

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH,  
COURT III**

**C.A. (CAA)/133/MB/2024**

**(Under Sections 230-232 of the Companies Act, 2013 and the rules framed thereunder read with Section 31 of the Insolvency and Bankruptcy Code, 2016)**

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and rules framed thereunder

AND

In the matter of the Scheme of Demerger between SK WHEELS PVT LTD (“Demerged Company” or “First Applicant Company”) and (“Resulting Company” or “Second Applicant Company”) and their respective Shareholders (“the Scheme”) and their respective shareholders and creditors being a part of the Resolution Plan submitted in respect of SK Wheels Pvt. Ltd which has been approved by the National Company Law Tribunal, Mumbai Bench by and under Order dated 19.11.2021 passed in M.A. No. 976/2020 in CP (IB) No. 4301 of 2018.

**SK WHEELS PVT. LTD.  
(DEMERGED COMPANY)**

Through Successful Resolution Applicant, Anil Kumar  
47/1701, NRI Complex,  
Seawood Estate Phase -II,  
Sector 54/56/58, Nerul Navi Mumbai – 400 706.

**CIN: U50500MH2004PTC146157**

*...First Applicant Company/ Transferor Company*

**S. K. HIGH WHEELS PRIVATE LIMITED  
RESULTING COMPANY)**

Ground Floor, Plot No D-267,  
TTC Indl. Area, MIDC Turbhe, Navi Mumbai – 400 705.

**CIN-U34300MH2015PTC265780**

*.... Second Applicant Company/ Transferee Company*

(Hereinafter the First Applicant Company and Second Applicant Company shall collectively be known as Applicant Companies)

**Order Pronounced on 14.02.2025**

**Coram:**

Hon'ble Ms. Lakshmi Gurung, Member (J)  
Hon'ble Sh. Charanjeet Singh Gulati, Member (T)

**Appearances:**

For the Applicant Companies: Adv. Abhishek Anand, Adv. Amar Vivek,  
Adv. Anant Jain, Adv. Damini Srestha.

**Per: SH. CHANRANJEET SINGH GULATI, MEMBER (T)**

**ORDER**

1. The present Scheme of Arrangement is between SK Wheels Pvt. Ltd. ("Demerged Company" or "First Applicant Company" or "Transferor Company") and S. K. High Wheels Private Limited ("Resulting Company" or "Second Applicant Company" Transferee Company) under the aegis of the Resolution Plan submitted in respect of First Applicant Company which was propounded by the Successful Resolution Applicant, Mr. Anil Kumar has been approved by this Bench vide Order dated 09.11.2021 passed in M.A.976/ 2020 in CP (IB) No.4301/2018.

2. **PARTICULARS OF APPLICANT COMPANIES:**

2.1 The First Applicant Company was incorporated under the provisions of Companies Act, 1956 on 10.05.2004.

2.2 The Second Applicant was incorporated under the provisions of Companies Act, 2013 on 20.06.2015.

2.3 The Applicant Companies are not listed on any stock exchange

3. **BACKGROUND:**

- 3.1 The Demerger Scheme forms an integral and intricate part of the aforesaid duly approved Resolution Plan, which would effectively culminate in the demerger of the Applicant Companies.
- 3.2 The First Applicant Company was admitted into CIRP vide order dated 29.03.2019 of this Tribunal.
- 3.3 In the course of CIRP a Resolution Plan in respect of First Applicant Company was submitted by the Successful Resolution Applicant i.e. Mr. Anil Kumar. Mr. Anil Kumar is the common director of both the First and Second Applicant Company.
- 3.4 The Resolution Plan submitted by the SRA was approved with a Voting Percentage of 75.78%. The Resolution Professional accordingly preferred an application bearing I.A. No. 976/2020 seeking approval of the Resolution Plan.
- 3.5 This Tribunal vide its order dated 09.11.2021 approved the said Resolution Plan.
- 3.6 Further the SRA filed an I.A. 80/2022 seeking an exclusion of time of Covid period and extension of time for making further payments. The aforementioned Application was dismissed by the Tribunal vide order dated 04.05.2022.
- 3.7 Subsequently an Application bearing I.A. No.1054 of 2022 was filed by the Resolution Professional of the Corporate Debtor under Section 33 (3) seeking initiation of liquidation of the Corporate Debtor in view of dismissal of the extension Application.

- 3.8 This Tribunal observed that the said Application was filed by the Resolution Professional at the behest of Implementation and Monitoring Committee (hereinafter referred to as the '**IMC**') only on the oral recommendation of the IMC, in such matters the view of the CoC consisting of the Financial Creditor and a major beneficiary of the Resolution Process needs to be consulted.
- 3.9 This Tribunal therefore vide its order dated 04.05.2022 directed the Resolution Professional to convene a Meeting of the CoC and file appropriate application for liquidation. Accordingly, Application bearing I.A. No. 1054 of 2022 was disposed.
- 3.10 In the meeting dated 08.07.2022, Resolution Professional invited all Members of CoC where a Resolution pertaining to the initiation of the Liquidation of the Corporate Debtor was tabled before the CoC. Subsequently, the CoC decided to repudiate the liquidation of the Corporate Debtor with a voting share of 59.73%.
- 3.11 However, Edelweiss Asset Reconstruction Company Ltd., being a Financial Creditor of the Corporate Debtor holding a voting share of 20.28%, voted against the majority decision and proceeded to prefer Application bearing No. I.A. No. 2767 of 2022 before the Tribunal under Section 33 (3) seeking commencement of Liquidation Process.
- 3.12 Subsequently, on 02.12.2022, a Meeting of Financial Creditors of the Corporate Debtor was held where the Financial Creditors with a majority decision of 69.04%, decided to extend the time for SRA to make the payments as per schedule contained in the Resolution.
- 3.13 In the meantime, an application bearing I.A. No.2767 of 2022, was heard by the Tribunal. This Tribunal by its order dated

13.02.2023 directed for initiation of liquidation of the Corporate Debtor.

3.14 Pursuant thereof the SRA preferred an Appeal bearing No. CA (AT)(Ins.) 519/2023 against the Order dated 13.02.2023 before the Hon'ble Appellate Tribunal. The Hon'ble Appellate Tribunal vide its Order dated 29.04.2024 was pleased to set aside the Order dated 13.02.2023 initiating the Liquidation of the Corporate Debtor. Additionally, the SRA was also granted extension of time to make payments as required in terms of the Resolution Plan.

3.15 Thereafter, an Appeal bearing No. Civil Appeal No. 7224-7225/2024 was preferred before the Hon'ble Supreme Court against the Order dated 29.04.2024 passed by the Hon'ble Appellate Tribunal. The Hon'ble Supreme Court vide its Order dated 15.07.2024 was pleased to uphold the decision of the Hon'ble Appellate Tribunal. Hence, the Order dated 09.11.2021 approving the Resolution Plan has attained finality.

4. It is submitted that “Demerged Undertaking” shall primarily mean all business activities along with all the assets and liabilities of the Demerged Company related to the Auto Dealership and Workshop business as on the Appointed Date. However, as the Scheme is an integral part of the Resolution Plan submitted by Resolution Applicant, the liabilities / claims of Corporate Debtor, including liabilities / claims pertaining to the Auto Dealership and Workshop business, are proposed to be settled as per the Plan. Therefore, the liabilities of Auto Dealership and Workshop business as part of the Demerged Undertaking shall be restricted only to such amount as specified in the detailed Resolution Plan.

The details of the Demerged undertaking have been elaborately explained in clause 3.9 of the Scheme.

5. **Relevant Clause from the Resolution Plan giving details of the Demerger:**

The relevant clause is reproduced herein under:

*C) DEMERGER OR AUTO DEALERSHIP AND WORKSHOP BUSINESS/ AND REAL ESTATE DEVELOPMENT BUSINESS INTO TWO SEPARATE ENTITIES*

- *In order to maximise the value of assets and provide distinct focus to the diverse business segments of the Company, as a part of the Resolution Plan Approval, there will be a demerger of the Company into two separate companies. The existing company SK Wheels Private Limited shall carry out the real estate... business, A demerged Resulting Entity shall be formed which will carry out the Auto Dealership and Workshop Business*

6. **NATURE OF BUSINESS OF THE APPLICANT COMPANIES:**

6.1 The nature of the business of the Applicant Companies is as under:

The Transferor/First Applicant Company/ Demerged Company is primarily engaged in the business of manufacturing, buying, selling, reselling, sub-contracting, hiring, altering, importing, exporting, designing, job working, servicing, cleaning of vehicles and to carry on the business of spare parts, stockists, franchisers, agents and brokers, wholesalers and retailers of motor parts as set out in the main object of the Memorandum of Association.

6.2 The Transferee/ Second Applicant Company/ Resulting Company is primarily engaged in the business of manufacturing, buying, selling, reselling, contracting, sub-contracting, hiring, altering, importing, exporting, designing, develop, drawing, job working, servicing, cleaning of vehicles and to act as agents, stockists,

distributors, advisors, consultants, franchisers, market agents, brokers, wholesalers, retailers sales promoter and conducting the business of motor parts, motor vehicles and all incidental acts and things necessary for the attainment of above objects as set out in the main object of the Memorandum of Association.

6.3 The Implementation and Monitoring Committee of the First Applicant Company in its 8<sup>th</sup> Meeting dated 11.05.2024 approved Scheme of Demerger.

6.4 The Board of Directors of the Second Applicant Company have approved the Scheme in their meeting held on 09.05.2024.

7. **RATIONALE OF THE SCHEME:**

“Rationale For the Demerger”:

7.1 *In order to ensure sustainable long-term growth / profitability it requires focused management attention, different set of skill and resources to meet competitive, regulatory environment and to mitigate risk, the Resolution Applicant proposes to transfer and vest the Demerged Undertaking into the Resulting Company.*

7.2 *The proposed segregation of the activities of the Demerged Company is to ensure enhanced value for the shareholders in future and allow a focused strategy in operations of the Companies, which would be in the best interests of the Demerged Company, Resulting Company, as well as their shareholders and other stakeholders.*

7.3 *The nature of risk and return involved in businesses of the separate Undertakings of the Demerged Company are distinct from each other. The proposed demerger will lend greater focus to the operations of each of these Undertakings.*

7.4 *As mentioned in the Resolution Plan, the demerger will allow the proposed incoming real estate developer for the said project with requisite comfort to operate on a project without concern of other*

*business contingencies and unrelated liabilities.*

7.5 *Real estate business being of a distinct nature with specific regulatory compliances would be better served if operating as a separate business undertaking.*

**8. SHARE CAPITAL OF THE APPLICANT COMPANIES:**

The Authorized, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies as on 09.11.2021 are as follows:

**First Applicant Company:**

<b>Authorized Share Capital</b>	<b>Amount in Rs</b>
1,50,00,000 Equity shares of Rs. 10/- each	15,00,00,000
<b>Total</b>	15,00,00,000
<b>Issued, subscribed and paid-up Share Capital</b>	<b>Amount in Rs</b>
1,49,99,900 Equity Shares of Re. 10/- each	14,99,99,000
<b>Total</b>	14,99,99,000

**Second Applicant Company:**

<b>Authorized Share Capital</b>	<b>Amount in Rs</b>
2,00,000/- Equity Shares of Rs.10/- each	20,00,000/-
<b>Total</b>	20,00,000/-
<b>Issued, subscribed and paid-up Share Capital</b>	<b>Amount in Rs</b>
37,370 Equity Shares of Rs.10/- each	37,3700
<b>Total</b>	37,3700

As per the perusal of the Audited Financial statements for the year ended 31.03.2018 there has been no change in the authorized, issued, subscribed and paid up share of the Resulting Company.



9. **CONSIDERATION:**

A consideration for the proposed demerger in the Scheme is as under:

9.1 Upon the infusion of the upfront funds in the Demerged Company and the Resulting Company, respectively, by the Resolution Applicant pursuant to the Resolution Plan, the Demerged Company and the Resulting Company, respectively, shall, without any further act or deed, issue and allot equity shares of Rs 10/- (Ten) each for such funds infused in the Demerged Company and the Resulting Company respectively.

9.2 Upon the effectiveness of the Scheme, in consideration of the demerger and the transfer and vesting of the Demerged Undertaking into the Resulting Company pursuant to this Scheme, the Resulting Company shall, without any further act or deed, issue and allot to each equity shareholder of the Demerged Company whose name is recorded in the register of members of the Demerged Company on the ("**Record Date**") *which means the date to be fixed by the Board of Directors of the Demerged Company, in consultation with the Resulting Company for the purpose of determining the members of the Demerged Company to whom shares in the Resulting Company will be allotted under the Scheme or to their respective heirs, executors, administrators or other legal representatives or the successors-in-title as the case may be, as under:*

*"1 (One) Equity Share of Rs. 10/- (Ten) each credited as fully paid up in the Resulting Company for every 1 (One) Equity Shares of Rs. 10/- (Ten) each held in the Demerged Company as on the Record Date".*

9.3 The equity shares to be issued and allotted shall be subject to the terms and conditions set out in the Memorandum of Association and Articles of Association of the Resulting Company. The equity

shares shall be issued in physical form by the Demerged Company and the Resulting Company.

- 9.4 For the purpose of Clause at Para 9.1 and 9.2 above, fractional entitlements, if any, shall be rounded off to the nearest integer.
- 9.5 In the event the Resulting Company / Demerged Company restructures its equity share capital by way of share split/ consolidations/issue of bonus or rights shares/ further issue of shares during the pendency of the Scheme, the share exchange ratio as defined in Clause at Para 9.2 above, shall be adjusted accordingly to take into account the effect of such corporate actions.
- 9.6 The Demerged Company and the Resulting Company may increase / modify its authorized share capital, if necessary, to facilitate allotment of its equity shares to the equity shareholders of the Demerged Company as provided in Clause at Para 9.1 and 9.2 above.
- 9.7 Upon the Scheme becoming effective, the issued, subscribed and paid-up share capital of the Demerged Company and the Resulting Company shall stand suitably increased/ modify consequent upon the issuance of Equity shares in accordance with Clause at Para 9.1 and 9.2 above.
- 9.8 That as on the date the Demerged Company has two equity shareholders, Mr Akshit Lahoria holds 5000 Equity shares approximately 13% of the shareholding of the Company and Mr. Anil Kumar holding 32,370 Equity shares holding approximately 87% of the shareholding of the Company has approved the Scheme of Demerger and have consented to the Scheme of Arrangement.

10. **MEETING OF EQUITY SHAREHOLDERS OF THE APPLICANT COMPANIES:**

10.1 The consent of equity shareholders of First Applicant Company is deemed to have been granted on the approval of the Resolution Plan under Section 31(1) of IBC, 2016, given that the said Scheme is part of the approved Resolution Plan.

10.2 The legal position is apparent from **General Circular IBC/01/2017** dated 25.10.2017 issued by Ministry of Corporate Affairs, Government of India and the Explanation to Section 30(2) of IBC, 2016. The Explanation to Section 30(2) of IBC as follows: *“Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18) of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.”*

10.3 In view of the aforesaid position there is no requirement for obtaining consent of the Equity Shareholders of the First Applicant Company and accordingly, the meetings of the equity shareholders of First Applicant Company is **dispensed with.**

10.4 Mr. Akshit Lahoria holds 5000 Equity shares approximately 13% of the shareholding of the Demerged Company and Mr. Anil Kumar holding 32,370 Equity shares holding approximately 87% of the shareholding of the Company have approved the Scheme of Demerger therefore the meetings of the equity shareholders of Second Applicant Company is **dispensed with.**

11. **MEETING OF SECURED CREDITORS OF APPLICANT COMPANIES:**

11.1 The of First Applicant Company have already accorded their consent to the said Scheme as the creditors of First Applicant Company formed the part of Committee of Creditors and the Committee of Creditors in its 12th Meeting of the CoC dated 23.01.2020 and 8th meeting of IMC dated 11.05.2024 has accorded its sanction to the said Scheme which was forming part of Resolution Plan, which was approved by the Committee of Creditors under Section 30(4) of the Insolvency and Bankruptcy Code, and thus, the requirement of consent of creditors of First Applicant Company stands satisfied. The relevant paragraphs of the 12<sup>th</sup> CoC Meeting and 8<sup>th</sup> IMC Meeting are reproduced herein under:

**12<sup>th</sup> CoC Meeting:**

*“Resolved that the consent of the Committee of Creditors be and is hereby accorded to approve Resolution Plan as submitted by the sole resolution applicant Promoter- Director Mr. Anil Kumar after having considered its feasibility and viability, and the distribution of proceeds to all the stakeholders including the Financial Creditors as proposed therein.”*

The Resolution Plan inclusive of the Demerger Scheme was approved with a voting percentage of 75.78%

**8<sup>th</sup> IMC Meeting:**

*“To vote upon to approve the “Scheme of Demerger” proposed by the Successful Resolution Applicant as per the approved resolution plan:*

*The Supervisor specifically asked Cosmos Bank if they are ok with the Scheme of Demerger and the draft of the same, and can he record their approval to the Scheme of Demerger and SRA to be authorized to file necessary application with the Hon'ble NCLT. The Cosmos Bank confirmed their approval.”*

11.2 It is submitted that in any event, the Resolution Plan, of which the Scheme is an integral part, is binding on the creditors of the First Applicant Company, i.e. the Corporate Debtor in the CIRP, according to the Approval Order, under Section 31(1) of IBC. The requirement of obtaining the consent of the creditors of the First Applicant Company is satisfied. Accordingly, the requirement of obtaining the consent of the creditors of the First Applicant Company is **dispensed with**.

11.3 Regarding the Applicant Company 2, the Counsel for the Applicant Companies has submitted that there are no creditors; However, it is pertinent to note that Applicant 2 Company had not annexed CA Certificate certifying that there are nil creditors, therefore this tribunal vide its order dated 30.01.2024 directed the Applicant Companies to file the same. Pursuant thereto the Applicant Companies have filed an Additional Affidavit dated 01.02.2025 annexing Certificate issued by the CA .AT Upadhyya & Co certifying that list of Secured and Unsecured Creditors of the Applicant 2 Company as on 30.01.2025 which shows that there are nil creditors. Thus, the question of convening the meeting of creditors for obtaining their consent to the Scheme does not arise.

11.4 The Applicant Companies shall serve the Notice in terms of Section 230 (5) of the Companies Act, 2013, upon:

a) The Central Government, through Regional Director,

Western Region, Ministry of Corporate Affairs;

- b) Jurisdictional Registrar of Companies, Mumbai, Maharashtra;
  - c) Jurisdictional Income Tax Authority within whose jurisdiction, the Applicant Company's assessment is made; and the 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 – 400 020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in];
  - d) Jurisdictional Goods and Services Tax Authority;
  - e) Any other Sectoral/ Regulatory Authorities relevant to the Applicant Companies or their business; stating therein that they may submit their representations in relation to the Scheme, if any, to this Tribunal within 30 (thirty) days from the date of receipt of the said notice, with a copy thereof to the respective Applicant Companies. The Notice shall be served through by Registered Post-AD or Speed Post or Hand Delivery and by email along with a copy of Scheme.
12. The Applicant Companies shall host notices along with the copy of the Scheme on their respective websites, if any.
13. The Applicant Companies to file a Joint Affidavit of Service within 10 (ten) working days after serving the notices to all the regulatory authorities as stated above and to report this Tribunal that the directions regarding the issue of notices have been duly complied with.

14. The Second Motion Petition be filed within **30 days**.
15. Ordered accordingly.

**SD/-**

**CHARANJEET SINGH GULATI**  
**MEMBER (TECHNICAL)**

Apurva LRA

**SD/-**

**LAKSHMI GURUNG**  
**MEMBER(JUDICIAL)**