

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

COMPANY SCHEME APPLICATION NO 351 OF 2017

In the matter of the Companies Act 2013;

AND

In the matter of Sections 230 to 232 read with section 52 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

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

Mahindra Two Wheelers Limited, a Company incorporated)
under the provisions of Companies Act, 1956 having its)
Registered Office at Mahindra Towers, P. K. Kurne Chowk,)
Worli, Mumbai, Maharashtra – 400 018)
CIN: U35911MH2008PLC185462)

..... Applicant Company

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Applicant Company

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

V. Nallasenapathy, Member (Technical)

Dated 5th day of April 2017

MINUTES OF THE ORDER

1. The Counsel for the Applicant Company states that the present Scheme involves demerger of the Two Wheelers Business, inter-alia, consisting of entire undertaking, business activities and operations pertaining to the Two Wheelers Business ("Demerged Undertaking" or "Two Wheelers

Undertaking”) of Mahindra Two Wheelers Limited (“Applicant Company / Demerged Company”) and its transfer as a going concern to Mahindra & Mahindra Limited (“Resulting Company”) (“the Demerger”).

2. The Counsel for the Applicant Company further states that the Applicant 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”).
3. The Counsel for the Applicant Company further submits that rationale for the scheme is as under:
 - (a) The 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 Wheelers segment, would enable the Two Wheelers Undertaking benefit from the Resulting Company’s Design & Development and Sourcing capabilities.
 - (c) The proposed demerger would also enable the Demerged Company enhance focus on the spares business.
 - (d) The proposed demerger would also enable the Demerged Company and the Resulting Company achieve and fulfil their objectives more efficiently and in cost effective manner.
4. The meeting of Equity shareholders of the Applicant Company be convened and held at Ground Floor, Gateway Building, Apollo Bunder, Mumbai – 400 001 on 13th June, 2017 at 9 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed arrangement embodied in the Scheme of Arrangement between Mahindra Two Wheelers Limited (“Demerged Company”) and Mahindra & Mahindra Limited (“Resulting Company”) and their respective Shareholders and Creditors.

5. That at least one month before the said Meeting of the Equity shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting at the place, date and time as aforesaid, together with a copy of the scheme, a copy of statement disclosing all material facts as required under section 230(3) of the Companies Act read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 notified on 14th December 2016 and the prescribed Form of Proxy, shall be sent by Courier or Registered Post or Speed Post or through Email (to those shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email) or hand delivery, addressed to each of the Equity Shareholders of the Company, at their last known address or email addresses as per the records of the Applicant Company.
6. That at least one month before the meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting, indicating the place, date and time of meeting as aforesaid be published and stating that the copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid and / or at the offices of its Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur Mumbai – 400071.
7. That the Notice of the Meeting shall be advertised in two local newspapers viz. Business Standard in English and Sakal in Marathi, both circulated in Mumbai not less than 30 days before the date fixed for the meeting.
8. That Dr. Pawan Goenka, Director of the Applicant Company and failing him, Mr. VS Parathasarathy, Director of the Applicant Company and failing him, Mr. Rajesh Jejurikar, Director of the Applicant Company, shall be the

Chairman of the aforesaid meeting of the Equity Shareholders to be held at Ground Floor, Gateway Building, Apollo Bunder, Mumbai – 400 001, on 13th June, 2017 at 9 a.m. or any adjournments thereof.

9. That the Chairman appointed for the aforesaid Meeting to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairman shall have all the powers as per the Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any proposed at the meeting by any person(s).
10. That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
11. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at its Registered Office at Mahindra Towers, P. K. Kurne Chowk, Worli, Mumbai, Maharashtra – 400 018 not later than 48 hours before the aforesaid meeting.
12. That the value and the number of the shares of each Equity Shareholders shall be in accordance with the books / register of the Applicant Company or depository records and where the entities in the books / register/ depository records are disputed, the Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
13. That Mr. Sachin Bhagwat, Practicing Company Secretary is hereby appointed as Scrutinizers of the meeting of Equity shareholders the Applicant Company proposed to be held on 13th June, 2017 at 9 a.m. at Ground Floor, Gateway Building, Apollo Bunder, Mumbai – 400 001, and his remuneration is fixed as Rs. 1,000/-

14. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the Meeting and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
15. That the Chairman of the Meeting to report to this Tribunal, the results of the aforesaid meeting within thirty days of the conclusion of the Meeting.
16. That the Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessments are made, (ii) to the Central Government through the office of Regional Director, Western region, Mumbai, (iii) to the Registrar of companies, Mumbai, (iv) to the Directorate of Industries (Government of Maharashtra), with the direction that they may submit their representations, if any, within a period of thirty days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served to the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposal.
17. The Counsel for the Applicant Company submits that there are no Secured Creditors in the Applicant Company, therefore the question of sending notices to the Secured Creditors does not arise. That Counsel for the Applicant further submits that since the Scheme is an arrangement between the Applicant Company and their respective shareholders only, a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This bench hereby directs the Applicant Company to issue notice by Courier or Registered Post or Speed Post or through Email or hand delivery, to its Unsecured creditors of the value above Rs 1,00,000/- (Rupees One Lakh only) as on 28th February, 2017 with a direction that they may submit their

representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.

18. The Applicant Company to file affidavit of service in the Registry proving dispatch of notices upon Shareholders, Unsecured Creditors, publication of notices in newspapers and to the regulatory authorities as stated in clause 16 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

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

Sd/-

V. Nallasenapathy, Member (Technical)