

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI**

CSP NO.1109 OF 2017

IN

CSA NO.913 OF 2017

Under Sections 230 to 232 of the Companies
Act, 2013

In the matter of Scheme of Amalgamation of
Spark Inculabs Private Limited (SIPL) with
Lodha Finserv Private Limited (LFPL)

SPARK INCULABS PRIVATE LIMITED)... First Petitioner Company
(Transferor Company)

With

LODHA FINSERV PRIVATE LIMITED)...Second Petitioner Company
(Transferee Company)

ORDER DELIVERED ON: 25TH JANUARY, 2018

CORAM:

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

Hon'ble V. Nallasenapathy, Member (Technical)

Advocate for the Petitioner: 1. Advocate Shruti Kelji-Pednekar
2. Advocate A. S. Lambhate
3. Advocate Sunila Chavan

For Regional Director: P. Sheela, Joint Director

For Registrar of Companies: Parvez Naikwadi, Asst. ROC

For Official Liquidator: Santosh Dalvi, representative

PER: V. Nallasenapathy, Member (Technical)

ORDER

1. Heard Advocate for the parties. Neither any objector has come before the Hon'ble Tribunal to oppose the Scheme of Amalgamation nor has any party controverted any averments made in the Petitions.
2. The sanction of the Hon'ble Tribunal is sought under Section 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation of Spark Inculabs Private Limited, Transferor Company with Lodha Finserv Private Limited, Transferee Company and their respective shareholders.
3. The Learned Advocate for the Petitioner Companies state that the Transferor Company is incorporated with the objectives of providing support services and the Transferee Company is engaged in the business of Non Banking Financial Services.
4. The Learned Advocate for the Petitioner Companies state that the Transferor Company and Transferee Company are being controlled by the same management and in order to reduce the cost of managing separate companies and to make the management of the business operations of the companies more effective, it is proposed to amalgamate the Transferor Company with the Transferee Company and the amalgamation would enable the management to bring the entire business of the two companies under one umbrella and consolidation of the business operations of the Transferor Company and Transferee Company by way of amalgamation would lead to a more efficient utilization of resources and create a stronger base for future growth of the amalgamated entity and greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities and benefit of operational synergies to the combined entity and greater leverage in operations, planning and process optimization and cost savings are expected to flow from more focused operational efforts, rationalization and standardization of administrative expenses and the rights of the creditors will remain unaffected by the merger.

5. The Learned Advocate for the Petitioner Companies states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the Company Scheme Petition.
6. The Learned Advocate for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in the respective Company Scheme Application and that the Company Scheme Petition have been filed in consonance with the Orders passed in Company Scheme Application.
7. The Learned Advocate appearing on behalf of the Petitioner Companies have stated that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary affidavit of compliance in the Tribunal. Moreover, the Petitioner Companies undertake 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 undertakings given by the Petitioner Companies are accepted.
8. The Official Liquidator has filed his report dated 27th November, 2017 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.
9. The Regional Director has filed his report dated 29th December, 2017 wherein it is stated that save and except as stated in paragraph IV(a) to IV(g), 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:-

"IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:-

- (a) In addition to compliance of AS-14 (IND AS-103) the Transferee Company 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.;*

- (b) *As per Part -A Clause 1.5 of the Scheme (Definitions and Share Capital) 'The Appointed Date' for the purpose of this Scheme shall mean the commencement of 1st April, 2017 or such other date as may be fixed by the Tribunal at Mumbai or other competent relevant authority may otherwise direct/fix. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April, 2017;*
- (c) *M/s. Lodha Finserv Private Limited (LFPL)- the Transferee Company) is presently engaged in the business of Non-banking Financial Services and registered with RBI, Mumbai as Non-Banking Financial Company, Hon'ble Tribunal may kindly direct the Petitioner to submit NOC of the RBI.*
- (d) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation/Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 17th October, 2017 has served a copy company scheme Application No.913 of 2017 along with relevant orders etc.*
- (e) *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 transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
- (f) *As regards Part-B Clause 12 of the Scheme (Combination of Authorised Capital), and fee payable by the Transferee Company shall be accordance with the provisions of Section 232 (3)(i) of the Companies Act, 2013.*
- (g) *Since the Transferee Company has to issue Redeemable Preference Shares to the Shareholders of Transferor Company. In this regard, the Transferee Company has to amend its capital clause of Memorandum of Association in accordance with the provisions of Companies Act, 2013 to issue redeemable preference shares.*

10. As far as the observations in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Companies states that the Transferee Company undertakes that in addition to compliance of AS-14 (IND AS-103) accounting treatment, the Transferee Company 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.
11. As far as the observations in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Companies states that the Appointed Date will be 1st day of April, 2017.
12. As far as the observations in paragraph IV (c) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Companies states that M/s. Lodha Finserv Private Limited (LFPL)- the Transferee Company has served the Reserve Bank of India, Mumbai the Notice of shareholders meeting pursuant to Section 230(5) of Companies Act, 2013 on 18th October, 2017 (Annexure H to Affidavit of Service) for which Reserve Bank of India, vide its letter dated 30th October, 2017 (Annexure O to Petition) has asked the Transferee Company to submit its consolidated audited balance-sheet post amalgamation.
13. As far as the observations in paragraph IV (d) and IV (e) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Companies state that the Petitioner Companies have served the concerned Income Tax Department on 17th October, 2017 and filed the original acknowledgements with this Tribunal vide its Affidavit of Service. Further, the Learned Advocate for the Petitioner Companies states that Petitioner Companies undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
14. As far as the observations in paragraph IV (f) of the Report of the Regional Director is concerned, the Petitioner Companies undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013, if applicable.

15. As far as the observations in paragraph IV (g) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Companies state that the Transferee Company undertakes to amend its capital clause of Memorandum of Association in accordance with the provisions of the Companies Act, 2013 in relation to the issuance of Redeemable Preference Shares as per Scheme of Amalgamation.
16. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 10 to 15 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
17. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
18. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.1109 of 2017 filed by the Petitioner Companies is made absolute in terms of prayer clauses (a) to (c).
19. The Petitioner Companies are directed to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai 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 receipt of the order.
20. The Petitioner Companies are further directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC-28 in addition to physical copy, as per the relevant provisions of the Companies Act, 2013.
21. The Petitioner Companies to pay costs of Rs.25,000/-each to the Regional Director, Western Region, Mumbai and cost of Rs.25,000/- to the Official Liquidator, High Court, Bombay by First Petitioner Company/Transferor Company. Costs to be paid within four weeks from the date of receipt of the Order.

22. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai.
23. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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

Date: 25th January, 2018