

THE NATIONAL COMPANY LAW TRIBUNAL

SPECIAL BENCH,

AT NEW DELHI

COMPANY PETITION NO. (CAA)-05 (PB) 2019

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

In the matter of:

Scheme of Amalgamation

of

Incredible Realcon Private Limited

Transferor Company

With

Ireo Private Limited

Transferee Company

Judgment delivered on: 07.08.2019

CORAM:

Dr. DEEPTI MUKESH, Hon'ble Member (J)

Mr. S. K. MOHAPATRA, Hon'ble Member (T)

For Petitioners

: Mr. Rajeev K. Goel, Advocate

Mr. Kartikeya Goel, Advocate

For Income Tax

: Mr. Puneet Rai, Advocate

For Official Liquidator

: Mr. Amish Tondon, CP



ORDER

S. K. Mohapatra, Member

1. This Joint application has been filed by the Petitioner 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 Amalgamation of the transferor company into the Transferee Company. The copy of the Scheme has been placed on record.
2. The “Transferor Company”, Incredible Realcon Private Limited was incorporated on 08.10.2013 as a private limited company under the provisions of Companies Act 1956, having its registered office C-4, 1st Floor, Malviya Nagar, New Delhi-110017.
3. The “Transferee Company”, Ireo Private Limited was incorporated on 15.03.2004 under the companies Act, 1956, having its registered office at C-4, 1st Floor, Malviya Nagar, New Delhi-110017.



4. It is seen from the records that the First Motion application seeking dispensation from convening the meetings of Shareholders and Creditors of petitioner companies was filed before this Bench vide CA (CAA) No. 169 (PB) 2018 and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, the meetings of Equity Shareholders, Secured Creditors of transferor company and optional convertible 'Series B' debenture holders of the transferee company were dispensed with, vide order dated 09.10.2018 passed by this Bench. Directions were also issued in the same order to convene meetings of debenture holders, unsecured creditors of Transferor Company and equity shareholders, preference shareholders, compulsory convertible debenture holders (Series A), secured creditors and unsecured creditors of Transferee Company.

5. Subsequently, in compliance of the order dated 09.10.2018 the aforementioned meetings were duly convened on 15.12.2018 and the proposed Scheme was unanimously approved by the members present and voting



in the respective meetings. The reports of the Chairperson and Scrutinizer have also been placed on record.

6. On 19.02.2019 the Petitioners were directed to carry out publication in the newspapers 'Business Standard' English Delhi edition as well as in 'Business standard' Hindi Delhi edition. In addition to the public notice, notices were directed to be served on to the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other relevant sectoral regulators.
7. It is seen from the records that the Petitioners have filed an affidavit dated 22.03.2019 affirming compliance of the order passed by the Tribunal dated 19.02.2019. A perusal of the affidavit discloses that the petitioners have affected the newspaper publication as directed in one issue of the 'Business Standard' English edition on 16.03.2019 as well as in 'Business Standard' Hindi edition again on 16.03.2019 in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of petition have been duly served to the Registrar of Companies, Regional Director, Northern Region, official liquidator and



Income Tax Department in compliance of the order and in proof of the same acknowledgement made by the respective offices have also been placed on record.

8. Petitioners in their affidavit filed on 22.03.2019 have confirmed that there is no other sectoral regulator who may have significant bearing on the operations of the petitioner companies.
9. The Regional Director has filed its report on 02.05.2019 and submitted that in reference to clause 10 (c) of the Scheme the transferee company should comply with the provisions of Section 232(3)(B)(i) and 233(11) and (12) of the Companies Act, 2013.
10. The transferee company in response to the aforementioned observation of the Regional Director has filed an additional affidavit dated 23.07.2019 and undertook to comply with the provisions of Section 232(3)(B)(i) and 233(11) and (12) of the Companies Act, 2013. The Regional Director has not raised any objection against the sanction of the Scheme.
11. The Official Liquidator has filed its report dated 27.03.2019 wherein no specific objection has been raised



against the approval of the Scheme. It is submitted in the report that the Official Liquidator has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

12. The Department of Income Tax has filed their no objection letter in respect of Transferee company on 15.07.2019. In respect of transferor company, the Department of Income Tax vide report dated 16.05.2019 has submitted that the department reserves its right to recover any pending tax in respect of transferor company. However, the department has not raised any objection against the sanction of the Scheme.

13. The Petitioner companies have filed response to the report of Income Tax Department on 28.05.2019 and submitted that the sanction of the Scheme will not adversely affect the right and powers of Income Tax Department and it is further stated that the petitioners have no objection against any specific liberty if granted to



the department regarding recovery or investigation in respect of both the petitioner companies.

14. In addition to the undertaking given by the petitioner companies it is clarified that there shall be no limitation on the power of the Income tax Department for recovery of pending Income Tax dues, including imposition of penalties etc. from the petitioner companies as provided in law.

15. In the joint 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 any of the Petitioner Companies.

16. Certificates of respective Statutory auditors of both the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation 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.



17. 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.

18. In the case of Hindustan Lever Employees Union Vs. Hindustan Lever Limited (1995) 5 SCC 491 the three Judges Bench of Hon'ble Supreme Court held that:

“a company court does not exercise appellate jurisdiction over a scheme and its jurisdiction is limited to ascertaining fairness, justness and reasonableness of the Scheme and to ensure that neither any law has been violated or public interest compromised in the process.”



19. Right to apply for the sanction of the Scheme has been statutorily provided under Section 230-234 of the Companies Act, 2013 and therefore, it is open to the applicant companies to avail the benefits extended by statutory provisions and the Rules.
20. The petitioner companies have filed affidavit dated 28.05.2019 confirming that any objection has not been received against the Scheme from any party or from any person interested in the Scheme in any manner.
21. It has also been affirmed in the petition that Scheme is in the interest of the transferor company and the transferee company including their shareholders, creditors, employees and all concerned.
22. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and the report of official liquidator and Income Tax Department, there appears to be no impediment in sanctioning the present Scheme.



23. Consequently, sanction is hereby accorded to the Scheme under Sections 230 & 232 of the Companies Act, 2013.

24. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

25. 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 petitioners.

26. 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.



27.

THIS TRIBUNAL DO FURTHER ORDER

1. *That the Transferor Company shall stand dissolved without following the process of winding-up; and*
2. *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 Section 232 of the Companies Act, 2013, be transferred to and vest in the transferee company.*
3. *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 Section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and*
4. *That all proceedings now pending by or against the Transferor Company, be continued by or against the transferee company; and*



5. That all the employees of the Transferor Company 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 transferee company on such date without any break or interruption in service and upon terms and condition not less favorable than those subsisting in concerned transferor companies on the said date.

6. That as per approved Scheme the Transferee Company will issue 1 (one) 13.90% Un-secured rated Redeemable Non-Convertible Debentures (Bonds) of Rs. 10,00,000 each, credit as fully paid up, for every 1 (one) 13.90% Un-secured rated Redeemable Non-convertible Debentures (Bonds) of Rs. 10,00,000 each held in the Transferor Company on the same terms and conditions (including coupon rate and redemption, etc.) as are applicable to these NCDs (Bonds) in the Transferor Company. The new Debentures / Bonds to be issued by the



Transferee Company, will be listed on the BSE Ltd. (Bombay Stock Exchange) under the category of Privately Placed Debt Instruments.

7. *That as per the approved Scheme the transferee company will issue 1 (one) Equity Share of Rs. 10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of Rs. 10 each held in the Transferor Company.*

8. *That Petitioner 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 Transferor Company shall be dissolved and the Registrar of Companies shall place all documents relating to the transferor company registered with him on the file kept by him in relation to the transferee company and the files relating to both the petitioner companies shall be consolidated accordingly; and*



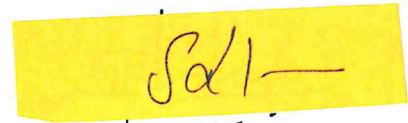
9. *That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.*

The petition stands disposed of in the above terms.

Let copy of the order be served to the parties.



(S. K. MOHAPATRA)
MEMBER (T)



(DR. DEEPTI MUKESH)
MEMBER (J)