

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

**CA No. 197/2023  
in  
CA (CAA) No.24/Chd/HRY/2023  
(1st Motion)  
(Disposed of on 11.09.2023)  
Under Rule 11 of the NCLT Rules  
2016**

**IN THE MATTER OF SCHEME OF AMALGAMATION OF:**

**FIM Holdco I Ltd.,**

Company registered in Mauritius  
having its registered office at Level 6,  
Tower A, 1 Exchange Square,  
Wall Street, Ebene 72201,  
Republic of Mauritius

Transferor Company 1

and

**Ariston Investments Sub A Limited,**

Company registered in Mauritius  
having its registered office at Level 6,  
Tower A, 1 Exchange Square,  
Wall Street, Ebene 72201,  
Republic of Mauritius

Transferor Company 2

with

**One World Center Private Limited,**

Company incorporated under Companies Act, 2013  
having Its registered office at Plot No 422-B,  
Udyog Vihar, Phase IV,  
Village Dundaheera, Gurugram,  
Gurgaon – 122016, Haryana, India  
CIN: U45309HR2019PTC083279

Transferee Company

**Order delivered on: 22.04.2024**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present:**

For the Applicant : Mr. Anand Chhibbar, Senior Advocate  
Ms. Swati Vashisth, PCA

**Per: Harnam Singh Thakur, Member (Judicial)**

**Subrata Kumar Dash, Member (Technical)**

**ORDER**

The present application has been filed by the FIM Holdco I Ltd. (Transferor Company 1) and Ariston Investments Sub A Limited (Transferor Company 2) with One World Center Private Limited (Transferee Company) and their respective shareholders and creditors (Scheme of Amalgamation) under Rule 11 of the National Company Law Tribunal Rules, 2016 to sanction the Amended Scheme and allow modification of scheme. Further, issue necessary direction for permitting the filling of the application, petition and other documents as may be required for the purpose of amendment. Furthermore, it is prayed to exempt the applicant company from filing the certified copies and true types copies of annexures and permission to file photocopies.

2. It is averred that The First Motion Application ie C.A. (CAA) No. 24 / CHD / HRY/2023 was filed with the Tribunal on 28.04.2023. which was allowed vide order dated 11.09.2023.

There was a change in the share capital of the Transferor Company 1 after 20.03.2023 as under:

<b>Particulars</b>		<b>Amount in USD</b>
As on the date of approval of the Scheme: 17,93,93,372 ordinary shares	(A)	17,93,93,372

of USD 1 each		
Addition: 1,50,000 ordinary shares of USD 1 each	(B)	1,50,000
As on 31.03.2023: 17,95,43,372 ordinary shares of USD 1 each	(A+B)	17,95,43,372

There was a change in the share capital of Transferor Company 2 after 20.03.2023 as under:

<b>Particulars</b>		<b>Amount in USD</b>
As on the date of approval of the Scheme: 2,60,76,343 ordinary shares of USD 1.2828 each	(A)	3,34,50,732.80
Addition: 77,955 ordinary shares of USD 1.2828 each	(B)	1,00,000.67
As on 31.03.2023: 2,61,54,298 ordinary shares of USD 1.2828 each	(A+B)	3,35,50,733.47

2.1. It is further submitted that consequent to the change in the share capital of Transferor Company 1 and Transferor Company 2, it was imperative to amend the fair exchange ratio mentioned in clauses 11 and 20 of the Scheme. The Applicant Company sought for amendment of the fair exchange ratio report. The addendum to the original fair share exchange ratio report dated 15.03.2023 issued by Mr. Akshat Jain, IBBI Registered Valuer having his office at B - 801, Sunteck City Avenue-1, Oshiwara District Centre, Goregaon has been attached as Annexure A2.

2.2. Further, it is averred that the Board of Directors of the Applicant Company vide resolution dated 09.10.2023, and the Board of directors of the Transferor Company 1 and Transferor Company 2, vide resolution dated 10.10.2023, exercised the powers conferred to them by clause 28 of the Scheme, provided their consent for amendment of the fair exchange ratio report and the

following clauses in the Scheme:

- 1) Clause 3.1 and 3.2 ie, Share Capital of the Amalgamating Company 1 and Amalgamating Company 2 in the Scheme;
- 2) Insertion of the words "as on Appointed Date." in sub-clause (a) of Clause 11 in Part B and sub-clause (a) of Clause 20 in Part C;
- 3) Amendment of the proportion mentioned in sub-clause (b) of Clause 11 in Part B from 2.0242:1000 to 2.0225:1000;
- 4) Amendment of the proportion mentioned in sub-clause (b) of Clause 20 in Part C from 2.7998:1000 to 2.7915:1000;
- 5) Insertion of new sub-clause (c) of Clause 11 in Part B and new sub-clause (c) of Clause 20 in Part C; and thereby renumbering of sub-clause (c) of Clause 11 as sub-clause (d) of Clause 11 in Part B, renumbering of sub-clause (d) of Clause 11 as sub-clause (e) of Clause 11 in Part B renumbering of sub-clause (e) of Clause 11 as sub-clause (f) of Clause 11 in Part B and renumbering of sub-clause (c) of Clause 20 as sub-clause (d) of Clause 20 in Part C, renumbering of sub-clause (d) of Clause 20 as sub-clause (e) of Clause 20 in Part C, renumbering of sub-clause (e) of Clause 20 as sub-clause (f) of Clause 20 in Part C along with such other consequential changes as may be required or are necessary ('Amended Scheme').

2.3. It is further averred that the Scheme of Amalgamation is not prejudicial to the interest of the shareholders or the creditors of the Applicant Company.

3. The short note was filed vide Dairy No. 3500/01 dated 19.02.2024

reiterating the above-mentioned facts. The additional documents have been filed by Dairy No. 3500/2 dated 18.03.2024-

- Consent affidavit from BREP Asia SG L&T Holding (NQ) Pte Ltd, the shareholder of FIM Holdco I Ltd. ie, Transferor Company 1
- Consent affidavit from BREP Asia G L&T Holding (NQ) Pte Ltd, the shareholder of Ariston Investments Sub A Limited ie, Transferor Company 2
- Authorisation board resolution to sign the consent affidavits for Transferor Company 1 and Transferor Company 2 on behalf of BREP Asia SG L&T Holding (NQ) Pte Ltd
- Consent affidavit from BREP Asia SBS L&T Holding (NQ) Ltd, the shareholder of FIM Holdco I Ltd. ie, Transferor Company 1
- Consent affidavit from BREP Asia BS L&T Holding (NQ) Ltd, the shareholder of Ariston Investments Sub A Limited ie, Transferor Company 2
- Authorisation board resolution to sign the consent affidavits for Transferor Company 1 and Transferor Company 2 on behalf of BREP Asia SBS L&T Holding (NQ) Ltd
- Consent affidavit from BREP VIII BS L&T Holding (NQ) Ltd, the shareholder of FIM Holdco I Ltd. ie Transferor Company 1
- Consent affidavit from BREP VIII SBS L&T Holding (NQ) Ltd, the shareholder of Ariston Investments Sub A Limited ie, Transferor Company 2
- Authorisation board resolution to sign the consent affidavits for Transferor Company 1 and Transferor Company 2 on behalf of BREP VIII SBS L&T Holding (NQ) Ltd

4. We note to the fact that there is a change in the share capital of the prosperous company No. 1 and also the Pastoral Company No. 2, which are both the non-applicant foreign companies in the scheme of Cross-border amalgamation. This has necessitated a change in the fair exchange ratio which was mentioned in the first motion application and approved by this bench by its order dated 11.09.2023.

5. The documents submitted in the course of the present application consists mainly of the approval accorded by the board of directors of the Transferor Company No. 1 (Annexure A-5) And Transferor Company No. 2

(Annexure A-6) and Transferee Company/Applicant Company (Annexure A-7).

6. In this context, it is noted that the present application being for an inbound merger, the relevant regulations in this regard are quite detailed, and the applicants are mandated under the law to abide by the same. By making a change in the share exchange ratio, the very dynamics of the merger are changed by recognising the fact that in the case of cross border merger, the applicants are the final entities to decide on the details of the merger, and the same has to be carried out within the four corners of the Indian laws.

7. We further note that various compliances were made and the relevant documents and evidence in the same, were submitted in the course of the first motion application. For the sake of discussion, a reference is made to the following documents in the First Motion Application-

*“i. Certificate from two Directors of the Applicant Company ensuring compliance with the Foreign Exchange Management (Cross Border Merger) Regulations, 2018 (Annexure P-1 of the Application).*

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*v. CA certificate certifying the list of Equity Shareholders of the Applicant Company as on 17.03.2023 alongwith consent affidavits of all the Equity Shareholders, according, their consent to the Scheme of Amalgamation (Annexure P-7 of the Application).*

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*xi. Certificate of the statutory auditors of the Applicant Company confirming the accounting treatment proposed in the Scheme of Amalgamation (Annexure P-25 of the application).*

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*xiii. Independent auditor’s report along with audited financial statements as on 31.03.2022, 31.03.2021 and 31.03.2020 of the Applicant Company (Annexure P-5 Colly of the Application)”.*

8. As can be seen, in the original first motion application, the applicants had furnished various certificates regarding compliance with the relevant provision of the companies act 2013, and have also obtained the required approvals. We note that the same has not been done after the present amendment to the scheme whereby the share exchange ratio is substantially

altered, as a consequence of the increase in the Authorised Share Capital of the Transferor Company No. 1 & 2. It is pertinent to note that the said change in the share capital of the Transferor Company No. 1 & 2 was prior to the filing of the first motion application, i.e., on 28.04.2023. Therefore, the same should have been included in the first motion application and in the scheme thereof.

9. As the applicants have substantially changed the terms and conditions of the original scheme of amalgamation, we are of the view that they need to furnish the necessary certificates evidencing the compliances with the extant law again. View of such facts, we hold that the present application is incomplete in this regard, and hence the plea for allow modification of the scheme; for permitting the filling of the application/petition and other documents as may be required for the purpose of amendment; to exempt the applicant company from filing the certified copies and true types copies of annexures; and permission to file photocopies is hereby rejected. This bench, however, gives the applicants liberty to file the first motion application again, complete in our respect as required under the relevant provisions of the Companies Act, 2013.

10. In view of the above, the present IA is dismissed and disposed of accordingly.

**Sd/-**  
**(Subrata Kumar Dash)**  
**Member (Technical)**

April 22, 2024  
PKA/TB

**Sd/-**  
**(Harnam Singh Thakur)**  
**Member (Judicial)**