

**Before the National Company Law Tribunal,
Chandigarh Bench
Corporate Bhawan, Plot No.4B, Sector 27-B, Madhya Marg,
Chandigarh.**

No.:NCLT/Chd/Reg/ 6010

Date: 23/03/2021

CR (CAA) No. 11/Chd/Pb/2019

In the matter of scheme of amalgamation between:

FINDOC Commodities Private Limited

...Petitioner Company No.2

To,

FINDOC Commodities Private Limited
Regd Office at: 4th Floor, Kartar Bhawan,
Near PAU Gate No.1, Ferozpur Road,
Ludhiana, Punjab- 141001

Please find enclosed herewith a certified copy of order dated 19.03.2021 for your information and necessary action


22.3.21

Encl: Copy of order.

Designated Registrar
NCLT, Chandigarh Bench

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGMENT

This is a joint Second Motion petition filed under Sections 230-232 of the Companies Act, 2013 (for short the 'Act') filed by the Petitioner Companies in terms of Rule 15 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'Rules') for the sanction of Scheme of Amalgamation (for brevity 'Scheme') of Findoc Commodities Private Limited ('Transferor Company') and Findoc Investmart Private Limited ('Transferee Company'). The joint petition is maintainable in terms of Rule 3(2) of the Rules.

2. The Petitioner Companies filed First Motion Application bearing CA (CAA) No.40/Chd/Chd/2018 before this Tribunal for seeking directions for dispensing with the meetings of equity shareholders, secured creditors and unsecured creditors of the Applicant Companies.

3. The First motion application was disposed of vide order dated 21.01.2019 read with order dated 25.01.2019, with directions to dispense with the meetings of equity shareholders, secured creditors, unsecured creditors of the Transferor Company and to dispense with the meetings of equity shareholders and unsecured creditors of Transferee Company as consent affidavits had been obtained from them. In relation to the Secured creditors of the Transferee-Company, the meeting was directed to be convened on 09.03.2019 along with other directions mentioned in the order dated 21.01.2019 passed in First Motion Petition.

4. The affidavit of compliance of directions as entailed in the order dated



21.01.2019 was filed vide diary no. 1037 dt.28.02.2019 along with newspaper publications in "Financial Express" (English) Chandigarh Edition and "Jansatta" (Hindi) Chandigarh Edition and "Jagbani" (Punjabi) Punjab Edition on 30.01.2019 and notice of the meeting was sent to Secured Creditors of Transferee Company and to all the Statutory Authorities including Income Tax Department.

5. Report dated 09.03.2019 of the Chairperson along with the report of Scrutinizer in respect of the meetings of Secured creditors of the Transferee Company was received and filed with this Hon'ble Tribunal on 15.03.2019 by Diary No.1283. The Chairperson has reported that the secured creditors of the Transferee Company representing 97.4% of the total value of the secured creditors. Thereupon the instant petition was filed for approval of the Scheme in terms of Rule 15 of the Rules.

6. When the petition was listed on 31.05.2019, the following order was passed: -

" The Petition be listed for hearing on 19.07.2019. Notice of hearing be advertised in the same newspapers as were mentioned in the first motion petition i.e. "Financial Express" (English) Chandigarh Edition and "Jansatta" (Hindi) Chandigarh Edition and "Jagbani" (Punjabi)", not less than 10 days before the aforesaid date fixed for hearing.

Notice be also served upon to Objector(s) or to their representative as contemplated under sub-section (4) of Section 230 of the Act who may have made representation and who have desired to be heard in their representation along with a copy of the petition and the annexures filed therewith at least 15 days before the date fixed for hearing.

In addition to the above public notice, each of the Petitioner shall serve the notice of the petition on the following Authorities namely, (a) Central Government through Regional Director (Northern Region),



Ministry of Corporate Affairs (b) Registrar of Companies, Punjab and Chandigarh at Chandigarh (c) Income Tax Department through the Nodal Officer – Principal Chief Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17E, Chandigarh (d) Official Liquidator, Punjab and Chandigarh (e) The Securities and Exchange Board of India (SEBI), along with copy of this petition by speed post immediately and to such other Sectoral Regulator(s) who may govern the working of the respective companies involved in the Scheme.

Both the petitioners shall at least 7 days before the date of hearing of the petition file an affidavit of service regarding paper publication effected as well as service of notices on the authorities specified above including the sectoral regulator as well as to objectors, if any. Objections, if any, to the scheme contemplated by the authorities to whom notice has been given on or before the date of hearing fixed herein may be filed, failing which it will be considered that there is no objection to the approval of the Scheme on the part of the authorities by this Tribunal and subject to other condition being satisfied as may be applicable under the Companies Act, 2013 and relevant rules framed thereunder.

The petitioner companies shall individually comply with proviso to sub-section (3) of section 232 or proviso to sub-section (7) of Section 230, as may be applicable under the circumstances on or before the date fixed for hearing by filing the certificate of company's auditor. Registry shall also report before the date fixed as to whether any objection has been received to the proposed Scheme in the registry."

7. The affidavit of the authorised representative of Petitioner Companies with regard to compliance of all the directions given in the above order dated 31.05.2019 was filed vide Diary no. 3396 dated 15.07.2019, along with newspaper publications in "Financial Express" (English) Chandigarh Edition and "Jansatta" (Hindi) Chandigarh Edition and "Jagbani" (Punjabi) Punjab Edition on 14.06.2019. The original copies of the newspapers are attached to this affidavit at Annexure A4. It has also been stated in the affidavit that copies of notices were served upon the Official Liquidator, Punjab and



Haryana, the Registrar of Companies, Punjab and Chandigarh and the Principal Chief Commissioner of Income Tax, Chandigarh on 12.06.2019 for both the Petitioner Companies by hand, copies of the hand acknowledgement receipts are attached as Annexure-A2. It is further stated that notice of hearing and copies of the Petition were served upon the Regional Director, Northern Region and the Securities and Exchange Board of India (SEBI), for both Petitioner Companies by Speed post on 12.06.2019, the postal receipt and tracking report showing delivery to the Regional Director on 14.06.2019 and to Securities and Exchange Board of India on 14.06.2019, is attached as Annexure A3 to the said affidavit.

8. It is also deposed that pursuant to publications made on 14.06.2019, no objections to the scheme have been received from any stakeholder and by the petitioner-companies or the Advocate on behalf of the Applicant/Petitioner Companies on any of the addresses as mentioned in the notice of hearing.

9. The certificate of Chartered Accountant, certifying that the accounting treatment specified in the Scheme is in compliance with the provisions of Section 133 of the Companies Act, 2013 read with the Companies (Indian Accounting Standards) Rules and other generally accepted accounting principles, was referred and discussed in detail in the order disposing of the first motion petition dated 21.01.2019 at Para 27.

10. The main objects, date, of incorporation, authorized and paid up share capital of all petitioner-companies, interest of employees and workmen clauses, rationale of the Scheme and clauses pertaining to legal proceedings have been



already discussed in detail in the order disposing the First Motion Application dated 21.01.2019 read with 25.01.2019.

11. We have heard the learned senior counsel for Petitioners, Registrar of Companies, the Regional Director, the Official Liquidator and counsel of the Income Tax Department and perused the record carefully.

12. The Registrar of Companies (RoC) has filed its report which is appended with the report of the Regional Director (RD) filed vide Diary No. 5506 dated 11.10.2019. The RD in para 6 of the report has observed that Clause 1.5 of Scheme refers to Employees and means all the Permanent Employees only and not all employees whether permanent or otherwise. Therefore, the company has to amend the clause accordingly. Further the RD in para 10 has reiterated the observations of the ROC which is as under: -

- i) That Clause 14.4 of Scheme is not in consonance with AS-14, to the extent that the excess/deficit, if any, of the value of assets over value of liabilities of Transferor Company vested in Transferee Company pursuant to scheme should not be adjusted to General Reserve Account, but rather credited to Capital Reserve Account.
- ii) That Clause 14.7 of Scheme is not in consonance with AS-14, to the extent that any difference in accounting policy between the Transferor Company and Transferee Company, the impact of the same till amalgamation should not be quantified and adjusted to General Reserve Account, but rather Capital Reserve Account.

That as per Clause 18.3 & 18.4 of Scheme it is provided that when



transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the Transferee company on its authorised capital subsequent to the amalgamation, which is not in accordance with the provisions of Section 232 (3) (i) of the Companies Act, 2013.

13. The Official Liquidator has filed his report by way of affidavit dated 09.09.2019 vide Diary No.4684 dt.11.19.19. The Official Liquidator, amongst other things, has mainly considered the audited financial statements of the petitioner companies for the period ending 31.3.2017 and 31.3.2018. It has been observed in Para 11 of Report, that there is a defect relating to Provisional financial statements as on 30.09.2018 of the Transferor Company, that in heading at Page 157 of Second Motion Petition it is mentioned as 30.09.2018, whereas in the table, it is mentioned as 31.03.2017 and 31.03.2018.

14. The Petitioner Companies in response to the above reports, filed reply vide Diary No. 7331 dated 20.12.2019 wherein a correct copy of Profit & Loss account as on 30.09.2018 of Transferor Company, an amended scheme of amalgamation after carrying out amendments of Clauses 14.4 and 14.7 of Scheme along with Board Resolutions dt.30.11.2019 has been filed and it has been stated in the affidavit that the Clauses 14.4 & 14.7 of the scheme has been suitably amended to be in consonance with the Accounting Standards applicable. The amended scheme is attached as Annexure A-4 and Board Resolutions are attached as Annexure A3 of Diary No. 7331 dated 20.12.2019.



15. Further an affidavit vide Diary no. 1990 dt.13.03.2020 has been filed by the authorised representatives of the petitioner companies, clarifying therein that with regards to RD/ROC's observation pertaining to employee clause, that all the employees of Transferor Company are permanent employees and the Transferor Company has/had no non-permanent employee as on date or on the date of filing the present Petition and that the interest of employees is protected vide clause 10 of the scheme. It has been undertaken in the affidavit that all its employees (permanent as well as non-permanent, if any) who will be on the rolls of Transferor Company before the sanction of amalgamation/ effective date, shall continue to be the employees of Transferee Company in same capacity with similar rights, interests, benefits, obligations, etc., and any claim against the Transferor Company before the sanction of amalgamation/ effective date, shall be enforceable by them against the Transferee Company, as if it was against the Transferor Company. It has been further stated in the affidavit with regards to observation of Clause 18.3 & 18.4 of Scheme, that the clause 18 of the scheme only contemplates to take the benefit of setting-off of the fees already paid by the Transferor Company on its authorized capital, to the extent allowed under Section 232 (3) (i) of the Companies Act, 2013 and prescribed rules, regulations, circulars, if any. Also, that the Transferor Company and Transferee Company undertake that upon setting-off of the fees already paid by Transferor Company on its authorized capital, pursuant to the amalgamation, if any additional fee is required to be paid on the combined authorized capital, the same shall be paid/complied with in accordance with law by the Transferee Company.



16. The Income Tax Department has filed their reports with regard to the Transferor Company and the Transferee Company vide Diary No. 4819 dated 16.09.2019. It has been stated that as per record, no demand is outstanding against both the applicant companies as on date and income tax department has no objection in the matter of amalgamation between the two companies.

17. The Appointed Date of the scheme has been amended vide Board Resolution dt.30.11.2019 (Annexure A-3 diary no. 7331 dt.20.12.2019) and as per the amended Scheme (Annexure A-4 Diary No. 7331 dt.20.12.2019), the new Appointed Date is 01.04.2018, or such other date as may be approved by the Tribunal.

18. When the matter was listed on 08.11.2019, the learned counsel for the petitioner companies was directed to send fresh notice to Securities and Exchange Board of India, as no report was received from them. Accordingly, in compliance of the order dated 08.11.2019, the authorised representative of the petitioner companies filed affidavit of service along with original postal receipt for sending notice to Securities and Exchange Board of India on 28.11.2019 along with tracking report showing successful delivery on 30.11.2019. It was further submitted that despite successful service of notice, no response/representation has been received from Securities and Exchange Board of India.

19. In view of the above discussion, there is no impediment in the sanction of the amended Scheme. The Amended Scheme (Annexure A.4 Diary



No 7331 dt.20.12.2019)) is hereby approved. While approving the Scheme, it is clarified that this order should not be construed as an order in any way granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law. With the sanction of the Scheme, the Transferor Company be transferred to and vested in the Transferee Company. Notwithstanding the above, if there is any deficiency found, or violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners as well as the petitioners.

THIS TRIBUNAL DOES FURTHER ORDER:

- i) That all the property, rights and powers of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Company but subject nevertheless to all charges now affecting the same; and



- ii) That all the liabilities and duties of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and become the

- liabilities and duties of the Transferee Company; and
- iii) That all the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and
 - iv) That the employees of the Transferor Company shall be transferred to the Transferee Company in terms of the 'Scheme'; and
 - v) That the Transferee Company shall, without further application, allot to the existing members of the Transferor Company, shares of Transferee Company to which they are entitled under the said Scheme of Amalgamation; and
 - vi) That the fee, if any, paid by the Transferor Company on its authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme'; and
 - vii) That the Petitioner Companies shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company and the files relating to the Transferor Company and Transferee Company shall be consolidated accordingly, as the case may be; and



- viii) That the Transferee Company shall deposit an amount of Rs. 75,000/- with the Pay & Accounts Office in respect of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi and Rs. 25,000/- in favour of "The Company Law Tribunal Bar Association" Chandigarh within a period of four weeks from the date of receipt of the certified copy of this order; and
- ix) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

20. As per the above directions, Form No.CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 forms be issued on the petitioners on filing of the schedule of properties i.e. (i) freehold property of the Transferor Company (ii) leasehold property of the Transferor Company by way of affidavit. Copy of this order be communicated to the Counsel for the Petitioners.

Sd/-
(Raghu Nayyar)
Member (Technical)




Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

FREE OF COST COPY

No _____
Date of Presentation As per Rule 150 of the NCLT Rules, 2016
of application for Copy _____
No of Pages 12
Copying Fee NIL
Registration / Stamp Fee NIL
Total ₹ NIL
Date of Receipt _____
Date of Preparation of Copy 22/09/2021
Date of Delivery of Copy _____

 22/3/21

DD / DR / AR / Court Officer
National Company Law Tribunal
Chandigarh Bench, Chandigarh