

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
NEW DELHI BENCH COURT-V**

Company Application No. **CA (CAA) 27 (ND) of 2020**

Under Sections **230-232** & 66 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

In the Matter of:

**Focus Buildwell Private Limited**

Plot No. 2, Flat No. D-2, GF & FF, Aurbindo Marg, New Delhi- 110017

.....Applicant No. 1/ Transferor Company No. 1

MSG Finance (India) Private Limited

Plot No. 2, Flat No. D-2, GF & FF, Aurbindo Marg, New Delhi- 110017

.....Applicant No. 2/ Transferor Company No. 2

Indo- Gulf Infrastructure and Investments Private Limited

Plot No. 2, Flat No. D-2, GF & FF, Aurbindo Marg, New Delhi- 110017

.....Applicant No. 3/ Transferee Company

Order Delivered on: 17.03.2020

Coram:

Hon'ble Abni Ranjan Kumar Sinha, Member (J)

Hon'ble K.K. Vohra, Member (T)



Present:

For the Applicant: Mr. Ashish Middha, Advocate

**ORDER**

Per: K.K. Vohra (T)

1. This is an Application which is filed jointly by the Applicant Companies named above under section 230-232 of Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement by way of Amalgamation (Scheme) proposed among the Applicants. The said Scheme is also annexed as Annexure "A-31" to the Application. The Applicants above named have preferred the instant Application in effect for the following purpose as evident inter alia from the reliefs sought for in the Application, namely:

- a. Dispensing with the requirement of convening meeting of the Equity Shareholders of the Transferor and Transferee Companies (Applicant Companies) and also to dispense with the requirement of issue and publication of notices for the same;
- b. Dispensing with the requirement of convening the meetings of the Secured Creditors of the Applicant Companies and also to dispense with the requirement of issue and publication of notices for the same;
- c. Dispensing with the requirement of convening the meetings of the Unsecured Creditors of the Transferor and Transferee Companies in view of



their consents of more than 90% and also to dispense with the requirement of issue and publication of notices of the same; and

d. Issue such other orders or directions as may be deemed fit.

2. Affidavits in support of the above Application sworn for and on behalf of the Applicant Companies by Mr. Naval Singh and Mr. Vijay Kumar Sharda have been filed, being the Authorized Signatories along with the Application. It is represented that a Joint Application filed by the Applicants is maintainable in view of Rule 3(2) of the Companies (Compromises, Arrangements and Arrangements) Rules 2016 and it is also represented that the registered offices of all the Applicant Companies are situated within the territorial jurisdiction of this Tribunal.
3. Applicant Companies 2 and 3 are Non-Banking Financial Companies. Applicant Company 1 is engaged in construction business. Directors of Applicant Companies 1 and 2 are same. One Director in Applicant Company 3 is common with Applicant Companies 1 and 2.
4. The Counsel appearing for the Applicant Companies has submitted that the Amalgamation would enable pooling of physical, financial and human resources of the Companies; optimum utilization of manpower, better choice of skill up gradation, development and career growth for the employees beneficial to the companies, their Shareholders, creditors, employees and all concerned, and will enable these companies to achieve and fulfil their objectives more efficiently and economically. Amalgamation will also eliminate duplication of work and reduce regulatory work.

5. The Applicants have furnished the details of the Shareholders, Secured Creditors and Unsecured Creditors in the Scheme of the Applicant Companies which are as follow:

| S. No. | Applicant Company       | Share Holders | Secured Creditors | Unsecured Creditors |
|--------|-------------------------|---------------|-------------------|---------------------|
| 1.     | Applicant Company No. 1 | 22            | NIL               | 1                   |
| 2.     | Applicant Company No. 2 | 22            | NIL               | 3                   |
| 3.     | Applicant Company No. 3 | 11            | 1                 | 6                   |

The Applicant Companies contend that all the equity Shareholders have given their consent for the Scheme and necessary affidavits have been filed and seek dispensation from convening and conducting the meetings of the Shareholders. The Applicant Companies plead that there is no need to conduct meetings of the Secured Creditors as both the Transferor Companies have 'NIL' Secured creditors and the Transferee Company has one Secured Creditor who has given its consent. The Applicant Companies plead that there is no need to conduct meeting of the Unsecured Creditors as all the Unsecured Creditors have given their consent for the Scheme and necessary affidavits have been filed and seek dispensation from convening and conducting the meetings.

6. Perusal of the Application filed by the Applicants indicates the details of the capital structure of the Companies which are given as follows:

| S. No. | Company | Date of incorporation | Authorized Share Capital | Issued, paid up and subscribed | CIN No. |
|--------|---------|-----------------------|--------------------------|--------------------------------|---------|
|        |         |                       |                          |                                |         |

44

|    |                               |          |   | share capital<br>(Rs)  |                               |
|----|-------------------------------|----------|---|--|-------------------------------|
| 1. | Applicant<br>Company<br>No. 1 | 05.05.08 | Rs 75,00,000<br>divided into<br>7,50,000 Equity<br>Shares of Rs 10<br>each    | 63,06,500<br>divided into<br>6,30,650<br>Equity<br>Shares of Rs<br>10 each | U45400DL<br>2008PTC1<br>77616 |
| 2. | Applicant<br>Company<br>No. 2 | 16.09.03 | Rs 1,00,00,000<br>divided into<br>10,00,000<br>Equity Shares of<br>Rs 10 each | 96,44,000<br>divided into<br>9,64,400<br>Equity<br>Shares of Rs<br>10 each | U65993DL<br>1992PTC2<br>21208 |
| 3  | Applicant<br>Company<br>No. 3 | 23.12.04 | Rs 4,00,00,000<br>divided into<br>40,00,000<br>Equity Shares of<br>Rs 10 each | 3,29,43,800<br>divided into<br>32,94,380<br>Equity<br>Shares of Rs<br>10   | U74899DL<br>1995PTC0<br>67563 |

7. All the Applicants have filed their respective Memorandum and Articles of Association inter alia delineating their object clauses as well as their last available Audited Annual Accounts for the year ended 31.03.2019.

8. The Board of Directors of the Applicant Companies, vide meeting held on 16.09.2019, have unanimously approved the proposed Scheme and copies of resolutions passed thereon have been placed on record by the Companies.

9. The appointed date as specified in the Scheme is 1<sup>st</sup> April, 2019 subject to the directions of this Tribunal.

10. The Applicant Companies have stated in the Application that no investigation proceedings are pending against them under Sections 210 or any other applicable provisions of the Companies Act, 2013.
11. The Applicant Companies have filed certificate of the Company's Auditor dated 15<sup>th</sup> September, 2019 in relation to compliance with the Accounting Standards under section 133 of the Act.
12. The Valuation Report dated 15<sup>th</sup> September, 2019 prepared by Bhala & Bhala Chartered Accountants elaborates that the Applicant Companies are closely held Companies having Common Director/ Interests and the Directors, their friends, relatives and associates hold the entire share capital of these Companies and that the general public is not affected by the share exchange ratio in the proposed Amalgamation.
13. A preliminary perusal of the financials for the FY 2018-19 of the Applicants reveals that:
- a. For the Transferor Company No 1, there have been losses to the tune of Rs 19,05,000 termed as 'Extra-Ordinary Item During the year', sharp increase in other current assets and unsecured loans.
  - b. For Transferor Company 2, there have been new unsecured loans to the tune of Rs 2.68 crore and sharp reduction in other current liabilities to Rs 12.37 Lakh (3.90 crore on 31<sup>st</sup> March, 2018).
  - c. For the Transferee Company, there are long term borrowings of Rs 13.81 crore (3.86 crore as on 31<sup>st</sup> march, 2018).
14. Taking into consideration the Application filed jointly by the Applicant Companies and the documents filed therewith, this Tribunal proposes to issue the following directions with respect to calling, convening and holding of the meetings of the Equity Shareholders, Secured and Unsecured Creditors, or dispensing with the same:

**A) In relation to the Applicant Company No.1:**

(i) With respect to Equity Shareholders:

Since, it is represented by the Company that there are 22 Equity Shareholders in the Company whose consents have been obtained and are placed on record, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the Scheme is dispensed with.

(ii) With respect to Secured Creditors:

Since, it is represented by the Company that there are no Secured Creditors, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Since, it is represented by the Company that there is 1 Unsecured Creditor in the Company whose consent has been obtained, the necessity of convening a meeting does not arise.

**B) In relation to the Applicant Company No.2:**

(i) With respect to Equity Shareholders:

Since, it is represented by the Company that there are 22 Equity Shareholders in the Company whose consents have been obtained and are placed on record, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the Scheme is dispensed with.

(ii) With respect to Secured Creditors:

Since, it is represented by the Company that there are no Secured Creditors, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:



It is represented by the Company that there are 3 Unsecured Creditors in the Company whose consents have been obtained. Hence, the necessity of convening a meeting does not arise.

**C) In relation to the Transferee Company:**

(i) With respect to Equity Shareholders:

Since it is represented by the Transferee Company that there are 11 Equity Shareholders in the Company whose consents have been obtained and are placed on record, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the Scheme is dispensed with.

(ii) With respect to Secured Creditors:

Since it is represented by the Transferee Company that there is 1 Secured Creditor in the Company whose consent has been obtained, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Since, it is represented by the Transferee Company that there are 6 Unsecured Creditors in the Company, whose consents have been obtained, the necessity of convening a meeting does not arise.

Since, the meetings of the Shareholders, Secured and Unsecured creditors have been dispensed with, hence, the requirement of publication in the newspapers regarding convening of meetings is dispensed with.

The Application stands **allowed** on the aforesaid terms. Let the Petition for approval of the Scheme of Amalgamation be filed within a period of seven days from the date of this order. The Tribunal further directs the presence of the Auditors who have certified the compliance to Section 133 of the Act (Pg.





514 of Petition), Share Exchange Ratio (Pg. 509) and other financials for elaborating the details.

Sd/-

**K.K. Vohra**  
**MEMBER (T)**

Sd/-

**Abni Ranjan Kumar Sinha**  
**MEMBER (J)**