

**IN THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL
BENCH AT CHANDIGARH**

**CP (CAA) No. 66/Chd/Hry/2022
(2nd Motion)**

**Under Sections 230 to 232 of the
Companies Act, 2013 read with
Companies (Compromise, Arrangements
and Amalgamations) Rules, 2016**

IN THE MATTER OF SCHEME OF AMALGAMATION AND ARRANGEMENT OF:

UnitedLex BPO Private Limited

PAN: AAACU8493Q

CIN: U72300HR2006PTC097239

...Petitioner Company No.1/Transferor Company

And

Ironway India Private Limited

PAN: AABC15613D

CIN: U74140HR2006PTC1007138i

...Petitioner Company No.2/Transferee Company

Order delivered on: 31.08.2023

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

Present:-

For the petitioner Companies: Mr. Anand Chhibbar, Senior Advocate with Mr.
Jasmeet Singh Bhatia, Advocate.

For the Income Tax Department: Mr. Yogesh Putney, Senior Standing Counsel.

Per: Subrata Kumar Dash, Member (Technical)

ORDER

1. This is a joint second motion company petition filed by the Petitioner-Companies, namely **UnitedLex BPO Pvt. Ltd.** and **iRunway India Pvt. Ltd.** under Section 230-232 of the Companies Act, 2013 (the Act) and Rules 15 Companies

(Compromises, Arrangements, and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Arrangement between the petitioner companies.

2. The Petitioner Companies have prayed for sanctioning of the Scheme of Arrangement between the respective companies. The said Scheme is attached as Annexure P-1 of the petition.
3. The first motion application seeking directions for dispensing with the meetings of the equity shareholders, secured and unsecured creditors of the applicant companies was filed before this Tribunal vide Joint First Motion Application CA(CAA)-17/Chd/Hry/2022 and based on such an application, moved under Sections 230-232 of the Companies Act, 2013, (for brevity, the 'Act') necessary directions were issued as per the order dated 04.08.2022 the meetings of equity shareholders, secured creditors, and unsecured creditors of all the applicant companies were dispensed with for the reasons recorded in the aforementioned order.
4. The main objects, date of incorporation, authorized and paid-up share capital and the rationale of the Scheme have been discussed in detail in the order dated 04.08.2022.
5. In the second motion proceedings, certain directions were issued by this Tribunal by order dated 18.11.2022, and the same were compiled by filing affidavits vide Diary No. 02067/01 dated 13.01.2023. The notice of hearing was published in "Business Standard" and "Jansatta", on 07.01.2023, and the original copies of the newspapers are attached as Annexure A-3 of the aforesaid affidavit. It has also stated in the affidavits that copies of notices were served upon the (1) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs; (2) Registrar of Companies, NCT of Delhi and Haryana; (3)

Jurisdictional Income Tax Department (4) Official Liquidator. Additionally, since Applicant Company No. 1 has established a unit in SEZ in Gurugram (Haryana), it is also required to serve notice to and obtain approval from the concerned Unit Approval Committee. Original postal receipts along with tracking reports are attached as Annexure A-2 of the aforesaid affidavit.

6. It is deposed in the aforesaid affidavit that the authorized signatories have not received any objection/complaint against the proposed Scheme of Amalgamation and Arrangement (Merger by Absorption) from any person/party/stakeholder interested in the Scheme in any manner till date. . The aforesaid affidavits have been filed vide Diary No. 02067/01 dated 13.01.2023.
7. In response to the abovementioned notices, the statutory authorities have furnished their responses:

7.1 Registrar of Companies (RoC)/Regional Director (RD):

7.1.1. The Regional Director (RD) has filed its report along with the report of the Registrar of Companies by Diary No. 02067/03 dated 28.02.2023. In the report of the Regional Director, the following observations have been made:-

Para 10 of the report of the Regional Director has made certain observations at Clause 30 of the report of the ROC dated 18.01.2023 as under:-

i. As per MCA General Circular no. 9/2019 dated 21.08.2019, if the appointed date is significantly ante-dated beyond a Year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against the public interest. In this case, the appointed date is 01.04.2021. However, the justification of the same being significantly ante-dated in terms of the above circular is not clearly brought out.

ii. As per Annexure-A to the auditor's report of Runway India Private Limited for the year ended 31.03.2021 list of Statutory dues of Tax and Interest pertaining to A.Y 2014-15 to A.Y 2018-19 has been given which is pending under dispute.

iii. Refer to Clause 5 of the Scheme, the Transferee company may kindly be directed to comply with the provision of section 232(3) of the Companies Act, 2013 in regard to the fee payable on its revised authorized share capital, if applicable.

iv. As per Clause 13 of the Scheme, the name of the Transferee Company shall be changed to "UnitedLex India Private Limited". In this regard petitioner company may be directed to comply with relevant provisions and Rules regarding change of name under the Companies Act, 2013.

v. In Clause 3 of the Scheme, it has been stated that the Scheme would be effective from the effective date, this is contrary to section 232(6) which requires the Scheme to be effective from the appointed date"

7.1.2. The petitioner companies have filled the response to the report of Regional Director/RoC wherein it has been stated that the Appointed Dated of the Scheme of Amalgamation is 1st April 2021 and the first motion application was filed before this Tribunal on 30.03.2022 which falls in the same financial year. Hence, the appointed date is not ante-dated and it meets the requirements as clarified in the *MCA General Circular no. 9/2019 dated 21.08.2019*. It is further submitted that In terms of Clause 7 of the present Scheme of Amalgamation, all the Legal, Judicial, Quasi-judicial, Regulatory and Tax proceedings whether filed by the Transferor Company or filed against it, shall be continued and enforced by or against the Transferor Company. The scheme of amalgamation shall not hinder any rights of any Tax/Regulatory authorities, or any other person as a result of the present Scheme of Amalgamation. It is further stated that the Transferee Company undertakes to pay any demand which may arise subject to

the appropriate remedies or right to appeal available with the petitioner companies under the applicable laws and statute.

7.1.3. It is further submitted by the petition companies that the fee, if any, paid by the Transferor Company on its Authorization Share Capital shall be set off against the fee payable by the Transferee Company on its Authorization Share Capital subsequent to the Amalgamation, if applicable and also pay the differential fee, if any, arises on the increase of Share Capital. It is further clarified by the petitioner companies that the Scheme of Amalgamation will take effect from the Appointed Date and it is further undertaken that upon the order sanctioning the Scheme of Amalgamation being filed by the Transferor Company and Transferee Company with their Jurisdictional Registrar of Companies, the Scheme of Amalgamation shall take effect from the Appointed Date and same will be in compliance with the *MCA General Circular no. 9/2019 dated 21.08.2019*.

7.1.4. After going through the above submissions made by the applicant, the Regional Director in a report dated 17.02.2023 has stated that the observations stand clarified. Hence, no adverse inference is drawn against the petitioner companies.

7.2 Income Tax Department:

7.2.1. The Income Tax Department filed its report by Diary No. 02513/8 dated 23.05.2023 wherein it has been stated that neither any proceeding nor any prosecution has been initiated in the case of the petitioner companies. There is Rs. 2,46,426/- outstanding demand,

unabsorbed depreciation and carry forward of losses in relation to the petitioner companies.

7.2.2. The Income Tax Department filed its report in respect of the Transferor Company and Transferee Company by Diary No. 02067/07 dated 01.05.2023 and 15.02.2023 respectively wherein it has been stated that neither any proceeding nor any prosecution has been initiated in the case of the companies. It is further stated that the Income Tax Department has no objection to the proposed scheme of amalgamation with respect to both the applicant companies.

7.2.3. A revised Report dated 23.02.2023 has been filed by the Income Tax Department via Dairy No. 02067/08 on 23.05.2023 in respect of the Transferee Company which is extracted below :-

“On verification, it is noticed that the company Ms. Irunway India Private Limited (Transferee Company) has no outstanding collectable demand as on date. However, it is seen from records that in earlier assessment years, huge additions to the returned income have been. made by assessing officer during scrutiny assessment proceedings and various appeals of the Department/assessee are pending before various appellate forums, the details of which are as under:

A.Y	Demand Raised in Assessment Order as per Demand Notice (In Rs.)	Appeal Status	Remarks
2014-15	1,84,84,320	Appeal of the Department is pending before Hon'ble ITAT, Bangalore	An addition of Rs. 3,63,91,076/- was made in the assessment order as the assessee has overvalued the Fair Market Value of the shares by more than 505 percent in comparison to the value determine by assessing officer
2015-16	3,56,10,940	Appeal of Department is pending before Hon'ble High Court of	During the course of scrutiny proceeding of AY 2015-16 there was addition of Rs. 7,11,10,315/-

		<i>Karnataka</i>	<i>on account of default on part of assessee in deducting TDS on fees for technical services to a US entity which is 100% subsidiary of assessee company. Also, there was an addition of Rs. 15,31,482/- for failure to deduct TDS on sales commission to a US Citizen. The issue is pending before the Hon'ble High Court of Karnataka</i>
<i>2017-18</i>	<i>1,55,76,276/-</i>	<i>Appeal of the assessee is pending before National Faceless Appeal Centre (NFAC), Delhi</i>	<i>Addition of Rs. 4,50,39,942/- on account of default on part of the assessee in deducting TDS on fees for technical services to a US entity which is 100% subsidiary of assessee company</i>
<i>2018-19</i>	<i>73,47,169/-</i>	<i>Appeal of the assessee is pending before Appeal Faceless Appeal Centre (NFAC), Delhi</i>	<i>Addition of Rs. 2,01,60,684/- on account of default on part of the assessee in deducting TDS on fees for technical services to a US entity which is 100% subsidiary of the assessee company.</i>

7.2.4. It is further submitted by the Income Tax Department that though they have no objection on the proposal for the amalgamation subject to the directions, be issued to pay the demand arising in the future as a consequence of the Appellate orders

7.2.5. Thus, no adverse observation can be inferred from the report of the Income Tax Department.

7.3 Official Liquidator:

7.3.1. The Official Liquidator has filed his report vide Dairy No. 02067/02 dated 07.02.2023. The Official Liquidator in its report has noted the information on the incorporation of the Petitioner Companies, their capital structure, financial highlights, shareholding, etc. The Official Liquidator has also reproduced the extracts of Reports of the Statutory Auditors of the Petitioner Companies on the Financial Statements. The Transferor company shall be dissolved without winding up as per provisions of the Act. On and with effect from the

Effective Date, the Transferor Company shall be struck off from the records of the Registrar of Companies. The Transferee Company shall make all necessary filings in this regard. Any obligations/ step which need to be undertaken by the Transferor Company pursuant to the sanction of this scheme shall be fulfilled by the Transferee Company.

7.3.2. Thus, no adverse observation can be inferred from the report of the Official Liquidator.

8. The certificate of the Statutory Auditors with respect to the Scheme between Petitioner Companies to the effect that the accounting treatment proposed in the Scheme is in compliance with applicable Indian Accounting Standards (Ind.AS) as specified in Section 133 of the Act, read with rules thereunder and other Generally Accepted Accounting Principles is attached as Annexure P-17.
9. We have heard the learned counsel for petitioner companies and learned counsel for the Income Tax Department and have carefully perused the record.
10. In the context of the above discussion, the Scheme contemplated between the petitioner companies appears to be prima facie in compliance with all the requirements stipulated under the relevant Sections of the Companies Act, 2013. As the observations from the Statutory Authorities have been duly addressed by the Petitioner Companies and since all the requisite statutory compliances have been fulfilled, this Tribunal sanctions the Scheme of Amalgamation and Arrangement attached as **Annexure P-1 of the petition**.
11. Notwithstanding the submission that no investigation is pending against the petitioner companies, if there is any deficiency found or, the violation committed qua any enactment, statutory rule, or regulation, the sanction granted by this

Tribunal will not come in the way of action being taken, albeit, in accordance with the law, against the concerned persons, directors and officials of the petitioners.

12. While approving the scheme as above, it is clarified 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, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

- (i) 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 Sections 230 & 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Companies but subject nevertheless to all charges now affecting the same; and
- (ii) 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 Sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company;
- (iii) All benefits, entitlements, incentives, and concessions under incentive schemes and policies that the Transferor Company is entitled to include under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated

obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives, and concessions;

- (iv) All contracts of the Transferor Company which are subsisting or having effect immediately before the Effective Date shall stand transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Companies, the Transferee Company had been a party or beneficiary or obliged thereto;
- (v) All the employees of the Transferor Company shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favorable than those on which they are engaged by the Transferor Companies, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans, and any other retirement benefits;
- (vi) That the Appointed Date for the scheme shall be **01.04.2021** as specified in the Scheme;
- (vii) That the proceedings, if any, now pending by or against the Transferor Company be continued by or against the Transferee Company;
- (viii) That the Transferee Company shall, without further application, allot to the existing members of the Transferor Company shares of Transferee Company to which they are entitled under the said Scheme;

- (ix) That the fee, if any, paid by the Transferor Company on their authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme';
- (x) That the carry forward and set off of accumulated losses and unabsorbed depreciation allowance in the Petitioner Companies, if any, shall be subject to applicable provisions of Income Tax including Section 72A and Section 79 of the Income Tax Act, 1961;
- (xi) That the assessment under the Income Tax Act will be in accordance with the provisions of the Section 170 (2A) of the Income Tax Act, 1961;
- (xii) That the Transferee Company shall file the revised memorandum and articles of association with the concerned Registrar of Companies and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company; after setting off the fees paid by the Transferor Company;
- (xiii) That the Petitioner Companies shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the concerned Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Companies shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Companies registered with him on the file relating to the said Transferee Company, and the files relating to the Companies and Transferee Company shall be consolidated accordingly, as the case may be;

(xiv) That for the purpose of change of name of Transferee Company as mentioned in Clause 13 of scheme, the Demerged Company is directed to comply with the provisions of the Companies Act and the procedure laid down thereto for the change of the name and approach the concerned authority for the same; and

(xv) That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

13. As per the aforesaid directions, formal orders in Form No. CAA-7 of Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 be issued after the filing of the Schedule of Properties within three weeks from the date of receiving a certified copy of this order by the petitioners.

14. All the concerned Regulatory Authorities are to act on a copy of this order annexed with the Scheme duly authenticated by the Registrar of this Bench.

15. The Company Petition (CAA) No. 66/Chd/Hry/2022 is allowed and disposed of accordingly.

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

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

August 31, 2023
JGS