

Edgar Filing: FINOVA CAPITAL CORP - Form SC 13D

FINOVA CAPITAL CORP
Form SC 13D
November 23, 2001

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

SCHEDULE 13D
(Rule 13d-101)

INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT
TO RULE 13d-1(a) AND AMENDMENTS THERETO FILED PURSUANT TO
RULE 13d-2(a)

SMART CHOICE AUTOMOTIVE GROUP, INC.

(Name of Issuer)

COMMON STOCK, \$.01 PAR VALUE

(Title of Class of Securities)

831686 20 9

(CUSIP Number)

Richard Lieberman
FINOVA CAPITAL CORPORATION.
4800 North Scottsdale Boulevard
Scottsdale, AZ 85251
(480) 636-4800

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communication)

November 8, 2001

(Date of Event Which Requires Filing of This Statement)

If the filing persons has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box .

(Continued on following pages)

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The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes)

CUSIP No. 831686 20 9

13D

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NAME OF REPORTING PERSON

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1. SS OR IRS IDENTIFICATION NO. OF ABOVE PERSON

Finova Capital Corporation
94-1278569

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)
(b)

N/A

3. SEC USE ONLY

4. SOURCE OF FUNDS

OO

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

N/A

6. CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

7. SOLE VOTING POWER
NUMBER OF SHARES 44,857,909

8. SHARED VOTING POWER
BENEFICIALLY OWNED BY EACH 0

9. SOLE DISPOSITIVE POWER
REPORTING PERSON 44,857,909

10. SHARED DISPOSITIVE POWER
WITH 0

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
44,857,909

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

N/A

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
93.9%

14. TYPE OF REPORTING PERSON
CO

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SCHEDULE 13D OF FINOVA CAPITAL CORPORATION
WITH RESPECT TO SECURITIES OF SMART CHOICE AUTOMOTIVE GROUP, INC.

Item 1. Security and Issuer

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Common stock, par value \$0.01 per share

Smart Choice Automotive Group, Inc.
5200 South Washington Avenue
Titusville, FL 33780

Item 2. Identity and Background

This statement is being filed by Finova Capital Corporation ("Finova"), a Delaware corporation, which is engaged in the business of providing commercial finance and capital to mid-size businesses in the United States and abroad. Finova's principal business and office address is 4800 North Scottsdale Boulevard, Scottsdale, AZ 85351. Finova has not been convicted of a criminal proceeding during the last five years, nor has Finova during the last five years been a party to any civil proceeding of a judicial or administrative body of competent jurisdiction which resulted in a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activity subject to, federal or state securities laws or finding any violation with respect to such laws.

The executive officers and director of Finova, and/or any person controlling Finova, are identified below:

The executive officers of Finova are as follows:

| | |
|------------------------|--|
| Ian M. Cumming | Chairman of the Board |
| Lawrence S. Hershfield | Chief Executive Officer |
| Joseph S. Steinberg | President |
| William J. Hallinan | Executive Vice President-General Counsel & Secretary |
| Randolph Todd Abrahams | Senior Vice President-Healthcare Finance |
| Derek C. Bruns | Senior Vice President-Internal Audit |
| John B. Burtchaell Jr. | Senior Vice President-Special Assets |
| Anthony P. DeMarco | Senior Vice President-Corporate Credit & Reporting |
| Burt M. Feinberg | Senior Vice President-Portfolio Management |
| Jack Fields III | Executive Vice President-Specialty Finance |
| Glenn E. Gray | Senior Vice President-Portfolio Management |
| Randall R. Heller | Senior Vice President-Portfolio Management |
| Richard Lieberman | Senior Vice President, Deputy General Counsel and Secretary |
| Don A. Luttenegger | Senior Vice President-Transportation Finance |
| Thomas E. Mara | Senior Vice President |
| Bruno A. Marszowski | Senior Vice President-Controller and Chief Financial Officer |
| Scott H. Mitchell | Senior Vice President-National Audit Manager |
| Joseph Orlando | Senior Vice President |

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| | |
|----------------------|--|
| Jeffrey A. Owings | Senior Vice President-Resort Finance Lending |
| William C. Roche | Senior Vice President-Chief Administrative Officer |
| Mirian C. Santa Cruz | Senior Vice President-Special Assets |
| Stuart A. Tashlik | Senior Vice President-Chief Financial Officer |

The directors of Finova, including their occupations and businesses

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addresses are as follows:

Thomas F. Boland
Managing Director
Seneca Financial Group, Inc.
39 Lewis Street
Greenwich, CT 06830

Ian M. Cumming
Leucadia National Corporation
529 East South Temple
Salt Lake City, UT 84102

G. Robert Durham
244 Carlyle Lake Drive
Creve Coeur, MO 63141

Lawrence Hershfield
The FINOVA Group Inc
4800 N. Scottsdale Road
Scottsdale, AZ 85251

R. Gregory Morgan
Munger, Tolles & Olson LLP
355 South Grand Avenue, 35 FL
Los Angeles, CA 90071

Kenneth R. Smith
Department of Economics
McClelland Hall Room #430MM
The University of Arizona
Tucson, Arizona 85721

Joseph S. Steinberg
Leucadia National Corporation
315 Park Avenue South, 20 FL
New York, NY 10010

Finova is a wholly-owned subsidiary of FINOVA Group, Inc. The executive officers and principal place of business of FINOVA Group, Inc. are as follows:

Ian M. Cumming

Chairman of the Board

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Lawrence S. Hershfield
Joseph S. Steinberg
William J. Hallinan
Derek C. Bruns
Bruno A. Marszowski
William C. Roche
Stuart A. Tashlik
Richard Lieberman

Chief Executive Officer
President
Executive Vice President-General Counsel & Secretary
Senior Vice President-Internal Audit
Senior Vice President-Controller and Chief Financial Officer
Senior Vice President and Chief Administrative Officer
Senior Vice President-Planning and Communications
Senior Vice President, General Counsel and Secretary

FINOVA Group, Inc.
4800 Scottsdale Road
Scottsdale, Arizona 85251

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The directors of FINOVA Group, Inc., including their occupations and businesses addresses are as follows:

Thomas F. Boland
Managing Director
Seneca Financial Group, Inc.
39 Lewis Street
Greenwich, CT 06830

Ian M. Cumming
Leucadia National Corporation
529 East South Temple
Salt Lake City, UT 84102

G. Robert Durham
244 Carlyle Lake Drive
Creve Coeur, MO 63141

Lawrence Hershfield
The FINOVA Group Inc
4800 N. Scottsdale Road
Scottsdale, AZ 85251

R. Gregory Morgan
Munger, Tolles & Olson LLP
355 South Grand Avenue, 35 FL
Los Angeles, CA 90071

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Department of Economics
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The University of Arizona
Tucson, Arizona 85721

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Joseph S. Steinberg
Leucadia National Corporation
315 Park Avenue South, 20 FL
New York, NY 10010

None of the foregoing persons has been convicted in a criminal proceeding during the last five years nor has any such person during the last five years been a party to any civil proceeding of a judicial or administrative body of competent jurisdiction which resulted in a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

Item 3. Source and Amount of Funds or Other Consideration.

The Issuer and Crown Group, Inc. are guarantors, under amended and restated guaranties dated November 18, 1999 (the "Guaranties," and each a "Guaranty"), for certain related parties in connection with debt owed to Finova under that Second Amended and Restated Loan and Security Agreement dated as of November 9, 1998 ("Loan Agreement"), as amended by that Third Amended and Restated Schedule to the Loan Agreement dated as of September 25, 2000. The securities described in Item 5 hereof were acquired in exchange for Finova entering into that Forbearance Agreement among Finova, the Issuer and related

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parties of the Issuer dated November 8, 2001 (the "Forbearance Agreement") (as described in Item 6) and that Settlement Agreement between Finova and Crown Group, Inc. dated November 8, 2001 (the "Settlement Agreement") (as described in Item 6). The Forbearance Agreement and the Settlement Agreement are attached hereto as Exhibits 1 and 2, respectively, and are expressly incorporated by reference herein.

Item 4. Purpose of Transaction.

The purpose of the transaction was to facilitate the continued operations of the Issuer. As described in greater detail in the Forbearance Agreement, material events of default under the Loan Agreement entitled Finova to exercise its remedies against the Issuer and its related parties and subsidiaries under the Loan Agreement and the Guaranties, including the immediate recovery of collateral. Finova acquired an option to purchase the Issuer's remaining authorized but unissued common stock as consideration for the partial and conditional forbearance of its rights and remedies against the Issuer under the Loan Agreement and Issuer's Guaranty. In addition, pursuant to the Settlement Agreement, Finova settled the limited liability of Crown Group, Inc. under its Guaranty in exchange for a substantial cash payment by Crown Group, Inc. and an option to purchase shares of the Issuer held by Crown Group, Inc.

Pursuant to the Forbearance Agreement, the Issuer agreed to wind down the operations of its unprofitable Florida subsidiaries and Finova foreclosed upon certain assets from these subsidiaries that were collateral under the Loan Agreement. These subsidiaries and the assets foreclosed upon by Finova represent a material portion of the business of the Issuer. However, the execution of the Forbearance Agreement allows the continued operations of the Issuer and its subsidiaries with operations in Texas.

Finova does not presently intend to exercise its options to purchase stock of the Issuer from either Crown Group, Inc. or from the Issuer.

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There is no affiliation between Finova and Crown Group, Inc. Other than described above, Finova has no present intentions of causing any of the acts or events described in Item 4 of Schedule 13D.

Item 5. Interest in the Securities of the Issuer.

(a) Finova beneficially owns in the aggregate 44,857,909 shares of the Issuer's common stock. Finova holds an option to purchase 38,000,000 shares of the Issuer's authorized but unissued common stock from the Issuer and an option to purchase 6,857,909 shares of the Issuer's common stock from Crown Group, Inc. Finova beneficially owns approximately 93.9% of the common stock of the Issuer, as determined in accordance with Rule 13d-3(d)(1).

(b) Finova possesses sole voting and dispositive powers with respect to all of the securities of the Issuer beneficially owned by it.

(c) Except as set forth elsewhere in this Schedule, Finova has not effected any transactions in the Issuer's common stock during the 60 days prior to the date hereof.

(d) Not applicable

(e) Not applicable

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Item 6. Contracts, Arrangements, Understandings or Relationships with respect to Securities of the Issuer.

On November 8, 2001, Finova, the Issuer and related parties of the Issuer entered into the Forbearance Agreement. Under the Forbearance Agreement, Finova was issued a 120-day option to purchase 38,000,000 shares of the Issuer's authorized but unissued common stock ("Issuer Option") at an exercise price of \$0.30 per share. As consideration, Finova agreed to conditionally forbear, for a period of up to 60 days, the exercise of its remedies under the Loan Agreement and Guaranty resulting from a material breach of such agreements by the Issuer and its related parties. Also under this Forbearance Agreement, Finova was issued an option to purchase the equity interests in certain related parties to the Issuer ("Related Party Option"). However, the terms of the Forbearance Agreement provide that Finova may exercise only one of the two options granted under the agreement. Upon the closing of a purchase under either the Issuer Option or the Related Party Option, the remaining unexercised option shall immediately terminate.

Also on November 8, 2001, Finova and Crown Group, Inc. entered into the Settlement Agreement. Under the Settlement Agreement, Finova was issued a 120-day option to purchase 6,857,907 shares of the Issuer's common stock held by Crown Group, Inc. ("Crown Option") at an aggregate exercise price of \$1.00 and Finova also received a cash payment of \$1 million. As consideration for the grant of the Crown Option and the cash payment, Finova agreed to release Crown from any remaining liability arising from Crown Group, Inc.'s obligations under its Guaranty. The Crown Option may be exercised in whole, but not in part. The exercise of the Crown Option is also conditioned on the lack of exercise of the Related Party Option. Upon the

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closing of a purchase under the Related Party Option, the Crown Option shall immediately terminate.

Item 7. Material to be Filed as Exhibits.

(1) Forbearance Agreement entered into as of November 8, 2001 among Finova, the Issuer, Florida Finance Group, Inc., Liberty Finance Company, Smart Choice Receivables Holding Company, First Choice Auto Finance, Inc., Paaco Automotive Group, L.P., Premium Auto Acceptance Corporation and SC Holdings, Inc. relating to the grant of the options to purchase the Issuer's common stock and the limitations thereon.

(2) Settlement Agreement entered into as of November 8, 2001 between Finova and Crown Group, Inc. relating to the grant of the options to purchase the Issuer's common stock and the limitations thereon.

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SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: November 21, 2001

By: /s/ Philip Clark

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Name: Philip Clark
Title: Vice President - Assistant Secretary

EXHIBIT INDEX

| | |
|------------|-----------------------|
| EX_1 | Forbearance Agreement |
| EX_2 | Settlement Agreement |