

THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I

**C.P. (CAA)/283/MB-I/2023**

**c/w**

**C.A. (CAA)/157/MB-I/2023**

*In the matter of*

*The Companies Act, 2013;*

*AND*

*In the matter of*

*Sections 230 to Section 232 of the*

*Companies Act, 2013 and other*

*relevant provisions of the*

*Companies Act, 2013*

*read with Companies*

*(Compromises, Arrangements and*

*Amalgamation) Rules, 2016;*

*AND*

*In the matter of*

*Scheme of Merger*

***Tirumala Travels Private Limited***

*(‘Transferor Company’)*

*with*

***JRT Family Office Private Limited***

*(formerly known as Todi Finance Private*

*Limited)*

*(‘Transferee Company’)*

*and*

*their respective shareholders*

**Tirumala Travels Private Limited**  
CIN: U63040MH1988PTC049065

Petitioner Company 1/  
**Transferor Company**

**JRT Family Office Private Limited**  
(formerly known as  
**Todi Finance Private Limited**)  
CIN: U67120MH1984PTC034129

Petitioner Company 2/  
**Transferee Company**

*(Hereinafter collectively referred to as “the Petitioner Companies”)*

**Order delivered on: 08.02.2024**

**Coram:**

**Shri. Prabhat Kumar**  
Hon’ble Member (Technical)

**Justice V.G. Bisht (Retd.)**  
Hon’ble Member (Judicial)

**Appearances:**

For the Petitioner(s):

Mr. Nitin Gutka i/b ZADN & Associates,  
Practicing Chartered Accountants.

**For the Regional Director:**

Mr. Altap Mahammad Shaikh, Assistant  
Director, Authorised Representative,  
Office of Regional Director, Western  
Region.

**ORDER**

1. Heard the Representative for the Petitioner Companies and the representative of the Regional Director Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition to the Scheme, except as otherwise stated.
2. The sanction of the Tribunal is sought under Sections 232 r/w Section 230 and other relevant provisions of the Companies Act, 2013 (“**the Act**”) and the Rules framed thereunder for the Scheme of Merger of **Tirumala Travels Private Limited** (“Transferor Company”) with **JRT Family Office Private Limited** (“Transferee Company”) and their respective shareholders hereinafter referred as to “Scheme”).
3. The Representative for the Petitioner Companies submits that the Board of Directors of the Petitioner Companies in their respective Board Meetings held on 30<sup>th</sup> May, 2023 have approved the Scheme.
4. The Petitioner Company 1 is currently carrying on the business of travel agency services and also carrying on the business of trading in commodities. The Petitioner Company 2 is carrying on the business of commodities and investment in shares and securities.
5. The rationale of the Scheme of Merger is summarised as follows:
  - a) Tirumala Travels Private Limited is partially held by JRT Family Office Private Limited and Todi Family Members hold the rest of the stake. The proposed amalgamation and reorganisation of the legal entities in the group structure shall ensure optimised corporate holding structure more aligned with the business requirements.
  - b) The merger shall result in consolidation of resources; facilitating optimum utilization of assets and other resources for future growth;

avoiding duplication of efforts.

- c) Consolidate and effectively manage the Transferor Company and the Transferee Company in a single unified entity by eliminating multiple entities.
  - d) Greater efficiency in overall combined business including synergies, efficiency of operations, cash flow management, consolidation of resources and increased asset base for the purpose of development of businesses of the combined entity, enhancing their growth opportunities and maximizing the shareholder's value;
  - e) Shareholders / ultimate beneficial owners of the Transferor Company and the Transferee Company are part of the same family and promoter group which implies that both the companies are owned and controlled by same set of shareholders.
  - f) The proposed amalgamation will eliminate the duplication in administrative costs and multiple record-keeping thus resulting in cost savings for the Companies. The proposed amalgamation would also reduce the overall compliance cost of the combined entity.
6. The Present Company Scheme Petitions is filed in consonance with Section 232 r/w Section 230 of the Companies Act, 2013 and in terms of the order dated 17<sup>th</sup> October, 2023 passed in C.A. (CAA) / 157 / MB / 2023 by this Tribunal and the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary affidavits of compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made thereunder to give effect to the Scheme.

7. Pursuant to the Scheme the Transferee Company is proposing to issue shares to the shareholders of the Transferor Company (other than the shares held by the Transferee Company) as per the below ratio:-  
*"2(Two) fully paid up equity shares of INR 100/- (Hundred) of the Transferee Company shall be issued and allotted for every 353(Three Hundred and Fifty-Three) equity shares of INR 10/- (Ten) each held in the Transferor Company."*
8. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Report dated 21<sup>st</sup> December, 2023 making certain observations and the Petitioner Companies have submitted / undertaken that:
- a. The Transferee Company shall comply with the proviso of section 232(3)(i) of the Companies Act, 2013, as applicable, and pay the difference of fees and stamp duty on increasing the authorized capital after setting-off of the fee and stamp duty paid by the Transferor Company while giving effect to increase in the authorized share capital of the Transferee Company;
  - b. The interest of the creditors of each of the Petitioner Companies is protected under the Scheme;
  - c. The Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Merger to comply with accounting standards AS-14 (IND AS-103) and any other applicable accounting standards including AS-5 (IND AS-8) to the extent applicable;

- d. The Petitioner Companies have complied with the requirements and clarification of circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs (“**Circular**”) and the Appointed Date is in accordance with the provisions thereof;
  - e. The Transferee Company shall comply with provisions of section 2(1B) of the Income Tax Act, 1961, as applicable.
  - f. The Petitioner Company 2 shall not object to the Registrar of Companies taking appropriate action if required to deal with the non-compliance of provisions of Section 90 of the Companies Act, 2013 read with the Companies (Significant Beneficial Owners) Rules, 2018, amended from time to time by the Petitioner Companies. All issues arising thereunder shall be decided in accordance with law.
9. Mr. Altaf Sheikh, Assistant Director, Office of Regional Director (WR), Mumbai appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.
10. The Official Liquidator, High Court of Bombay, at Mumbai, has filed its report dated 5<sup>th</sup> December, 2023 in the consolidated Company Scheme Petition No. C.P.(CAA) /283/ MB / 2023, inter alia, stating therein that the representation of the Official Liquidator may be taken on record by this Tribunal. Further, the Official Liquidator has made certain observations in Para 5 & 6 of his Report and response submitted by the Petitioner Companies as under :

- a. The Transferee Company shall comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 with regard to the combination of Authorised share capital, where the Transferor Company shall stand dissolved and the fees, if any, paid by the Transferor Company on its Authorised share capital shall be set off against any fees payable by the Transferee Company on its Authorised share capital subsequent to the Merger, the Deficit fee, if any after setting-off the fees already paid by the Transferor Company on their authorized capital, will be paid by the Transferee Company. Hence, there is no question of modification of clause 16.1 of the Scheme.
  
- b. The Petitioner Company states that principal business/activities of the Transferor Company is that of travel agency services and trading of commodities. The Transferor Company has invested temporary funds due to pandemic situation and there is no intention to carry on financial business /activities that would require registration with Reserve Bank of India (RBI) as NBFC. The RBI requires that only companies who are predominantly engaged in financial activity should get registered with it. Hence if there are companies engaged in agricultural operations, industrial activity, purchase and sale of goods, providing services or purchase, sale or construction of immovable property as their principal business and are doing some financial business in a small way, they will not be regulated by the RBI. The Petitioner Company further submits that statutory auditors in clause 16 of Companies Auditors Report Order, 2020 (“Order”) for the Financial Year 2022-23 has

stated that “*the Company is not required to be registered under section 45-IA of the Reserve Bank of India Act, 1934 and hence provision of clause 3(xvi) of the order are not applicable to the Company*”. The Transferor Company has also obtained certificate from the statutory auditors stating that “*the Company is not required to be registered under section 45-IA of the Reserve Bank of India Act, 1934, as its main business is travel agency services and trading in commodities. The Company has not accepted any deposits from the public*”.

11. The observations made by the Official Liquidator, High Court of Bombay, at Mumbai, have been explained by the Petitioner Company. The Affidavit dated 23<sup>rd</sup> December, 2023 filed by the Petitioner Company 1, the clarifications and undertakings given by the Petitioner Companies are accepted by this Tribunal, and the Petitioner Companies are directed to comply with the same. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made thereunder.
12. The Income Tax department (Assistant Commissioner of Income Tax-8(3)(1), vide its letter dated 28<sup>th</sup> November, 2023 has intimated to this Tribunal that, they have certain comments/observations in respect of the proposed Scheme of Merger. In response to the said letter, Petitioner Company 2 vide their letter dated 11<sup>th</sup> December, 2023, submitted the appropriate reply. Further, in response to the comments/observation made by the Income Tax department, the Petitioner Companies have given necessary clarifications by way of an Affidavit dated 23<sup>rd</sup> December, 2023. In the said Report it is, inter alia, mentioned that:



- a. The Petitioner Company 1 submits that the Scheme will be without prejudice to the rights of the Income Tax Department, and the Income-tax Department is free to proceed against the Transferee Company in all its proceedings.
- b. The Petitioner Company 1 submits that the Petitioner Company 1 has received an order under Section 143(1) of the IT Act, 1961, for AY 2019-20 raising demand of Rs, 19,360. The demand has arisen as the Income Tax Officer has not given credit of TDS of Rs. 25,584/-. The Petitioner Company 1 e-filed a rectification return on 11<sup>th</sup> August, 2020 correcting all the defects. Subsequently, the Income Tax Department, vide its order under Section 154 of the IT Act dated 12<sup>th</sup> September, 2020, deleted the demand raised and issued a refund of Rs. 7780/-. In any event, the Petitioner Company 1 submits that income Tax arrears outstanding of the Petitioner Company 1 will be borne by the Transferee Company as per clause 12 of the Scheme.
- c. The Petitioner Company 1 undertakes that the Income Tax Department will be at liberty to initiate the appropriate course of action as per law if it is discovered that this scheme is used as a device for tax avoidance.
- d. The Income Tax Department will be free to examine any aspect of any tax payable as a result of the scheme and will be at liberty to initiate the appropriate course of action as per the law if it is found that the scheme ultimately results in tax avoidance or not in accordance with the IT Act.
- e. The Petitioner Company 1 undertakes that rights of the Income Tax Department will not be adversely affected by taking out any present

or future proceedings regarding the raising of any tax demand at any future date after the sanctioning of the scheme.

13. The observations made by the Income Tax Department, have been explained by the Petitioner Company above. The Affidavit dated 23<sup>rd</sup> December, 2023 filed by the Petitioner Company 1, the clarifications and undertakings given by the Petitioner Companies are taken on record by this Tribunal. Nonetheless, the Petitioner Companies undertake to comply with the direction of the Income Tax Authority in accordance with the applicable law.
14. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme ultimately results in tax avoidance under the provisions of the Income Tax Act, it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.
15. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law, and is not contrary to public policy considering that no objection has so far been received from any authority or creditors or members or any other stakeholders.
16. Since all the requisite statutory compliances have been fulfilled, the consolidated Company Scheme Petition in C.P. (CAA) 283 / MB / 2023 filed by Petitioner Companies is made absolute in terms of clause (a) to (c) of the said Company Scheme Petition.

17. The Scheme is hereby sanctioned and the Appointed Date of the Scheme is fixed as 1<sup>st</sup> April, 2023.
18. The Petitioner Companies are directed to lodge a certified copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically in E-Form INC-28 within 30 days from the date of receipt of the Order from the Registry.
19. The Petitioner Companies are directed to lodge a certified copy of this order and the Scheme duly authenticated by the Deputy / Assistant Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, payable, if any, within 60 clear working days from the date of receipt of the certified copy of the Order from the Registry of this Tribunal.
20. All concerned regulatory authorities are to act on a copy of this Order duly certified by the Deputy Registrar / Assistant of this Tribunal along with a copy of the Scheme.
21. Ordered accordingly. C.P. (CAA)/283/MB/2023 is allowed and disposed of.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)