

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

M.A. NO. 472 OF 2017

IN

CSA.NO 221 OF 2017

Under Section 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation of Flomic
Freight Services Private Limited, Transferor Company,
with, Vinaditya Trading Company Limited, the
Transferee Company and their respective
Shareholders and Creditors.

VINADITYA TRADING COMPANY LIMITED,

...First Applicant Company/Transferee Company

FLOMIC FREIGHT SERVICES PRIVATE LIMITED,

...Second Applicant Company/Transferor Company

Order delivered on 10th January 2018

Coram:

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

Hon'ble V. Nallasenapathy, Member (Technical)

For the applicants: RUSHIL AIYA, Advocate, with AJIT TAWAR, Advocate, i/b Aabid &
Co., Company Secretaries for the Applicant.

Per: Hon'ble V. Nallasenapathy, Member (Technical)

MINUTES OF THE ORDER

UPON the application of the Applicant Companies above named by a Company Notice of
Admission **AND UPON HEARING** Mr. RUSHIL AIYA and Mr. AJIT SINGH TAWAR
i/b AADBID & CO, Company Secretaries of the Applicant Company. **AND UPON**
READING the Application along with the Notice of Admission dated 23rd day of

September, 2017 of Mr. SATYAPRAKASH SATYANARAYAN PATHAK, Director of the Applicant Companies, in support of Notice of Admission along with Applications and Exhibits therein referred to, **IT IS ORDERED THAT:**

1. The Learned Counsel for the Applicant Companies submits that, the First Applicant Company has conducted the meeting of equity shareholder only by E-Voting, whereas the First Applicant Company being a listed company was required to follow the SEBI Circular no. CIR/CFD/CMD/16/2015 dated 30th November, 2015 and was required to conduct the same by postal ballot and e-voting.
2. The Learned Counsel has relied upon the letter from Bombay Stock Exchange dated 16th August, 2017 calling for First Applicant Company to carry out modification to the Scheme in terms of the aforesaid circular and the Learned Counsel has sought modifications in the scheme as averred in paragraph 21 of the interlocutory application inter alia as follows:-

"A. Delete Clause 20(D)(2) of the Scheme,

B. Delete Clause 20(E)(a)(ii) of the Scheme and substituting it with the following clause:

"in terms of SEBI Circular dated 30th November, 2015 bearing no CIR/CFD/CMD/16/2015 approval of shareholders of the Transferee Company shall be obtained by a resolution passed through postal ballot and e-voting after disclosure of all material facts in the explanatory statement in relation to such resolution and such resolution shall be acted upon only if the votes cast by public shareholders in favour of the proposal are more than the number of votes cast by the public against it.

C. Delete clause 20(E)(a)(iv) of the Scheme and substituting it with the following clause:

"the certified copies of the orders of the National Company Law Tribunal, Mumbai Bench, referred above being filed with the Registrar of Companies, Maharashtra, at Mumbai".

The said modifications are allowed and the modified scheme annexed as Exhibit-'K' to the interlocutory application is taken on record.

3. The Learned Counsel for the Applicant Company submits that the modified scheme needs to be approved by the shareholders of both the Applicant companies and therefore the reliefs sought under the interlocutory application are allowed as under:-

- a. A meeting of the Equity Shareholders of the First Applicant Company, be convened and held at Office 12, 4th Floor, 68, Sai Sadan, Janmabhoomi Marg, Hutatma Chowk, Fort, Mumbai, Maharashtra-400001, India on Tuesday, 20th February, 2018

at 12:00 pm for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed modified Scheme of Amalgamation between Flomic Freight Services Private Limited, Transferor Company, with Vinaditya Trading Company Limited, the Transferee Company and their respective Shareholders and Creditors.

- b. In compliance with Clause 9 of SEBI Circular No. CIR/CFD/CMD/16/2015 dated 30th November, 2015, the First Applicant Company will also obtain approval of the Shareholders to the said Scheme of Amalgamation through postal ballot and e-voting.
- c. At least 30 clear days before the said meeting of the Equity Shareholders of the First Applicant Company to be held as aforesaid, a notice convening the said meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by Registered Post or by Air Mail, or by courier or by speed post, or by hand delivery to each of the Equity Shareholders of the First Applicant Company at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Equity Shareholders as per the records of the Applicant Company.
- d. At least 30 clear days before the Meeting of the Equity Shareholders of the First Applicant Company to be held as aforesaid, a notice convening the said meeting, at the place, date and time aforesaid and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid, shall be published once each in 'Free Press Journal' in English and 'Navshakti' in Marathi, both circulated at Mumbai.
- e. The Applicant Company undertakes to:
 - i. Issue Notice convening meeting of the Equity shareholders in Form No. CAA.2 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

- ii. Issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;
- iii. Issue Form of Proxy in Form No. MGT-11 as per Rule 19 of the Companies (Management and Administration) Rules, 2014; and
- iv. Advertise the Notice convening meeting in Form No. CAA.2 as per Rule 7 the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The undertaking is accepted.

- f. Mr. Satyaprakash Satyanarayan Pathak, Wholetime Director Cum CFO of the First Applicant Company failing him Mr. Mahendra Pipalwa, Authorised Representative of the First Applicant Company is appointed as the chairperson for the meeting of the Equity Shareholders. The Scrutinizer for the meeting shall be Deepa Atmaram Kudalkar, Practicing Company Secretary, who shall be paid an amount of Rs. 1000/- for the services.
- g. The Chairperson appointed for the aforesaid Meeting to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (or any re-enactment thereof upon effectiveness of Companies Act, 2013) in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise at the meeting or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
- h. The quorum for the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
- i. The voting by proxy or authorised representative in case of body corporate shall be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at its Registered Office at Office 12, 4th Floor, 68, Sai Sadan, Janmabhoomi Marg, Hutatma Chowk, Fort, Mumbai, Maharashtra-400001, India,

not later than, 48 hours before the aforesaid meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

- j. The value and number of the shares of each member shall be in accordance with the books/ register of the First Applicant Company or depository records and where the entries in the books / register/depository records are disputed, the Chairperson of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
- k. The Chairperson to file an affidavit not less than seven days before the date fixed for the holding of the meeting and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016..
- l. The Chairperson to report to this Tribunal, the result of the aforesaid meeting within thirty days after the conclusion of the meeting, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromise, Arrangements and Amalgamation) Rules, 2016.
- m. That since there are no Secured Creditors in the First Applicant Company, therefore the question of sending notices to secured creditor does not arise.
- n. The Counsel for the First Applicant Company submits that since the Scheme is an arrangement between the Applicant Companies involved in the Scheme and their respective Shareholders and only meetings of the Equity Shareholders of the Applicant Companies are proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act, 2013. This bench hereby directs the respective Applicant company involved in the Scheme to issue notice to all its unsecured creditors as required under Section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representation, if any, to the Tribunal and a copy of such representations shall simultaneously be served upon the respective Applicant Company.
- o. A meeting of the Equity Shareholders of the Second Applicant Company, be convened and held at 101, Span Landmark, 145, Andheri-Kurla Road, Andheri East,

Mumbai, Maharashtra-400099, INDIA on MONDAY, 20th February, 2018 at 12:00 pm for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation between Flomic Freight Services Private Limited, Transferor Company, with Vinaditya Trading Company Limited, the Transferee Company and their respective Shareholders and Creditors.

- p. That Counsel for the Second Applicant Company, submits that since the scheme is an amalgamation between the Applicant Company and their respective shareholders only a meeting of 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 Applicant Company to issue notice to all its Secured Creditors as required under Section 230 (3) of the Companies Act, 2013 with a direction that may submit their representation, if any, to the Tribunal and a copy of such representations shall simultaneously be served upon the Applicant Company.
- q. That Counsel for the Second Applicant submits that since the scheme is an amalgamation between the Applicant Company and their respective shareholders only a meeting of 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 Applicant Company to issue notice to all its Unsecured Creditors as required under Section 230 (3) of the Companies Act, 2013 with a direction that may submit their representation, if any, to the Tribunal and a copy of such representations shall simultaneously be served upon the Applicant Company.
- r. At least 30 clear days before the said meeting of the Equity Shareholders of the Second Applicant Company to be held as aforesaid, a notice convening the said meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by Registered Post or by Air Mail, or by courier or by speed post, or by hand delivery to each of the Equity Shareholders of the Second Applicant Company at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Equity Shareholders as per the records of the Applicant Company.
- s. At least 30 clear days before the Meeting of the Equity Shareholders of the Second Applicant Company to be held as aforesaid, a notice convening the said meeting, at

the place, date and time aforesaid and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of Proxy can be obtained free of charge at the Registered Office of the Second Applicant Company as aforesaid, shall be published once each in 'Free Press Journal' in English and 'Navshakti' in Marathi, both circulated at Mumbai.

- t. The Second Applicant Company undertakes to:
- i. Issue Notice convening meeting of the Equity shareholders in Form No. CAA.2 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
 - ii. Issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;
 - iii. Issue Form of Proxy in Form No. MGT-11 as per Rule 19 of the Companies (Management and Administration) Rules, 2014; and
 - iv. Advertise the Notice convening meeting in Form No. CAA.2 as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The undertaking is accepted.

- u. Mr. Lancy Barboza, failing him Mrs. Anitashanti Lancy Barboza, Directors of the Second Applicant Company is appointed as the chairperson of the Equity Shareholders. The Scrutinizer for the meeting shall be Ms. Deepa Atmaram Kudalkar, Practicing Company Secretary, who shall be paid an amount of Rs. 1000/- for the services.
- v. The Chairperson appointed for the aforesaid Meeting to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (or any re-enactment thereof upon effectiveness of Companies Act, 2013) in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise at the meeting or at any adjournment

thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).

- w. The quorum for the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
- x. The voting by proxy or authorised representative in case of body corporate shall be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at its Registered Office at 101, Span Landmark, 145, Andheri-Kurla Road, Andheri East, Mumbai, Maharashtra-400099, INDIA, not later than, 48 hours before the aforesaid meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- y. The value and number of the shares of each member shall be in accordance with the books/ register of the Second Applicant Company and where the entries in the books / register are disputed, the Chairperson of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
- z. The Chairperson to file an affidavit not less than seven days before the date fixed for the holding of the meeting and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.
- aa. The Chairperson to report to this Tribunal, the result of the aforesaid meeting within thirty days after the conclusion of the meeting, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromise, Arrangements and Amalgamation) Rules, 2016.
- bb. The Applicant Companies to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the concerned Tribunal from Regional Director within 30 days of the date of receipt of

the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

cc. The Applicant Companies to serve the notice upon the concerned Registrar of Companies, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the concerned Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

dd. The Applicant Companies to serve the notice on the concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessment are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the concerned Tribunal from the Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

ee. The First Applicant Company to serve the notice upon the concerned Stock Exchange and Securities and Exchange Board of India (SEBI), pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the concerned Stock Exchange or SEBI within 30 days of the date of receipt of the notice it will be presumed that the concerned Stock Exchange or SEBI have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

ff. The Second Applicant Company to serve the notice upon the concerned office of the Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the concerned Office of the Official Liquidator

within 30 days of the date of receipt of the notice it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

gg. The Applicant Companies to file an affidavit of service of the directions given by the Tribunal not less than seven days before the date fixed for holding of the meetings and do report to this tribunal that the direction regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapathy

Member (T)

Sd/-

B.S.V. Prakash Kumar

Member (J)