL"

8. Meetings of the Applicant Companies:

- 8.1. The Learned Counsel for the Applicant Companies states that as on 31st December, 2023 there are 4 (Four) Equity Shareholders in the First Applicant Company, the Statutory Auditors Certificate certifying the list of Equity Shareholders of the First Applicant Company is annexed as **Annexure G1** to the Company Scheme Application. The equity shareholders constituting 100% of the Equity Share Capital of the First Applicant Company have given their consent in writing to the proposed Scheme. In view of the Consent Affidavits filed by all the Equity Shareholders (constituting 100% of the entire Equity Share Capital) of the First Applicant Company, **the meeting of the Equity Shareholders of the First Applicant Company**, for approving the proposed Scheme is hereby **dispensed with**. The Consent affidavits are annexed as **Annexure G2 Colly** to the Company Scheme Application.
- 8.2. The Learned Counsel for the Applicant Companies states that as on 31st December, 2023 there are 7 (Seven) Equity Shareholders in the Second Applicant Company, the Statutory Auditors Certificate certifying the list of Equity Shareholders of the Second Applicant Company is annexed as **Annexure I1** to the Company Scheme Application. The equity shareholders constituting 100% of the Equity Share Capital of the Second Applicant Company have given their consent in writing to the proposed Scheme. In view of the consent

affidavits filed by both the Equity Shareholders (constituting 100% of the entire Equity Share Capital) of the Second Applicant Company, the **meeting of the Equity Shareholders of the Second Applicant Company**, for the proposed Scheme is hereby **dispensed with**. The Consent affidavits are annexed as Annexure I2 Colly to the Company Scheme Application.

- 8.3. The **First Applicant Company has no Secured Creditor** as on 31st December, 2023. The certificate dated 12th January, 2024 as issued by S R Bakare & Co., Chartered Accountants, of the First Applicant Company certifying No Secured Creditors of the First Applicant Company as on 31st December, 2023 is annexed as Annexure H1 to the Company Scheme Application.
- 8.4. The **Second Applicant Company has no Secured Creditor** as on 31st December, 2023. The certificate dated 12th January, 2024 as issued by S R Bakare & Co., Chartered Accountants, of the Second Applicant Company certifying No Secured Creditors of the Second Applicant Company as on 31st December, 2023 is annexed as Annexure J1 to the Company Scheme Application.
- 8.5. The **First Applicant Company has no Unsecured Creditors**, as on 31st December, 2023. A certificate dated 12th January, 2024 as issued by S R Bakare & Co., Chartered Accountants, of the First Applicant Company certifying No Unsecured Creditors of the First Applicant Company is annexed as Annexure H2 to the Company Scheme Application.
- 8.6. The Second Applicant Company has 5 (Five) Unsecured Creditors, the aggregate outstanding amount of such Unsecured Creditors being Rs.16,31,325.45/- (Rupees Sixteen Lakhs Thirty One Thousand Three Hundred Twenty Five and Forty Five Paise Only) as on 31st

December, 2023. The Counsel for the Second Applicant Company further states that due to inadvertent error the list of Unsecured Creditors of the Second Applicant Company certified by S R Bakare & Co., Chartered Accountants, vide certificate dated 12th January 2024 annexed as Annexure J2 to the Company Scheme Application shows only three Unsecured Creditors out of five as on 31st December 2023, however the Second Applicant Company has filed a revised list of Unsecured Creditors certified by S R Bakare & Co., Chartered Accountants, vide certificate dated 20th February 2024 though Additional Affidavit dated 23rd February 2024, the same is annexed to the Additional Affidavit dated 23rd February 2024 as Annexure A. All Unsecured Creditors have given their consent in writing to the proposed Scheme, the Consent Affidavits of three Unsecured Creditors of the value of Rs. 4,72,915.45/- amounting to 28.99% of the total value of the Unsecured Creditors are annexed to the Company Scheme Application as Annexure J3 Colly and the Consent Affidavit of the remaining two Unsecured Creditors of the value of Rs. 11,58,410/- amounting to 71.01% of the total value of the Unsecured Creditors are annexed to the Additional Affidavit dated 23rd February 2024 as Annexure B1 and B2 respectively. In view of the Consent Affidavits filed by the Unsecured Creditors (constituting 100% the total outstanding amount of Unsecured Creditors) of the Second Applicant Company, the **meeting of the Unsecured Creditors of the Second Applicant Company**, for approving the proposed Scheme is hereby **dispensed with**.

9. The First Applicant Company is directed to serve notices along with copy of the Scheme upon: -
 - i. the Central Government through the Office of Regional Director, Western Region, Mumbai,
 - ii. the Office of Registrar of Companies, Maharashtra, Pune,

- iii. the concerned Income Tax Authority; within whose jurisdiction the First Applicant Company is assessed to tax, as mentioned hereunder:

Sr. No.	Applicant Company	PAN	Address of the Authority
1	Sahyadri Automotive Private Limited	AADCS5190D	Circle 1, Kolhapur - 416001

- iv. Nodal Authority in the Income Tax Department having jurisdiction over such Authority i.e. Pr. CCIT, Mumbai at 3rd Floor, Aayakar Bhavan, Maharshi Karve Road, Churchgate, Mumbai – 400020, with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the First Applicant Company failing which, it shall be presumed that the authorities have no representations to make on the proposed Scheme.

10. The Second Applicant Company is directed to serve notices along with copy of the Scheme upon: -

- i. the Central Government through the Office of Regional Director, Western Region, Mumbai
- ii. the Office of Registrar of Companies, Maharashtra, Pune
- iii. the concerned Income Tax Authority; and
- iv. the concerned Goods and Services Tax office within whose jurisdiction the Second Applicant Company is assessed to tax, as mentioned hereunder:

Sr. No.	Applicant Company	PAN	Address of the Authority
1	Kalpataru Hoteliers Private Limited	AABCK0632Q	Circle 1, Kolhapur - 416001

Sr. No.	Applicant Company	GSTIN	Address of the Authority
1	Kalpataru Hoteliers Private Limited	27AABCK0632Q1ZC	Commissionerate Kolhapur, Division - III Range-II, Kolhapur - 416003

- v. Nodal Authority in the Income Tax Department having jurisdiction over such Authority i.e. Pr. CCIT, Mumbai at 3rd Floor, Aayakar Bhavan, Maharshi Karve Road, Churchgate, Mumbai – 400020, with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Second Applicant Company.

11. The Transferor Company is also directed to serve the Copy of Scheme upon the Official Liquidator, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
12. The Applicant Companies shall host the notices along with a copy of the Scheme on their respective website, if any.
13. The Applicant Companies to file Affidavits of Service, with the Registry proving service upon the regulatory authorities as stated above, and report to this Tribunal that the directions have been duly complied with.

14. Ordered Accordingly.

Sd/-

CHARANJEET SINGH GULATI

MEMBER (TECHNICAL)

(Saayli, LRA)

Sd/-

LAKSHMI GURUNG

MEMBER (JUDICIAL)