

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH**

**CA (CAA) No. 11/Chd/Pb/17
Date of order: 16.05.2017**

Coram: Hon'ble Mr. Justice R P Nagrath, Member (Judicial)

In the matter of:

Malwa (Ludhiana) Motor Finance Ltd.
CIN : U 65921 PB 1992 PLC 012536
35-A, Defence Colony,
Jalandhar, Punjab-144001.
PAN : AAC CM 1735 H

...Applicant/Transferor Company

AND

Amrit Hire Purchase Ltd.
CIN : U 65921 PB 1987 PLC 007523
35-A, Defence Colony,
Jalandhar, Punjab-144001.
PAN : AAB CA 0808 Q

...Applicant/Transferee Company

Application Under Sections 230 & 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions.

Present: Mr Rajeev K Goel, Advocate for Applicants.

ORDER

R.P.Nagrath, J., Member(Judicial) (Oral):

This application has been jointly filed by the Applicant Companies herein, namely, Malwa (Ludhiana) Motor Finance Limited Transferor Company/ Applicant No. 1 (for brevity, to be described as A-1) and Amrit Hire Purchase Limited Transferee Company/Applicant No. 2 (for brevity, to be described as A-2) under sections 230 and 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, the

'Rules') and the National Company Law Tribunal Rules, 2016, supported by the separate affidavits on behalf of the applicant-companies, for seeking appropriate orders/directions for convening of respective meetings of the shareholders, secured creditors and un-secured creditors of the applicant-companies, in connection with the proposed Scheme of Amalgamation of Maiwa (Ludhiana) Motor Finance Ltd with Amrit Hire Purchase Ltd. The said Scheme of Amalgamation (for brevity, to be described as 'Scheme') is also annexed as Annexure A-4 to the joint Application.

2. It is represented by the learned counsel for applicants that as per the Memorandum and Articles of Association Annexure A-1/1, A-1 Company is engaged in the business of hire purchase, investment general finance, housing and industrial financing etc.; to purchase, sell or hire out or sell by instalment, lease or on hire purchase system, vans, motor cars, buses, trucks, LCV's, tractors etc. and any other allied articles thereof. Presently A-1 company is engaged in vehicle financing, general financing, other NBFC business and other related activities. A-2 Company is engaged in vehicle financing, general financing and other NBFC business, the business of hire purchase, general finance investment and housing; to purchase, sell or hire out or sell by instalment or on hire purchase system all kinds of motor vehicles, motor cycles, scooter moped, cycle rickshaws etc. or any other articles that the company may deem fit as per Memorandum and Articles of Association Annexure A-2/1.

3. It is represented by the learned counsel for the applicants that the registered office of both the applicant-companies is situated at 35-A, Defence Colony, Jalandhar, Punjab-144 001, therefore, the matter falls within the jurisdiction of this Tribunal.

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4 The certificates of incorporation of both the applicant-companies have been placed on record which are as Annexures A-1/1 and A-2/1. A-1 Company (CIN : U65921PB1992PLC012536) was incorporated as a private limited company with the name and style as 'Malwa (Ludhiana) Motor Finance Pvt. Ltd.' vide Certificate of Incorporation dated 17.08.1992 issued by Registrar of Companies, Punjab, Himachal Pradesh and Chandigarh. Subsequently, the company was converted into a public limited company and the name of the company was changed to 'Malwa (Ludhiana) Motor Finance Ltd.' Vide endorsement made on Certificate of Incorporation vide order dated 03.08.2001 by the Registrar of Companies, Punjab, Himachal Pradesh and Chandigarh.

5. A-2 Company (CIN : U65921PB1987PLC007523) was incorporated as a private limited company with the name and style as 'Amrit Hire Purchase Pvt. Ltd.' vide Certificate of Incorporation dated 24.06.1987 issued by Registrar of Companies, Punjab, Himachal Pradesh and Chandigarh. Subsequently, the company was converted into a public limited company and the name of the company was changed to 'Amrit Hire Purchase Ltd.' Vide endorsement made on Certificate of Incorporation vide order dated 08.11 1996 of the Registrar of Companies, Punjab, Himachal Pradesh and Chandigarh.

6. It is represented by the learned counsel for applicants that the authorized share capital of A-1 Company is ₹8,50,00,000/- divided into 8,50,000 equity shares of ₹100/- each. The present, issued, subscribed and paid up share capital of A-1 Company is ₹6,13,05,800/- divided into 6,13,058 equity shares of ₹100/- each. The authorised share capital of A-2 Company is ₹10,00,00,000/- divided into 10,00,000 equity shares of ₹100/- each. The present issued, subscribed

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and paid up share capital of the company is ₹9,14,93,700/- divided into 9,14,937 equity shares of ₹100/- each.

7. The learned counsel for the applicant-companies submits that the Board of Directors of A-1 Company have unanimously approved the 'Scheme' authorizing Mr. Ajit Pal Singh, Managing Director and Ms. Pawanjeet Kaur, whole time Director and Mr. Harsh Kumar, Company Secretary of the company jointly and severally to take all or any of the steps mentioned therein with regard to the 'Scheme'. Copy of the Board Resolution dated 31.03.2017, approving the 'Scheme' is placed on record as Annexure A-1/5.

8. The learned counsel for the applicant-companies further submits that the Board of Directors of A-2 Company have unanimously approved the 'Scheme' authorizing Mr. Ajit Pal Singh, Managing Director and Col. Joginder Singh Gill, Managing Director of the company jointly and severally to take all or any of the steps mentioned therein with regard to the 'Scheme'. Copy of the Board Resolution dated 31.03.2017, approving the 'Scheme' is placed on record as Annexure A-2/5.

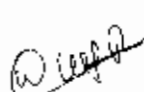
9. The affidavits of Mr. Ajit Pal Singh, Managing Director of the applicant-companies has been filed with the joint application. It is represented that the salient features of the Scheme as disclosed in the Application, inter alia, are as under :-

- i. All assets and liabilities including Income Tax and all other statutory liabilities, if any, of A-1 Company will be transferred to and vested in the A-2 Company.
- ii. All the employees of the A-1 Company in service on the Effective Date, if any, shall become the employees of the A-2 Company on and from such date without any break or interruption in service and upon terms

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and conditions not less favorable than those subsisting in the A-1 Company on the said date.

- iii. Appointed Date for Amalgamation will be 01.04.2017, or such other date, as the National Company Law Tribunal may approve.
- iv. A-2 Company will issue 1 (one) Equity Share of ₹100 each, credited as fully paid up, for every 1 (one) Equity Share of ₹100 each held in the A-1 - Malwa (Ludhiana) Motor Finance Ltd.
- v. A-2 Company will issue 1 (one) Secured Non-Convertible Redeemable Debenture (NCD) of ₹1,000 each, credited as fully paid up, for every 1 (one) Secured Non-Convertible Redeemable Debenture of ₹1,000 each held in the A-1 Company-Malwa (Ludhiana) Motor Finance Ltd on the same terms and conditions (including coupon rate and redemption, etc.) as are applicable to these NCDs in the A-1 Company.
- vi. A-2 Company will issue 1 (one) Un-secured Fully Convertible Debenture (FCD) of ₹1,000 each, credited as fully paid up, for every 1 (one) Un-secured Fully Convertible Debenture of ₹1,000 each held in the A-1 Company-Malwa (Ludhiana) Motor Finance Ltd on the same terms and conditions (including coupon rate and conversion, etc.) as are applicable to these FCDs in the A-1 Company.
- vii. The A-2 Company will issue 1 (one) Un-secured Non-convertible Redeemable Sub-ordinated Bonds (Bond) of ₹1,000 each, credited as fully paid up, for every 1 (one) Un-secured Non-convertible Redeemable sub-ordinated Bond of ₹1,000 each held in the A-1 Company-Malwa (Ludhiana) Motor Finance Ltd on the same terms and



conditions (including coupon rate and redemption, etc.) as are applicable to these Bonds in the A-1 Company.

- viii. All Un-secured Fixed Deposits existing in the books of accounts of the A-1 Company as on the Effective Date/record date, will be transferred to and vest in the A-2 Company. The A-2 Company will make necessary endorsement in the Fixed Deposit Receipts or issue fresh FDRs in replacement of the FDRs issued by the A-1 Company. All the terms and conditions of such Fixed Deposits (including coupon rate and repayment, etc.) will remain the same.

10. The Learned Counsel for the Applicants has represented that accounts of both the applicant-companies have been prepared and audited upto the Financial Year ending on 31.03.2016. Copies of the Audited Financial Statements for the Financial Year ended 31.03.2016 and the Auditors Report of both the applicant-companies have been filed with the Application as Annexure A-1/2 & A-2/2. Further, latest financial position of both the applicant-companies is reflected in the un-audited provisional financial statements for the period ended 31.12.2016. Copies of the aforesaid un-audited provisional Financial Statements of both the applicant-companies have been filed with the Application as Annexure A-1/3 & A-2/3.

11. It is represented by the learned counsel that the Share Exchange Ratio under the 'Scheme' have been determined in accordance with the Report on Valuation of Shares & Share Exchange Ratio dated 18.03.2017, issued by M/s Shyam S Aggarwal & Co., Chartered Accountants, Jalandhar, as per the settled principles of valuation. A copy of the Valuation Report is placed on record with the Application as Annexure A-3.



12. The learned counsel for the applicant companies further represented that it has been stated that both the applicant-companies have submitted that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013, is pending against them. Further, the Applicants have also submitted that the 'Scheme' is not otherwise opposed to public policy or interest of the members of the respective applicant-companies.

13. Learned Counsel for the Applicants has submitted that the proposed 'Scheme' does not envisage any corporate debt restructuring. There is no proposal to restructure or vary the debt obligation of A-1 Company or A-2 Company towards their respective creditors. The proposed 'Scheme' will not adversely affect the rights of any of the secured creditors (including Secured NCD holders) or un-secured creditors (including un-secured FCD holders, bond holders and FD holders) of the A-1 Company or of the A-2 Company in any manner whatsoever. It was further confirmed that the 'Scheme' does not envisage any buy back of shares.

14. Learned Counsel for the Applicants has submitted that both the applicant-companies are un-listed Group Companies under common shareholding, management and control. Status of the Shareholders, Secured Creditors and Un-secured Creditors of the Transferor Company and the Transferee Company is summarized in following table:

Particulars	Transferor Company	Transferee Company
Shareholders	178	145
Secured Lenders	6	6
Secured Non Convertible Debenture holders	535	656
Un-secured Sundry & other Trade Creditors, Un-secured Fully Convertible Debenture holders and Un-secured Sub-ordinated Bond holders	148	284
Un-secured Fixed Deposit holders	1004	279

15. Prayer has been made to convene separate meetings of shareholders, secured creditors and un-secured creditors in A-1 Company and A-2 Company, under the supervision of this Tribunal to consider and approve the proposed 'Scheme'.

16. Taking into consideration the Application filed jointly by A-1 Company and A-2 Company along with the documents filed therewith and averments made by learned Counsel for the Applicants, it is proposed to issue the following directions with respect to convening and holding of the meeting of shareholders, secured and un-secured creditors as well as issue of notices including by way of newspaper publication, as follows:-

i) Separate meetings of the following categories/classes are directed to be convened and held for A-1 Company and A-2 Company under the supervision of this Tribunal to consider and approve the proposed 'Scheme':-

- a. Shareholders;
- b. Secured Creditors being Secured Lenders towards loan and other finance facility obtained from various banks and other financial institutions (hereinafter referred to as Secured Lenders);
- c. Secured Non-Convertible Redeemable Debenture holders (hereinafter referred to as Secured NCD holders)
- d. Un-secured Sundry & other Trade Creditors, Un-secured Fully Convertible Debentures (hereinafter referred to as Un-secured FCD holders) and Un-secured Non-convertible Redeemable Sub-ordinated Bonds (hereinafter referred to as Un-secured Bond holders);
- e. Un-secured Fixed Deposit holders (hereinafter referred to as Un-secured FD holders)

ii) The venue of the meetings has been suggested by the Learned Counsel for the applicants for which the necessary arrangements should be made by the applicant

companies. The notices for the meetings shall be issued by A-1 and A-2 Companies as follows :-

In relation to A-1 Company

- a. Meeting of shareholders be convened on 18.08.2017 at 10.00 AM at Hotel Country Inn and Suites, BSF Chowk, Jalandhar, Punjab subject to notice of meeting being issued.
- b. Meeting of secured lenders be convened on 18.08.2017 at 12.30 PM at Hotel Country Inn and Suites, BSF Chowk, Jalandhar, Punjab subject to notice of meeting being issued.
- c. Meeting of secured NCD holders be convened on 18.08.2017 at 3.30 PM at Hotel Country Inn and Suites, BSF Chowk, Jalandhar, Punjab subject to notice of meeting being issued.
- d. Meeting of unsecured sundry and other trade creditors, unsecured FCD holders and unsecured bond holders be convened on 19.08.2017 at 10.00 AM at Hotel Country Inn and Suites, BSF Chowk, Jalandhar, Punjab subject to notice of meeting being issued.
- e. Meeting of unsecured FD holders be convened on 19.08.2017 at 2:30 PM at Hotel Country Inn and Suites, BSF Chowk, Jalandhar, Punjab subject to notice of meeting being issued.

In relation to A-2 Company

- a. Meeting of shareholders be convened on 18.08.2017 at 11.30 AM at Hotel Country Inn and Suites, BSF Chowk, Jalandhar, Punjab subject to notice of meeting being issued.
- b. Meeting of secured lenders be convened on 18.08.2017 at 2.30 PM at Hotel Country Inn and Suites, BSF Chowk, Jalandhar, Punjab subject to notice of meeting being issued.



- c. Meeting of secured NCD holders be convened on 18.08.2017 at 04.30 PM at Hotel Country Inn and Suites, BSF Chowk, Jalandhar, Punjab subject to notice of meeting being issued.
- d. Meeting of unsecured sundry and other trade creditors, unsecured FCD holders and unsecured bond holders be convened on 19.08.2017 at 12.00 Noon at Hotel Country Inn and Suites, BSF Chowk, Jalandhar, Punjab subject to notice of meeting being issued.
- e. Meeting of unsecured FD holders be convened on 19.08.2017 at 04.30 PM at Hotel Country Inn and Suites, BSF Chowk, Jalandhar, Punjab subject to notice of meeting being issued.
- iii) The following quorum is fixed for the meetings:

Meetings of	Transferor Company		Transferee Company	
	No.	% of total value	No.	% of total value
Shareholders	50	25%	40	25%
Secured Lenders	3	25%	3	25%
Secured NCD holders	75	25%	75	25%
Un-secured Sundry & other Trade Creditors, Un-secured FCD holders and Un-secured Bond holders	50	25%	75	25%
Un-secured FD holders	100	25%	75	25%

It is further directed that in case the aforesaid quorum is not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter, the person present and voting shall be deemed to constitute the quorum. For the purpose of constituting the quorum, the valid proxies shall also be considered, if the proxy is in the prescribed form, duly signed

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by the person entitled to attend and vote at the meeting, filed with registered office of the concerned Company at least 48 hours before the meetings

- iv) Mr. Justice J.S.Narang (Retd.), Mobile Number 9501400114, Address H.No.114, Sector-9, Chandigarh is appointed as the Chairperson for all the aforesaid meetings to be called under this order and the relevant law and shall be paid a consolidated fee of ₹ 2,00,000/- (Rupees two lacs only) for his services as the Chairperson.
- v) Mr. Yash Pal Gupta, Mobile Number 9878572526, Address SCO 40-41 Level III, Sector 17-A, Chandigarh-160017 is appointed as Alternate Chairperson for all the meetings to be called under this order and the relevant law and shall be paid a consolidated fee of ₹ 75,000/- for his services as Alternate Chairman.
- vi) The Scrutinizer for all the meetings, as suggested by the Learned Counsel, shall be Mr. Dinesh Gupta, Company Secretary in whole time practice, FCS: 3462, Mobile Number 98151 64949, Address: Raj Chambers, 5 & 6, Hind Samachar Street, Jalandhar, who shall be paid a consolidated fee of ₹ 60,000 in lump sum for rendering his services.
- vii) The fee of the Chairperson, Alternate Chairperson and Scrutinizer shall be paid by A-2 Company. The travelling expenses, boarding and lodging for them shall also be borne by the A-2 Company.
- viii) It is further directed that the individual notices of the said meetings shall be sent by the applicant-companies to all the members/

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creditors as on 31.03.2017 through Registered Post or Speed Post, 30 days in advance before the schedule date of the meetings, indicating the day, date, place and time as aforesaid, together with a copy of 'Scheme', a copy of Explanatory Statement, required to be sent under the Companies Act, 2013, and the 'Rules' along with proxy forms, unaudited provisional financial statements as on 31.03.2017 and other documents as prescribed under the Act and the Rules. The Scrutinizer appointed for the aforesaid meetings shall verify that the proxy registers are properly maintained.

- ix) The applicant-companies shall jointly publish advertisement in "The Tribune" (English, Jalandhar Edition), "Punjab Kesari" (Hindi, Jalandhar Edition) and Jag Bani (Punjabi, Jalandhar Edition), at least 30 clear days in advance before the meetings in the form prescribed under the 'Rules'. It be stated that the copies of Scheme of Amalgamation, the Explanatory Statement required to be furnished pursuant to Section 230-232 of the Companies Act, 2013 and the forms of proxy shall be provided free of charge at the registered office of the applicant-companies. The applicant-companies shall also publish the notice on their respective websites, if any.
- x) Voting by proxies is permitted and will be considered for the purpose of computing the quorum of the aforesaid meetings, provided that the proxy in the prescribed form and duly signed by the person entitled to attend and vote at the said meeting, or by his

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authorized representative, is filed with the registered office of the applicant-companies, as applicable, at least 48 hours before the said meeting.

- xi) The Chairperson shall be responsible to report the result of the meetings to the Tribunal in Form No. CAA.4, as per Rule 14 of the 'Rules' within seven days of the conclusion of the meetings. Learned counsel and other Authorized Representatives of the Applicant Companies and the Scrutinizer appointed by this Tribunal will assist the Hon'ble Chairperson and Alternate Chairperson in conducting the meetings and preparing and finalizing the reports.
- xii) It shall be the responsibility of the applicant-companies to ensure that the notices are sent under the signature and supervision of the authorized representative of the concerned Company on the basis of Board Resolutions and that they shall file their affidavit in the Tribunal at least seven days before the date fixed for the meetings.
- xiii) The applicant-companies shall individually and in compliance of the provisions of Section 230(5) of the Companies Act, 2013 and Rule 8 of the 'Rules', send notices in Form No. CAA 3 along with copy of the 'Scheme', the Explanatory Statement and the disclosures mentioned in Rule 6 of the 'Rules' to (a) the Central Government through the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, Punjab & Chandigarh, Chandigarh; (c) The Official

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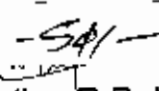
Liquidator, Punjab & Chandigarh, Chandigarh; (d) the Income Tax Department, through the Commissioner of Income Tax II, Central Revenue Building, Model Town Road, Jalandhar 144 001 and (e) the Reserve Bank of India, Department of Non-banking Supervision (DNBS), Chandigarh; and other Sectoral Regulator(s) who may have significant bearing on the operations of the applicant-companies stating that representation, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representation shall be simultaneously sent to the applicant-companies, failing which it shall be presumed that they have no objection to the proposed 'Scheme'.

- xiv) The Applicant-Companies shall further furnish copy of the 'Scheme' free of charge within 1 day of any requisition for the 'Scheme' made by any creditor or member/equity shareholder entitled to attend the meetings as aforesaid.
- xv) The Authorised Representatives of the applicant-companies shall furnish affidavit of service of notices to creditors and members and publication of advertisement in newspapers at least 7 days before the date of the meeting.
- xvi) All the directions shall be complied in accordance with the Companies Act, 2013 read with 'Rules' and the formats prescribed thereunder.

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17. The application stands allowed in the aforesaid terms. It is directed that the learned counsel/Authorized Representative of the applicant-companies shall deliver the copy of this order to the Chairperson, Alternate Chairperson and Scrutinizer immediately. A copy of the order be supplied to the counsel for the applicant-companies forthwith.

List the matter on 30.08.2017 for awaiting the report and for other compliances.


(Justice R.P. Nagrath)
Member (Judicial)

May 16, 2017
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