

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH,
AT NEW DELHI**

COMPANY PETITION NO. CA (CAA)-169 (PB) /2018

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

In the matter of

Scheme of Amalgamation of

Incredible Realcon Private Limited

Applicant Company No. 1/ Transferor Company

WITH

Ireo Private Limited

Applicant Company No. 2/ Transferee Company

Judgment delivered on: 09.10.2018

CORAM:

CHIEF JUSTICE (Rtd.) M.M. KUMAR, Hon'ble President

S. K. MOHAPATRA, Hon'ble Member (T)

For Applicants: Mr. Rajeev K. Goel, Advocate

Mr. Kartikeya Goel, Advocate



ORDER

S .K. Mohapatra, Member

1. This application has been jointly filed by the Applicant Companies under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, duly supported by separate affidavits of the Applicant Companies, for seeking appropriate orders/directions for dispensing with/convening the respective meetings of shareholders, debenture holders, secured creditors and unsecured creditors of the applicant companies, in connection with the proposed Scheme of Amalgamation contemplated between the applicant companies. The said Scheme of Amalgamation (hereinafter referred to as the "Scheme") has been placed on record along with the joint application.
2. It is represented that the registered offices of both the applicant companies are situated in New Delhi and therefore



the subject matter of this joint application falls within the territorial jurisdiction of this Bench.

3. M/s Incredible Realcon Private Limited (Transferor Company) was incorporated on 08.10.2013 as a private limited company. The present Authorized Share Capital of the Transferor Company is Rs. 1,00,000/- divided into 10,000 Equity Shares of Rs. 10/- each. The present issued, subscribed and paid-up share capital of the company is Rs. 1,00,000/- divided into 10,000 Equity Shares of Rs. 10/- each. The registered office of the Transferor Company is situated at C-4, 1st Floor, Malviya Nagar, New Delhi-110017. The transferor company has also issued 6,000, 13.90% unsecured rated Redeemable non-convertible debentures (bonds) of Rs. 10,00,000/- each, which are listed on Bombay Stock Exchange (BSE).
4. It is submitted that the transferor company has 2 Equity Shareholders and both the two equity shareholders have given their consent affidavits in favour of the Scheme constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record.



It is further represented that the transferor company has 3 debenture holders. Additionally the transferor company has no secured creditor and 7 unsecured creditors. The certificates of chartered accountant in respect of status of creditors of the company have also been placed on record. As the company has no secured creditor the requirement of convening of meeting of secured creditors does not arise. In relation to the equity shareholders, the transferor company seeks dispensation from convening and holding of their meeting on the ground that both the shareholders of the transferor company have given their consent affidavits in favour of the Scheme. In respect of debenture holders and unsecured creditors prayers have been made for issuance of directions for convening and holding of their respective meetings in order to obtain their approval in favour of the Scheme.

5. M/s Ireo Private Limited (Transferee Company) was incorporated on 15.03.2004 as a private limited company. The registered office of the Company is situated at C-4, 1st Floor, Malviya Nagar, New Delhi-110017. The Authorized Share



Capital of the company is Rs. 23,75,01,00,000/- divided into 112,50,10,000 equity shares of Rs. 10/- each aggregating to Rs. 1125,01,00,000/- and 125,00,00,000, 1% non-cumulative redeemable preference shares of Rs. 10 each aggregating to Rs. 12,50,00,00,000/-. The Issued, subscribed and paid up share Capital of the Company is Rs. 11,46,79,70,460/- divided into 35,34,25,796 Equity Shares of Rs. 10/- each aggregating to Rs. 3,53,42,57,960/- and 79,33,71,250, 1% non-cumulative redeemable preference shares of Rs. 10 each aggregating to Rs. 7,93,37,12,500/-. The transferee company has also issued 1,52,48,853, 15% unsecured compulsorily convertible debentures 'Series A' of Rs. 100/- each aggregating to Rs. 1,52,48,85,300/-. The company has also issued 3,92,11,339, 15% unsecured optionally convertible debentures 'Series B' of Rs. 100/- each aggregating Rs. 3,92,11,33,900/-.

6. It is submitted that Transferee Company has four Equity Shareholders, two preference shareholders, three 15% unsecured compulsorily convertible 'Series A' debenture holders, one 15% unsecured optionally convertible 'Series B'



debenture holder, eight secured creditors and Nine hundred Seventeen unsecured creditors. Certificates of chartered accountant in respect of status of the creditors of the transferee company have also been placed on record. The sole 15% unsecured optionally convertible 'Series B' debenture holder has given its consent affidavits in favour of the Scheme. In relation to the equity shareholders, preference shareholders, 'Series A' debenture holders, secured creditors and unsecured creditors of the transferee company, prayers have been made for issuance of directions for convening and holding of their respective meetings in order to obtain their approval in favour of the Scheme.

7. We have perused the joint applications and the connected documents / papers filed by the applicants including the Scheme of Amalgamation as contemplated between the Applicant companies.
8. It is seen that the board of directors of both the applicant companies vide separate meetings, held on 28.03.2018 and 14.09.2018 respectively have unanimously approved the proposed Scheme of Amalgamation. Copies of such



resolutions passed thereat have been placed on record by the applicant companies.

9. Both the applicants have filed their respective Memorandum and Articles of Associations. The applicants have also filed their latest audited financial statements for the year ending 31.03.2017.
10. It is submitted that the proposed merger is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013 and the same if sanctioned by this Tribunal the appointed date as provided in the Scheme shall be 01.01.2018.
11. Both the companies have submitted that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under the provisions of the Companies Act, 1956 is pending against applicant companies.
12. Certificates of respective statutory auditors of both the applicant companies confirming that the accounting treatment in the scheme is in conformity with Section 133 of the Companies Act, 2013 have been placed on record.



13. Further, it has been stated in the application that the Scheme will be beneficial to all the applicant companies and their respective shareholders, employees, creditors and other stake holders.

14. Taking into consideration the application filed jointly by the Applicant Companies the following directions are issued: -

A. In relation to the Transferor Company:-

- i. *The meeting of Equity Shareholders is dispensed with as there are only two equity shareholders in the company and their consent affidavits in favour of the Scheme have been placed on record.*
- ii. *The meeting of the debenture holders of the transferor company is directed to be held at Apparel House Marketed by SRS Group, Institutional Area, Sector 44, Gurugram-122003, on 15.12.2018 at 10:30 A.M. The quorum of the meeting shall be 2 in number or 75% in value.*



iii. *The meeting of Secured creditors is dispensed with because there is no Secured creditor in the company and therefore, the requirement of convening meeting of Secured creditors does not arise.*

iv. *The meeting of unsecured creditors is directed to be held at Apparel House Marketed by SRS Group, Institutional Area, Sector 44, Gurugram-122003, on 15.12.2018 at 11:30 A.M. The quorum of the meeting shall be 4 in number or 75% in value.*

B. In relation to the Transferee Company:-

i. *The meeting of the equity shareholders of the transferee company directed to be held at Apparel House Marketed by SRS Group, Institutional Area, Sector 44, Gurugram-122003, on 15.12.2018 at 12:30 P.M. The quorum of the meeting shall be 3 in number or 75% in value.*



- ii. *The Meeting of Redeemable Preference Shareholders is directed to be held at Apparel House Marketed by SRS Group, Institutional Area, Sector 44, Gurugram-122003, on 15.12.2018 at 1:30 P.M. The quorum of the meeting shall be 2 in number or 75% in value.*
- iii. *The meeting of compulsory convertible 'Series A' debenture holders is directed to be held at Apparel House Marketed by SRS Group, Institutional Area, Sector 44, Gurugram-122003, on 15.12.2018 at 2:30 P.M. The quorum of the meeting shall be 2 in number or 75% in value.*
- iv. *The meeting of optional convertible 'Series B' debenture holders is dispensed with as the sole optional convertible 'Series B' debenture holder has given its consent affidavit in favour of the Scheme.*



v. *The meeting of Secured creditors is directed to be held at Apparel House Marketed by SRS Group, Institutional Area, Sector 44, Gurugram-122003, on 15.12.2018 at 3:30 P.M. The quorum of the meeting shall be 5 in number or 75% in value.*

vi. *The meeting of unsecured creditors is directed to be held at Apparel House Marketed by SRS Group, Institutional Area, Sector 44, Gurugram-122003, on 15.12.2018 at 4:30 P.M. The quorum of the meeting shall be 400 in number or 75% in value.*

C. Mr. Abhay Pratap Singh, Advocate (Mobile No. 8527334575) is appointed as the Chairperson and Ms. Stuti Bordoloi, Advocate (Mobile No.9654984442) is appointed as the Alternate Chairperson and Mr. Gopal Prasad Aggarwal, Chartered Accountant (Mobile No. 9437052192) is appointed as Scrutinizer for the aforesaid meetings in terms of direction issued herein.



D. In case the quorum as noted above for the aforesaid meetings are not present at the meetings, then the meeting shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the applicant companies at least 48 hours before the meetings. The Chairperson and Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained.

E. The fee of the Chairperson for the aforesaid meetings shall be Rs. 1,50,000/- , the fee of the Alternate Chairperson shall be Rs. 1,25,000/- and the fee of the Scrutinizer shall be Rs. 1,25,000/- in addition to meeting their incidental expenses. The



Chairperson will file its reports within a week from the date of holding of the above meetings.

F. That the applicant companies shall publish advertisement with a gap of at least 30 days before the aforesaid meetings, indicating the day, date, place and time as aforesaid, to be published in Delhi editions of 'The Business Standard' English edition and "The Business Standard" Hindi edition stating that the copies of Scheme, the explanatory statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered offices of the Applicant Companies.

G. Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be applicable for the aforesaid meetings in terms of the provisions of the Companies Act, 2013 and Rules framed there under.



H. The applicant companies shall individually send notice to Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, the Income Tax Authorities, Registrar of Companies National Capital Territory of Delhi and Haryana, Bombay Stock Exchange, The Securities and Exchange Board of India, the Haryana Real Estate Regulatory Authority and the Official Liquidator along with copy of relevant documents and disclosures as required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

I. The applicant companies shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every members and creditors of the applicant companies entitled to attend the meetings as mentioned above.

J. 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.

- K.** All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the applicant companies.

The application stands allowed in the aforesaid terms.

Let the copy of the order be served to the parties.

Sd/-

(M.M. KUMAR)

PRESIDENT

Sd/-

(S. K. MOHAPATRA)

MEMBER (T)