

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

CA(CAA)05/BB/2018

Under Sections 230 to 232 of Companies Act, 2013

Order delivered on 19th February 2018

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

IN THE MATTER OF SCHEME OF AMALAGAMATION

IN THE MATTER OF

INSTAKART SERVICES PRIVATE LIMITED

WITH

FLIPKART DIGITAL MEDIA PRIVATE LIMITED

Instakart Services Private Limited
Brigade Mane Court
First Floor, No.111
Industrial Layout, Koramangala
Bengaluru – 560 095

.. Applicant / Transferee Company

For the Applicant(s): Mr.A.Murali, Advocate
For J Sagar Associates, Advocates
Level 3, Prestige Obelisk
No.3, Kasturba Road, Bengaluru

Per: Hon'ble Shri Ashok Kumar Mishra, Member (Technical) - (Author)

Heard on: 09.02.2018

ORDER

This Application is filed on behalf of the Applicant/Transferee Company viz., Instakart Services Private Limited under Sections 230 to 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangement and Amalgamation) Rules, 2016, praying for an order for dispensation of holding the meeting of the Equity shareholders, Secured Creditors and Unsecured Creditors or alternatively direct convening of the meeting of the Equity shareholders, Secured Creditors and Unsecured Creditors for approving the Scheme of Amalgamation of **FLIPKART DIGITAL MEDIA PRIVATE LIMITED** (Transferor Company) to be merged with **M/S INSTAKART SERVICES**

PRIVATE LIMITED (Transferee Company) in terms of Scheme of Amalgamation shown in **Annexure-G** to this petition.

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

The Applicant/Transferee Company seeks an order for dispensation of holding of the meeting of the Equity shareholders, Secured Creditors and Unsecured Creditors or alternatively to direct convening the meeting of the Equity shareholders, Secured Creditors and Unsecured Creditors for approving the Scheme of Amalgamation of **FLIPKART DIGITAL MEDIA PRIVATE LIMITED** (Transferor Company) to be merged with **M/S INSTAKART SERVICES PRIVATE LIMITED** (Applicant/Transferee Company) in terms of Scheme of Amalgamation shown as **Annexure-G** to this application.

It is further averred in this Application that the Applicant/Transferee Company was incorporated on 8th June 2015 under the provisions of the Companies Act, 1956 in the name and style of **M/S INSTAKART SERVICES PRIVATE LIMITED** bearing CIN No.U74900KA2015PTC080778, having its Registered office at Brigade Manae Court, First Floor, No.111, Industrial Layout, Koramangala, Bengaluru – 560 095.

The main objects of the Applicant/Transferee Company as set out in the Memorandum of Association are:-

- i. To carry on the business of storage, warehousing, transportation and handling of all kinds of transport service/s and/business of courier and allied services including but not limited to the business of storage, packaging, carriage that of collecting any documents goods, articles, things on behalf of customers and to deliver them at specified places, cities, country and to provide reverse pick up facility and to act as Forwarding Agents, Commission Agents, Distributors and Stockists, Brokers and/or in any other capacity and to provide e-commerce solutions and services either directly or indirectly from time to time.
- ii. To carry on the business of clearing and forwarding agents, courier and cargo handlers, handling and haulage contractors, warehousemen, common carriers by land, rail, water and air, container agents, to handle goods and passengers within

the country and outside and to carry on the business of tour and travel operators and to act as customs agents, wharfingers, landing agents, stevedores and longshoremen.

- iii. To construct, purchase, take on rent or otherwise acquire garages, storehouses and other buildings for the housing or repairs of transport vehicles and for the storage of fuel, stores, spares, oils and other materials required for the working of the above vehicles the warehousing of the cargo and passengers transported.

The Authorised share capital of the Applicant/Transferee Company is Rs.40,00,00,00,000/- (Rupees Four Thousand Crores only) divided into 4,00,00,00,000 (Four Hundred Crores) Equity Shares of Rs.10/- (Rupees Ten) each. The issued, subscribed and paid up share capital of the Applicant/Transferee Company is Rs.12,60,18,24,590 (Rupees One Thousand Two Hundred Sixty Crores Eighteen Lakhs Twenty Four Thousand Five Hundred and Ninety only) divided into 1,26,01,82,459 (One Hundred Twenty Six Crores One Lakh Eighty Two Thousand Four Hundred and Fifty Nine) Equity Shares of Rs.10/- (Rupees Ten only) each fully paid up. A copy of the latest Audited financial statements as on 31st March, 2017 is marked as **Annexure-B** to this petition.

The Transferor Company Flipkart Digital Media Private Limited was incorporated on 3rd November 2010. The Transferor Company was incorporated,

(i) To carry on the business in India or abroad, whether as principal, agent, owner, proprietor, manager, contractor, consultant, advisor, partner, developer, dealer, manager, contractors, consultant, advisor, partner, developer, dealer, importer, exporter, buyer, seller, or otherwise in the field of Digital technology based Software, Products, Development, Product Development, Marketing Software, System Solution, Evaluation of supplies, negotiation and developing of contracts, economic forecasting, strategic planning of the supply chain dynamics, web designing, development of web based information system, client server application, enterprise resource planning, network management and to establish and maintain portal, to develop E-commerce activities, to commercialise internet application, to develop consumer oriented electronic commerce, to create digital signatures and systems on demand.

(ii) To deal with, market, export, import of all kinds of electric and electronic components capable of being used in digital, electrical, mechanical and electronic

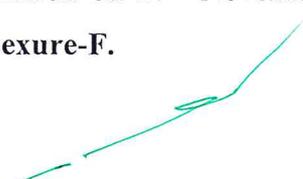
industries including Computers Telecommunications, to carry out software research and development, to design and develop system software, application software and any other software in India and abroad to start integrated services, Digital Local Network (ISDLAN) dial for data centres, technology parks, wide area network internet, user net, cyber cafe services in India and abroad.

(iii) To carry on in India and elsewhere in the world, whether as owner, manager, operator, consultant, partner, adviser or otherwise, the business of creating technology and developing software for the purpose of facilitating online sale and purchase of any kind and all kinds of goods, commodities and merchandise including books, magazines, periodicals and journals and to engage in B2B e-commerce in the nature of case and carry wholesale distribution of all kinds of goods, commodities and merchandise and providing services incidental thereto through various channels and mediums. The copy of the Memorandum of Association of the Transferor Company is produced as **Annexure-C**.

The Registered office of the Transferor Company is situated at Khasra No.299/1, (0-19), 299/2(1-0), 299/3(1-0), Village Barthal, Tehsil Vasant Vihar, Near Firni Road, New Delhi – 110 075.

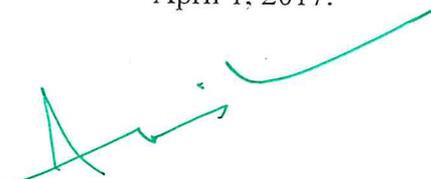
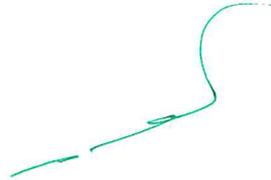
The Authorised share capital of the Transferor Company is Rs.6,60,00,000 (Rupees Six Crores Sixty Lakhs only) divided into 4,18,200 (Four Lakh Eighteen Thousand and Two Hundred) Equity Shares of Rs.10/- (Rupees Ten only) each and 1,23,636 (One Lakh Twenty Three Thousand Six Hundred and Thirty Six) Preference Shares of Rs.500/- (Rupees Five Hundred only) each. The issued, subscribed and paid up share capital of the Transferor Company is Rs.6,47,01,150/- (Rupees Six Crores Forty Seven Lakhs One Thousand One Hundred and Fifty only) divided into 2,65,127 (Two Lakh Sixty Five Thousand One Hundred and Fifty) Class A Equity Shares of Rs.10/- (Rupees Ten only) each fully paid up and 1,23,636 (One Lakh Twenty Three Thousand Six Hundred and Thirty Six) Preference Shares of Rs. 500/- (Rupees Five Hundred only) each.

It is further stated that, the Board of Directors of the Transferee Company have, in its meeting, held on 27th November 2017, have approved the Scheme of Amalgamation. A Copy of the Resolution dated 27th November 2017 passed by the Board of Directors of the Transferee Company is marked as **Annexure- E**. The Board of Directors of the Transferor Company have approved the Scheme of Amalgamation on 27th November 2017 and a copy of the said Board Resolution is marked as **Annexure-F**.



The Applicant/Transferee Company states that the proposed Scheme of Amalgamation will reduce administrative costs and avoid duplication of costs, enable the amalgamated company to effect internal economies and optimise profitability as also to reduce administrative inefficiencies by reducing duplication of functions. The amalgamation will also result in creation of a single larger unified entity in place of various entities under the same management and control, thus resulting in efficient synergies of operations and streamlined business transactions. The amalgamation is also in the best interest of the shareholders, creditors and employees of the Transferor Company and would result in greater efficiency in cash management of the combined entity, enhancement of shareholder value and would help the Transferee Company to vigorously pursue its business plan by consolidation process.

The Board of Directors of the respective Companies are confident that the proposed amalgamation would ensure to the benefit of all the shareholders of the respective Companies including the Creditors and employees of these companies. The salient features of the proposed Scheme are as follows:

- (i) With effect from the appointed date, all the assets of the Transferor Company shall without any further act, instrument, deed or order to be transferred to and be vested with the Transferee Company as a going concern.
 - (ii) On and from the appointed date, all debts, secured and unsecured liabilities, if any and obligations of every kind including tax liabilities of the Transferor Company to become the debts, liabilities and obligations of the Transferee Company from that date without enlarging the security for any debt, deposit or facility created by or available to the Transferor Company. All legal proceedings of whatsoever nature by or against the Transferor Company shall be continued by or against the Transferee Company.
 - (iii) All the contracts and deeds of which the Transferor Company is a party shall remain in full force and effect against or in favour of the Transferee Company.
 - (iv) The Scheme if approved will be effective from the appointed dated i.e., April 1, 2017.
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- (v) On and from the appointed date, the Transferor Company shall be deemed to have carried on and carry on their business for and on behalf of the Transferee Company.
- (vi) All the employees working in the Transferor Company shall become employees of the Transferee Company without any break or interruption in service and on terms of service not less favourable than those enjoyed by them.
- (vii) Upon the Scheme becoming effective, in consideration of the transfer and vesting of the assets and liabilities pursuant to this Scheme of amalgamation of the Transferor Company with the Transferee Company, the entire share capital of the Transferor Company held by the Transferee Company along with the nominee shareholder shall stand cancelled without any further act, application or deed.

The Applicant/Transferee Company further states that there are only two (2) equity shareholders and a Chartered Accountant has issued a certificate dated 01.12.2017 certifying the details of the equity shareholders. The certificate of the Chartered Accountant is produced as **Annexure-H** to the petition. It is further submitted that 100% of the equity shareholders have given their consent to the scheme through respective affidavits and the consent of the equity shareholders is produced as **Annexure-J** to the petition.

It is further submitted that the Applicant/Transferee Company has no Secured Creditors. The Applicant/Transferee Company has 715 (Seven Hundred and Fifteen) unsecured trade/other Creditors and 2 (Two) Unsecured Loan Creditors. A certificate by a Chartered Accountant stating the list of unsecured trade/other Creditors and Unsecured Loan Creditors of the Applicant Transferee Company as on 31.10.2017 is produced as **Annexure-K**. It is submitted that 17 (Seventeen) unsecured trade/other Creditors amounting to a value of Rs.11,792,507,229 and 2 (Two) unsecured loan Creditors amounting to the value of Rs.7,559,366,302 which are more than 90% in value, have accorded their consent/no-objection to the proposed Scheme and the consent affidavits are annexed hereto as **Annexure-L**.

In the light of the above facts stated, the Applicant/Transferee Company prays for the following relief:



1. To dispense with the convening and holding of the meeting of the Equity Shareholders of the Applicant-Transferee Company since all the equity shareholders have conveyed their 'consent' for the proposed scheme of Amalgamation or alternatively to direct the holding of the meeting of the Equity Shareholders be held on such date and time as this Hon'ble Tribunal may deem fit.
2. To dispense with the convening and holding of the meetings of Secured Creditor as there are no Secured Creditors.
3. To dispense with the convening and holding of the meeting of the Unsecured Creditors or issue directions for convening of the meeting of Unsecured Creditors.
4. To pass such other or further orders, as may be deemed necessary.

We have seen the consent affidavit filed by the 02 Equity Shareholders of the Applicant/Transferee Company. There are no Secured Creditors. The Unsecured Creditors constituting more than 90% in value have also accorded their consent/no-objection to the proposed Scheme.

The Applicant/Transferee Company is seeking an order to dispense with the holding of meeting of shareholders and Unsecured Creditors of the Applicant/Transferee Company on the ground that there are only 02 shareholders and both of them have given their consent and 90% of the Unsecured Loan Creditors and 90% of the Unsecured Creditors have given their consent by way of affidavits for the proposed scheme of Amalgamation.

In the result, the Application is allowed and holding of meeting of Shareholders and Unsecured Creditors are dispensed with. In any eventuality when the Applicant Company approaches this Tribunal for seeking approval of the Scheme it would be open for any person who is interested in the Scheme of Amalgamation to put forth their contentions before the Tribunal.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL