

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

T.P.NO. 173/2017 & 174/2017

IN

CoP.NO. 108/2016 & 109/2016

DATED: TUESDAY THE 18TH DAY OF APRIL 2017

***PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL***

**IN THE MATTER OF SECTIONS 391 to 394 OF THE COMPANIES ACT, 1956
AND OTHER RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013
ALONG WITH THE COMPANIES ACT, 1956**

AND

**IN THE MATTER OF SECTION 230 TO 232 OF THE COMPANIES ACT,
2013 AND OTHER RELEVANT PROVISIONS OF THE COMPANIES ACT,
2013 ALONGWITH THE COMPANIES ACT, 1956**

**AND IN THE MATTER OF
SCHEME OF AMALGAMTION**

**SHREENIDHI FINVEST CONSULTANCY PRIVATE LIMITED
WITH**

LADNUN CONSULTANCY SERVICES PRIVATE LIMITED

T.P.NO. 173/2017&174/2017 IN CoP.NO. 108/2016 & 109/2016

1. Shreenidhi Finvest Consultancy Services Private Limited,
216/2, Opposite Archana Complex,
4th Cross, Lalbagh Road,
Bengaluru-560 027 - **PETITIONER/TRANSFEROR COMPANY**
2. Ladnun Consultancy Services Private Limited,
216/1, Opposite Archana Complex,
4th Cross, Lalbagh Road,
Bengaluru-560 027 - **PETITIONER/TRANSFeree COMPANY**

PARTIES PRESENT:

1. Mr.N.K. DILIP , Mr. M.G.NANJAPPA, Advocates
TATVA LEGAL BANGALORE, 4th Floor, Phoenix
Pinaale 46, Ulsoor Road, Bengaluru 560025
Advocates for the Petitioner Company
2. Ms.M.R.Sinchana, Standing Counsel
Advocate for the Regional Director
3. Mr.Vasant Kumar, Assistant Official Liquidator
Representative for Official Liquidator

Heard on: 09.02.2017, 15.02.2017, 6.03.2017, 15.03.2017, 31.03.2017, 7.04.2017

COMMON ORDER

Originally these two Petitions were filed before the Hon'ble High Court of Karnataka and they were numbered as Co.P. No.108/2016 & Co.P. No.109/2016. Subsequently as per Notification No. GSR.1119 (E) dated 7th December 2016 issued by the Ministry of Corporate Affairs, New Delhi, the said cases are transferred to this Tribunal and renumbered as T.P No. 173/2017 & T.P No. 174/2017.

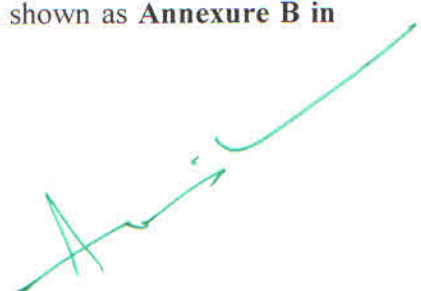

These Company Petitions were filed on behalf of the Petitioner Companies under Section 391-394 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959, praying to order for sanctioning the Composite Scheme of Amalgamation of the Transferor Company with the Transferee Company and shall be binding upon all the Shareholders and Creditors of the Companies.

The averments made in the Company Petitions are briefly described hereunder:-

The Petitioner Companies seeks an order for sanctioning the Composite Scheme of Amalgamation of **SHREENIDHI FINVEST CONSULTANCY PRIVATE LIMITED** (Transferor Company) with **LADNUN CONSULTANCY SERVICES PRIVATE LIMITED** (Transferee Company). The Scheme of amalgamation is shown as **Annexure A**.

The Transferor Company was incorporated on 16th January, 2003 as the Private Limited Company under the name, Shreenidhi Polymers Private Limited and on 1st July, 2011 the transferor company changed its name to **Shreenidhi Finvest Consultancy Private Limited**. The Registered office of the Transferor Company is situated at 216/2, Opposite Archana Complex, 4th Cross, Lalbagh Road, Bengaluru-560 027.

The Transferor Company is engaged in the business of providing services as consultant in investment of all kinds of investment schemes like mutual funds, bonds, real estates, pension schemes, fixed deposits, initial public offer etc. and Clause 16 of the Memorandum of Association permits amalgamation. A Copy of Memorandum and Articles of Association of the Transferor Company is shown as **Annexure B in T.P.173/17**.



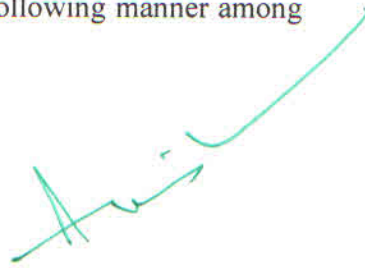
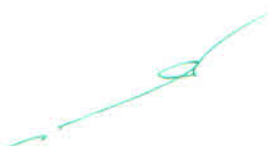
The authorised share capital of the Transferor Company as on 31st March 2016 is Rs.1,00,00,000/- divided into 10,00,000 Equity Shares of Rs.10/-each. The total paid up share capital as on 31st March, 2016 is Rs.65,14,280/- divided into 6,51,428 Equity Shares of Rs.10/- as shown in **Annexure-C in T.P 173/17**.

The Transferee Company was incorporated on 25th February, 2010 as a Private Limited Company under the name, **Ladnun Consultancy Servies Private Limited** and the Registered office of the Transferee Company is situated at 216/1, Opposite Archana Complex, 4th Cross, Lalbagh Road, Bengaluru-560 027.

The Transferee Company is engaged in various businesses which, inter alia, includes: i) to carry on the business of research and development and to act as consultants and problems relating to administration, management, organisations etc. ii) to carry on business of human resource management consultants, iii) to carry on the business of management and financial consultants, merchant bankers, managers to the issue, register and transfer agents for shares ,debentures, units, bonds, certificates etc. and Clause 22 of the Memorandum of Association permits amalgamation. A Copy of Memorandum and Articles of Association of the Transferee Company is shown as **Annexure B in T.P.174/17**.

The authorised share capital of the Transferee Company as on 31st March 2016 is Rs.1,70,00,000/- divided into 10,00,000 Equity Shares of Rs.10/-each. The total paid up share capital as on 31st March, 2016 is Rs.6,00,000/- divided into 60,000 Equity Shares of Rs.10/-. The Audited Balance Sheet of the Transferee Company is shown in **Annexure-C in T.P 174/17**.

The Directors of both the Companies are of the opinion that if the Transferor and the Transferee Company are amalgamated as one single unit it would be beneficial and cost effective in the long run. It is further averred that the proposed merger will be for the benefit of both the companies in the following manner among others.



- i) The amalgamation will enable the Transferee Company to integrate its business operations and provide significant impetus to the growth of the Transferee Company. The Consolidation of the activities by way of an amalgamation will lead to synergies of operations and a stronger and wider capital and financial base for future growth/expansion. The combined entity will have a bigger portfolio of services targeted at a wider array of customers, which will strengthen its competitive position in providing services as a consultant in investment of all kinds of investment schemes like mutual funds, bonds, real estate , pension schemes, fixed deposits
- ii) The amalgamation will result in economy of scales and reduction in overheads, administrative, managerial and other expenditure, operational rationalization, organizational efficiency and optimal utilization of various resources.
- iii) The managerial expertise of the Transferor Company will contribute to the strength of the transferee company. Consequently, the transferee company will offer a strong financial structure to all creditors including the creditors of the transferor company, facilitate resource mobilization and achieve better cash flows. This would contribute substantially towards enhancement of shareholder's value of the Transferee Company.

The Board of Directors of the Transferor Company and Transferee Company at their respective Board Meetings held on 15th February, 2016 adopted the scheme of Amalgamation. Copy of Board Resolution is shown as **Annexure G** at the respective Company Petitions in **T.P.-173/17** and **T.P.-174/17**.

The Transferor Company and the Transferee Company had filed C.A.No.116/16 & C.A. No.117/2016 respectively before the Hon'ble High Court of Karnataka to dispense with the convening of meeting of Shareholders and Creditors of the Companies. The Hon'ble High Court of Karnataka vide separate order dated 1st April, 2016 allowed the Application and dispensed with the shareholders meeting. There were no secured & unsecured creditors. Copy of the Order of Hon'ble High Court in C.A.No.116/16 is shown as **Annexure -K** in **T.P.-173/17** and C.A.No.117/16 is shown as **Annexure -K** in **T.P.-174/17**.

It is averred that the Transferee Company and the Transferor Company filed the Petition bearing Co.P No.108/2016 and Co.P.No.109/2016 respectively before the Hon'ble High Court for approving the scheme of Amalgamation on 27th April, 2016.

The Hon'ble High Court of Karnataka vide separate Order dated 2nd June, 2016 in Co.P.No.108/16 & Co.P.No.109/16 directed to have an advertisement of Notice of Petition be carried out in the 'Indian Express', an English daily Newspaper and 'Kannada Prabha', a Kannada daily newspaper on or before 16th June, 2016 and also stating the next date of hearing of the present petition on 7th July, 2016. Further the Hon'ble High Court vide its separate Order dated 9th June, 2016 in Co.P.No.108/16 & Co.P.No.109/16 respectively directed that the copy of Company Petition be served on the Regional Director and the Official Liquidator by way of Hand Summons. The Hon'ble High Court accepted the Memo of Service dated. 29th June 2016 for having taken out advertisement. A Memo of Service dated. 29th June, 2016 has been filed shown at **Page No.130-133** in **T.P.173/17 & T.P.174/17** respectively.

The Regional Director, Ministry of Corporate Affairs, South East Region, Hyderabad represented by Registrar of Companies has filed affidavits dated 15th February, 2017 making some observations and in furnishing response to the same, Director of the Transferee Company has filed Affidavit dated 6th March, 2017 and Additional Affidavit dated 15th March, 2017. The Income Tax Department has given its observation which is incorporated in the Affidavit of Registrar of Companies, Karnataka at Bangalore which is as follows:

- i) The Notice dated 21st June, 2016 was issued to the Income Tax Department giving 15 days' time to offer comments/ objections, if any namely, The Assistant Commissioner of Income Tax(OSD),O/o. The Addl. CIT, Range-6(1), Bangalore vide letter 25th August, 2016 made the following observations.

“In respect to (M/s. Shreenidhi Finvest Consultancy Private Limited) AY 2014-15 & AY 2015-16 scrutiny proceedings are pending and also arrear demand is outstanding for AY 2009-10 of Rs.23,200/- and AY2013-14 of Rs.40,560/-

The Director of Transferee Company has filed Affidavit dated 06/03/2017 stating that, the Scrutiny proceeding of Shreenidhi Finvest Consultancy Private Limited for the AY 2014-15 has been completed. A copy of the assessment order is shown as **Annexure B** of the Affidavit dt.6th March, 2017. The scrutiny for the AY 2015-16 is pending as on date. Arrear demand of (i) Rs.23,200/- outstanding for the AY 2009-10 (ii) Rs.40,560/- outstanding for the AY 2013-14, has been paid. A copy of receipts is shown as **Annexure A** of the Affidavit.

- ii) ‘The next observation made by the Regional Director (South East Region) at Para (6) of the Affidavit that the authorized share capital of the Petitioner/Transferee Company has to be increased by filing necessary forms and necessary filing fee as the authorized share capital is not sufficient to meet the requirement of issue of shares to the members of the Transferor Company as consideration.’

The Petitioner/Transferee Company submits that in the event of sanction of the scheme of Amalgamation, the Transferee Company undertakes to increase its authorised share capital, by paying the necessary fees to the Ministry of Corporate Affairs, which would be sufficient to the issue and allot the shares of the Transferee Company to the members/shareholders of the Transferor Company.

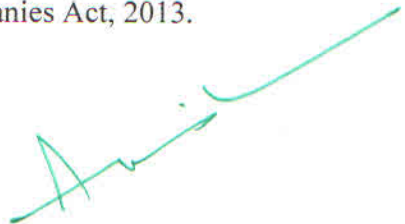

The Director of the Petitioner/Transferee Company in his Additional Affidavit has stated that the Transferee Company has increased its authorised share capital from Rs.1,70,00,000/- to Rs.2,80,00,000/-. A copy of form filed with Registrar of Companies and payment receipt is shown as **Annexure A** of the Additional affidavit dated 15th March, 2017.

- iii) The observation made by the Regional Director (South East Region) at Para (7) of the Affidavit that the Petitioner Companies have enclosed the audited balance sheet and Profit and loss Account for the financial year ended 31.03.2016 to the Company Petitions. Therefore, the petitioner company may file the Balance Sheet and Profit and Loss Account for the financial year ended 31.03.2016 before the scheme is implemented.

The Petitioners submit that the members of the Transferee Company have, within the prescribed time, approved the audited Balance sheet and Profit & Loss Account for the Financial Year ending 31st March 2016 of the Transferee Company. The Copy of Balance Sheet and Profit & Loss Account passed by the members of the Transferee Company through Resolution which is shown as **Annexure C to the Affidavit** and undertaken to file the same on the Online Portal of Ministry of Corporate Affairs.

Further the Counsel of the Transferor Company has filed the Memo dated 15th March, 2017, stating that the physical copy of the Audited financial statement of the Transferor Company for the financial year 31st March 2016 has been served on the Registrar of Companies, Karnataka, Bangalore. Copy of which is annexed along with Memo in C.P No.173/2017.

The Director of the Transferee Company in his Affidavit further stated that the Statutory Auditors of the Transferee Company have issued a certificate that the accounting treatment contained in the Scheme of Amalgamation is in compliance with accounting standards specified under section 133 of the Companies Act, 2013. The certificate of Statutory Auditor is shown as **Annexure E of the Affidavit** in T.P 174/2017. Further, the Counsel for Transferor Company has filed Memo dated 15th March 2017 in T.P.173/2017 along with certificate of Auditor that, the accounting treatment contained in the Scheme of Amalgamation is in compliance with accounting standards specified under section 133 of the Companies Act, 2013.

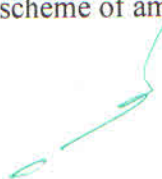
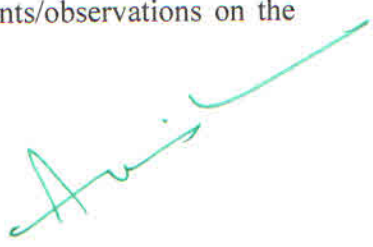


On the prayer made by the Official Liquidator in OLR No.80/2016 in Co.P.No.108/16, vide order dated 11th August, 2016 John, Joseph and Mathew Chartered Accountants were appointed by the Hon'ble High Court of Karnataka to scrutinize the Books of Accounts and records of the Transferor Company. Upon scrutiny of Books & Records and other material made available by the Transferor Company John, Joseph and Mathew Chartered Accountants have submitted report dated **8th November, 2016**. Pursuant to the same, the Official Liquidator has filed a report in **OLR No.-32/2017** in **T.P.No.173/17** stating that:

“The Petitioner/Transferor Company has maintained proper books of accounts, statutory registers and other relevant documents as required by the Companies Act, 1956. The Affairs of the Company have been conducted in a manner not prejudicial to the interests of its members and may kindly be dissolved without winding up.”

The Petitioner Companies have also filed Valuation Certificate of Chartered Accountant to consider the fair value of the equity share of the Petitioner/Transferee Company for the purpose of the proposed amalgamation. On consideration of all the relevant factors and circumstances as mentioned in the certificate, the Chartered Accountant considered that, the Fair Exchange ratio for the acquisition of **M/s Shreenidhi Consultancy Services Private Limited** by **M/s Ladnun Consultancy Services Private Limited** would be **'five Equity Shares of the Transferee Company of Rs.10/- each fully paid up for every one equity shares of the Transferor Company of Rs.10/- each fully paid up'**. The copy of Valuation Certificate is shown as **Annexure-F** in both the Company Petitions.

Further the Director of the Petitioner/Transferee Company in his Additional Affidavit Dated 15th March, 2017 stated that there are no other statutory authorities, other than the Regional Director, Registrar of Companies, Official liquidator and the Income Tax Department, to whom the Company Petitions of the Transferor Company and Transferee Company need to be served and that Petitions have been served on the Regional Director, Registrar of Companies, Official Liquidator and the Income Tax Department and they have provided their respective comments/observations on the scheme of amalgamation.

After hearing the Counsel for the Petitioner Companies and also considering the material on records,

THIS TRIBUNAL DO FURTHER ORDER

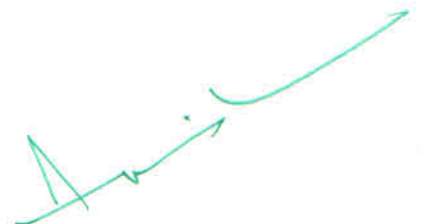

While Approving the Scheme, we further clarify that this order should not be construed as an order in any way granting exemption from payment of Stamp Duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specially required under any law.

The Whole of 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 Companies Act, 2013, be transferred to and vest in the transferee company for all the state and interest of the Transferor Company therein but subject nevertheless to all the charges now affecting the same; and

All the liabilities including taxes and charges as observed in the Official Liquidator Report, if any, 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 Companies Act, 2013, be transferred to and become the liabilities and duties of the transferee company; and

All the proceedings now pending by or against the Transferor Company, if any, be continued by or against the Transferee Company; and

The tax implications, if any, arising out of the scheme is subject to final decision of Income Tax Authorities and the decision of the Income Tax Authority shall be binding.



The Transferor and the Transferee Companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order along with a copy of scheme of Amalgamation to be delivered to the Registrar of Companies for registration in accordance with Rule 25 (7) of Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.

The Scheme shall be effective from the appointed date as mentioned in the scheme of Amalgamation i.e. 1st April, 2016.

The Transferor Company or its authorised signatory is directed that after the completion of the process of Amalgamation to handover the possession of the books of accounts and other relevant documents of the Transferor Company to the Transferee Company for the purpose of section 239 of the Companies Act, 2013.

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


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 14th DAY OF APRIL, 2017