

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH VI**

**CA (CAA) No. 231/MB/2023**

*[Under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 as amended from time to time]*

IN THE MATTER OF

**SCHEME OF AMALGAMATION OF**

**MUTUAL MANAGEMENT SERVICES PRIVATE LIMITED**

[CIN: U74999MH2019PTC323034]

... Applicant Company 1 /

Transferor Company

**WITH**

**MUTUAL AUTOMOTIVE PRIVATE LIMITED,**

[CIN:U25203MH2012PTC235302]

... Applicant Company 2 /

Transferee Company

**AND**

**THEIR RESPECTIVE SHAREHOLDERS**

**Pronounced: 02.04.2024**

*Coram:*

**SHRI SANJIV DUTT  
HON'BLE MEMBER (TECHNICAL)**

**SHRI K.R. SAJI KUMAR  
HON'BLE MEMBER (JUDICIAL)**

*Appearances: Hybrid*

For the Applicant(s) : PCS Dipika Biyani

**ORDER**

***[Per: SANJIV DUTT, MEMBER (TECHNICAL)]***

1. This is a joint Company Application filed by the Mutual Management Service Private Limited, the Transferor Company and Mutual Automotive Private Limited, the Transferee Company (both being referred hereinafter as “the Applicant Companies”) for seeking appropriate directions from this Tribunal in relation to the proposed composite Scheme of Amalgamation (hereinafter referred to as the “Scheme”) of the Transferor Company with the Transferee Company and their respective Shareholders under the provisions of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (hereinafter referred to as “the Act”) read with relevant Rules of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
2. It is observed that the Transferor Company and the Transferee Company are both having their registered offices in Mumbai and, therefore, these entities are within the territorial jurisdiction of this Tribunal.
3. The Applicant Companies state that the respective Boards of Directors of Transferor Company and the Transferee Company at their respective Board Meetings held on 31.03.2023 approved the proposed Scheme. Certified true copies of the Board Resolutions passed by the respective Boards of Directors have been placed on record.

4. The Applicant Companies submit that the appointed date of Scheme of Amalgamation is 01.04.2023.
5. The Applicant Companies submit that the Transferor Company is engaged in the business of management consultants and advisors and provides management services in all forms and aspects, including, strategic and operational planning, corporate communications, information technology, knowledge management, corporate management, productivity, profitability, advertisement, and any other related activity to companies, undertakings, institutions or any association of persons or any individual, whether in India or abroad.
6. The Transferee Company is engaged in the business of manufacture, production, processing, designing, development, purchase and sale of thermoplastic and composite components and moulds for automotive and non-automotive industries.
7. The rationale and benefits for the Scheme are as under:
  - a. The merger will result in economies of scale, reduction in overheads including administrative, managerial and other expenditure, operational rationalization, organizational efficiency and optimal utilization of resources;
  - b. The merger will result in a significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by both the Transferor Company and the Transferee Company;

- c. Consolidating and improving the internal control systems and procedures which will bring greater management and operational efficiency due to integration of various similar functions being carried out by the entities such as human resources, finance, legal, management etc;
  - d. Improved organizational capability and leadership, arising from the pooling of human capital who have diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry;
  - e. Greater access by the amalgamated company to different market segments in the conduct of its business;
  - f. Achieving economies of scale and consolidation and simplification of group structure and effective management of Transferee Company as a single entity.
8. The details of pre-scheme Authorised, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies as on 31.03.2023 are as under: -

8.1 The Transferor Company.

| <b>Particulars</b>   | <b>Amount (Rs.)</b> |
|--|---------------------|
| <b>Authorised capital</b><br>10,000 Equity Shares of Rs. 10/- each | 1,00,000            |
| <b>TOTAL</b>   | <b>1,00,000/-</b>   |
| <b>Issued, Subscribed and Paid-up Capital</b>                      | 1,00,000            |

|   |                   |
|---|-------------------|
| 10,000 Equity Shares of Rs. 10/- each fully paid-up |                   |
| <b>Total</b>  | <b>1,00,000/-</b> |

## 8.2 The Transferee Company

| <b>Particulars</b>  | <b>Amount (Rs.)</b>    |
|---|------------------------|
| <b>Authorised capital</b><br>4,00,00,000 equity shares of INR 10/- each                                   | 4,00,00,000/-          |
| <b>TOTAL</b>  | <b>40,00,00,000 /-</b> |
| <b>Issued, Subscribed and Paid-up Capital</b><br>3,02,68,354 Equity Shares of Rs. 10/- each fully paid-up | 30,26,83,540/-         |
| <b>Total</b>  | <b>30,26,83,540/-</b>  |

8.3 The Applicant Companies submit that upon this Scheme becoming effective and in consideration for the transfer and vesting of the properties, assets, liabilities and undertaking of the Transferor Company in the Transferee Company in terms of the Scheme, the Transferee Company shall issue and allot 1 (One) fully paid up equity share of Rs.10/- (Ten Rupees) each of the Transferee Company for every 10 (Ten) fully paid up equity shares of Rs.10/- (Ten Rupees) each of Transferor Company.

8.4 The Applicant Companies have obtained valuation reports from Mr. Hiten Prajapati, Registered Valuer for determining the share exchange ratio, which has been

placed on record.

- 8.5 It is submitted that from the effective date, the Transferor Company shall without any further Act or deed stand dissolved without winding up.
9. The Applicant Companies are hereby directed to **file CA certificates with respect to the net worth of both Applicant Companies (including pre-scheme and post-scheme net worth of the Transferee Company) along with the Company Scheme Petition.**
10. As regards compliance with the proviso to section 230(7) of the Act, a certificate dated 11.07.2023 issued by the statutory auditor of the Transferee Company Ms. Roshni Maru, Chartered Accountant, is placed on record specifying that the accounting treatment for the amalgamation of the Transferor Company in the books of the Transferee Company as proposed in the Scheme is in conformity with applicable accounting standards prescribed under Section 133 of the Act.
11. The Applicant Companies have made a categorical averment in para 23 of the Company Scheme Application that, *“No investigation or proceedings under the Companies Act, 2013 have been instituted or are pending in relation to any of the Applicant Company”. It is also stated that no winding up petition is pending against any of the Applicant Companies. It is further submitted that the proposed scheme does not in any way violate any provisions of the Companies Act, 1956 or the applicable and notified provisions of the Act and the rules, regulations and*

*guidelines prescribed thereunder.*

12. It is submitted that the Transferor Company has 4 (Four) equity shareholders having shares amounting to Rs.1,00,000/-. In this connection, the shareholders constituting 100% in value have given their consent to the Scheme by way of consent Affidavits. In view of this, it is prayed that the necessary direction may be issued for dispensation of meeting of equity shareholders of the Transferor Company. As the consent affidavits of all the 4 equity shareholders of the Transferor Company have been placed on record, **it is directed that the requirement of holding and convening meeting of the equity shareholders of the Transferor Company is dispensed with.**
13. It is submitted that the Transferee Company has 7 (Seven) equity shareholders having shares amounting to Rs. 30,26,83,540/-. All of them have given their consent to the Scheme by way of Consent Affidavits. In view of this, it is prayed that the necessary direction may be issued for dispensation of meeting of equity shareholders of the Transferee Company. As the consent affidavits of all the 7 equity shareholders of the Transferee Company have been placed on record, **it is directed that the requirement of holding and convening meeting of the equity shareholders of the Transferee Company is dispensed with.**
14. The Applicant Companies submit that there is no Secured Creditor in the Transferor Company. In view of this, the question of holding meeting of the Secured Creditor of the Transferor Company does not arise.

15. It is submitted that there are 4 (Four) Secured Creditors in the Transferee Company having a value of Rs.63,57,09,225/-. The secured creditors having value of Rs.57,59,61,522/- constituting 90.60% of the secured debt have given their consent to the Scheme out of which 3 secured creditors (i.e. HDFC Bank Limited, Standard Chartered Bank and Standard Chartered Capital Limited) have given their consent by way of Affidavit as provided under Section 230(9) of the Act. However, Kotak Mahindra Bank Limited has provided its consent by way of a letter and not on Affidavit. **The Transferee Company is, therefore, directed to submit the Consent of Kotak Mahindra Bank Limited on Affidavit as required under Section 230(9) of the Act along with the Company Scheme Petition.** In view of the above, the meeting of the Secured Creditors of the Transferee Company is dispensed with subject to the filing of the Consent Affidavit obtained from Kotak Mahindra Bank Limited along with the Company Scheme Petition.
16. The Applicant Companies submit that there are 4 (Four) Unsecured Creditors in the Transferor Company having shares amounting to Rs.94,70,84,374/-. The Consent Affidavits of Unsecured Creditors constituting 100% in value of the total unsecured debt have been annexed to the Application. In view of this, it is prayed that the necessary direction may be issued for dispensation of meeting of unsecured creditors of the Transferor Company. As the consent affidavits of all the 4 unsecured creditors of the Transferor Company have been placed on record, **it is directed that the requirement of holding and**



**convening meeting of the unsecured creditors of the Transferor Company is dispensed with.**

17. It is submitted that the Transferee Company has 380 (Three Hundred and Eighty) Unsecured Creditors amounting to Rs.37,75,55,581/- as on 31.03.2023. The Transferee Company prays that the meeting of its unsecured creditors be directed to be called to consider, and, if thought fit, to approve the Scheme, with or without modification.

17.1 In view of the above prayer, this Bench hereby directs that a meeting of the unsecured creditors of the Transferee Company be convened and held through VC/OAVM or physically, on **16.05.2024 at 11.00 a.m.** or any adjourned dates thereof, at **601, Dev plaza 6th floor, Above Vijay Sales S.V.Road, Andheri West , Mumbai 400058** for the purpose of considering and if thought fit, approving, with or without modification(s), the proposed Scheme.

17.2 The Tribunal hereby appoints Mr. Yashovardhan Sinha having Email ID- [yashisinha\\_29@hotmail.com](mailto:yashisinha_29@hotmail.com) and Mobile No. 9004086529 as the Chairperson for the aforesaid meeting of the Unsecured Creditors of the Transferee Company. The remuneration for the services to be rendered by the Chairperson shall be Rs.1,00,000/- exclusive of taxes.

17.3 The Scrutinizer for the Meeting of the Unsecured Creditors shall be CS Dipika Shetty Gaikwad having email ID- [dipika.shetty1002@gmail.com](mailto:dipika.shetty1002@gmail.com); Phone No. 8928234031;

Membership No. A62569 and COP: 24561. The remuneration for the services to be rendered by the Scrutinizer shall be Rs.50,000/- exclusive of taxes.

17.4 At least 30 (thirty) clear days before the aforesaid meeting of the unsecured creditors of the Transferee Company be held as aforesaid, a notice convening the said meeting, indicating the date and time aforesaid, containing instructions with regard to remote e-voting and e-voting at the time of the VC/OAVM or physical meeting, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent pursuant to Section 102 read with Sections 230-232 of the Act, shall be sent only through electronic mode to those unsecured creditors of the Transferee Company whose email ID's are registered with the Registrar and Transfer Agent/ Depositories/ Depository Participants / Transferee Company and hard copy of the said notice may be sent to those creditors who request for the same.

17.5 The voting by proxy or by authorized representative in case of body corporate shall be permitted, provided that authorization duly signed by the person entitled to attend and vote at the meeting is filed with the Transferee Company at the Registered Office not later than 48 (forty-eight) hours before the aforesaid meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

17.6 At least 30 (thirty) days before the aforesaid VC/OAVM meeting of the unsecured creditors of the Transferee Company to be held as aforesaid, an advertisement about convening the said meeting, indicating the date and time aforesaid, shall be published in 'Business Standard' in English language and 'Navshakti' in Marathi language, both having circulation in Maharashtra where the registered office of the Transferee Company is situated. The publication shall indicate the time within which the copies of the Scheme shall be made available to the concerned persons free of charge from the registered office of the Transferee Company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 read with Section 230-232 of the Act can be obtained free of charge at the registered office of the Transferee Company in accordance with the second proviso to sub-section (3) of Section 230 of the Act and Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

17.7 The quorum for the aforesaid meeting of the unsecured creditors of the Transferee Company shall be as prescribed under Section 103 of the Act. The Unsecured creditors attending the meeting through VC/OAVM shall be counted for the purpose of reckoning the quorum under Section 103 of the Act. In case the required quorum as stated above is not present at the commencement of meeting, the meeting shall be adjourned by 30 (thirty)

minutes and thereafter, the persons present shall be deemed to constitute the quorum.

17.8 The value of outstanding debt of each Unsecured Creditor shall be in accordance with the books of account of the Transferee Company as on 31.03.2023 and where the entries in the books of account are disputed, the Chairperson for the meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf shall be final.

17.9 The Chairperson appointed for the aforesaid meeting of the Unsecured Creditors of the Transferee Company shall issue the advertisement and send out the notices of the meeting referred to above and shall have all powers as per the Articles of Association of the Transferee Company and also under the Act read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting, including the power to decide procedural questions that may arise at the meeting or at any adjournments thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the aforesaid meeting by any person(s) and to ascertain the outcome of the meeting of the unsecured creditors by remote e-voting and e-voting at the VC/OAVM meeting.

17.10 The Transferee Company shall furnish the copy of the proposed Scheme along with copy of statement required

to be furnished under section 230 of the Act to the unsecured creditors free of charge within one day on a requisition being made for the same in accordance with Rule 11 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

17.11 The Chairperson is directed to file an affidavit not less than seven days before the date fixed for the holding of the meeting and do report this Tribunal that the direction regarding the issue of notices and advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

17.12 The Chairperson shall report to this Tribunal the result of the aforesaid meeting within 15 (fifteen) days of the conclusion of the aforesaid meeting, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The Applicant Companies are directed to serve notices of the present Application complete with enclosures by way of Registered Post A.D./ Speed Post/ Hand Delivery and email upon the following authorities :-

- a. Ministry of Corporate Affairs, Government of India (through the office of Regional Director, Western Region, Mumbai);
- b. Jurisdictional Registrar of Companies, Mumbai;

- c. Jurisdictional Income-Tax Authority within whose jurisdiction the Applicant Company's assessment are made;

| Name of the Company | PAN        | Income Tax Jurisdiction                              |
|---------------------|------------|--|
| Transferor Company  | AAMCM5460B | Ward 6(3)(1), Mumbai, Aayakar Bhawan, Mumbai 400020  |
| Transferee Company  | AAICM1831C | Circle 3 Thane, Qureshi Mansion, Gokhale Road, Thane |

- d. Nodal Authority in the Income-tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400020, Phone No. 022-22017654 [E-mail: [mumbai.pccit@incometax.gov.in](mailto:mumbai.pccit@incometax.gov.in).] ;
- e. Jurisdictional GST Authority (applicable to Transferee Company only), within whose jurisdiction it is assessed to tax under GST law i.e. Commisionerate, Pune I, Division VII, Shirur, Range III having GSTIN: 27AAICM1831C1ZT, and
- f. Any other Sectoral/ Regulatory Authorities relevant to the Applicant Companies or their business,

pursuant to Section 230(5) of the Act and in terms of Rule 8 of the Company (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notices, it shall be presumed that they have

no objection to the Scheme in terms of Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. It is clarified that notice of 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. That Learned Authorised Representative for the Applicant Companies submits that Transferor Company shall serve the notice of the present Application complete with enclosures on the Official Liquidator, High Court of Bombay pursuant to Section 230(5) of the Act. If no response is received by this Tribunal from Official Liquidator within 30 days, it may be presumed that the Official Liquidator, High Court of Bombay has no objection to the proposed Scheme in terms of Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
20. The Applicant Companies will submit the following details along with the Company Scheme Petition:-
  - 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 litigation pending against the Applicant Companies having material impact on the Scheme.
  - iii. Details of all Letters of Credit sanctioned and utilized as well as Margin Money details, if any.

21. The Applicant Companies are directed to file Affidavit of Service with the Registry within 15 days from service of notices complete with enclosures upon the regulatory authorities mentioned above and report to this Tribunal that all the directions in this regard have been duly complied with. The Applicant Companies are also directed to include in the Affidavit of Service proof of dispatch of documents sent to their creditors, wherever applicable, and to report to this Tribunal that the directions regarding the issue of notices have been duly complied with.
22. The Appointed Date of the Scheme of Amalgamation is 01.04.2023.
23. The Application is disposed of in terms of aforesaid directions.

**Sd/-**  
**SANJIV DUTT**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**K.R. SAJI KUMAR**  
**MEMBER (JUDICIAL)**