

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSP NO 964 OF 2017

IN

CSA No. 757 of 2017

Spear Logistics Private LimitedFirst Petitioner Company
(Transferor Company)

AND

FM India Supply Chain Private LimitedSecond Petitioner Company
(Transferee Company)

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other applicable
provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of Spear Logistics
Private Limited ('the Transferor Company') and FM India
Supply Chain Private Limited ('the Transferee Company') and
their respective Shareholders

Order/Judgement delivered on 6th December 2017.

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)

Hon'ble **V. Nallasenapathy**, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co, Advocates

For Regional Director: Ms. P Sheela, Joint Director

For Registrar of Companies:

Mr. Ramesh Gholap, Deputy Registrar of Companies

For the Official Liquidator:

Mr. Santosh Dalvi, from the office of Official Liquidator

Per: **V. Nallasenapathy, Member (T)**

Order

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petitions and nor any party has controverted any averments made in the Petitions.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 and the rules made there under, to the Scheme of

Amalgamation of Spear Logistics Private Limited ('the Transferor Company') and FM India Supply Chain Private Limited ('the Transferee Company') and their respective Shareholders.

3. The Counsel for the Petitioner Companies submit that the Transferor Company is primarily engaged in the business of warehouse management services, warehouse and distribution management services, freight management services, carrier management and transport services, secondary distribution services and all other business activities currently being undertaken by the Company. The Transferee Company has been incorporated to engage in the business of carrying all kinds of logistics services.
4. The Counsel for Petitioners state that the rational for the Scheme is to acquire the ongoing business carried on by the Transferor Company. With this objective, the Transferor Company, the Transferee Company along with FM Logistic Corporate S.A.S, a simplified French limited company with its registered office at Zone Industrielle- Rue de l'Europe, 57 370 Phalsbourg, France ("**FM Logistic**") entered into a share purchase agreement ("**SPA**") dated February 10, 2016 with the erstwhile shareholders of Transferor Company to acquire 95% of the shareholding of the Transferor Company. This acquisition was completed in 3 tranches with tranche 1 and tranche 2 being completed on March 17, 2016 and April 7, 2016 respectively. The closing for the tranche 3 took place on October 25, 2016 with a part of the purchase consideration being paid upfront and the rest being paid as deferred consideration. Around the same time, on February 10, 2016, the Transferor Company, the Transferee Company along with FM Logistic also entered into a shareholders' agreement ("**SHA**") with Mr. Gautam Dembla, one of the shareholders of the Transferor Company, to record their respective *inter se* rights and obligations in relation to the Transferor Company and to govern the sale and purchase of shares held by Mr. Gautam Dembla in the Transferor Company. Pursuant to the above referred acquisition, the Transferor

and Transferee Company form part of the same management and their business objectives are similar. Thus, with a view to achieve the main objective of consolidation of business carried on by the Transferor Company and in order to maintain a simple corporate structure and eliminate duplicate corporate procedures, it is desirable to merge / amalgamate all the Undertakings of the Transferor Company into the Transferee Company. The amalgamation of all the Undertakings of the Transferor Company into the Transferee Company shall facilitate consolidation of all the Undertakings in order to enable effective management and unified control of operations. Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.

5. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Hon'ble Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the rules made there under whichever is applicable. The said undertaking is accepted.
6. The Regional Director has filed a Report dated 17th November, 2017 stating therein that save and except as stated in paragraph IV (a) to (f) of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:
 - (a) *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*

- (b) *As per the existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It is observed that the Petitioner Companies has served a copy of company scheme application No. 757 of 2017 along with relevant orders etc. to the Income Tax Department on 04.08.2017. Further this Directorate has also issued a reminder on 09.11.2017 to IT Department.*
- (c) *Petitioner Companies have not submitted a copy of the admitted petition. In this regard, the Petitioner has to undertake to submit the same for the record of Regional Director.*
- (d) *In addition to compliance of AS-14 (IND AS-103) the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.*
- (e) *It is submitted by the Petitioner that there are foreign/non-resident interest in the Transferor and the Transferee Companies. In the Transferor Company 14.17% shares are held by a foreign company and in Transferee Company 100% shares are held by a foreign company. Hence for allotment of new shares to the shareholder of Transferor Company, the Transferee Company may be directed to comply with FEMA/RBI regulations, etc. as applicable in this regard.*
- (f) *As regards clause 15 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorized Share Capital, subsequent to the Amalgamation for setting-off of fees paid by the Transferor Company on its Authorized Share Capital in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.*

7. In so far as observations made in paragraph IV. (a) & (b) of the said Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertakes to comply with all applicable provision of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
8. In so far as observations made in paragraph IV (c) of the said Report of Regional Director is concerned, the Counsel for the Petitioners submit that a copy of

Petition has been filed with the office of Regional Director on 30th November 2017.

9. In so far as observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Transferee Company through their Counsel undertakes that in addition to compliance of AS-14 (IND AS-103) the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) to the extent applicable.
10. In so far as observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Transferee Company undertake that for allotment of new shares to the shareholder of Transferor Company, the Transferee Company undertakes to comply with relevant provisions of FEMA/RBI Regulations to the extent applicable.
11. In so far as observations made in paragraph IV (f) of the report of Regional Director is concerned, the Transferee Company clarifies that in respect of fees payable by the Transferee Company on its Authorized Share Capital, subsequent to the Amalgamation shall be set-off against the fees paid by the Transferor Company on its Authorized Share Capital in accordance to the provisions of Section 232(3)(i) of the Companies Act, 2013.
12. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 7 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
13. The Official Liquidator has filed his report dated 27th October 2017 stating therein that the affairs of the Transferor Company have not been conducted in the manner prejudicial to the interest of the members or the public interest and the Transferor Company may be ordered to be dissolved without winding up.

14. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 964 of 2017 of National Company Law Tribunal, Mumbai Bench, filed by the Transferor and Transferee Company are made absolute in terms of prayer clause (a).
16. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
17. Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of companies, electronically, along with E-form INC 28 within 30 days from the date of issuance of the order by the Registry.
18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Transferor Company to pay cost of Rs. 25,000/- to the Official Liquidator, High Court, Bombay.
19. The costs to be paid within four weeks from the date of receipt of Order.
20. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Date: 6.12.2017

Sd/-

B.S.V. Prakash Kumar, Member (J)