

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 COMPANY JURISDICTION
+ **COMPANY APPLICATION (MAIN) No.54 of 2008**
% **09.04.2008**

In the matter of the:
Companies Act, 1956

And

Applications under Sections 391(1), 393 & 394 of the
Companies Act, 1956

Scheme of Arrangement of:

New Holland Tractors (India) Pvt. Ltd. ... Applicant/Transferor
Company

With

Fiat India Pvt. Ltd. ... Transferee Company

Through: Mr.Rishi Agarwala, Advocates

VIPIN SANGHI, J. (ORAL)

1. This is an application under Section 391(1) read with Sections 393 and 394 of the Companies Act, 1956 (hereinafter referred to as the Act) by applicant New Holland Tractors (India) Pvt. Ltd.(Applicant/Transferor Company) for amalgamation with Fiat India Pvt. Ltd.(Transferee Company) seeking directions from the Court for convening, holding and conducting separate meetings of the equity shareholders, secured and unsecured creditors, which are statutorily required for sanctioning the scheme of arrangement for amalgamation of applicant companies .

2. The registered office of the Applicant/Transferor

company is situated at 50, Okhla Industrial Estate Phase-III, New Delhi-110020, that is, within the jurisdiction of this Court.

3. The Board of Directors of the Applicant/Transferor company and Transferee Company have passed separate resolutions approving the scheme of arrangement on 08.02.2008 and 20.03.2008 respectively, copies of which have been filed on record.

4. Both the companies have filed their respective Memorandums and Articles of Association along with the application. The audited balance sheets of both the Companies as on 31.3.2007 have been filed on record.

5. The Transferee company and the Transferor company have also filed the scheme of amalgamation and salient features of the amalgamation have been incorporated and detailed in the application.

6. The Applicant company has stated that no proceedings under Sections 235 to 251 of the Act are pending against the Transferor company and Transferee company.

7. The Applicant/Transferor Company was incorporated on 9.12.1998 and the authorized share capital of the Transferor company is Rs.3,10,00,00,000/- divided into 1,10,71,42,857 equity shares of Rs.2.80/- each. The issued, subscribed and paid up share capital of the Transferor company is Rs.1,94,98,36,196/- divided into 69,63,69,930 equity shares of Rs.2.80/- each.

8. The Transferee Company was incorporated on

23.11.1992 and the authorized share capital of the Transferee company is Rs.20,00,00,00,000/- divided into 15 crore equity shares of Rs.100/- each and 5 crore 9% Preference Shares of Rs.100/- each. The issued, subscribed and paid up Share Capital of the Transferee Company is Rs.8,36,36,17,700/- divided into 8,29,49,705 equity shares of Rs.100/- each and 9% Preference Shareholders of Rs.100/- each.

9. The Applicant/Transferor Company has 2 equity shareholders. Both the equity shareholders of the Applicant/Transferor company have given their consents in the writing, the same has been filed on record. Thus it is just and equitable to dispense with the holding of the meeting of the equity shareholders of the transferor company, which is otherwise required for considering, and if thought fit, approving the scheme of amalgamation of the applicant companies.

10. The Applicant/Transferor company does not have any secured creditors as can be seen from the certificate of the Chartered Accountant. Thus it is just and equitable to dispense with the holding of the meeting of the secured Creditors of the transferor company, which is otherwise required for considering, and if thought fit, approving the scheme of amalgamation of the applicant companies.

11. The Applicant/Transferor Company has 1334 Unsecured Creditors. The applicant has sought the holding of the meeting of its Unsecured Creditors for considering, and if thought fit, approving the scheme. Considering the facts and circumstances, the meeting of the Unsecured Creditors of the Transferor Company, be

held on 24.05.2008 at 11.00 am, at Air Force Auditorium, Subroto Park, New Delhi-110010. I appoint Shri D.K. Rustagi, Advocate Mobile No.9212733559, as the Chairperson and Mr. Anurag Chawla, Advocate Mobile No. 981140609, as the Alternate Chairperson for the meeting of the Unsecured Creditors of the Transferor company. The quorum for the said meeting shall be 150 Unsecured Creditors in number constituting 25% in value of the total Unsecured debt. The Chairperson and the Alternate Chairperson shall ensure that the notices convening the meeting of unsecured creditors of the applicant company along with copies of scheme and statement under Section 393 of the Companies Act, 1956, shall be sent to the unsecured creditors of the Transferor company by UPC at their registered or last known addresses at least 21 days before the date appointed for meeting, in their presence or in the presence of their authorized representatives. The Counsel for the applicant has sought dispensation of the requirement of attaching the scheme and statement along with the notices for unsecured creditors having a debt of below Rs.1 lac, as they are very large in number and very less in value of the total unsecured debt. Considering the aforesaid the notice need not be accompanied by the statutory statement and the scheme, for the unsecured creditors having a debt of less than Rs.1 lac. The said notice shall mention that the aforesaid creditors shall be entitled to obtain the copy of the scheme and the proxy form from the registered office of the applicant company, during working hours, on working days. The notice shall also be published in newspapers 'The Indian Express'

(English edition) and 'Jansatta' (Hindi edition) in terms of the Companies (Court) Rules, 1959, at least 21 days before the day appointed for the meeting.

12. In the aforesaid meeting, voting by proxy shall be permitted, if prescribed form duly signed by the person entitled to attend and vote at the meeting is filed with the registered office of the applicant company at least forty eight hours before the meeting. The chairpersons and the alternate chairpersons shall also ensure that the proxy registers are properly maintained and they shall inspect the same from time to time. In case the quorum for any of the aforesaid meeting is not met, then the meeting shall be adjourned by 30 minutes and then the members present and voting shall constitute the required quorum. For the purpose of quorum, the valid proxies shall also be considered.

13. The fees of the Chairperson for the meeting aforesaid shall be Rs.45,000/- and the fees of the Alternate Chairperson shall be Rs.40,000/- in addition to meeting their incidental expenses. The Chairperson appointed by this Court shall file their report within two weeks from the date of holding of the meeting. The Alternate Chairperson shall also attend the meeting and assist the respective Chairperson in conducting the meeting and in filing the report.

14. The Chairperson and the Alternate Chairperson shall be at the liberty to issue directions to the management of the Applicant companies so that meeting of the Unsecured Creditor is conducted in

a just, free and fair manner.

15. The application is allowed in terms of the above order.

16. Dasti.

April 9, 2008

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**(VIPIN SANGHI)
JUDGE**