

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSA No. 757 of 2017

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

Spear Logistics Private Limited.....First Applicant Company

(Transferor Company)

AND

FM India Supply Chain Private LimitedSecond Applicant Company

(Transferee Company)

Order delivered on 20th July, 2017

Coram:

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

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

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

Per: **B.S.V. Prakash Kumar, Member (J)**

Order

1. The Counsel for the Applicants states that the present Scheme is a Scheme of Amalgamation of Spear Logistics Private Limited ('the Transferor Company'/'First Applicant Company') and FM India Supply Chain Private Limited ('the Transferee Company'/'Second Applicant Company') and their respective Shareholders.
2. The Counsel for the Applicants further submits that the First Applicant Company is 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 First Applicant Company. The

Second Applicant Company was incorporated to engage in the business of carrying all kinds of logistics services.

3. The rationale for the Scheme of Amalgamation is to acquire the ongoing business of the First Applicant Company as both the applicant companies were incorporated with the object of carrying out logistics services as their business. Since both the applicants are engaged in the similar line of business, there will be exploitation of individual strengths and the amalgamation will provide foundation for big ticket growth of the enterprise by enabling the entities to attract capital and facilitate expansion. Thus, with a view to achieve the main objective of consolidation of business carried on by the First Applicant 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 First Applicant Company into the Second Applicant Company. The amalgamation of all the undertakings of the First Applicant Company into the Second Applicant 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.

Keeping in view the provisions of Section 230 of the Companies Act, 2013, directions are issued in relation to the calling, convening and holding of meeting of shareholders of the First Applicant Company and the Second Applicant Company as follows:

4. That the meeting of the Shareholders of the First Applicant Company be convened and held at 1st Floor, Lalani Aura Bldg, 34th Bldg, Khar-West, Mumbai 400052, Maharashtra, India on September 4, 2017 at 1:00 PM for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation of First Applicant Company with the Second Applicant Company and their respective Shareholders.
5. That the meeting of the Shareholders of the Second Applicant Company be convened and held at 1st Floor, Lalani Aura Bldg, 34th Bldg, Khar-West, Mumbai 400052, Maharashtra, India on September 4, 2017 at 3:00 PM for the purpose of considering and, if thought fit, approving with or without modification(s) the

proposed Scheme of Amalgamation of the First Applicant Company with the Second Applicant Company and their respective Shareholders.

6. That at least one month before the said meetings of the Shareholders of the First and Second Applicant Companies to be held as aforesaid, a notice convening the said, meeting at the place date and time as aforesaid, together with a copy of the Scheme of Amalgamation, a copy of the statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post or through Email (to those Shareholders whose email addresses are duly registered with the First and the Second Applicant Companies for the purpose of receiving such notices by email), addressed to each of the Shareholders of the First and the Second Applicant Companies, at their last known addresses or email addresses as per the records of the First and Second Applicant Companies respectively.
7. That at least one month before the meetings of the Shareholders of the First and Second Applicant Companies to be held as aforesaid, a notice convening the said meetings, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the Form of Proxy can be obtained free of charge at the registered offices of the First and Second Applicant Companies as aforesaid and / or at the office of their Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.
8. That the notice of the meetings shall be advertised in two local newspapers viz. “Indian Express” in English and “Loksatta” in Marathi, both circulated in Mumbai and at Pune not less than 30 days before the date fixed for the meeting.
9. That Mr. Gautam Chander Dembla, Director of the First Applicant Company, and failing him, Mr. Ramesh Kalpathy Vaidyanathan, Additional Director of the First Applicant Company shall be the Chairman of the aforesaid meeting of the Shareholders of the First Applicant Company to be held at 1st Floor, Lalani Aura Bldg, 34th Bldg, Khar-West, Mumbai 400052, Maharashtra, India on September 4, 2017 at 1:00 PM or any adjournment or adjournments thereof.

10. That Mr. Gautam Chander Dembla, Director of the Second Applicant Company, and failing him, Mr. Ramesh Kalpathy Vaidyanathan, Additional Director of the Second Applicant Company shall be the Chairman of the aforesaid meeting of the Shareholders of the Second Applicant Company to be held at 1st Floor, Lalani Aura Bldg, 34th Bldg, Khar-West, Mumbai 400052, Maharashtra, India on September 4, 2017 at 3:00 PM or any adjournment or adjournments thereof.
11. That the Chairmen appointed for the aforesaid meetings to issue the advertisement and send out the notices of the meetings referred to above shall have all powers as per the Articles of Association of the First and Second Applicant Companies respectively and also under the Companies Act, 2013 in relation to the conduct of the meetings, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meetings by any person(s).
12. That the quorum of the aforesaid meetings of the Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
13. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form / authorization duly signed by the person entitled to attend and vote at the meetings, are filed with the First Applicant Company at its Registered Office at 7th floor, A.G Technology Park, Server Space, Off ITI Road, Aundh, Pune-411007, Maharashtra, India and Second Applicant Company at its Registered Office at 1st Floor, Lalani Aura Bldg, 34th Bldg, Khar-West Mumbai-400052, Maharashtra, India respectively, not later than 48 hours before the aforesaid meeting, as per the provisions of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016.
14. That the value and number of the shares of each Shareholder shall be in accordance with the books / registers of the First and Second Applicant Companies or depository records and where the entries in the books / register / depository records are disputed, the Chairmen of the meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.
15. That Mr. Amosh Archapelli, Practicing Company Secretary (Membership Number: 34761 & Certificate of Practice: 12945), is hereby appointed as Scrutinizer of the meetings of the Shareholders of the First and Second Applicant Companies

proposed to be held on September 4, 2017 at 1st Floor, Lalani Aura Bldg, 34th Bldg, Khar-West, Mumbai 400052, Maharashtra, India and his remuneration is fixed as Rs. 7500/- excluding taxes.

16. That the Chairmen of each of the aforesaid meetings shall file an affidavit not less than seven (7) days before the date fixed for the holding of the respective meetings and to report to this Tribunal that the directions regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
17. That the Chairmen of each of the aforesaid meetings to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meetings.
18. The First Applicant Company is directed to serve notices along with copy of the Scheme of Amalgamation upon:- (i) concerned Income Tax Authority with in whose jurisdiction the First Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies, Pune, with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the First Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
19. The First Applicant Company is also directed to serve notice along with copy of Scheme of Amalgamation upon Official Liquidator. M/s S.M. Pradhan & Co. Chartered Accountants are appointed to assist the Official Liquidator to scrutinize books of accounts of the First Applicant Company for the last 5 years. The First Applicant Company to pay fees of Rs, 2,00,000/- for this purpose. Official Liquidator may submit his representations, if any within a period of 30 days from the date of notice of receipt of such notice to the Tribunal with a copy served to the Second Applicant Company, failing which it shall be presumed that Official Liquidator has no representations/ objections to make.
20. The Second Applicant Company is directed to serve notices along with copy of Scheme of Amalgamation upon:- (i) concerned Income Tax Authority within whose jurisdiction the First Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies, Mumbai, with a direction that they may submit their representations, if any, within a period of thirty days from the date of

receipt of such notice to the Tribunal with copy of such representations simultaneously be served upon the Second Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

21. The Counsel for the First Applicant Company further submits that since the Scheme is an arrangement between the Applicant Company and their respective shareholders, only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This Bench hereby directs the First Applicant Company to issue notice to all its Secured and Unsecured Creditors to whom the amounts are due and payable as required under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
22. The Counsel for the Second Applicant Company submits that there are no Secured and Unsecured Creditors in the Second Applicant Company therefore the question of sending notices to Secured and Unsecured Creditors does not arise.
23. The First and Second Applicant Companies to file affidavit of service in the registry proving dispatch of notices to the Shareholders, creditors, publication of notices in newspapers and to the regulatory authorities as stated in clauses 18 to 20 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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