

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CA(CAA) No. 05/KB/ 2018

IN THE MATTER OF

Section 230 read with Sections 66, 232 and other applicable provisions of the Companies Act, 2013;

And

FACITCON INVESTMENTS PRIVATE LIMITED, having its registered office at 3rd Floor, 31 Shakespeare Sarani, Kolkata-700017 within the aforesaid jurisdiction.

..... **Transferor Company No.1**

And

S T INVESTMENT PRIVATE LIMITED, having its registered office at 3rd Floor, 31 Shakespeare Sarani, Kolkata- 700017 within the aforesaid jurisdiction.

..... **Transferor Company No.2**

And

B.T. INVESTMENTS PRIVATE LIMITED, having its registered office at 3rd Floor, 31 Shakespeare Sarani, Kolkata- 700017 within the aforesaid jurisdiction.

...**Transferee Company**

And

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1. Facitcon Investments Private Limited
2. S T Investment Private Limited.
And
3. B T Investments Private Limited

.....Applicants

For the Applicants
Mr.Arkodeb Sinha, Advocate

Date of Pronouncing the order :

15/03/2018

Per Jinan K.R.

ORDER

1. This is an application filed by the Applicants namely Facitcon Investments Pvt. Ltd., the **“Transferor Company 1”**, **S T Investment Pvt.Ltd., the “Transferor Company 2”** and **B.T.Investments Pvt.Ltd., the Transferee Company** under Sections 230 and 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation proposed between the Transferor Company 1, Transferor Company 2 and Transferee Company.
2. A copy of the Scheme has been annexed as Annexure **“M”** to the application.
3. The ultimate objective of the Scheme is to amalgamate the Transferor Company 1 and Transferor Company 2 into the Transferee Company.
4. The Transferor Company 1 is a NBFC duly registered with the RBI vide its certificate dated 1st April 2004 and annexed as Annexure **“D”** to the application.

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5. The authorised share capital of the Transferor Company 1 is Rs.1,00,00,000/- (Rupees One Crore only) divided into 4,80,000 equity shares of Rs.10/- each and 52,000 7% Non-Cumulative Preference Shares of Rs.100/- each.
6. The issued, subscribed and paid up Share Capital is Rs.96,64,000/- (Rupees Ninety Six Lakhs Sixty Four Thousand only) divided into 4,63,200 equity shares of Rs.10/- each fully paid up and 50,320 7% Non-Cumulative Preference Shares of Rs.100/- each fully paid-up.
7. The Transferor Company 2 is a NBFC duly registered with the RBI vide its certificate dated 21st February 1998 and annexed as Annexure "H" to the application.
8. The authorised share capital of the Transferor Company 1 is Rs.4,20,00,000/- (Rupees Four Crores Twenty Lakhs only) divided into 42,00,000 equity shares of Rs.10/- each.
9. The issued, subscribed and paid up Share Capital is Rs.4,11,00,000/- (Rupees Four Crores Eleven Lakhs only) divided into 41,10,000 equity shares of Rs.10/- each fully paid up.
10. The Transferee Company is also NBFC duly registered with the RBI vide its certificate dated 1st January 2008 and annexed as Annexure "L" to the application.
11. The authorised share capital of the Transferee Company is Rs.90,00,000/- (Rupees Ninety Lakhs only) divided into 4,20,000 equity shares of Rs.10/- each and 48,000 7% Non-Cumulative Preference Shares of Rs.100/- each.
12. The issued, subscribed and paid up Share Capital is Rs.86,50,000/- (Rupees Eighty Six Lakhs Fifty Thousand only) divided into 3,92,500 equity shares of Rs.10/- each fully paid up and 47,250 7% Non-Cumulative Preference Shares of Rs.100/- each fully paid-up.



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13. It has been stated in the Application that the Transferor Company and the Transferee Company are engaged in a similar business on account whereof the instant amalgamation of the Transferor Company No.1 and Transferor Company No. 2 with the Transferee Company will allow the optimum growth, development and diversification of the businesses with the combined resources of the said companies and for centralizing the asset base and resources to result in better management and effective utilization of resources thereby resulting in lowering of overall costs and increase in overall productivity, efficiency and profitability, it is considered expedient and desirable to amalgamate the Transferor Company with the Transferee Company in the manner and on the terms and conditions stated in the Scheme of Amalgamation.

14. It is further stated that the Scheme of Amalgamation will result in economies of scale, reduction in overhead and other expenses, reduction in administrative and procedural work, elimination of duplication of work, better and more productive and effective utilization of the resources of the applicant companies to enable the applicant companies to effect internal economies and optimize productivity.

15. The instant Scheme of Amalgamation will have beneficial results for all the Applicant Companies concerned, their shareholders, employees, creditors and all concerned.

16. The RBI has given its approval to the said Scheme of Amalgamation between the Applicant Companies by its approval letter dated 7th August 2017 and annexed as Annexure "Q" to the said Application.

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17. The Board of Directors of the Applicant Companies have approved the Scheme of Amalgamation in its respective meetings held 5th August 2017, 9th August 2017 and 5th August 2017 and Board Resolutions are annexed herewith and marked with letter "**N-1**", "**N-2**" and "**N-3**" respectively.

18. It is also submitted in the Application that the aggregate assets of the Transferor Company and the Transferee Company are sufficient to meet all their liabilities and the Scheme of Amalgamation will not adversely affect the rights of any of the creditors of the Transferor Company and the Transferee Company in any manner whatsoever and due provisions have been made in the Scheme of Amalgamation for payment of all the liabilities of the concerned entities.

19. There are no proceedings pending under Sections 235 to 251 of the Companies Act, 1956 or Sections 217, 219, 221, 224 and 225 of the Companies Act, 2013 against any of the Applicant Companies.

20. The Valuation Report and Share Exchange Ratio for the said Scheme has been issued by the Chartered Accountants and annexed with the Application marked with letter "**O**".

21. The Auditor's of the Applicant Companies have also issued certificates for complying with the Accounting Standards upon the Scheme becoming effective and annexed with the Application marked with letter "**P-1**", "**P-2**" and "**P-3**" respectively.

22. The shareholders of the respective Applicant Companies have requested for a meeting to be held for such shareholders as per the direction of this Tribunal.

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23. The unsecured creditors having over 90% value of the Applicant Companies have consented to the Scheme and also signed Affidavit along with Auditor's certificate of the respective Applicant Companies relating to the list of creditors is annexed and marked as "S", "T" and "U" respectively and by way of Supplementary Affidavit.

24. The Applicant Companies further submitted that convening and holding of the meetings of the Creditors of the Applicant Companies be dispensed with in view of the written consents, by way of affidavits, given by all the creditors of both the Applicant Companies, as aforesaid.

25. It is submitted in the Application that no one will be prejudiced if the Scheme of Amalgamation is sanctioned and the sanction of the Scheme of Amalgamation will benefit all concerned and is in the interest of the Applicant Companies, their shareholders, creditors, employees and of the general public.

26. Heard the learned Counsel for the applicants, perused the records, documents annexed to the Application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants, the following orders are passed:

- (i) Meeting of the equity and preference shareholders of Facitcon Investments Pvt.Ltd., the Transferor Company No.1 shall be convened and held at the registered office of the Company at 3rd Floor, 31 Shakespeare Sarani, Kolkata- 700017 on 11-05-2018 at 11 A.M. for the purposes of considering and if thought fit approving with or without modifications the proposed Scheme of Arrangement and Amalgamation with the Transferee Company.

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- (ii) Meeting of the equity shareholders of S.T. Investment Pvt.Ltd., the Transferor Company No.2 shall be convened and held at the registered office of the Company at 3rd Floor, 31 Shakespeare Sarani, Kolkata- 700017 on 11-05-2018 at 12 P.M for the purposes of considering and if thought fit approving with or without modifications the proposed Scheme of Amalgamation with the Transferee Company.
- (iii) Meeting of the equity and preference shareholders of B.T.Investments Pvt.Ltd., the Transferee Company shall be convened and held at the registered office of the Company at 3rd Floor, 31 Shakespeare Sarani, Kolkata- 700017 on 11-05-2018 at 1.00 P.M for the purposes of considering and if thought fit approving with or without modifications the proposed Scheme of Arrangement with the Transferor Company No.1 and Transferor Company No.2.
- (iv) In view of the fact that there are no secured creditors of the Applicant Companies, as certified by the respective Auditors, convening and holding of separate meetings of the Secured Creditors of the Applicant Companies does not arise.
- (v) In view of the written consents, by way of affidavits, given by the unsecured Creditors of both the Applicant Companies, convening and holding of separate meetings of the Unsecured creditors of the Applicant Companies, are dispensed with.
- (vi) The quorum for the meeting of the equity and preference shareholders of the Transferor Company No.1 shall be in accordance with Section 103 of the Companies Act, 2013.

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- (vii) The quorum for the meeting of the equity shareholders of the Transferor Company No.2 shall be in accordance with Section 103 of the Companies Act, 2013.
- (viii) The quorum for the meeting of the equity and preference shareholders of the Transferee Company shall be in accordance with Section 103 of the Companies Act, 2013.
- (ix) Mr. Rajesh Singh, Advocate, Mobile No. 98302-70651/98302-70658 is appointed as the Chairperson for the meeting to be held under this order and the relevant law. The Chairperson shall be paid Rs. 50,000/- (Rupees Fifty thousand only) lumpsum for his services as the Chairperson.
- (x) Voting shall be allowed on the proposed Scheme by voting in person or by proxy in accordance with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 read with the relevant provisions of the Companies (Management and Administration) Rules, 2014 with necessary variations for the orders and directions herein under Sections 230(1) and 232(1) of the Companies Act, 2013.
- (xi) Voting by proxy shall be permitted, as aforesaid, provided that a proxy in the prescribed form is duly signed by the persons entitled to attend and vote at the respective meetings is filed with the Applicants at their respective registered office not later than forty-eight hours before the respective meeting.
- (xii) At least one month before the aforesaid date of the said meetings, an advertisement about convening of the meetings indicating the place, day, date and times, as aforesaid, shall be

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published in the "Financial Express" in the English Daily and "Aajkaal", in the Bengali Daily. The publication shall indicate the time within which copies of the Scheme shall be made available to the concerned persons free of charge from the registered office of the Applicant Companies. The publication shall also indicate that the Statement containing necessary details required to be furnished pursuant to Section 102 read with Sections 230 to 232 of the Companies Act, 2013 and the prescribed form of proxy can be obtained free of charge at the registered office of the concerned Applicant company/ companies or at the office of their Advocates M/s.A.Sinha & Associates, Advocates, 3A, Garstin Place, 6th Floor, Kolkata 700001 in accordance with second proviso to sub-section (3) of Section 230 of the Act and Rule 7 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 ["**Companies (CAA) Rules, 2016**"]. A joint advertisements for such meetings may be given.

- (xiii) At least one month before the aforesaid date of the said meetings of the applicant companies, a notice convening meetings C.A.A.2 indicating the day, date, place and times as aforesaid together with a copy of the Scheme, copy of statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and Rule 6 of Companies (CAA) Rules, 2016 and the prescribed form of proxy shall to be sent to each of the shareholders of the applicant companies at their respective registered or last known addresses either by registered post or speed post / Airmail or through courier or through e-mail.
- (xiv) Let the notice be served by the Applicant Companies, as per the requirements of sub-section (5) of Section 230 of the Companies Act, 2013, along with the copy of the Application and all other

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documents including the copy of the Scheme of Amalgamation and the statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal, and the concerned Assessing Officer along with the Chief Commissioner of Income-Tax with PAN Numbers of the Applicant Companies through E-Mail and by Speed Post, both, as also on the Official Liquidator and the Reserve Bank of India, having jurisdiction over the Applicant Companies, and such other relevant sectoral regulators/authorities, if applicable, which are likely to be affected by the proposed scheme, by sending the same by hand delivery through Special Messenger or by registered post or by Speed Post, by E-Mail, both, within seven days from the date of this order for filing their representation, if any, on the Application within 30 days from the date of the notice.

- (xv) If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation.
- (xvi) The Chairperson shall be responsible to report the results of the meetings within three weeks of the conclusion of the meetings with a vote on the proposed Scheme.
- (xvii) The Chairman or Chairperson shall have all powers under the Articles of Association of the Applicant Companies and also under the Rules in relation to the conduct of meetings, including for deciding any procedural questions that may arise at the meeting or adjournments thereof proposed at the said meeting.

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- (xviii) The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.
- (xix) The value of each of the members of the respective Applicants shall be in accordance with the respective books of the Applicants and where entries in the books are disputed, the Chairperson shall determine the value for the purpose of the meeting.
- (xx) The value of each of the unsecured creditors shall be in accordance with the respective books of the Applicant No.1 and where entries in the books are disputed, the Chairperson shall determine the value for the purpose of the meeting. The value of the creditors shall be considered as on 31st March 2017.
- (xxi) All the aforesaid directions are to be complied with in accordance with the applicable law including forms and formats contained in the Companies (CAA) Rules, 2016 as well as the provisions of the Companies Act. 2013. The undertaking of the authorized representatives of the applicant companies to this effect is accordingly taken on record.
27. Company Application CA(CAA) No.05/KB/2018 is hereby disposed of.
28. The Parties and the Chairperson shall act on the Order.



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29. Certified copy of this Order may be issued, if applied for, upon compliance of all requisite formalities.

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(Jinán K.R.)

Member (Judicial)

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