

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH, at MUMBAI

CSP NO 680 OF 2017

AND

CSP NO 683 OF 2017

MAHINDRA TWO WHEELERS LIMITED ... Demerged Company

AND

MAHINDRA & MAHINDRA LIMITEDResulting Company

In the matter of the Companies Act, 2013;

AND

In the matter of sections 230 to 232 read with section 52 and other applicable provisions of the Companies Act, 2013 as amended, including any statutory modification(s) or re-enactment(s) thereof and corresponding provisions of the Companies Act, 1956 to the extent as may be applicable;

AND

In the matter of Scheme of Arrangement between Mahindra Two Wheelers Limited having CIN: U35911MH2008PLC185462 ('Demerged Company') and Mahindra & Mahindra Limited having CIN: L65990MH1945PLC004558 ('Resulting Company') and their respective Shareholders and Creditors

Called for Hearing

Judgment/Order delivered on 18th October, 2017

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)

Hon'ble **V .Nallasenapathy**, Member (T)

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner Companies

Mr Ramehs Golap, Deputy Director in the office of Regional Director

Per: **B.S.V. Prakash Kumar, Member(J)**

Order

1. Heard the learned counsel for the Petitioner Companies.
2. The sanction of the Tribunal is sought under Sections 230 to 232 read with section 52 and other applicable provisions of the Companies Act, 2013, to the Scheme of Arrangement between Mahindra Two Wheelers Limited ("the Petitioner / Demerged Company") and Mahindra & Mahindra Limited ("the Petitioner /

Resulting Company”) and their respective Shareholders and Creditors (“Scheme”).

3. Learned Counsel for the Petitioner Companies states that the Petitioner / Demerged Company is engaged in the businesses of manufacturing and selling of two wheelers (“**Two Wheelers Business**”) and trading in spare parts and accessories (“**MTWL Spares Business**”). The Petitioner / Transferee Company is inter-alia 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 demerger of the Two Wheelers Business of the Petitioner / Demerged Company and its transfer as a going concern to the Petitioner / Resulting Company would *inter alia* have the following benefits:
 - (a) The Petitioner / Resulting Company is present in many segments of the automotive industry e.g. Passenger & Utility Vehicles and Commercial Vehicles including Three Wheelers and Trucks & Buses.
 - (b) The proposed demerger, in line with the strategy of focusing on niche premium Two Wheeler segment, would enable the Two Wheelers Undertaking to benefit from the Petitioner / Resulting Company’s Design & Development and Sourcing capabilities.
 - (c) The proposed demerger would also enable the Petitioner / Demerged Company enhance focus on the spares business.
 - (d) The proposed demerger would also enable the Petitioner / Demerged Company and the Petitioner / Resulting Company achieve and fulfil their objectives more efficiently and in cost effective manner.
5. The Demerged Company and Resulting Company have approved the said Scheme of Arrangement by passing the Board Resolution which are annexed to the respective Company Scheme Petitions filed by the Petitioner Companies.
6. Learned Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per

directions of the Hon'ble National Company Law Tribunal, Mumbai bench and has filed necessary affidavits of compliance with the National Company Law Tribunal, Mumbai bench. Moreover, the Petitioner Companies through its Counsel undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertaking given by the Petitioner Companies is accepted.

7. The Regional Director ('RD') has filed a Report dated 04th September 2017 stating therein, that the Tribunal may take into consideration the observations made at para IV (1) to (4) mentioned in his report and pass such other order or orders as deemed fit and proper in the facts and circumstances of the case.

In paragraphs IV (1) to (4), of the said Report it is stated that:-

“..

1. *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
2. *It is submitted that the Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities dated 11.05.2017 for comments. The office of the Directorate also has issued reminder dated 24.08.2017.*
3. *In addition to compliance of AS-14 (IND AS-103) the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc;*
4. *Petitioner in clause 12 of the scheme has inter alia mentioned that upon the scheme becoming effective. As an integral part of the Scheme and upon effectiveness of the Scheme, an amount of Rs 3450,00,00,000 (Rupees Three Thousand Four Hundred and Fifty Crore only) shall stand transferred from the authorised equity share capital of the Demerged Company to the authorised equity share capital of the Resulting Company and upon transfer of the amount of Rs 3450,00,00,000 (Rupees Three Thousand Four Hundred*

and Fifty Crore only) from the authorised equity share capital of the Demerged Company to the authorised equity share capital of the Resulting Company, the authorised equity share capital of the Resulting Company shall stand enhanced to Rs 4075,00,00,000 (Rupees Four Thousand and Seventy Five Crore only) divided into 810,00,00,000 (Eight Hundred and Ten Crore) Ordinary (Equity) shares of face value of Rs 5 (Rupees Five) each and 25,00,000 (Twenty Five Lakhs) Unclassified Shares of Rs 100 each, pursuant to Sections 13, 14 and 61 of the Companies Act, 2013 and other applicable provisions of the Act, as the case may be, without any further act, instrument or deed by the Resulting Company and without any liability for payment of any additional fees or stamp duty in respect of such increase as the stamp duty and fees has already been paid by the Demerged Company on such authorised equity share capital, the benefit of which stands vested in the Resulting Company pursuant to the Scheme becoming effective on the Effective Date.

In this regard, it is submitted that combination of Authorised Capital proportionately in case of demerger is not provided in Companies Act, 2013, unlike the combination in terms of Section 232(3)(i) of Companies Act, 2013 in respect of amalgamation.”

8. The Report of Registrar of Companies ('ROC') dated 18.08.2017 has been annexed as Annexure A to RD report. The observations of the ROC are mentioned in point no. 32 of the ROC Report which is as under:

“With reference to para 12.1.1 of the Scheme, Combination of Authorized Capital proportionately in case of demerger is not provided in Companies Act, 2013, unlike the combination in terms of Section 232(3)(i) of Companies Act, 2013 in respect of Amalgamation. May be decided on merits.”

9. So far as the observation in paragraph IV (1) & (2) of the RD Report is concerned, the Petitioner Companies through its Counsel undertakes to comply with the applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be answered in accordance with law.
10. With reference to the observation set out in paragraph IV (3) of the RD Report, the Petitioner Companies through its Counsel states that the Petitioner Companies undertake that in addition to compliance of AS-14 (IND AS-103), the

Petitioner Companies shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 (IND AS-8) etc.

11. With reference to the observation set out in paragraph IV (4) of the RD Report and the observation of the Registrar of Companies, Mumbai in point no. 32 of the ROC report, the Petitioner Companies through its Counsel submit that in a Scheme of Arrangement contemplated under Sections 230 to 232 of the Companies Act, as approved by the shareholders, includes doing acts for which the procedure specified in other sections of the Companies Act is also allowed to be undertaken under the concept of “single window clearance” as part of the arrangement in light of various judicial precedents. Hence, reclassification of authorized share capital as envisaged under clause 12 of the Scheme of Arrangement is undertaken as a part of the Scheme of Arrangement. Further, reliance is placed on the decision of Gujarat High Court in the case of Elitecore Technologies Pvt Ltd (176 Com Cas 297) (Guj.) where transfer of authorized capital has been sanctioned in the case of demerger. Also, in the present case it may be noted that such combination of Authorized Capital shall not result in any loss of revenue to the exchequer. Hence, in light of the above, combination of Authorized Capital should be allowed in the present case.
12. The observations made by the Regional Director and Registrar of Companies have been explained by the Petitioners in paragraphs 9 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 680 of 2017 filed by the Peitioner / Demerged Company is made absolute in terms of prayer clauses (a) and (b) of the said Petition and Company Scheme Petition No. 683 of 2017 filed by the Peitioner / Resulting Company is made absolute in terms of prayer clause (a) of the said Petition.
15. Petitioner / Resulting Company is directed to file a copy of this order along with a copy of Scheme of Arrangement with the concerned Registrar of Companies,

electronically, along with E-Form INC-28 within 30 days from the date of of issuance of the order by the Registry.

16. Petitioner / Demerged Company is directed to file a copy of this order and Form of Minutes (annexed as Annexure D to the Company Scheme Petition No 680 of 2017) along with a copy of Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form INC-28, within 30 days from the date of of issuance of the order by the Registry.
17. The Petitioner Companies to lodge certified copy of this order and the Scheme of Arrangement duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, 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 order.
18. It is clarified that for the period between the Appointed Date and Effective Date, the business of the Demerged Company shall be carried on by the Resulting Company in trust and for and on behalf of Resulting Company.
19. The respective Petitioner Companies to pay cost of Rs.25,000/- to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of receipt of order.
20. All authorities concerned to act on a certified copy of this order along with Scheme and form of minutes annexed to the the Company Scheme Petition filed by Demerged Company, duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
21. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)

Date: 18.10.2017