

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Company Application No. CA(CAA) No.396/KB/2017

In the matter of:

The Companies Act, 2013.

And

In the matter of:

Sections 230 and 232 of the
Companies Act, 2013.

And

In the matter of:

Infinity finance Limited, a company
incorporated under the provisions
of the Companies Act, 1956 and
having its registered Office at
" Infinity", Plot -A3, Block - GP,
Sector-V, Salt Lake, Kolkata - 700
091

And

In the Matter of:

Infinity Townships Private Limited,
Space Resort Private Limited, a
company incorporated under the
provisions of the Companies Act,
1956 and having its registered
Office at Infinity", Plot -A3, Block -
GP, Sector-V, Salt Lake, Kolkata -
700 091

And

In the matter of :

Infinity Jaipur Knowledge City Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered Office at 'Infinity', Plot -A3, Block - GP, Sector-V, Salt Lake, Kolkata – 700 091

And

Infinity Infoech Parks Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered Office at 'Infinity', Plot -A3, Block - GP, Sector-V, Salt Lake, Kolkata – 700 091

And

In the matter of :

1. Infinity Finance Limited
2. Infinity Townships Private Limited
3. Infinity Jaipur Knowledge City Private Limited
4. Infinity Infotech Parks Limited

..... Applicants

For the Applicants :

1. Mr. DN Sharma, Advocate
2. Mr. T Khaitan, Advocate

Date of Pronouncing the order : 16-10-2017

Coram : Shri VP Singh, Member(Judicial) and
Shri KR Jinan, Member(Judicial)

Per KR Jinan, Member(Judicial)

ORDER

This application has been filed by the Applicant Companies, namely, (1) Infinity Finance Limited; (2) Infinity Townships Private Limited ; (3) Infinity Jaipur Knowledge City Private Limited (Transferor Company) and (4) Infinity Infotech Parks Limited (Transferee Companies) for obtaining sanction of this Tribunal to a Scheme of Amalgamation by which (1) Infinity Finance Limited; (2) Infinity Townships Private Limited and (3) Infinity Jaipur Knowledge City Private Limited is proposed to be merged into the Infinity Infotech Parks Limited, Transferee Company on the terms and conditions fully stated in the Scheme of Amalgamation, a copy whereof is annexed with the application and marked "A".

In the application it is stated that the Transferor companies are wholly owned subsidiaries of the Transferee Company. For the better and more efficient management, control and running of the businesses of the Undertakings of the companies concerned, it is considered desirable and expedient to amalgamate the Transferor companies with the Transferee company in the manner and on the terms and conditions contained in the said Scheme of Amalgamation. The proposed scheme will result in administrative and operational rationalization, organizational efficiencies, reduction in overheads and other expenses and optimal utilization of various resources of the companies concerned

and formation of a larger and stronger company having greater capacity for conducting its operations and business more effectively and efficiently. The said Scheme of Amalgamation will have beneficial results for the companies concerned, their shareholders, employees and all concerned.

It is further stated in the application that the Scheme of Amalgamation shall take effect from the appointed date i.e. 1st day of April, 2016 and the Undertaking of the Transferor Companies shall, pursuant to the sanction of the Scheme by the High Court at Calcutta and/or the Tribunal and pursuant to the provisions of Sections 391 to 394 of the Companies Act, 1956 or the Companies Act, 2013, as applicable, stand transferred to and vested in and/or to be deemed to have been transferred to and vested in the Transferee Company, as a going concern, without any further act, instrument, deed, mater or thing so as to become, as and from the appointed date, the Undertaking of the Transferee Company.

The transfer of assets and liabilities of the Transferor Companies will be in the manner detailed in the Scheme.

The Applicants submitted in the application that on the Scheme becoming operative, all staff, workmen and employees of the Transferor Companies in service on the effective date shall be deemed to have become the staff, workmen and employees of the Transferee Company with effect from the appointed date without any break in their service and on the basis of continuity of service and the terms and conditions of their employment with the Transferee Company shall not be less favourable than those applicable to them with reference to the Transferor companies on the effective date.

The fuller terms of the Scheme will appear from the Scheme of Amalgamation enclosed with the application as Annexure "A".

The applicants submitted that the Board of Directors of all the petitioner companies have, at their respective meetings, by resolutions passed unanimously, approved the said Scheme of Amalgamation and the copies of Board resolutions of all the applicant companies and the Power of Attorney of the Transferor companies are enclosed with the application as Annexure "L".

The applicants stated in the application that there are no proceedings pending under Sections 210, 212, 214, 215, 216, 217, 219, 220, 223, 224 and 225 of the Companies Act, 2013 and/or Sections 235 to 251 of the Companies Act, 1956 against any of the applicant companies.

The applicants have obtained certificate from the Chartered Accountants to the effect that the Accounting treatment proposed under the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013. A copy of the said certificate is annexed with the application as Annexure "M".

For the purpose of the Scheme of Amalgamation, unaudited accounts of the applicants for financial year ended on 31-03-2017 is annexed with the application and marked "N".

It is further stated in the Application that by an order made in Company Application No.805 of 2016 on the 21-11-2016, the Hon'ble High Court at Calcutta, was pleased to dispense with convening meetings of equity shareholders of the Transferor companies in view of the written consents given in writing by all the equity shareholders of the Transferor companies.

The High Court further directed that meeting of the equity shareholders

of the Transferee company be convened and held for the purpose of considering and, if thought fit, approving, with or without modification, the said Scheme of Amalgamation. A copy of the order of the Hon'ble High Court dated 21-11-2016 is enclosed as Annexure "J". On the 23rd of December, 2016, the said meeting of the equity shareholders of the Transferee company, was duly convened in accordance with the said order and resolution was passed unanimously by the equity shareholders of the Transferee Company.

It is further submitted by the applicants that the aggregate assets of the Transferor companies and the Transferee Company are more than sufficient to meet their liabilities and the said Scheme will not adversely affect the rights of any of the creditors of the Transferor companies or the Transferee company in any manner whatsoever as due provisions have been made for payment of all liabilities as and when the same fall due in usual course.

However, no details of the secured and unsecured creditors of all the applicant companies are available in the petition and no meetings of the creditors of any of the petitioner companies had been convened and held. Neither is there any order for dispensation with the meetings of the creditors of the petitioner companies.

In view of such position, before considering the sanction of the proposed Scheme of Amalgamation, there is a need to draw a list of both secured and unsecured creditors of all the petitioner companies as on 30-09-2017 and convene and hold the meetings of the Creditors of all the petitioner companies by issuing individual notice to all the secured and unsecured creditors and also by publishing a newspaper advertisement on calling of the meetings of the Creditors of the respective petitioner companies.

The petitioner companies have stated in the application that the proposed Scheme is not violative of any existing laws or regulations.

The object of this application is to ultimately obtain sanction of this Tribunal to the proposed Scheme of Demerger and Amalgamation.

- We have perused the documents annexed to the application and have heard the submissions made on behalf of the applicants and pass the following orders:
- 1. That separate meetings of both the secured and unsecured Creditors of all the respective petitioner companies, namely, (1) Infinity Finance Limited; (2) Infinity Townships Private Limited ; (3) Infinity Jaipur Knowledge City Private Limited (Transferor Company) and (4) Infinity Infotech Parks Limited (Transferee Companies) shall be convened and held on 27-11-2017 at "Infinity", Plot -A3, Block – GP, Sector-V, Salt Lake, Kolkata – 700 091 at 2-30 P.M., at 3.00 P.M., at 3-30 P.M., at 4-00 P.M., at 4-30 P.M. and at 5.00 P.M. respectively, for the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme of Amalgamation.
 2. That at least 30 (thirty) clear days before the date of the said separate meetings of the secured and unsecured creditors of the respective petitioner Companies, an advertisement convening the meetings and stating that copies of the said Scheme of Amalgamation and of the Statement required to be furnished

pursuant to Section 230 of the Companies Act, 2013 and a form of proxy can be obtained free of charge at the Registered Office of the concerned petitioner companies or at the office of their Advocates, M/s. Khaitan & Co. LLP be inserted once each in the local daily Bengali newspaper and in the widely circulated English newspaper.

3. That in addition, at least 30 (thirty) clear days before the separate meetings to be held as aforesaid, a notice convening the said meetings of the secured and the unsecured creditors of the respective petitioner companies at the place and time as aforesaid together with a copy of the said Scheme of Amalgamation, a copy of the Statement required to be sent under the Act and the prescribed form of Proxy be sent by registered post or by hand or by courier or by e-mail addressed to each of the secured and the unsecured creditors of the concerned petitioner Companies at their respective or last known addresses.
4. To serve the notice as per requirements of sub-section (5) of Section 230 of the Companies Act, 2013 along with all the documents including a copy of the Scheme 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; Reserve Bank of India and Income Tax Department having jurisdiction over the Transferor company and the Transferee Company 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 speed post within 14 days from the date of

this order for filing their representation, if any, within 30 days from the date of notice. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the applicants and/or their Advocates. 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. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 and Companies (Compromises, Arrangements & Arrangement) Rules, 2016 with necessary variations incorporating the directions therein.

5. That Mr. SM Gupta, PCS, (Mobile No. 9830057568) shall be the Chairperson for the said meetings of the secured and the unsecured creditors of the petitioner companies to be held as aforesaid at a consolidated remuneration of Rs. 50,000/- (Rupees Fifty thousand only).
6. That Chairperson appointed for the said meetings or any person authorised by him do issue and send out the notice of the said meetings referred to above.
7. The quorum for meeting of the Equity Shareholders of the Transferee company and the quorum for the meeting of the secured and unsecured creditors of the applicant companies be fixed in accordance with Section 103 of the Companies Act, 2013 present either in person or by proxy.

8. That voting by proxy be permitted, provided that a proxy in the prescribed form duly signed by the person(s) entitled to attend and vote at the meeting, is filed with the concerned Applicant Companies at their Registered Office not later than forty eight hours before the meetings. The Chairperson shall have the power to adjourn the meeting, if necessary, and to conduct the procedure for the adjourned meeting as deemed necessary under the Act.
9. That the value of each creditor shall be in accordance with the respective books of the concerned petitioner Companies and where entries in the books are disputed, the Chairperson concerned shall determine the value for the purpose of the meeting.
10. That the Chairperson do report to this Court the results of the said meetings within four weeks from the date of the conclusion of the respective meetings and his report shall be verified by his affidavit.
11. The petition bearing No. CP(CAA) No. 396/KB/2017 is, accordingly, disposed of.
12. Parties and the Chairpersons to act on the order.

Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

List on 07-12-2017.

Sd/-

(VP Singh)
Member (Judicial)

GOUR_STENO

Sd/-

(KR Jinan)
Member (Judicial)