

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

**Company Petition No. 51/ALD/ 2017**  
**Connected with**  
**Company Application 33/ALD/2017**  
*(Under Section 230-232 of Companies Act, 2013)*

**IN THE MATTER OF**

**ALPINE VACATION PRIVATE LIMITED,**

A private Limited company incorporated under the provision of Companies Act, 1956, having its Registered Office at D-180, Sector-63, Gautam Buddha Nagar, Noida-201301, Uttar Pradesh.

**.....Petitioner Company No.1/Transferor Company 1**

**AND**

**FREEDOM TECHNOBUILD PRIVATE LIMITED,**

A private limited company incorporated under the provision of Companies Act, 1956, having its Registered Office at D-180, Sector-63, Gautam Buddha Nagar, Noida-201301, Uttar Pradesh.

**..... Petitioner Company NO.2/Transferor Company 2**

**AND**

**SUPERIOR PORTFOLIO PRIVATE LIMITED,**

A private Limited company incorporated under the provision of Companies Act, 1956, having its Registered Office at D-180, Sector-63, Gautam Buddha Nagar, Noida-201301, Uttar Pradesh.

**..... Petitioner Company No.3/Transferor Company 3**

**AND**

**CLEAVE GLOBAL E SERVICES PRIVATE LIMITED,**

A private limited company incorporated under the provision of Companies Act, 1956, having its Registered Office at D-180, Sector-63, Gautam Buddha Nagar, Noida-201301, Uttar Pradesh.

**....Petitioner Company No.4/Transferor Company 4**

**AND**

**SUDH INVESTMENTS PRIVATE LIMITED,**

A private limited company incorporated under the provision of Companies Act, 1956, having its Registered Office at D-180, Sector-63, Gautam Buddha Nagar, Noida-201301, Uttar Pradesh.

**..... Petitioner Company No.5/Transferee Company**





**Coram:**

Hon'ble Shri H.P. Chaturvedi, Member (J)

**For the Petitioner :** Shri Rahul Agarwal (Advocate)  
**For the Central Govt. :** Shri M.K Bagri, (Official Liquidator)

**Per Shri H.P. Chaturvedi, Member (Judicial)**

**ORDER/JUDGMENT**

1. The present Petition is filed by the Petitioner Companies before this tribunal under Section 232 of Companies Act, 2013 read with National Company Law Tribunal Rules, 2016 along with The Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 seeking prayer for sanction of the scheme of arrangement vide which **ALPINE VACATION PRIVATE LIMITED**, (*hereinafter referred to as Petitioner Company No.1 or Transferor Company 1*), **FREEDOM TECHNOBUILD PRIVATE LIMITED**, (*hereinafter referred to as Petitioner Company No.2 or Transferor Company 2*), **SUPERIOR PORTFOLIO PRIVATE LIMITED**, (*hereinafter referred to as Petitioner Company No.3 or Transferor Company 3*), **Cleave Global E Services Private Limited**, (*hereinafter referred to as Petitioner Company No.4 or Transferor Company 4*) will merge with **SUDH INVESTMENTS PRIVATE LIMITED**, (*hereinafter referred to as Petitioner Company No.5 or Transferee Company*).

2. The petitioner companies submitted that the proposed Company Scheme of Arrangement has already been approved by its Board of Directors in its meeting which held on 20<sup>th</sup> January, 2017.





3. As per the present company petition, the main object and salient features of the proposed Scheme of amalgamation may be described as under:

- a. As a result of amalgamation, there would be reduction of the Companies leading to reduction in compliance requirements of multiple companies.
- b. That the scheme would result in the consolidation of the business operations undertaken by the Transferor Companies and the Transferee Company.
- c. The amalgamation will result in reduction in overheads, administrative, managerial and other expenditure, and optimal utilization of various resources due to consolidation of activities. There would no duplication of efforts and division of resources.
- d. Greater efficiency in cash management of the Transferee entity, and access to cash flow generated by the combined business.
- e. The Scheme shall be beneficial and in the best interests of the shareholders, debenture holders and creditors of the Transferor Companies and the Transferee Company and all concerned.

4. That the *Appointed Dated* under the Scheme is on **01.04.2017**. It is further stated in the company petition that as per company scheme the Share Exchange Ratio would be as under: -

1. 367 equity shares of Rs.10/- each fully paid up in the share capital of transferee company for every 100 fully paid up equity shares of Rs.10/- each held in Transferor Company No.1.
2. 107 equity shares of Rs.10/- each fully paid up in the share capital of transferee company for every 100 fully paid up equity shares of Rs.10/- each held in Transferor Company No.2.



*[Handwritten signature]*



3. 601 equity shares of Rs.10/- each fully paid up in the share capital of transferee company for every 100 fully paid up equity shares of Rs.10/- each held in Transferor Company No.3.
4. 06 equity shares of Rs.10/- each fully paid up in the share capital of transferee company for every 100 fully paid up equity shares of Rs.10/- each held in Transferor Company No.4.

5. In the petition, it is further stated that pursuant to this Scheme of Amalgamation, all the shareholders of the Transferor Companies will get shares in the Transferee Company and there would be no change in the economic interest for any of the shareholders of the Transferor Companies pre and post implementation of the Scheme. A copy of the valuation report and fairness opinion report has already been annexed as Annexure No.28 to Company Application No.33 of 2017.

6. It is further submitted that the proposed Scheme of Amalgamation is not intended, in any manner, to have any beneficial effect on or material interest, if any, of the Directors of the Petitioner Companies, except to the extent of their shareholdings, if any. That the Scheme will not adversely affect the rights or interest of any creditor and debenture holder of the Petitioner Companies or their respective shareholders, in any manner whatsoever.

7. It is also stated that the Scheme of Amalgamation does not involve any compromise with the creditors and debenture holder of any of the Petitioner Companies in any manner whatsoever. As such, the Scheme of Amalgamation does not in any manner adversely affect the interests of any of the creditors and debenture holder of the Petitioner Companies. Due provisions have been made for payment of all their liabilities as and when the same fall due in the usual course.



*[Handwritten signature]*



8. It is further submitted that the Auditors of the *Alpine Vacation Private Limited, Freedom Techno build Private Limited, Superior Portfolio Private Limited, Cleave Global E Services Private Limited and Sudh Investments Private Limited*, did not disclose any kind of mismanagement in the affairs these companies e.g. the Transferors Companies and the Transferee Company.

9. It is also reported that the Petitioner Company No.5/Transferee Company has duly complied with the accounting standards. In support the petitioners enclose a certificate from the auditor of the Transferee Company (Petitioner Company No.5) with regard to accounting treatment under the proposed Scheme being in compliance with the Accounting Standards. This certificate has earlier been annexed as Annexure-29 to the Company Application No.33 of 2017.

10. A perusal of the present petition discloses that initially the Petitioner Companies filed a Company Application/CA No.33/ALD/2017 before this Tribunal seeking such directions for dispensing with the meetings of its shareholders (e.g. of Transferor Companies and Transferee Company); further to dispense with meeting of secured creditor of Superior Portfolio Private Limited to dispense with meeting of unsecured creditors of Alpine Vacation Private Limited and Cleave Global E Services Private Limited and Sudh Investments Private Limited to dispense with meeting of debenture holder of Sudh Investments Private Limited and Cleave Global E Services Private Limited. Accordingly, this Bench vide its order dated 13.04.2017 allowed the above mentioned prayers by dispensing with such meeting.





11. Further in the above stated order this Tribunal issued a direction to the Petitioner Companies to issue a notice to Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies, Official Liquidator and further to make a paper publication in English and Hindi newspapers.

In Compliance thereof, authorised representative of the applicant companies has filed an affidavit of service by confirming that notices have been duly published in the English '*Business Line*' and in the Hindi '*Business Line*' Noida Edition. The Petitioners have duly served notices of the present Company Petition upon the Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies, U.P. at Kanpur upon the Income Tax Officer at New Delhi.

12. In response to the such notices issued. The Registrar of Companies has filed its report stating that there is no prosecution filed against Transferor Companies and Transferee Company, nor any proceeding under section 235 to 251 of the Act, 1956 is pending against them, nor there is any report of violation of section 383A/215 of the Companies Act, 1956.

13. The Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, having received a report from the Registrar of Companies (Kanpur) filed his representation Affidavit wherein he has stated that his offices having no objections to present scheme except what is contained under Para 7 and 8 of his affidavit which reads as under: -



*[Handwritten signature]*



**Para 7:** That the Deponent is to say that the petitioner companies may be directed to give an undertaking in relation to payment of stamp duty as may be applicable consequent upon the transfer of assets due to the Amalgamation.

**Para 8:** That the deponent is to say that ROC at Para 29 of his report has stated that:-

*"Transferor Company No.3 M/S Superior Portfolio Pvt. Ltd. Has not filed AOC -4 as at 31.03.2016 as yet"*

The Deponent is to say that the petitioner transferor company no.3 may be directed by Hon'ble Tribunal to file form AOC-4 as at 31.03.2016 before sanctioning of the scheme.

14. In the present matter, the Official Liquidator, Allahabad further filed his report wherein he mentioned about the detailed particulars of Authorized, Issued, Subscribed and Paid up Capital of Transferor Companies and Transferee Company as on 31.03.2016.

Further as per para 23 of his report, it is reported that under the provisions of section 230-232 of the Companies Act, 2013, his office was required to scrutinize the Books of Accounts and other documents for preparation and submission of his report, pursuant thereto Shri Abhishek Nahata, PCS being authorized representative of the Transferor Companies and Transferee Companies duly produced Books of Accounts and statutory records for his inspection. After making scrutiny Official Liquidator has reported that affairs of the Transferor Company are not being conducted in manner prejudicial to the interest of their member or to public at large. Further as per para 26 of the OL's report it is informed that the office of the OL is having no objection to the dissolution of the transferor Company without winding up pursuant to provisions of Section 230-232 of the Companies Act, 2013 and rules made there under.





15. In response to the comments/observation of the Regional Director (NR) Petitioner Companies through Authorized Signatory Shri Rahul Srivastava has filed affidavit of service stating that in response to Para 7 of RD's affidavit, the Petitioner Companies undertake to comply with all applicable laws, including the India stamp Act and discharge the burden of stamp duty (if applicable), on the present Scheme of Arrangement. Further in response to Para 8 of the RD's affidavit, he filed Form AOC-4 [Pursuant to section 137 of the Companies Act, 2013 and sub-rule (1) of Rule 12 of Companies (Accounts) Rules, 2014] Form for filing financial statement and other documents with the Registrar in Annexure -1 of his Affidavit.

16. We carefully considered the above stated averments made in the Company Petition and perused the documents annexed therewith and further perused the RD (NR) affidavit as well as of the Report of ROC and OL filed in the present matter. We examined the merits of present Company Scheme Petition in the light of Judicial Trend as has been settled that *a court must examine the scheme on its own merits and is not bound to treat the scheme as fait accompli. "It is well-settled that in exercising its discretion in according sanction, the court will consider, first, whether the statutory provisions have been complied with; secondly, whether the classes were fairly represented by those who attended the meeting and whether the statutory majority were acting bona fide, and, thirdly, whether the scheme is such as a man of business would reasonably approve. Bearing in mind these principles, the scheme may be examined."*<sup>1</sup>



<sup>1</sup> Bank Of Baroda Ltd. vs Mahindra Ugine Steel Co. Ltd. (1976) 46 Comp. Cas 227 (Guj)



Further a Court is required to consider circumstances before giving its approval. Some of the outstanding circumstances in short may be narrated as under:-

- a. The proposal for the Scheme was made in good faith;
- b. The Scheme is fair and reasonable;
- c. The Scheme will yield to smooth and satisfactory working;
- d. The Scheme does not offend public or commercial morality;
- e. The Scheme is not detrimental to the interests of the creditors or members or public interest.

By following the above stated legal canons, we are of the view that the proposed company scheme does not seem to be contrary to the public policy, nor prejudicial to the interests of its shareholders and detrimental to public at large. By perusing the material available on record, the Company Scheme appears to be fair and reasonable and is not found violative of any provisions of Law.

17. In addition to above all the Statutory compliance either seems to have been complied with or further undertaken for making compliances by Petitioner Companies as per its Affidavit. Therefore, the present Company Scheme Petition filed by the Petitioner Companies deserve to be allowed. Hence, the same is allowed and the prayer made therein is made absolute in terms of its Prayer Clause. In the result, the proposed Company Scheme of Arrangement annexed to Company Petition is duly approved and hereby sanctioned. Petitioner Companies to act upon as per the terms and condition of the Sanctioned Company Scheme.

18. Consequently, all the property, rights and powers of transferor Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of





Act, be transferred to and vested in the Transferee Company for all intents and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same.

19. All the liabilities of the Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee Company.

20. That Petitioner Companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and the Transferor Companies on such certified copy being so delivered shall deemed to be dissolved. The Registrar of Companies shall place all documents relating to the Transferor Companies and registered with him on file kept by him in relation to the Transferee Company and files relating to the Petitioner Companies shall be consolidated accordingly.

21. While approving the scheme as above, 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 other charges, if any, and payment in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law.



22. In addition to above cost of Rs. 25,000/- is awarded in favour of the Central Government through the office of the Registrar of Companies (Kanpur), Regional Director (NR) as the case may be towards Legal Expenses incurred which is payable by the Petitioner



companies within four weeks from the receipt of an authentic copy of this order.

23. The counsel of the petitioner companies to furnish a copy of draft order of sanction of the Scheme in the prescribed format under Companies Compromises, Arrangement and Amalgamations) Rules, 2016 read with other rules for scrutiny and authentication by the Registry of this Tribunal.

24. All Concerned Regulatory Authorities to act on a copy of this order annexed with the Company Scheme duly authenticated by the Asst. Registrar, National Company Law Tribunal, Allahabad Bench.



**Dated: 11.09.2017**

*(Aparna)*

**H.P. Chaturvedi,  
Member (Judicial)**