

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. VI, NEW DELHI**

CP(CAA) NO. 12/ND/2024

Connected with

CA(CAA) No. 70/ND/2023

(Under Section 230, 232 of the Companies Act, 2013)

IN THE MATTER OF:

1. M/s PICKRR TECHNOLOGIES PRIVATE LIMITED

[CIN - U74140DL2015PTC418468]

Having its Registered office at:

Khasra No. 360, M.G. Road, Sultanpur Gadaipur, New Delhi - 110030.

Through its authorized signatory

Ms. Bharti Agarwal (Senior Manager - Legal)

... DEMERGED COMPANY/ APPLICANT COMPANY NO.1

AND

2. M/s BIGFOOT RETAIL SOLUTIONS PRIVATE LIMITED

[CIN - U72900DL2011PTC225614]

Having its Registered office at:

Plot No- B, Khasra No- 360 Sultanpur, Delhi – 110030

Through its authorized signatory

Ms. Deepa Kapoor (Director – Legal and Compliance)

... RESULTING COMPANY/ APPLICANT COMPANY NO 2

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER, JUDICIAL

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER, TECHNICAL

**For the Petitioner/Applicant
For the RD**

:Mr. Rajeev Kumar, Advocate
:Adv. Shankari Mishra, Adv. Jyoti
Khurana

For the IT Department

:Mr. Ruchir Bhatia SSC, Mr.
Pratyaksh Gupta, Junior Standing
Counsel Mr. Anant Maan with Adv.
Vikram Chand and Sheetal
Chaudhary.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

Date: 15.07.2024

1. This application has been filed jointly by the Applicant Companies under Sections 230 to 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Demerger proposed between the Applicants. The copy of the Scheme of Demerger (hereinafter referred as the "Scheme"), for the demerger of the demerged Undertaking of the Demerged Company into the Resulting Company has been placed on record.
2. From the records, it is seen that the First Motion joint application was filed before this Tribunal vide C.A.(CAA) 70/(ND)/2023. Vide order dated

10.11.2023, this Tribunal had disposed off the 1st Motion application in terms of directions contained therein.

3. Vide order dated 22.02.2024, the Petitioner Companies were directed to publish notice in newspapers "Financial Express", (English) and "Jansatta", (Hindi) both Delhi NCR Edition. In compliance with the aforesaid direction, the notice of the hearing of the abovesaid Petition was published in both the said newspapers on 09th April 2024.
4. In addition to the aforesaid public notice, it was also directed vide order dated 22.02.2024 to serve notices upon the following authorities for filing their reply and appearance: -
 - (i) Central Government through the Regional Director,
 - (ii) Registrar of Companies, NCT of Delhi and Haryana,
 - (iii) Jurisdictional Income Tax Authority.
5. Applicant(s) contended that notices were duly served to the aforesaid authorities. Pursuant to the notice issued, Income Tax Department has filed its reply dated 30.04.2024 stating that their office does not have any objection to the proposed scheme of demerger in the present matter.
6. The Regional Director's office (Northern Region) has also made certain observations upon which the applicant companies have provided comments/clarifications as tabulated below: -

S. NO	OBSERVATION RAISED BY REGIONAL DIRECTOR	RESPONSE BY APPLICANT COMPANIES
1.	The proposed scheme of demerger has not specified the units of demerged undertaking which would have been vested in the resulting Company. It has also not attached the separate schedule of assets and liability of the Demerged undertaking. Clarification Sought.	As mentioned in the scheme, the demerged company has 3 business verticals - Shipping Business, Fastrr Business and B2B Business. Pursuant to the scheme, it is proposed to demerge the shipping business ("Demerged Undertaking") from demerged company into resulting company. Further, the details of assets and liabilities of the demerged undertaking as captured in the Management Certified Carve-Out financials as on 31.03.2024 have been already submitted as

		Annexure A-6 with the first motion application.
2.	In the case of demerged company, auditor has stated in the audit report for the Financial Year ended 31.03.2023, that the company has incurred cash losses during the current year of Rs. 821.57 million. Further, in the preceding year loss was Rs. 380.54 million. Clarification sought.	The observation is merely factual in nature and is correct. Request you to kindly let us know if there is any specific query with regard to the same.
3.	In the case of Resulting Company, auditor has stated in the audit report for the Financial Year ended 31.03.2023, that the company has granted loans and advances to its subsidiary company. Hence, the company to ensure the compliance of the provisions of section 185, 186 and 188 of the Companies Act, 2013. Further, the resulting company has not paid certain statutory dues on account of dispute and the cases for the same are pending before the respective authority.	The Resulting Company is complying with and undertakes to comply with the requirements of Section 185, 186 and 188 of the Companies Act, 2013. The scheme of arrangement shall not have any impact on the outstanding statutory dues on account of dispute since both the companies will continue to remain into existence

		pursuant to the scheme of arrangements.
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7. There has been no further rejoinder / objections raised by the RD to the aforementioned response submitted by the applicant companies to the observation posed. This Tribunal is of the opinion that the response submitted appears to be satisfactory and does not pose any impediment.
8. Vide order dated 10.11.2023 passed by this Tribunal in the 1st Motion application [CA(CAA) No. 70/ND/2023], this Tribunal had made certain appointments in furtherance of the matter: -
- (i) Mr. Hemant Sethi (Insolvency Professional) as the Chairperson.
 - (ii) Adv. Swati Sood as the Alternate Chairperson.
 - (iii) CS Saurabh Agrawal as Scrutinizer for the following meetings: -
 - a. The Unsecured Creditors of the Demerged Company.
 - b. Shareholders, Secured and Unsecured Creditors of the Resulting Company in terms of the directions issued by this Tribunal.
9. The brief takeaways from the report dated 05.02.2024 submitted by the aforesaid Three Member Panel appointed by this Tribunal is as follows: -

Venue Of Meeting(s) - The Park Hotel, Sansad Marg, Connaught Place, New Delhi – 110001.

MODE – Video Conferencing/ Other Audio-Visual Means (OAVM) with facility of remote e-voting.

(Remote E-Voting commenced on 24.01.2024 at 9 a.m. and ended on 28.01.2024 at 5 p.m.)

➤ **WITH REGARD TO DEMERGED COMPANY (M/s Pickrr Technologies Pvt. Ltd.)**

<u>PARTICULARS</u>	<u>DATE OF MEETING</u>	<u>% of Persons Present & Voting</u>	
		<u>In Favour</u>	<u>AGAINST</u>
1. Unsecured Creditors	29.01.2024	100 % [Twenty-One in number constituting total value of Rs. 27,83,51,730/-]	0% [One person constituting value of Rs. 1,804/- only.]

➤ **WITH REGARD TO RESULTING COMPANY (M/s Bigfoot Retail Solutions Pvt. Ltd.)**

<u>PARTICULARS</u>	<u>DATE OF MEETING</u>	<u>% of Persons Present & Voting</u>	
		<u>In Favour</u>	<u>AGAINST</u>
1. Equity Shareholders	29.01.2024	100 % [Twenty-One in number]	NIL

2. Preference Shareholders	29.01.2024	<u>In Favour</u> 100 % [Thirty-Two in number]	<u>AGAINST</u> NIL
3. Secured Creditors	29.01.2024	<u>In Favour</u> 100 % [Three in Number representing total value of Rs. 2,19,61,61,010/-]	<u>AGAINST</u> NIL
4. Unsecured Creditors	29.01.2024	<u>In Favour</u> 100 % [Fifty-One in number representing a total value of Rs. 52,93,42,753/-]	<u>AGAINST</u> NIL

10. The Board of Directors of the Petitioner Company No.1 and Petitioner Company No. 2 in their respective Board Meetings held on 31st August 2023 and on 29th August 2023 respectively have approved the scheme.

11. The Appointed Date as provided in Form-B of the scheme is 01 April 2023.
However, this Tribunal confirms and approves 01.04.2023 as the appointed date.
12. Given the fact that the core business vertical of M/s Pickrr (Demerged Company/Applicant No. 1) is Shipping Business which is similar to M/s Bigfoot Retail Solutions (Resulting Company/ Applicant No.2) who is also engaged in the business of logistics and merchant solutions, the proposed scheme of demerger has the following rationale and likely benefits inter-alia as follows: -
- (i) Realization of benefits of greater synergies between the businesses of the Demerged Company and Resulting Company and use of the financial, managerial, technical and marketing resources of each other towards maximizing stakeholder value;
 - (ii) Synergy of operations will result in incremental benefits through sustained availability and better procurement terms of components, pooling of resources, thus leading to better utilization and avoidance of /6 duplication;
 - (iii) Opportunities for employees of the Companies to grow in a wider field of business;

- (iv) Improvement in competitive position and also achieving economies of scale including enhanced access to marketing networks/customers;
 - (v) Administrative and operational efficiencies because of similar business combined in a single entity. The proposed Scheme is in the interest of the shareholders, creditors, employees, and other stakeholders in the Demerged Company and the Resulting Company.
13. A Copy of Share Entitlement Report dated 21st August 2023, issued by Mr. Niranjana Kumar, Registered Valuer, having IBBI registration No - IBBI/RV/06/2018/10137 is annexed to the present petition prescribing "48,267 (Forty-Eight Thousand Two Hundred and Sixty-Seven) Non-Convertible, Non-Cumulative Redeemable Preference Shares of the Resulting Company of INR 100/- each fully paid up shall be issued for every 10 (Ten) equity shares of the Demerged Company of INR 10/- each fully paid up held by such shareholders". Thus, the recommended fair share entitlement ratio for demerged undertaking (rounded off) is 4862.7.
14. Share Capital Structure(s) as on 31.03.2023 of both the applicant companies respectively has been annexed to the petition, however is not being reproduced herein for the sake of brevity. It is further contended

that there has been no change in the mentioned capital structure(s) respectively of the both the applicant companies after 31st March 2023, till the date of filing the present petition.

15. Similarly, the financial position(s) of both the applicant companies has been placed on record and appears to be satisfactory.
16. It is further emphasized that sub-clause 26 of Object Clause III (b) of the Memorandum of Association of the Demerged Company authorizes Amalgamation / Arrangement with any other company. Similarly, sub-clause 7 of Object Clause III (B) of the Memorandum of Association of the Resulting Company authorizes Amalgamation / Arrangement with any other company.
17. The Directors and Key Managerial Personnel of the Petitioner Companies shall not be deemed to be interested in the proposed Scheme save to the extent of shares held by them in the Petitioner Companies, if any. 60. The Petitioners declare that the present petition is within limitation. 61. The Petitioner Companies are not governed by any specific regulator; therefore, no notice is required to be sent to any regulator.
18. In this petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the

Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Applicant Companies.

19. Certificate of the Statutory auditor of the Applicant Companies has been placed on record to the effect that Accounting Treatment proposed in the Scheme of Arrangement is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.

ORDER

20. The shareholders of the applicant companies are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme, of which sanction is sought under Section 230-232 of the Companies Act of 2013, will not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors.

- i.* It has also been affirmed in the petition that the Scheme is in the interest of the Companies including their shareholders, creditors, employees and all concerned.

ii. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Applicant Companies to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and the report of the Income Tax Department, there appears to be no impediment in sanctioning the present Scheme.

21. Consequently, **sanction is hereby granted** to the Scheme under Section 230 to 232 of the Companies Act, 2013.
22. The Applicants shall however remain bound to comply with the statutory requirements in accordance with law.
23. Notwithstanding the above, if there is any deficiency found or, violation committed, qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit in accordance with law, against the concerned persons, directors and officials of the Applicants.
24. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment

in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

25. **THIS TRIBUNAL DO HEREBY FURTHER ORDER:**

1. *That all the property, rights and powers of the Demerged Undertaking, be transferred without further act or deed, to the Resulting Company and accordingly the same shall, pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the Resulting Company for all intents, purposes and interest of the Demerged Undertaking subject nevertheless to all changes now affecting the same; and*
2. *That all the liabilities (if any) and duties of the Demerged Undertaking, be transferred without further act or deed, to the Resulting Company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Resulting Company; and*
3. *That all proceedings now pending by or against the Demerged Undertaking, be continued by or against the Resulting Company; and*

4. *That all the employees of the Demerged Undertaking in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date, shall become the employees of the Resulting Company on such date, without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the concerned Demerged Undertaking on the said date.*
5. *That Applicant companies shall, within thirty days of the date of the 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 Demerged Undertaking shall be deemed to be transferred: and*
6. *That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.*

26. The **petition** stands disposed off on the above terms. Let copy of the order be served to the parties.

Without costs.

-SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-

(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)