

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT No-I
KOLKATA**

Company Petition C.P(CAA) NO 111 / KB / 2022
connected with
Company Application (CAA) No. 37/ KB /2022

A petition under section 230 read with section 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions of law.

In the matter of:

A Scheme of Amalgamation of (Second Motion):

FULFORD SALES PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having Company Identification Number (CIN:U51109WB1994APTC062319) and having its Registered Office at 16, Ganesh Chandra Avenue, Gandhi House, 5th Floor, Kolkata, - 700013 in the State of West Bengal.

***** Transferor Company No 1 / Petitioner No 1

And

STRIKORD SALES LIMITED, a company incorporated under the provisions of the Companies Act, 2013 and having Company Identification Number (CIN:U51900WB2017PLC219995) and having its Registered Office 133, Canning Street, 3rd Floor, Room No- 15, Kolkata – 700001 in the State of West Bengal.

***** Transferor Company No 2 / Petitioner No 2

And

PUSHPANJALI CREDIT RESOURCES PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having Company Identification Number (CIN:U51109WB1990PTC049645) and having its Registered Office at 16, Ganesh Chandra Avenue, 5th Floor, Kolkata - 700013 in the State of West Bengal.

***** Transferee Company / Petitioner No 3

And

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connected with
Company Application (CAA) No. 37/ KB /2022

In the matter of:

1. **FULFORD SALES PRIVATE LIMITED**
2. **STRIKORD SALES LIMITED**
3. **PUSHPANJALI CREDIT RESOURCES PRIVATE LIMITED**

.... **Petitioner Companies**

Date of pronouncing the order:10 /07/2024

Coram:

Bidisha Banerjee : **Member (Judicial)**
Balraj Joshi : **Member (Technical)**

For the Petitions : 1. Ms. Manju Bhuteria, Advocate
2. Ms. Radhika Patodia, ACA
3. Ms. Aisha Amin, Advocate

For the Regional Director, (ER), MCA
(Appearance Via Video Conferencing) : Mr. Alok Tandon, JD.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The instant application has been filed in the second stage of the proceedings under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (“Act”) for sanction and confirmation of the Scheme of Amalgamation of

Fulford Sales Private Limited	Transferor Company No 1 / Petitioner No.1
Strikord Sales Limited	Transferor Company No 2 / Petitioner No.2
Pushpanjali Credit Resources Private	Transferee Company / Petitioner No.3

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Limited	
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whereby and where under the Transferor Companies are proposed to be amalgamated with the Transferee Company from the **Appointed Date, 01st April, 2021** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation(“Scheme”). Copy of the said Scheme is annexed to the Company Petition marked – **Annexure –A**, in VOL I at Page 39 to 65.

2. It is submitted by Ld. counsel appearing for the Petitioner (s)that as per the Scheme the **Appointed Date is 01st April, 2021**.
3. It is submitted by Ld. counsel appearing for the Applicant(s) that the **Applicant No 1** and **Applicant No 3** are **NBFC Company** duly registered with Reserve Bank of India and are holding valid certificate of Registration.
4. It is submitted by Ld. counsel appearing for the Petitioner(s) that the list of Equity Shareholders of the Petitioner Companies as on 31st December,2021 is annexed to the Company Petition marked – **Annexure – H**, in VOL II at Page 284 to 286.
5. It is submitted by Ld. counsel appearing for the Petitioner(s) that the list of Preference Shareholders of the Petitioner No 3 as on 31st December,2021 is annexed to the Company Petition marked – **Annexure – I**, in VOL II at Page 287 to 287.
6. It is submitted by Ld. counsel appearing for the Petitioner(s) that NIL Secured Creditors of the Petitioner Companies as on 31st December,2021and list of Unsecured Creditors of the Petitioner Companies as on 31st December,2021 is annexed to the Company Petition marked – **Annexure – J**, in VOL II at Page 288 to 290.
7. It is submitted by Ld. counsel appearing for the Petitioner(s) that the Valuation Report dated 21-02-2022recommending the Swap Ratio has been prepared by MUKESH BANKA, IBBI Registered Valuer. Copy of the Valuation Report is annexed to the Company Petition marked – **Annexure – L**, in VOL II at Page 297 to 310.
8. It is submitted by Ld. counsel appearing for the Petitioner(s) that the Board of Directors of the Petitioner Companies have at their meeting held on 28- 02- 2022 have passed resolution approving the proposed Scheme of Amalgamation. Copy of the said Board Resolution is annexed to the Company Petition marked – **Annexure – M**, in VOL II Page 311 to 313.

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9. It is submitted by Ld. counsel appearing for the Petitioner(s) that the Statutory Auditors of the Petitioner Companies have by their certificate all dated 01-03-2022 have confirmed that the Accounting Treatment mentioned in the Scheme is in conformity with the Accounting Standards referred to in Section 133 of the Companies Act , 2013 and the Rules made there under. Copy of the said Certificate issued by the Statutory Auditor is annexed to the Company Petition marked – **Annexure – N**, in VOL II at Page 314 to 318.
10. It is submitted by Ld. counsel appearing for the Petitioner(s) that the Petitioner Companies had the following class of shareholders and creditors:

PARTICULARS	AS ON 31st DECEMBER,2021			
	EQUITY SHARE HOLDERS	PREFERENC E SHARE HOLDERS	SECURED CREDITOR S	UNSECURED CREDITORS
Transferor Company No 1 / Petitioner No 1	5	NIL	NIL	NIL
Transferor Company No2 / Petitioner No 2	7	NIL	NIL	3
Transferee Company / Petitioner No 3	12	2	NIL	NIL

11. The Petition has now come up for final hearing. Counsel for the Applicants submits as follows:-
- (a) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-
- i. The Transferee Company and “Transferor Company” No.1 are a Non-Banking Finance Company duly Registered with Reserve Bank of India and is engaged in Investing and Financing activities and the Transferor Company No. 2 is engaged in investing activities and have made deployment of their surplus fund which is not required in other investable instruments. The business of the Transferor Companies and the Transferee Company can be combined/ adjusted and carried forward conveniently with combined strength;

- ii. The amalgamation will enable the Transferee Company to consolidate its line of business by restructuring and re-organizing its business activities and Capital Structure;
- iii. The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the Transferee Company;
- iv. The amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources;
- v. The business of the Company can be conveniently and advantageously combined together and in general business of the Company concerned and will be carried on more economically and profitably under the said Scheme;
- vi. The said Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business of the company concerned. The said Scheme will also enable the undertakings and business of the said applicant company to obtain greater facilities possessed and enjoyed by one large company compared with a number of small Company for raising capital, securing and conducting trade on favorable terms and other benefits;
- vii. The said scheme will contribute in furthering and fulfilling the objects of the Company concerned and in the growth and development of these businesses;
- viii. The said scheme will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability;
- ix. The said scheme will enable the undertakings concerned to pool their resources and to expand their activities;

- x. The said scheme will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages;
 - xi. The said scheme will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.
- (b) It is submitted by Ld. counsel appearing for the Petitioner(s) that there are No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).
12. It is submitted by Ld. counsel appearing for the Petitioner(s) that by an order dated 20th May, 2022 in Company Application No. C.A (CAA) No.37/(KB)/2022 this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) of the Act:-

a. **Meetings dispensed:**
Equity Shareholders

Meeting of Equity Shareholders of the Petitioner Companies, for considering the Scheme are dispensed with in view of all shareholders of Petitioner Companies having respectively given their consent to the Scheme by way of affidavits.

Preference Shareholders

Meeting of Preference Shareholders of the Petitioner No.3, for considering the Scheme are dispensed with in view of all Preference shareholders of Petitioner No.3 having respectively given their consent to the Scheme by way of affidavits.

Unsecured Creditors

Meeting of Unsecured Creditors of Petitioner No.2, for considering the Scheme are dispensed with in view of consent by 98.98% in value of the Unsecured Creditors of the Petitioner No.2 having respectively given their consent to the Scheme by way of affidavits.

b. **No requirement of Meetings**
Secured Creditors

Secured Creditors of Petitioner Companies - NIL Creditors verified by auditor's certificate.

Unsecured Creditors

Unsecured Creditors of Petitioner No.1 and Petitioner No.3 - NIL
Creditors verified by auditor's certificate.

c. Meetings to be held

No meeting is s required to be held.

- (a) Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 22nd August,2022 the instant petition was admitted by this Tribunal and fixed for hearing on 16th September,2022 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 22nd August,2022 the Petitioner(s) have duly served such notices on the Regulatory Authorities as below :

NAME OF THE REGULATORY AUTHORITY	DATE OF SERVICE	AFFIDAVIT OF SERVICE	
		ANNEXURE	PAGE NO
THROUGH PERSONNEL MESSENGER(BY HAND DELIVERY)			
Principal Commissioner of Income Tax – 1	31-08-2022	C	17
Deputy Commissioner of Income Tax – Circle -1(1)	31-08-2022	C	18
Income Tax Officer – Ward 2(1)	31-08-2022	C	19
Income Tax Officer – Ward 5(1)	31-08-2022	C	20
Upon Registrar of Companies , West Bengal	29-08-2022	D	27
Upon Regional Director, Eastern Region	29-08-2022	E	29
Upon Reserve Bank of India	29-08-2022	F	31
Upon Official Liquidator , High Court Calcutta	29-08-2022	G	32
BY ELECTRONIC MAIL			
Principal Commissioner of Income Tax – 1	30-08-2022	C	21 , 23 & 26
Deputy Commissioner of Income Tax – Circle -1(1)	30-08-2022	C	22
Income Tax Officer – Ward 2(1)	30-08-2022	C	24

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Income Tax Officer – Ward 5(1)	30-08-2022	C	25
Upon Registrar of Companies , West Bengal	30-08-2022	D	28
Upon Regional Director, Eastern Region	30-08-2022	E	30
PAPER PUBLICATION			
Financial Express - In English	30-08-2022	B	13 to 14
Dainik Statesman – Bengali Translation	30-08-2022	B	15 to 16

An affidavit of Compliance duly affirmed on 08th September,2022 has also been filed.

- (b) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.

13. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (“RD”), Official Liquidator, High Court have filed their representations before this Tribunal.
14. The Official Liquidator has filed his report dated 09/09/2022 and concluded as under:-

“Para 9

That the Official Liquidator has not received any complaint against the Proposed Composite Scheme of Arrangement from any person/party interested in the Scheme in any manner till the date of filing of this Report.

Para 11

That the Official Liquidator on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is applicable.”

15. The RD has filed his reply affidavit dated **14th September,2022** (“RD affidavit”) which has been dealt with by the Petitioner(s) by their Rejoinder affidavit dated **15th September,2022** (“Rejoinder”). The observations of the RD and responses of the Petitioner(s) are summarized as under:-

Paragraph 2 (a) of RD Affidavit

That it is submitted that as per available record, it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. Further, all the petitioner companies are also up-dated in filling their statutory returns for the financial year 31/03/2021.

Paragraph 2 (a) of the Rejoinder

No adverse comments made by the Registrar of Companies, West Bengal in his report to the Regional Director. Further the Registrar of Companies, West Bengal has not received any Complaint and / or representation from any person on the proposed Scheme.

Paragraph 2 (b) of RD Affidavit

It, is submitted that the Transferor Company namely M/s Fulford Sales Private Limited and Transferee Company, M/s Pushpanjali Credit Resources Private Limited are registered with RBI as NBFC Companies. However, no "NOC" from RBI is provided yet in the said matter.

Paragraph 2 (b) of the Rejoinder

The Deponent submits that Fulford Sales Private Limited and Transferee Company namely Pushpanjali Credit Resources Private Limited are both NBFC Companies duly registered with Reserve Bank of India.

The Transferee Company namely Pushpanjali Credit Resources Private Limited has applied to the RBI for issuance of NOC under cover letter delivered to the Bank on 06-05-2022, 17-06-2022, 20-06-2022, 18-07-2022 and 30-08-2022.

(Reply to RD observation Annexure B at Page No 16 TO 18, 25 TO 27, 29, 31, 35)

The Transferee Company namely Pushpanjali Credit Resources Private Limited has also responded to the e mail received from the Bank on 21-06-2022 to their email

dated 07-06-2022, on 21-06-2022 to their email dated 09-06-2022 , on 19-07-2022 to their email dated 07-07-2022 , on 02-09-2022 to their email dated 01-09-2022.

(Reply to RD observation Annexure B at PAGE NO 21, 28, 30, 38)

Further emails were also sent on 24-08-2022 , 26-08-2022, 29-08-2022. E mails was also sent on 13-09-2022 requesting for issuance of NOC .

(Reply to RD observation Annexure B Page No 31to 34)

Similarly Fulford Sales Private Limited has applied to the RBI for issuance of NOC under cover letter delivered to the Bank on 06-05-2022.

(Reply to RD observation Annexure B Page No 19 to 20, 22 to 24)

Further pursuant to the direction contained in the order passed by the Hon'ble National Company Law Tribunal in dispensation order and director order the Petitioners served notice upon the Reserve Bank of India on 25th May,2022 and 29th August,2022 respectively.

(Reply to RD observation Annexure B Page No 36 and 37)

It is to noted that the Transferee Company namely Pushpanjali Credit Resources Private Limited is a NBFC Company and it shall continue to be a NBFC Company even after the sanction of the Scheme . Further the Transferee Company shall comply with all directions issued by the Bank to its fullest satisfaction for giving effect to the post facto concurrence to the Scheme . Copy of the letters, emails and notice served upon the Bank are collectively annexed and marked – Annexure – B.

Paragraph 2 (c) of RD Affidavit

The Petitioner Companies should be directed to provide list / details of Assets, if any, to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the proposed Scheme.

Paragraph 2 (c) of the Rejoinder

The Deponent duly authorised by the Petitioner Companies hereby confirms that the Transferee Company shall upon coming into effect of the Scheme shall file a list / details of assets that will be transferred by the Transferor Companies pursuant to the Scheme to the Transferee Company .

Paragraph 2 (d) of RD Affidavit

That the Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.

Paragraph 2 (d) of the Rejoinder

The Transferee Company undertakes that it shall comply with the provisions of Sec 232(3)(i) of the Companies Act, 2013 in regard to adjustment of fees upon clubbing of Authorized Share Capital(s) of the Transferor Company (ies) with the Authorized Share Capital of the Transferee Company in post-amalgamation and shall file a detailed statement thereof with the Registrar of Companies at the time of filing of INC – 28.

Paragraph 2 (e) of RD Affidavit

That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

Paragraph 2 (e) of the Rejoinder

The Transferee Company undertakes that it shall pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

Paragraph 2 (f) of RD Affidavit

The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

Paragraph 2 (f) of the Rejoinder

The Deponent duly authorized by the Petitioner Companies hereby affirms that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

Paragraph 2 (g) of RD Affidavit

It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 15/06/2022 for their views/ observation in the matter but the same is still awaited.

Paragraph 2 (g) of the Rejoinder

The Income Tax authorities have not made any observations on notice served by the office of the Regional Director.

Further the Petitioner Companies have also complied with the directions contained in the order passed by the Hon'ble Tribunal and have effected service upon the Income Tax Department. However the said department have not made/ filed observation pursuant to the said notices filed by the Petitioner Companies.

16. The Petitioners have also submitted an affidavit in terms of Section 65B of the Indian Evidence Act as called for by this Bench in respect of all emails sent and received by the Petitioner Companies .
17. That the Petitioners have received email dated 27th February 2023 communicated to the Petitioner Transferee Company that the application has been returned on the grounds that the said information called for by the bank has not submitted. However the said information and documents was submitted on 25th January, 2023 as well within time period which was never considered or referred to by the Bank in their all future correspondence. Copies of letter and email evidencing submission of documents to the Bank are all collectively annexed to the affidavit affirmed on 26-07-2023. (Annexure A , Page No 8 to 73 to the affidavit , Submission of Documents made to RBI)
18. That the Petitioners have received e mail dated 04th August,2023 communicated to the Petitioner Transferee Company that the application has been returned on the grounds that the Principal Business Criteria of the merged entity has not been met. The Petitioner Transferee Company has vide letter delivered to the Bank on 18-08-2023 have stated that the Principle Business Criteria of the merged entity has been met post amalgamation and the same has been communicated to the Bank vide letter delivered to their office on 25-04-2023 being page No 71 to 75. Copies of letter and email evidencing submission of documents to the Bank are all collectively annexed to

the affidavit affirmed on 18-08-2023. (Annexure A, Page No 7 to 31 to the affidavit, Submission of Documents made to RBI).

19. This Tribunal upon perusal of documents filed finds that the Petitioner Transferee Company has submitted from time to time all documents and information as called for by the Reserve Bank of India for issuance of NOC to the proposed Scheme . It has also found that the reasons cited by the Bank for rejection of application has been duly replied through substantiate evidence. Hence this Bench does not see any reason why the Scheme should not be sanctioned and accordingly it hereby sanctions the Scheme.
20. That this Tribunal give direction vide its order dates 6th May, 2024 to serve notice upon Reserve Bank of India for filing their reply to the letter dated 17th February, 2024. Till date the Reserve Bank of India has not filed any reply to the notice served upon them on 29th May, 2024 and accordingly it is presumed that they have no reply to offer and the bench proceeds to reserve the matter.”
21. Heard submissions made by the Ld Counsel appearing for the Petitioner, submissions made by the RD. Mr. Alok Tandon Joint Director appearing for RD submits that the office of the RD has no objection if the scheme is sanctioned, subject to the approval by RBI. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-
 - a. ***The Petitioner Transferee Company is directed to submit all papers that the Reserve Bank will require post amalgamation to the fullest satisfaction of the Bank for ex-post facto approval to the scheme.***
 - b. With the above condition, the Scheme of Amalgamation mentioned in this Petition being Annexure “A” hereto be sanctioned by this Hon'ble Tribunal with the Appointed date as April, 2021 and the same shall be binding on Fulford Sales Private Limited and Strikord Sales Limited with Pushpanjali Credit Resources Private Limited and their shareholders and all concerned;
 - c. All the properties, rights and interest of Fulford Sales Private Limited and Strikord Sales Limited be transferred to and vested in without further act or

deed in Pushpanjali Credit Resources Private Limited and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and vested in Pushpanjali Credit Resources Private Limited for all the estate and interest of Fulford Sales Private Limited and Strikord Sales Limited but subject nevertheless to all charges, now affecting the same;

- d. All the liabilities and duties of Fulford Sales Private Limited and Strikord Sales Limited be transferred without further act or deed to Pushpanjali Credit Resources Private Limited and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and become the liabilities and duties of Pushpanjali Credit Resources Private Limited;
- e. That all the proceedings and/or suit appeals now pending by or against Fulford Sales Private Limited and Strikord Sales Limited shall be continued by or against Pushpanjali Credit Resources Private Limited, for which the required records in respect of Transferor companies shall also be preserved by the Transferee Company as per the provisions of Section 239 of the Companies Act 2013.
- f. The Transferee Company do issue and allot shares to the shareholders of Fulford Sales Private Limited and Strikord Sales Limited as envisaged in the said Scheme of Amalgamation and for that, if necessary, to increase the authorized share capital;
- g. The schedule of assets & liabilities in respect of Fulford Sales Private Limited and Strikord Sales Limited be filed within a period of 60 days from the date of the order to be made herein;
- h. The Transferor Companies namely Fulford Sales Private Limited and Strikord Sales Limited shall stand dissolved from the appointed date;
- i. Pushpanjali Credit Resources Private Limited, Fulford Sales Private Limited and Strikord Sales Limited shall within 30 days after the date of obtaining the Certified Copy of the order to be made herein cause certified

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copies of this order to be delivered to the Registrar of Companies, West Bengal
for registration respectively;

- j. Any person/authority is aggrieved shall be at liberty to apply to this Hon'ble
Tribunal in the above matter for any direction that may be necessary;
22. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets
and liabilities in acceptable form to the department and the department will append
such printout, upon verification to the certified copy of the order.
23. The Company Petition C.P (CAA) No. 111/ KB / 2022 connected with Company
Application C.A(CAA) NO 37 / KB / 2022 is disposed of accordingly.
24. Certified copy of this order, if applied or, be supplied to the parties, subject to
compliance with all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Signed on this, the 10th Day of July, 2024.

BD