

**THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH**

**CO. APPL.(CAA) 33/ND/2018**

IN THE MATTER OF:

Deora Associates Private Limited

(Applicant Company No.1/ Transferor company)

WITH

Integrated Capital Services Limited

(Applicant Company No.2 /Transferee Company)

**CORAM:**

**MS. INA MALHOTRA, MEMBER (JUDICIAL)**

**MS. DEEPA KRISHAN, MEMBER (TECHNICAL)**

**Order Delivered on- 26.09.2018**

**O R D E R**

**PER SMT. INA MALHOTRA, MEMBER (J)**

This Joint application has been filed by the Applicant Companies under sections 230 and 232 of the Companies Act, 2013 read with the Company (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of approving the Scheme of Amalgamation, as contemplated between the Transferor Company with Transferee Company.

2. Both the Transferor Company (DAPL) as well as Transferee Company (ICSL) have their registered offices which lie within the jurisdiction of this Tribunal.

3. A perusal of the petition discloses that Transferor Company and Transferee Company had jointly filed the first motion application bearing CAA No. 138/ND/2017. Vide order dated 21.12.2017, the meeting of the unsecured creditors of the Transferor company was dispensed with in view of the consent affidavits being on record, As there were no Secured Creditors of both the applicant companies, the requirement for convening their meeting did not arise. With respect to the meetings of the Equity shareholders of both Companies and the Unsecured Creditors of the Transferee Company, a meeting was directed to be convened on 06.02.2018.

Accordingly the applicant companies held the meeting on 06.02.2018. As per the Chairman's report the proposed scheme was unanimously approved without modification through a voting process.

4. The applicant companies have now initiated the Second Motion. An affidavit dated 11.05.2018 has been filed deposing that the petitioners have effected publication in the daily newspapers "The Financial Express" in English and "Jansatta" in Hindi, both dated 09.05.2018, having circulation in Delhi. The affidavit further discloses that due notice of the proposed scheme had been served on the Registrar of Companies, Regional Director, Northern Region, Income Tax Dept. and the Official Liquidator in compliance with the order of the Tribunal, inviting objections if any to the proposed Scheme of Amalgamation.

Pursuant to the Publication in the daily newspapers, for listing of the matter before this Bench, no objector appeared before us on the date fixed.

Additionally, the petitioners have also filed an affidavit before this tribunal that neither the petitioner companies, nor their Legal Counsels have received

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any objection/representation against the proposed scheme of Amalgamation till the date of such affidavit.

5. The report of the statutory auditors certifying that the Accounting Standards as required u/s 133 of the Companies Act 2013 have been adhered to is on record. The audited Balance Sheets as on 31.03.2017 of the Applicant Companies are on record. Provisional Financial Statements till 31.09.2017 have also been filed by both the applicant companies.

6. That the Share exchange ratio has been worked out by the Chartered Accountants Rajender Singh & Co. Chartered Accountants, New Delhi, on the basis of Net Asset Value of the Shares of the company and been duly approved by the respective Board of Directors of each company on 28<sup>th</sup> February, 2017 and also adopted by their respective shareholders.

7. The Transferor Company holds 69.27% of the aggregate Share holding in the Transferee Company. The scheme of Amalgamation as contended by the Petitioners is sought to be justified on grounds that:

- a. To restructure the shareholding pattern of ICSL, which is currently held by DAPL as one of the promoters of the company;
- b. To eliminate a layer of promoter investment company and streamline promoter holding;
- c. To vest the shareholding of the company in the names of promoters of DAPL.

The Scheme has proposed the Appointed date as 1<sup>st</sup> October, 2016.

8. Report dated 29.05.2018 of the Regional Director (NR) and Official Liquidator dated 28.05.2018 have been placed before us.

While the OL has not made any observation. As per the report of the RD, their main concern was in respect of the Share Exchange Ratio which was considered to be unjustly skewed in favor of the promoter Directors.

As per the explanation offered, the applicant companies submit:-

- a. That the share exchange ratio provided in the scheme was such that each of the shareholder of the Transferor Company would get 9.79 shares of face value (Rs. 1 each) of the Transferee company for every 1 share held. The valuation was based on the average "net asset value" and the "price earning method value".
- b. The shares of the Transferee Company were by way of averaging the "net asset value", the "price earning method value" and the "market price value". The net asset value of the shares of the transferor company was determined by taking the value of non-current investments as Rs. 5,15,81,867/- while the book value of the shares was only Rs. 96,90,850/-. The valuation of shares of the Transferee Company was therefore done at Rs. 2.06 per share. However for purpose of exchange ratio value per share of the transferee company was determined at Rs. 1.93 per share, even though the average market price was assessed as Rs. 1.68.
- c. The observation of the Ld. RD that the shareholding of the promoter group would disproportionately increase their shareholding in the Transferee Company is in complete contrast to the proposed scheme of merger, whereby the shareholding of the promoter group in the Transferee company shall actually decrease upon the proposed scheme of merger becoming effective.
- d. Further, the proposed scheme of merger specifically states that upon the scheme of merger becoming effective, the issued and subscribed capital of the Transferee Company shall reduce from Rs. 361,50,000 to Rs. 355,84,000 as the promoters shareholding shall reduce by 566,000 equity shares from 250,41,000 equity



shares to Rs. 244,75,000 equity shares. Accordingly, the 69.27% shareholding of the Transferor Company in the Transferee Company as per the pre-merger shareholding, shall stand reduced to 68.27%, post the proposed merger. The said percentages are without considering the present shareholding of the promoter group, Sanjeve Deora HUF in the Transferee Company, which holds 600,000 equity shares of the Transferee Company and since the said holding shall remain the same as earlier, the aggregate of promoters shareholding in the Transferee Company shall stand reduced from 70.93% to 70.47%.

Ld. Prosecutor appearing for the Regional Director accepts the aforesaid submissions and has accepted the share valuation of the applicant company.

9. The department of Income Tax has also made certain observations which have been replied to by the applicant companies. As per the observations, the Income Tax Dept has submitted that while there is no outstanding of the Transferor Company, and there is an outstanding demand is pending against the Transferee Company.:-

10. The aforesaid observations of the IT Dept. have been duly replied to an affidavit has been filed deposing that all dues have been paid. Copies of the challans have been annexed. Certain deposits, which were not clearly reflected on account of inaccurate mentioning of the Assessment year have

been rectified. The Transferee Company has also submitted an Indemnity Bond with the department and has asked for a No Dues Certificate from them.

There is no repudiation by the IT Dept. to the aforesaid submissions.

11. In view of the foregoing, upon considering the approval accorded by the members and creditors of all companies to the proposed Scheme, and the observations raised by the office of the Regional Director or the Income Tax Dept having been duly explained, there appears to be no impediment in granting sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under sections 230-232 of the Companies Act, 2013. The sanctioned Scheme of arrangement shall be binding on the Transferor and the Transferee Companies and on all their respective shareholders and creditors. The Petitioners shall also be bound to comply with the statutory requirements in accordance with law.

12. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioner companies.

13. While approving the Scheme as above, we further clarify 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, and payment in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law.

14. This tribunal doth further order that upon scheme of Amalgamation by way of Merger coming into effect;



- a. That Transferor Companies shall stand dissolved without being wound up.
- b. That the entire business, properties and assets of the Transferor companies, be transferred without further act or deed to the Transferee company and accordingly the same shall, pursuant to section 232 of the Act, be transferred to and vest in the Transferee company, but subject nevertheless to all charges now affecting the same;
- c. That all the assets and liabilities including Income Tax and all other Statutory dues, if any, of the Transferor companies, be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company;
- d. All employees of the Transferor Companies in service on the effective date shall become the employees of the Transferee Company on and from such date without any break or interruption in service and upon terms and conditions not less favorable than those subsidiary with the Transferor Company on that date. The Appointed date for Amalgamation shall be 1<sup>st</sup> April 2016. That all proceedings now pending by or against the transferor companies, be continued by or against the transferee company;

15. That petitioners shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the transferor companies shall be dissolved and the Registrar of Companies shall place all documents relating to the transferor company and registered with them and shall consolidate the files of the companies, is accordingly duly approved and sanctioned in terms of the above.



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

17. The Transferor and the Transferee Company are directed to pay Rs. 1 lakh to the Prime Minister's Relief Fund, receipt of which shall be produced before the RoC at the time of Submission of the Sanctioned Scheme.



**Deepa Krishan**  
Member (T)



**Ina Malhotra**  
Member (J)