

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH, at MUMBAI

COMPANY SCHEME PETITION NO. 2 OF 2017

TATA MOTORS FINANCE LIMITED ... Transferor Company

AND

COMPANY SCHEME PETITION NO. 3 OF 2017

SHEBA PROPERTIES LIMITED Transferee Company

In the matter of the Companies Act,
2013;

AND

In the matter of Sections 391 to 394 of
the Companies Act, 1956 (corresponding
sections 230 to 231 of the Companies Act
2013);

AND

In the matter of Scheme of Arrangement
amongst Tata Motors Finance Limited
("Transferor Company") and Sheba
Properties Limited ("Transferee
Company") and their respective
Shareholders and creditors

Called for Hearing

Mr. Shyam Mehta, Senior Counsel, Mr. Hemant Sethi i/b Hemant Sethi & Co.,
Advocates for the Petitioners.

Mr. Zaid Ansari, advocate for Rajarshi Motors Private Limited, the objecting Creditor.

Mr. Ragunath Pola, Deputy Registrar of Companies present.

Mr. Ramesh Gholap, Assistant Director from the office of Regional Director.

Coram: B.S.V. Prakash Kumar, Member (Judicial)

V. Nallasenapathy, Member (Technical)

Date : 6th April 2017

1. Heard the learned counsel for the Petitioner Companies and the objecting Creditor.
2. The objecting creditor namely Rajarshi Motors Private Limited has filed an affidavit opposing Scheme of Arrangement on the ground that the Transferor

Company has not paid their alleged dues. The Transferor Company has filed an Affidavit rejoinder dated 24th March 2017 to the objections raised. The Counsel for the Petitioners submits that the objector does not meet the mandatory minimum threshold prescribed by law as a sine que non for a creditor to raise objection to a Company Scheme Petition. The Transferor Company has filed Affidavit dated 24th March 2017 and annexed latest Audited financial statement for the quarter ended December 31, 2016 which reflects that total outstanding dues of the Transferor Company are to the tune of Rs. 16,800 Crores approx. therefore 5% of the total outstanding debt of the Transferor Company is Rs. 840 Crores approx. He further points out that the alleged amount claimed by the objector from the Transferor Company is Rs. 7 Crores approx. ie. less than 0.042% of the total outstanding debt of the Transferor Company and therefore has no locus standi to file objection. The Counsel for the Petitioner Companies further submits that the networth of the Transferee Company after the scheme is given effect to would be to the tune of Rs. 3067 Crores approx. The Counsel for the Petitioners lastly stated that in any case the claim of the objector is disputed and the contract between the parties contains an Arbitration clause.

3. The Counsel for the Objector states that now the objector has received a copy of the Scheme and the petition and considering that the liability towards the objector would stand transferred to the Transferee Company the objector is agreeable to withdraw its objection to the Scheme and shall pursue legal remedies as may be available in law.
4. The sanction of the Tribunal is sought under Sections 230 and 232 of the Companies Act, 2013, to the Scheme of Arrangement amongst Tata Motors Finance Limited ("Transferor Company") and Sheba Properties Limited ("Transferee Company") and their respective Shareholders and creditors.
5. Learned Counsel for the Petitioner Companies states that the Transferor Company is primarily engaged in the business of granting loans and facilities for *inter alia* financing the purchase of new vehicles manufactured by Tata Motors Limited ('TML', its holding company) and other entities within the TML Group. The Transferor Company also, as a separate line of business, grants loans and other financial facilities and services to the dealers and vendors of TML Group.
6. The rationale for the scheme is that the Transferor Company proposes to convert itself to a Core Investment Company ('CIC') and engage primarily in

the business of granting of loans, guarantees and other forms of finance to, leasing and making of investments in securities of Group Companies and to carry on such other activities as may be permitted under the CIC Guidelines. The strategic vision of the Transferor Company is to become the umbrella financial company within the TML Group and to devote its dedicated business focus in providing investment, financing and leasing solutions to aid the business growth of the TML Group. Thus, in order to implement its vision to convert itself into a CIC and to meet the eligibility criteria therefor stipulated under the CIC Guidelines, it is necessary for the Transferor Company to inter alia transfer the Transferred Undertaking. Accordingly, the Transferor Company purports to transfer the Transferred Undertaking to the Transferee Company by way of a sale of business on a going concern basis on a slump sale basis for a lumpsum cash consideration to be paid by the Transferee Company to the Transferor Company. The implementation of this Scheme will assist in streamlining the various financing activities presently being carried out by the Transferor Company and its subsidiaries, with each of such entities being able to devote its dedicated focus and time to the specific lines of business entrusted to them.

7. The Transferor Company and Transferee Company have approved the said Scheme of Arrangement by passing the Board Resolution which are annexed to the Company Scheme Petition filed by the Petitioner Company.
8. 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.
9. The Regional Director ('RD') has filed a Report dated 16th day of March, 2017 stating therein, that the Tribunal may take this report on record and pass such other order or orders as deemed fit and proper in the facts and circumstances of the case post considering the observations made at Sr. No. IV (a) to (f) mentioned in his report.

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

“..

- a) As per scheme the "Appointed Date" means the close of business hours on the 31st day of January, 2017 or such other date as may be determined by the respective Board of Directors of the Transferor and Transferee. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 31st day of January, 2017.
- b) Further, as per Definitions & Interpretations 4.1(b) of the Scheme the "Appointed date" is 31st day of January, 2017 it is submitted that the audited balance sheet is as at 30.09.2016. The gap between the date of audited balance sheet and the appointed date should be reasonable and nearer to the time of final hearing of the petition and this requirement is statutory" it is pertinent to mention that all the Companies to the Scheme of arrangement, the balance sheet is available up to 30.09.2016. Hence, this Hon'ble Tribunal may kindly direct the companies to scheme to submit provisional balance sheet from 01.10.2016 up to the appointed date as 30'th day of January, 2017.
- c) Clause 22 & 23 of the Scheme contemplates Change of name. The same is subject to compliance with the provisions of section 4(2) & (3) of the Companies Act, 2013 r/w rule 8(8) of the Company (Incorporation) Rules, 2014.
- d) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 2010112017 has served a copy company petition No.2 & 3 of 2017 along with relevant orders etc., to respective IT Department. Further the Regional Director has also issued a reminder on 14.03.2017 to respective IT Department. However, as on date there is no response from Income Tax Department.
- e) 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 Court 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.
- f) In view of para 14 supra regarding observations made by the Registrar of Companies, Mumbai, Hon'ble NCLT may kindly pass appropriate order as deemfit and proper in the light of facts and circumstances of the case.

Para 14 - Status of ROC Report: -

ROC Mumbai vide report/letter No. ROC/STA (DG)/504441230-2321680 dated 02.03.2017, has mentioned that No complaints, no Technical Scrutiny etc., However, vide point 29 has made couple of observations and has mentioned that the matter may be decided on merits. (Copy enclosed as Annexure "A")

Annexure A

Observations on the Scheme of Arrangement, etc:

1. It is a clear case of Sale of Business Undertaking directly but not a case of Scheme of Arrangement, for the reasons as detailed below:-

With reference to the para No.2.3(b) of the Scheme regarding sale of business, it is noticed that such proposed transfer of proposed

undertaking of Tata Motors Finance Limited (TMFL) to Sheba Properties Limited (SFL) is proposed to be made for a lumpsum cash consideration to the seller. Such proposed transfer/sale involving payment to the seller instead of to the shareholder of the seller cannot be effected through a scheme of arrangement as there is 'no arrangement' between TMFL and its share holder (listed company)', rendering it ineligible for making application I petition under section 230(1)(b) of Companies Act, 2013 read with 391(1)(b) of the Companies Act, 1956. Such proposed transfer/sale need to be undertaken through a contract of sale outside the purview of the scheme by complying with with section 180(1)(a) read with 180(4) of the Companies Act, 2013 by obtaining special resolution of the share holder (a listed company).

2. Service without attaching 'Minutes of Order' of Hon'ble NCLT, Mumbai:- Notice was served on this office separately by the Advocate of the each of the Company on 20.1.2017 without the attachment of Certified copy of 'Minutes of Order' dated 17.1.2017 ordered by the Hon'ble NCLT, Mumbai. Hence such notice served on this office remain incomplete as on the date of service of notice (20.1.2017) in the absence of receipt of 'Minute of Order' dated 17.1.2017' in the office of RoC Mumbai by then. Office of RoC Mumbai has received the 'photocopy of order dated 17.1.2017 (unsigned version)' only on 23.2.2017 for the first time by way of further notice/letter of the Advocate vide their notice/letter dated NIL received on 23.2.2017. Accordingly, clear 30 days notice period may kindly be considered / counted only from 23.2.2017 (with due date upto 25 .3.2017) in this regard.... ”

10. As far as the observations made in paragraph IV (a) of the RD Report is concerned, Petitioner Companies through its Counsel submits that it is well settled that the parties to a scheme of arrangement are free to select any date to be the Appointed Date and that the Appointed Date set out in the present Scheme is in line with Section 232 (6) of the Companies Act, 2013. Further, the reference to the 'close of business hours' is only clarificatory language included so as to ensure that the financial statement of the Transferor Company as it stands at the end of the day on January 31, 2017 is considered for the purposes of identification of assets & liabilities to be transferred as part of the Scheme.
11. As far as the observations made in paragraph IV (b) of the RD Report is concerned, Petitioner Companies through its Counsel submits that the audited balance sheet for the period ending September 30, 2016 was the latest available balance sheet at the time of filing the Scheme petition and was accordingly annexed thereto. The Petitioner Companies through its Counsel further submits that in any event it has since the date of the RD Report provided the Unaudited provisional balance sheet as on January 31, 2017 (i.e the Appointed Date) and Audited financials as on December 31, 2016 for both the Petitioner Companies

to the office of the Regional Director, Western Region on March 21, 2017 vide letter of even date.

12. With reference to the observation set out in paragraph IV (c) of the RD Report, the Petitioner Companies through its Counsel submits that it undertakes to comply with all relevant and applicable provisions of the Companies Act, 2013 and the rules framed thereunder in respect of the change of name.
13. With reference to the observation set out in paragraphs IV (d) and IV (e) of the RD Report, Petitioner Companies through its Counsel submits that the Income Tax Department has already provided its no-objection certificates in relation to the Scheme in respect of both the Petitioner Companies and the same have been provided to the office of the Regional Director, Western Region on March 21, 2017 vide its letter of even date. Further, Petitioner Companies through its Counsel submits that it is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
14. With reference to the observation set out in paragraph IV (f) of the RD Report, the Petitioner Companies through its Counsel submits the below response to each of the observations of the Registrar of Companies, Mumbai ("ROC"):
 - a) With reference to the first observation of the ROC, the Petitioner Companies through their Counsel submits that the present Scheme has all the trappings of a scheme of arrangement and there is no bar under the Companies Act, 2013 for the consideration for a scheme to be in the form of cash paid to the Transferor Company, where the same has been approved by the shareholders of the Transferor Company. Hence, cash consideration to the Transferor Company has been mentioned in the scheme and the same has been approved by the shareholders of the Transferor Company.
 - b) With reference to the second and last observation of the ROC, Petitioner Companies through its Counsel submits that the same is not relevant at the present time since the report of the Regional Director has already been filed with the Tribunal .
15. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 10 to 14 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.

16. 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.
17. Since all the requisite statutory compliances including obtaining certificate from statutory auditors in terms of section 133 of the Companies Act 2013, Company Scheme Petitions No. 2 and 3 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
18. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the order by the Registry.
19. The Transferee Company to lodge certified copy of this order and the Scheme 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.
20. The Petitioner Companies to pay cost of Rs.25,000/- each to the Regional Director, Western Region, Mumbai.
21. Costs to be paid within four weeks from the date of receipt of order.
22. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
23. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

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

Sd/-

V. Nallasenapathy, Member (Technical)