

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Petition No.- 213 of 2016

Connected with

Company Application No. (M) 186 of 2015

(Transferred from Hon'ble High Court, Delhi)

15.10.2018

Coram:

CHIEF JUSTICE (Rtd.) SHRI M.M. KUMAR

HON'BLE PRESIDENT

&

SHRI R. VARADHARAJAN


MEMBER (JUDICIAL)

**(IN THE MATTER OF SECTION 391 to 394 OF THE
COMPANIES ACT, 1956)**

**(PRESENTLY UNDER SECTIONS 230-232 OF THE
COMPANIES ACT, 2013)**

IN THE MATTER OF:

Sections 230-232 and other applicable provisions of the
Companies Act, 2013 read with the Companies (Compromises,
Arrangements and Amalgamations) Rules, 2016

 Hanuman Buildwell with Fimosys Infrastructure Pvt. Ltd.
CP No. 213 of 2016

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

HANUMAN BUIDWELL PRIVATE LIMITED

(PETITIONER/TRANSFEROR COMPANY)

AND

FIMOSYS INFRASTRUCTURE PRIVATE LIMITED

(PETITIONER /TRANSFEREE COMPANY)

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

ATTENDANCE:

For the Petitioner(s) :MrMahinder Kumar Gupta, Advocate

For the RD (NR) :Mr. C. Balooni,Company Prosecutor

For the OL :Mr. Ayush Beotra, Advocate


For the IT Dept :Ms. Lakshmi Gurung, Standing Counsel

MEMO OF PARTIES:

HANUMAN BUILDWELL PRIVATE LIMITED

A Company incorporated under Companies Act,1956

Having its registered office at:

 Hanuman Buildwell with Fimosys Infrastructure Pvt. Ltd.
CP No. 213 of 2016

**306, B-09, IITL Tower, Netaji Subhash Place
New Delhi - 110034**

...PETITIONER/TRANSFEROR COMPANY

**FIMOSYS INFRASTRUCTURE PRIVATE LIMITED
A Company incorporated under Companies Act,1956
Having its registered office at:
1005, Akashdeep Building, Connaught Place
New Delhi - 110001**

...PETITIONER/TRANSFeree COMPANY

ORDER

1. The present petition has been filed by the companies above named for the purpose of the approval of the scheme of amalgamation, as contemplated between the companies, its shareholders and creditors by way of amalgamation of the Transferor Company with the Transferee Company. A perusal of the petition discloses that initially the application seeking the dispensation of the meetings of equity shareholders, secured and unsecured creditors was filed before the Hon'ble High Court of Delhi in CA (M) 186/2015.



Hanuman Buildwell with Fimosys Infrastructure Pvt. Ltd.
CP No. 213 of 2016

2. The Hon'ble High Court of Delhi vide its order dated 23.12.2015, was pleased to dispense with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the Petitioner Companies in view of their consents having been obtained and produced before it or there were none therefore the necessity of convening the meeting did not arise as the case may be. Consequent to the order of dispensation the petitioners have preferred the company petition CAA-186 of 2015 before the Hon'ble High Court of Delhi pursuant to which on 11.3.2016 the Hon'ble High Court ordered Notice in the Second Motion petition Rules, in connection with the scheme of amalgamation, to the Registrar of Companies, NCT of Delhi & Haryana, Regional Director (Northern Region), the Income Tax Department and to such other Sectoral Regulatory Authorities who may govern the working of the respective companies. The Petitioners were also directed vide said order to carry out publication in the newspapers "Business



Standard”(English Edition)and Hindi daily “Jan Satta”
(Delhi Edition).

3. Thereafter, since this Tribunal has now been vested with the power to consider the provisions relating to compromises, arrangements and amalgamation as contemplated under Sections 230-232 of Companies Act 2013 vide notification w.e.f. 15.12.2016 the Hon'ble High Court of Delhi pursuant to the notification bearing No. GSR 1119 & S.O 3676 dated 7.12.2016 issued by the Ministry of Corporate Affairs has transferred/transmitted the records of the above petition to this Tribunal, for our consideration.

4. Under the circumstances, the Petitioner Companies have filed their joint petition for sanction of the Scheme of Amalgamation and also an application seeking condonation of delay in filing the Second Motion Petition before this Tribunal under the applicable provisions, subsequent to the order of dispensation of the meeting ordered by the Hon'ble High Court of Delhi.



5. The Petitioner Companies, it is seen from the records, have filed an affidavit dated 22.08.2017 in relation to the compliance of the orders dated 11.3.2016 passed by the Hon'ble High Court and a perusal of the same discloses that the petitioners have effected the paper publication as directed by the Hon'ble High Court in the English Daily 'Business Standard' and in the Hindi Daily 'Jan Satta' on 18.04.2016. Further, it has also been stated by the Learned Counsel for the Petitioner Companies that notices have been issued to the Registrar of Companies, Regional Director (Northern Region), Income Tax Department as well as to the Official Liquidator attached to the High Court, Delhi in compliance with the order dated 11.03.2016.

The Regional Director, Northern Region,
Ministry of Corporate Affairs, New Delhi,
after receiving the report from the
Registrar of Companies has filed its
report with an affidavit on 8.06.2017. The
observations made by the ROC in its
report dated 9.6.2017 is to the following



effect in relation to scheme under consideration:-

a) It has been mentioned in para k(i) of part V of the proposed scheme of Amalgamation that the post-merger issued, Subscribed and paid up capital of Transferee company would be Rs 2,00,000/- divided into 20,000 equity shares of Rs. 10/- each whereas neither the company has disclosed the bifurcation of such increase in capital nor the latest shareholding pattern of such companies have been found to be enclosed with the petition, hence, no comments can be offered on the such increase in capital.

b) It has been mentioned in clause-1 of part IV of the scheme that 17(Seventeen) equity shares of Rs. 10/- each credited as fully paid up of the Transferee company shall be issued and allotted at par against

10(ten) Equity shares of Rs 10 each to the shareholders of the transferor company whereas the Board of Directors of the Transferee company in its meeting held on 18.8.2015 (copy of board Resolution enclosed with the petition at Annexure-3, Page 55-58) approved the share exchange ratio for the proposed amalgamation as under-

“The transferee company will issue 5 (five) equity shares of Rs 10 each, credited as fully paid up, for every 6(six) equity shares of Rs 10 each, held in the Transferor company”

The above aspect regarding material variation in swap ratio may kindly be examined in the Directorate. Moreover, the petitioner companies have also not furnished the copy of valuation report to the proposed swap ratio, Therefore, the



comments on the merits of the same may kindly be examined in the Directorate.

This office has complied the above factual report on the basis of records maintained and documents filed by the concerned company(s) as submitted. The Directorate may consider the above while preparing a report under section 394A of the Companies Act,1956.

6. On the observations made by the Regional Director, the Petitioner Companies had filed their reply through affidavit dated 25.5.2017 for the objections raised by the Regional Director which are as follows :-

	Observations made by the Regional Director	Reply by the Petitioner companies
1	That the Deponent is to state that in query for pendency of prosecution proceedings of	It is submitted that there are no prosecution pending against the petitioner Transferor and Transferee company i.e. Hanuman Buildwell Pvt. Ltd. and Fimosys Infrastructure And

 Hanuman Buildwell with Fimosys Infrastructure Pvt. Ltd.
CP No. 213 of 2016

	prosecution against any of the petitioner Companies or its Directors for violation of various laws.	its directors under the various laws such as the Companies Act 1956/2013, FEMA, IPC, SEBI Act and RBI Act before any court.									
2	It has been mentioned in para k (i) of part v of the proposed Scheme of Amalgamation that the post-merger Issued, Subscribed and paid up capital of Transferee Company would be Rs. 2,00,000/- divided into 20,000 equity shares of Rs 10 each/- whereas neither the company has disclosed the bifurcation of such increase in capital nor the latest shareholding pattern of such companies have been found to be enclosed with the petition,	<p>The details of post merger issued, subscribed and paid up capital of transferee company in para k(i) of part v of the proposed scheme of Amalgamation would be Rs 2,70,000/- as under-</p> <table border="1"> <thead> <tr> <th>Particulars</th> <th>Amount</th> <th>No. of shares</th> </tr> </thead> <tbody> <tr> <td>Issued, subscribed and paid up capital of Transferee Company (before merger) (Equity share of Rs. 10/- each)</td> <td>100,000</td> <td>10,000</td> </tr> <tr> <td>Addition: Amount of shares to be allotted to the members of transferor company by the transferee</td> <td>170,000</td> <td>17,000</td> </tr> </tbody> </table>	Particulars	Amount	No. of shares	Issued, subscribed and paid up capital of Transferee Company (before merger) (Equity share of Rs. 10/- each)	100,000	10,000	Addition: Amount of shares to be allotted to the members of transferor company by the transferee	170,000	17,000
Particulars	Amount	No. of shares									
Issued, subscribed and paid up capital of Transferee Company (before merger) (Equity share of Rs. 10/- each)	100,000	10,000									
Addition: Amount of shares to be allotted to the members of transferor company by the transferee	170,000	17,000									

	hence, no comments can be offered on the such increase in capital.	company (Equity share of Rs 10/- each)		
		Total Issued, subscribed and paid up capital of Transferee Company (Post Merger) (Equity Share of Rs 10/- each)	2,70,000	27,000
3	It has been mentioned in clause- 1 of Part IV Of the scheme that 17 equity shares of Rs 10 each credited as fully paid up to the Transferee company shall be issued and allotted at par against 10 equity shares of Rs 10 each to the shareholders	i) The valuation report of M/s Mittal & Mittal Associates, Chartered Accountant has assessed the Fair Share Exchange ratio as under- “17 share of Rs 10/- of Fimosys Infrastructure Private Limited for every 10 Equity share of Rs 10/- each of M/s Hanuman Buildwell Private Limited” The same has been adopted in the proposed scheme of Amalgamation dated 7.8.2015 as under- ’17 Equity Shares of Rs 10 each credited as fully paid up of the Transferee Company i.e. Fimosys Infrastructure Pvt. Ltd. Shall be issued and allotted at		

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<p>of the Transferor company whereas the board of Directors of the Transferee Company in its meeting held on 18.8.2015 approved the share exchange ratio for the proposed amalgamation. "The Transferee Company will issue 5 equity shares of Rs 10 each, credited as fully paid up, for every 6 equity shares of Rs 10 each, held in Transferor Company"</p>	<p>par against 10 equity shares of Rs 10 each to the shareholders of the Transferor Company i.e. Hanuman Buildwell Pvt. Ltd.</p> <p>The Transferee company also has approved the above Share Exchange Ratio i.e. - "17 Equity Share of Rs 10 each credited as fully paid up of the Transferee Company i.e. Fimosys Infrastructure Pvt. Ltd. Shall be issued and allotted at par against 10 equity shares of Rs 10 each to the shareholders of the Transferor Company i.e. Hanuman Buildwell Private Limited.</p> <p>However there is inadvertent typographic error in the copy of Board Resolution enclosed to the petition. The error is regretted. The Share Exchange ratio in the copy of Board Resolution enclosed to the petition may be read as under- "17 Equity Share of Rs 10 each credited as fully paid up of the Transferee Company i.e. Fimosys Infrastructure Private Limited shall be issued and allotted at par against 10 Equity Shares of Rs 10/- each to the shareholders of the Transferor Company i.e. Hanuman Buildwell Pvt. Ltd.</p>
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In relation to the observation of ROC and duly reflected in the report of the ROC as extracted in para supra , it is seen that in

the 1st motion application, the minutes of the meetings of the Board of Directors of both the Transferor and Transferee Company annexed as Annexure 1 and Annexure 11 in relation to share exchange ratio correlates with that given in the Scheme as filed as Annexure 22 to the application. However, the inconsistency pointed out by the ROC reflected in the RD's report seems to have cropped up in the second motion petition only and in the circumstances the explanation of the petitioner companies is considered and taken on record in this regard.

7. Reply on behalf of the Income Tax Department was filed on 28.03.2018 vide Diary No.2918 wherein the following observation has been made:

In respect of Transferor Company and Transferee Company

a) The Income tax Department must be permitted to retain its recourse for recovery in respect of any existing or future tax liabilities of the transferor companies or the transferee company. In respect of the assets sought to be transferred under the proposed scheme, and that this protection must be made explicitly by this court in its final order and has to bind all the parties to the Scheme, particularly the transferor and transferee companies. There should be no limitation on the power of the Income Tax



Department for recovery, including imposition of penalties etc.

b) That without prejudice to the above the approval of the scheme, should in no manner affect the tax treatments of the transactions under the Income Tax Act, 1961 or any other applicable taxing statute, nor would sanction of the scheme or the effect thereof serve as a defense for the companies concerned against tax treatment under the aforementioned statutes.

8. That the Official Liquidator has filed its report through an affidavit dated 29.07.2016 stating that the office of the Official Liquidator has not received any complaint against the proposed scheme of Amalgamation from any person interested in the scheme and on the basis of the information submitted by the Petitioner Companies, their affairs do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the second proviso 394(1) of the Companies Act 1956. Hence, no objections have been raised to the proposed scheme. The above statement is taken on record.

9. The petitioner Companies have also duly filed the certificate from its statutory auditor in relation to compliance with the Accounting standards prescribed under section 133 of the

Companies Act, 2013 of the Accounting Treatment adopted in the scheme.

10. The compliances as are envisaged in the provisions of Companies Act, 2013, read with Compromises, Arrangements and Amalgamations Rules, 2016 in relation to the scheme herein coming before us for sanction are in place and also taking into consideration the reports of the Statutory/ Regulatory authorities to whom notice have been issued and have also responded does not contain any serious objections to the sanctioning of the scheme by this Tribunal. Other than mundane and in the circumstances this tribunal sanctions the scheme annexed as Annexure 1 to the present petition.
11. 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 will not come in the way of action being taken, albeit, in accordance with 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 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:

That in terms of the Scheme:

A. 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 section 232 of the Act, be transferred to and vest in the Transferee company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same;

B. 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 section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee company;




- C.** All proceedings now pending by or against the Transferor Company be continued by or against the Transferee company;
- D.** All the employees of the Transferor Companies in service on date immediately preceding the date on which the scheme finally take effect shall become the employees of the Transferee company without any break or interruption in their service;
- E.** That the Transferee Company do without further application allot to the persons entitled of the Transferor Company, as have not given such notice of dissent, the shares in the transferee company to which they are entitled under part IV of the said SCHEME OF AMALGAMATION;
- F.** The Transferor Company 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 Company shall be dissolved and the Registrar of Companies shall place all documents relating

to the Transferor Company and registered with him on the file kept by him in relation to the Transferee company and the files relating to the said both companies shall be consolidated accordingly;

- G.** Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

The Petition stands disposed of on the above terms.


(SHRI. M.M. KUMAR) 15.10.2018
(PRESIDENT)


(R. VARADHARAJAN) 15.10.2018
MEMBER (JUDICIAL)

UD Mehta/D