

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
COMPANY JURISDICTION

+ **CP No. 7 of 2008**

% **DATED 04.03.2008**

In the matter of the Companies Act, 1956:

Composite Scheme of Arrangement of:

Eicher Goodearth Holdings Pvt. Ltd. ... Petitioner/Transferor
company no.1

and

Eicher Holding Pvt. Ltd. ... Petitioner/Transferor
company no.2

and

Eicher Goodearth Ltd. ... Petitioner/Transferee/
Demerged company

and

Eicher Ltd. ... Petitioner/Transferor
company no.3

and

Eicher Goodearth India Pvt. Ltd. ... Petitioner/Resulting
Company

Through : Mr. Mahesh Aggarwal, Mr. Akshay Ringe
& Mr. B.S. Shukla, Advocates
Ms. Manisha Tyagi, for the OL
Mr. R.D. Kashyap, Dy. ROC

VIPIN SANGHI, J. (ORAL)

1. This is a petition under Sections 391 and 394 of the
Companies Act, 1956 seeking sanction of the composite Scheme of
Arrangement between Eicher Goodearth Holdings Pvt. Ltd.

(Transferor company no.1), Eicher Holding Pvt. Ltd. (Transferor company no.2), Eicher Goodearth Ltd. (Transferee/Demerged company), Eicher Ltd. (Transferor company no.3) and Eicher Goodearth India Pvt. Ltd. (Resulting Company). The Scheme envisages the amalgamation of entire business and undertakings of Transferor companies no.1&2 with the Transferee/Demerged company, the demerger of the Operating Business undertaking of the Transferee/Demerged company (as defined in Clause 1.13 of the Scheme) and its subsequent transfer to the Resulting company, and the amalgamation of Transferor company no.3 with the Residual Transferee/Demerged company.

2. The registered offices of all the Transferor companies, the Transferee/Demerged company and the Resulting company are situated at Eicher House, 12 Commercial Complex, Greater Kailash II (Masjid Moth), New Delhi - 110048, that is, within the jurisdiction of this Court.

3. The Transferor company no.1 was incorporated on 10.08.1978. The authorized share capital of the Transferor company no.1 is Rs.2,00,000/- divided into 14,870 equity shares of Rs.10/- each and 513 preference shares of Rs.100/- each. The issued, subscribed and paid up equity share capital of the Transferor company no.1 is Rs.1,05,500/- divided into 10,550 equity shares of Rs.10/- each.

4. The Transferor company no.2 was incorporated on 19.03.1987. The authorized share capital of the Transferor company no.2 is Rs.2,00,000/- divided into 20,000 equity shares of Rs.10/- each. The issued, subscribed and paid up equity share capital of the Transferor company no.2 is Rs.1,05,500/- divided into 10,550 equity shares of Rs.10/- each.

5. The Transferee/Demerged company was incorporated on 24.04.1959. The authorized share capital of the Transferee/Demerged company is Rs.5,50,00,000/- divided into 52,45,000 equity shares of Rs.10/- each and 25,500 redeemable cumulative preference shares of Rs.100/- each. The issued, subscribed and paid up equity share capital of the Transferee/Demerged company is Rs.76,69,280/- divided into 7,66,928 equity shares of Rs.10/- each.

6. The Transferor company no.3 was incorporated on 03.11.1955. The authorized share capital of the Transferor company no.3 is Rs.40,00,00,000/- divided into 4,00,00,000 equity shares of Rs.10/- each and 10,00,000 redeemable cumulative preference shares of Rs.100/- each. The issued, subscribed and paid up equity share capital of the Transferor company no.3 is Rs.11,14,16,240/- divided into 1,11,41,624 equity shares of Rs.10/- each.

7. The Resulting company was incorporated on 03.12.2007. The authorized share capital of the Resulting company

is Rs.1,00,00,000/- divided into 10,00,000 equity shares of Rs.10/- each and 10,00,000 redeemable cumulative preference shares of Rs.100/- each. The issued, subscribed and paid-up equity share capital of the Resulting company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

8. The petitioner companies had filed the joint 1st motion Company Application (M) No. 178/2007, which was allowed by order dated 19th December, 2007. All the equity shareholders, secured and unsecured creditors had either filed their given their consent in writing or have been paid off. Copies of all the consents had been filed on record. Therefore, by the aforesaid order, the requirement of conducting statutory meetings of equity shareholders, secured and unsecured creditors of all the petitioner companies were dispensed with.

9. Vide order dated 9th January 2008, citations were directed to be published in "The Statesman" (English edition) and "Jansatta" (Hindi edition), in terms of Companies (Court) Rules, 1959. An affidavit dated 31st January 2008 has been filed by one Mr. Nanak Ram, the office clerk of the Counsel of the petitioner companies about the publication of the citations in "The Statesman" (English) and "Jansatta" (Hindi) on 28th January 2008. The said publication containing the said citations have also been produced along with the affidavit.

10. Notices were issued to the OL and the Regional Director (Northern Region) vide order dated 9th January 2008. Pursuant to the notice issued to the OL, a report dated 22nd February 2008 has been filed by the Official Liquidator. The Official Liquidator sought information from the petitioner company vide its letter no. OL/TECH/AMAL/110/895 dated 8th February 2008, upon which the requisite information was furnished by the petitioner companies.

11. The OL has considered the accounts of petitioner companies as on 31st March 2007. The OL in its report has stated that he has not received any complaint against the Scheme of Arrangement from any person/parties interested in the scheme in any manner whatsoever, and on the basis of information submitted by the petitioner companies. Thus it was inferred that the affairs of the petitioner companies do not appear to have been conducted in a manner prejudicial to the interest of the members, creditors, or public interest, and is well in accordance with the provisions of Section 394(1) of the Companies Act, 1956.

12. The report has also been filed by Shri Dhan Raj, Regional Director (Northern Region) by an affidavit, dated 28th February 2008. Relying on Clause 9.1 of Part II of the Scheme of Arrangement, it was submitted that all the employees of the Transferor companies shall become the employees of the

Transferee company, and all employees engaged in the Operating Business of the Demerged company shall become the employees of the Resulting company, without any break or interruption in their services upon the sanctioning of the said Scheme of Arrangement.

13. The Regional Director further submitted that in Para 7 of Para-II and para 25 of Part-IV of the Scheme, which provides for the Accounting Standards, there is no mention whether the petitioner companies have complied with the Accounting Standard-14 (Accounting for Amalgamation), issued by the Institute of Chartered Accountants of India. The petitioners have filed an affidavit dated 1st March 2008, whereby they have undertaken that they will adopt the said Accounting Standard-14. Thus the objection of the Regional Director does not subsist.

14. There is no other legal impediment to sanction of the Scheme of Arrangement which is annexed to the petition. Consequently, sanction is hereby granted to the Scheme of Arrangement of the amalgamation of Transferor companies no.1&2 with the Transferee/Demerged company, the demerger of the Operating Business of the Transferee/Demerged company and its transfer to the Resulting company, and the amalgamation of Transferor company no.3 with the Residual Transferee/Demerged company, under Sections 391 and 394 of the Companies Act, 1956. The Transferee company and the Resulting company will comply

with the statutory requirements in accordance with law. Certified copies of this order be filed with the Registrar of Companies within five weeks. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty that is payable in accordance to law. Upon sanction becoming effective from the appointed date of arrangement, that is 1st April 2007, the Transferor companies no.1&2, and effective 2nd April 2007, the Transferor company no.3, shall stand dissolved without being wound up. Costs of Rs.10000/- to be paid in aggregate as the O.L. fee to the Common Pool Fund.

15. The petition is disposed of in terms of the above order.

March 4, 2008
a/P.K. BABBAR

VIPIN SANGHI, J.