

**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

CA (CAA) NO.40/Chd/Chd/2018

**Under Section 230 to 232
of the Companies Act, 2013**

IN THE MATTER OF SCHEME OF AMALGAMATION OF:

FINDOC COMMODITIES PRIVATE LIMITED

(CIN U74900PB2010PTC036010)

having its registered office at:

4th FLOOR, KARTAR BHAWAN, NEAR PAU GATE NO.1,
FEROZEPUR ROAD, LUDHIANA (PB) 141001

PAN: AABCF9455E

...Applicant No. 1/Transferor Company

WITH

FINDOC INVESTMART PRIVATE LIMITED

(CIN U74992CH2010PTC035180)

having its registered office at: SCO

No. 210-211, SECTOR 34-A,
CHANDIGARH-160022.

PAN: AABCF8332L

... Applicant No. 2 / Transferee Company

Judgment delivered on:21.01.2019

**Coram: Hon'ble Mr. Justice R.P. Nagrath, Member (Judicial).
Hon'ble Pradeep R. Sethi, Member (Technical).**

For the Applicant-companies: Mr.Nahush Jain, Advocate

Per: R.P. Nagrath, Member (Judicial)

JUDGEMENT

Having heard the learned counsel for the applicants and for the reasons stated in the application, the prayer for condonation in refiling the application is allowed.

2. This is a first motion joint application filed by Findoc Commodities Private Limited, Applicant No. 1/ Transferor Company (for brevity, to be described as A-1 Company) and Findoc Investmart Private Limited, Applicant No. 2/ Transferee Company (for brevity, to be described as A-2 Company) jointly, described in short as 'Applicant Companies' under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (to be referred as the 'Act') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, the 'Rules') in connection with the proposed Scheme of Amalgamation being Annexure A-11 between the Applicant Companies. The affidavit of Mr. Nitin Shahi, authorised signatory of A-1 Company and Mr. Hemant Sood, authorised signatory of A-2 Company have been filed in support of the joint application. The joint application is maintainable in terms of Rule 3(2) of the Rules.

3. It is also represented that the Board of Directors of the applicant-companies unanimously approved the "Scheme" by passing their respective Board resolutions subject to sanctioning of the same by this Tribunal. These Board resolution are dated 25.01.2018 and are at Annexure A-12. Both the applicant-companies have authorised Mr. Nitin Shahi and Mr. Hemant Sood, Directors severally to sign and file applications, petitions, affidavits and other ancillary documents with the National Company Law Tribunal, Chandigarh Bench, or such other appropriate authorities for sanction of scheme of amalgamation of Findoc Commodities Private Limited with Findoc Investmart Private Limited and also to sign and file all documents, deeds, applications, notices, petitions and letters and to finalize and execute all the necessary applications/deeds/papers for and on behalf of the company.

4. As per the Memorandum of Association and Articles of Association (Annexure A-2), the main objects of A-1 Company are as follows:-

“ i) To do the business of commodity (including Commodity derivatives) broking, trading and hedging.

ii) To carry on business as brokers and traders in all commodities and commodity derivatives, and to act as market makers, finance brokers, underwriters, sub-underwriters, providers of service for commodity related activities” etc.

5. A-1 Company was incorporated on 02.03.2012 as a private limited company with the Registrar of Companies, Punjab and Chandigarh with CIN U74900PB2010PTC036010. The certificate of incorporation is a part of Annexure A-2. The authorized share capital of the A-1 Company as on 31.03.2018 is ₹ 4,90,00,000/- divided into 49,00,000 equity shares of ₹ 10/- each and the issued, subscribed and paid up share capital is ₹ 1,50,00,000/- divided into 15,00,000 equity shares of ₹ 10/- each.

6. As per the Memorandum of Association and Articles of Association (Annexure A-7), the main objects of A-2 Company are as follows:-

“i) To carry on the business of financial consultant, Investment Consultant, Technical Consultant, Stock Broker and Commodities Broker, sub-broker and also advice, subscribe and deal with sale, purchase, acquire and hold shares, commodities, stocks, debentures, debentures stock, bonds and other financial gems.

ii) To provide all types of services as depository and participant including custodian, clearing or settlement services in the securities market and also to provide financial services in connection therewith and incidental thereto.”

7. A-2 Company was originally incorporated as private limited company on 24.08.2010 under the Companies Act, 1956 and certificate of incorporation was issued by the Registrar of the Companies, Punjab and Chandigarh. Its CIN is U74992PB2010PTC034212. Its registered office was shifted from the State of Punjab to Chandigarh and a fresh certificate of incorporation was issued by the Assistant Registrar of Companies, Chandigarh.

8. The authorized share capital of the A-2 Company as on 31.03.2018 is ₹ 9,90,00,000/- divided into 99,00,000 equity shares of ₹ 10/- each and the issued, subscribed and paid up share capital is ₹ 9,90,00,000/- divided into 99,00,000 equity shares of ₹ 10/- each.

9. The registered office of Applicant No. 1 company is situated in the State of Punjab and of Applicant No. 2 company, is at Chandigarh. Therefore, the matter falls within the territorial jurisdiction of this Tribunal. It is represented that both the applicant companies are closely held companies and have common management but the shareholders except for one are different.

10. It is stated that the ‘Scheme’ does not envisage any corporate debt restructuring. The proposed Scheme of Amalgamation will not adversely affect the rights of any of the creditors of the Transferor Company or of the Transferee Company in any manner whatsoever.

11. The joint application has been filed with the prayer to dispense with the requirement of holding meeting of the shareholders of both companies, and those of the secured and unsecured creditors of both the companies, and to permit the filing of second Motion Petition for sanction of the Scheme.

12. It is further stated that on 31.03.2018, A-1 company had two equity shareholders as per list at Annexure A-13 (colly). This list is certified by the firm of Chartered Accountants of the company. Mr. Hemant Sood holds 7,50,000 shares i.e. 50% of the total shareholding and has given his consent by way of affidavit for dispensation of meeting of equity shareholders which is at Pages 279 and 280 of the paper book. Mr. Chander Shekhar, the other shareholder also holds 7,50,000 shares i.e. remaining 50% of the total shareholding. He has given his consent by way of affidavit for dispensation of meeting of equity shareholders which is at page Nos. 281 to 282 of the paper book. Therefore, the meeting of the shareholders of Applicant-I company can be dispensed with.

13. As per the certificate of Rakshit Khosla & Associates, Chartered Accountants (Annexure A-15), there is no secured creditor of the A-1 company as on 31.03.2018. Therefore, there is nothing to convene meeting of the secured creditors.

14. Further as per the certificate of Rakshit Khosla & Associates, Chartered Accountants [(Annexure A-16 (colly)], there are 302 (Three hundred two) unsecured creditors of A-1 Transferor Company as on 31.03.2018 amounting to ₹ 12,30,27,602.85. It is stated that three unsecured

creditors holding 90.34% of the total amount of the unsecured credit have given their consent by way of affidavits for the dispensation of the meeting of unsecured creditors which are at Annexure A-17(colly) from pages 303 to 311 which include the resolutions of the companies being the unsecured creditors. M/s. Sirsa Deposits and Advances Limited is the unsecured creditor to the tune of ₹5,77,63,899.71. This unsecured creditor which is a company has passed the resolution dated 26.07.2018 (page No. 305) approving the Scheme, and authorised Mr. Rubal Kapoor, Director to furnish affidavit to this effect. The affidavit of Mr. Rubal Kapoor is at Page-303 of the paper book stating that this company has no objection to the sanction of the Scheme and for dispensation of the meeting of the unsecured creditor.

15. M/s. Shalimar Zubrabiz Pvt. Ltd. is the unsecured creditor to the tune of ₹ 4,38,76,866.73. This company has also approved the Scheme by passing resolution dated 29.05.2018 (Page-308) and authorised Mr. Hatinder Kumar, Director to furnish the affidavit. Mr. Hatinder Kumar, Director has furnished affidavit (Page-306) stating that the company has no objection to the proposed Scheme.

16. The third major unsecured creditor is M/s. Newtrax Investments Pvt. Ltd. with unsecured credit of ₹95,10,390.58. This company has passed resolution dated 29.05.2018 (page-311) giving approval and consent to the proposed Scheme, and authorised Mr. Amit Arora, Director to furnish the affidavit of no objection. The affidavit giving no objection furnished by Mr. Amit Arora is at page-309 of the paper book. In view of the above, the meeting of the unsecured creditors of Applicant-1 company can be dispensed with.

17. As per certificate of firm of Chartered Accountants of A-2 Company (Annexure A-18), there are three shareholders of the company. The list of shareholders is at page-313 of the paper book. Out of the three shareholders, two are the individuals and third shareholder is a private limited company. The affidavits of individual shareholders, namely, Hemant Sood and that of Ms. Sonia Aggarwal are at pages-314 and 316 of the paper book. They have given their approval to the Scheme and dispensation of meeting of the shareholders. The third shareholder **M/s. Findoc Capital Mart Pvt. Ltd.** has passed resolution dated 29.05.2018 (page-320) giving approval and consent to the Scheme, and authorized Mr. Hatinder Kumar, Director to furnish the requisite affidavit . Mr. Hatinder Kumar has given his affidavit at page-318 of the paper book giving approval to the Scheme and no objection if the meeting of the shareholders is dispensed with. In view of the 100% consent, the meeting of shareholders of Applicant-2 company can be dispensed with.

18. As per the certificate issued by Sukhminder Singh & Company, Chartered Accountants of Applicant-2 company, there are five secured creditors of the company of the value of ₹ 20,24,24,769/-. The consent letters and no objection certificates from all the banks have been obtained by the company in order to make the submission that the meetings of the secured creditors may also be dispensed with. There is, however, affidavit of Mr. Haren Devidas Parekh, the Chief Finance Officer of HDB Financial Services Limited giving no objection but the authority letter with this affidavit on behalf of the bank to furnish no objection, has not been attached. Sub-section (9) of Section 230 of the Act says that the Tribunal may dispense with calling of meetings of

creditor or class of creditors where such creditor or class of creditors having at least 90% value, agree and confirm by way of affidavit to the Scheme of compromise or arrangement. The compliance of furnishing of affidavits of the creditors for dispensing with the meeting supported with the appropriate authority from the creditors has not been made. The learned counsel for the applicants has ultimately made the prayer that meeting of the secured creditors of Applicant-2 company may be called and convened.

19. As per the certificate of Chartered Accounts of Applicant-2 company (Annexure A-22), the Applicant-2 company has 1277 unsecured creditors of the total value of ₹ 24,23,41,519/- , out of which 52 unsecured creditors valuing 90.15% of unsecured debt have given consents to the Scheme. The affidavits in respect of the companies which are unsecured creditors are supported by their respective Board Resolutions, with regard to dispensation of the meeting of unsecured creditors. It is represented by the learned counsel for the applicants that the affidavits of the creditors who are individuals and those of companies supported also with the Board resolutions of the creditors are from page-409 to page 520 of the paper book. Therefore, the meeting of the unsecured creditors of Applicant-2 company can be dispensed with.

20. We have heard the learned counsel for the Applicant Companies and perused the record carefully.

21. The benefits of the Scheme *inter alia* will be as under:-

“a) *The amalgamation/merger will enable the companies to pool their resources. The proposed amalgamation will result in*

consolidation of the business of the Transferor Company with the business of the Transferee Company;

- b) The amalgamated entity will provide strategic and competitive advantage due to its increased size and integration of the businesses and will enable better integration of the businesses and will enable better prospects for the business of the Companies;*
- c) The amalgamation will result in economies of scale;*
- d) The amalgamation/merger will provide the companies with the resources to invest in Transferee Company and provide long term profitable growth to the shareholders. With the increase in competition and squeezing margins, more investment will be needed in the transferee company.*
- e) The amalgamated/merged company will have better financial and business prospects. The Scheme shall be beneficial and will be in public interest, as it will immediately provide strength to the Transferee Company on its merger with the Transferor Company.*
- f) It would be advantageous to combine the activities of the Companies involved in the amalgamation/merger into a single Company. The amalgamation would provide synergistic linkages, besides reduction in costs by combining the total business functions and the related activities and thus contribute to the profitability of the amalgamated Company.*
- g) A larger growing company will mean enhanced financial and growth prospects for the people and organization connected with the Company and will be in public interest.*
- h) It will be conducive for better and more efficient and economical control and business and financial conduct of the Companies.”*

22. The learned counsel for the applicant companies further submitted that the Share Exchange Ratio under the 'Scheme' has been determined in accordance with the Report on Valuation of Shares & Share Exchange Ratio dated 05.03.2018 of M/s Sukhminder Singh & Co, Chartered Accountants and the same has been annexed at Annexure A-26. Based upon the above valuation report, the share swap ratio is as follows:-

“2 (two) equity shares of Findoc Investmart Private

Limited of face value of ₹ 10/- each fully paid up for

**every 1 (one) equity shares of Findoc Commodities
Private Limited of ₹ 10/- each fully paid up.”**

23. The audited Financial Statements of A-1 and A-2 Company for the year ending 31.03.2018 have been annexed as A-4 and A-9, respectively.

24. The Scheme (Annexure A-11) also deals with and takes care of the interest of staff, workmen and employees of transferor-company by virtue of Para 10 of the Scheme which is as under:-

“On the Scheme becoming effective, all staff, workmen and employees of the Transferor Company in service on the effective date shall be deemed to have become staff, workmen and employees of the Transferee Company with effect from the appointed date without any break in their service and on the basis of continuity of service and the terms and conditions of their employment with the Transferee Company shall not be less favourable than those applicable to them prior to the appointed date” etc.

25. It is also stated in the Scheme in para 11 that all legal proceedings of whatsoever nature by or against the Transferor Company pending at the Appointed Date and or arising after the Appointed date till the effective date shall be continued and enforced by or against the Transferee-Company in the manner and to the same extent as would or might have been continued and enforced by or against the Transferor Company as and from the Effective date etc.

26. It is also submitted by the learned counsel for the applicant companies that that no proceedings under Sections 235 to 251 of the Companies Act, 1956 and/or under Section 206 to 229 of of the Companies Act, 2013 are pending or instituted against the Transferor Company and the Transferee Company.

27. It is further represented that certificates of the Statutory Auditors of Applicant Companies have been filed at Annexure A-25 respectively stating therein that the accounting treatment proposed in the Scheme is in accordance with requirements of Section 133 of the Act.

28. The 'Scheme' envisages that with effect from the Appointed Date i.e. 01.04.2017, A-1 Company shall merge in the A-2 Company and all the assets and liabilities of A-1 Company shall also be transferred to and vested in and assumed by A-2 Company. The 'Scheme' thus states that it shall be affective from the Appointed Date but shall be operative from the Effective Date as defined in the 'Scheme'.

29. When the matter was listed on 27.11.2018, the learned counsel for the applicant companies sought time to file affidavit with regard to the Sectoral Regulators by which the applicant companies are governed other than the statutory authorities. In compliance, therefore, the affidavits of the authorized representatives of the applicant Companies were filed vide Diary No. 5126 dated 24.12.2018 stating therein that apart from statutory authorities, the Transferor Company being registered with SEBI as Stock Broker and, therefore, notice is to be sent to SEBI. Also, the Transferee Company is registered with SEBI as Stock Brokers and depository

participants. Therefore, notice to the SEBI is also required to be served upon while fixing the meetings.

30. In view of the above, following directions are issued with respect to calling, convening and holding of meetings of the shareholders, secured and unsecured creditors or dispensing with the same as well as issue of notices including by way of paper publication:-

A. In relation to Applicant-1/ Transferor Company:

- (i) The meeting of the equity shareholders is dispensed with as there is consent by way of affidavits of all the equity shareholders;
- (ii) There are no secured creditors and therefore, there is nothing to call and convene their meeting.
- (iii) The meeting of the unsecured creditors is dispensed with as there is consent by way of affidavits of the requisite percentage of unsecured creditors;

B. In relation to Applicant-2/ Transferee Company:

- (i) The meeting of the equity shareholders is dispensed with as there is consent by way of affidavits of all the equity shareholders;
- (ii) The meeting of the secured creditors be convened on 09.03.2019 at 4th Floor, Kartar Bhawan, Near PAU Gate No. 1, Ferozpur Road, Ludhiana (Punjab)-141001 at 11 AM, subject

to notice of meeting being issued. The quorum of the meeting shall be four in number or 50% in value of the secured debt;

(iii) The Meeting of unsecured creditors is dispensed with as there is consent by way of affidavits of the requisite percentage of unsecured creditors;

C. In case the required quorum as noted above for the meeting is not present at the commencement of the meeting, the meeting shall be adjourned by 30 minutes and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purposes of completing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the persons entitled to attend and vote at the meeting, is filed with the registered office of the Transferee Company at least 48 hours before the meeting. The Chairperson and the Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy register is properly maintained.

D. Mr. Justice Arvind Kumar (Retd.), Kothi No. 275, Sector 17, Panchkula, Mobile No. 9888807564 is appointed as the Chairperson for the meeting to be called under this order. An amount of ₹ 1,50,000/- (Rupees one lac fifty thousand only) be paid to him for his services as the Chairperson.

E Mr. Aditya Jain, Advocate, H. No. 133, Sector 35-A, Chabndigarh, Mobile No. 9779288882 is appointed as the Alternative Chairperson for the meeting to be called under this order. An amount of ₹ 80,000/-

(Rupees eighty thousand only) be paid to him for his services as the Alternative Chairperson.

F. CS . B.B. Gupta, Flat No. 404, GH-14, Mansa Devi Complex, Sector 5, Panchkkula-134114, Mobile No. 9815489490 is appointed as the Scrutinizer for the above meeting to be called under this order. An amount of ₹ 70,000/- (Rupees seventy thousand only) be paid to him for his services as the Scrutinizer.

G. The fee of the Chairperson, Alternative Chairperson and Scrutinizer along with travelling expenses and other out of pocket expenses for them shall be borne by the Transferee Company.

H. It is further directed that individual notice of the said meeting shall be sent by the Transferee Company through registered post or speed post or through courier or e-mail, 30 days in advance before the schedule date of meeting, indicating the day, date, the place and time as aforesaid, together with a copy of the Scheme, copy of explanatory statement with Valuation Report along with the proxy forms and any other documents as may be prescribed under the Act shall also be duly sent with the notice.

I. It is further directed that along with the notices, Transferee Company shall also send, statement explaining the effect of the scheme on the creditors, key managerial personnel, promoters and non-promotor members etc. along with effect of the arrangement for amalgamation on any material interests of the Directors of the Company

or the debenture trustees, if any, as provided under sub-section 3 of Section 230 of the Act.

J. It is also directed that the provisional financial statements of both the companies as on 30.09.2018 be also circulated for the aforesaid meeting in terms of Section 230 (2) (e) of the Act apart from other requirements of Section 230 (2) of the Act.

K. That the Transferee Company shall publish advertisement with a gap of at least 30 clear days before the aforesaid meeting, indicating the day, date and place and the time of meeting as aforesaid, to be published in the "Financial Express" (English) Chandigarh Edition; "Jansatta" (Hindi) Chandigarh Edition and Jagbani (Punjabi) Punjab Edition. It be stated in the advertisement that the copies of "Scheme", the Explanatory Statement required to be published pursuant to Section 230 to 232 of the Act and the form of proxy shall be provided free of charge at the registered office of the Transferee Company. The Transferee Company shall also publish the notice on its website, if any.

L. It shall be the responsibility of the Transferee Company to ensure that the notices are sent under the signature and supervision of the authorized representative of the company on the basis of Board resolutions and that they shall file their affidavits in the Tribunal at least ten days before the date fixed for the meeting.

M. Voting shall be allowed on the "Scheme" in person or by proxy or through electronic means or by postal ballot as may be applicable

to the Applicant/ Transferee Company under the Act and the Rules framed thereunder.

N. The Chairperson shall be responsible to report the result of the meeting to the Tribunal in Form No. CAA-4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 7 (seven) days of the conclusion of the meeting. He would be fully assisted by the authorized representative/Company Secretary of the Transferee Company and the Scrutinizer, who will assist the Hon'ble Chairperson and Alternate Chairperson in preparing and finalizing the report.

O. The Transferee Company shall individually and in compliance of subsection (5) of Section 230 of the Act and Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form No. CAA-3 along with copy of the Scheme, Explanatory Statement and the disclosures mentioned in Rule 6 of the "Rules" to (i) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi (ii) Registrar of Companies, Punjab and Chandigarh at Chandigarh (iii) Official Liquidator; (iv) Income Tax Department through the Nodal Officer – Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh by mentioning the PAN number of the Applicant Companies; (V) SEBI and such other Sectoral Regulator(s) governing the business of the Transferee Company, if any, stating that representation, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and

copy of such representation shall be simultaneously sent to the concerned companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

P. The Transferee Company shall furnish a copy of the Scheme free of charge within one day of any requisition for the Scheme made by any creditor or member/shareholder entitled to attend the meeting as aforesaid.

Q. The authorized representative of the Transferee Company shall furnish affidavit of service of notice of meeting and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meeting.

R. All the aforesaid directions are to be complied with strictly in accordance with the applicable laws including forms and formats contained in the Rules as well as the provisions of the Companies Act, 2013 by the Transferee Company.

31. With the aforesaid directions, this First Motion Petition stands disposed of. A copy of this order be supplied to the learned counsel for the Applicant Companies who in turn shall supply copy of the same to the Chairperson, Alternative Chairperson and the Scrutinizer immediately.

Sd/-

(Pradeep R. Sethi)
Member (Technical)

Sd/-

(Justice R.P. Nagrath)
Member (Judicial)

January 21, 2019.
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