

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Company Petition No. CP (CAA) No. 26/ALD of 2019

Connected with

Company Application No. CA (CAA) No. 323/ALD of 2018

(Under Section 230-232 of the Companies Act, 2013)

IN THE MATTER OF COMPANIES ACT, 2013

AND

IN THE MATTER OF SCHEME OF AMALGAMATION AND ARRANGEMENT OF:

1. Carefree Investment Company Limited, a public limited company incorporated under the Companies Act, 1956 and having its registered office at C -76, First Floor, Sector-22, Gautam Buddha Nagar -201301, Uttar Pradesh.

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

2. Divine Leasing and Finance Limited, a public limited company incorporated under the Companies Act, 1956 and having its registered office at C -76, First Floor, Sector-22, Gautam Buddha Nagar -201301, Uttar Pradesh.

..... Petitioner Company No. 2/Transferor Company No. 2

3. Excellent Commercial Enterprises and Investment Limited, a public limited company incorporated under the Companies Act, 1956 and having its registered office at C -76, First Floor, Sector-22, Gautam Buddha Nagar - 201301, Uttar Pradesh.

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

4. International Resources Limited, a public limited company incorporated under the Companies Act, 1956 and having its registered office at C -76, First Floor, Sector-22, Gautam Buddha Nagar -201301, Uttar Pradesh.

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

5. Moderate Investment and Commercial Enterprises Limited, a public limited company incorporated under the Companies Act, 1956 and having its registered office at C -76, First Floor, Sector-22, Gautam Buddha Nagar - 201301, Uttar Pradesh.

..... Petitioner Company No. 5/Transferor Company No. 5

AND

6. Hindustan Commercial Company Limited, a public limited company incorporated under the Companies Act, 1956 and having its registered office at C -76, First Floor, Sector-22, Gautam Buddha Nagar -201301, Uttar Pradesh.

.....Petitioner Company No. 6/Transferee Company



ORDER DELIVERED ON 20:11:2019

CORAM : Justice(Retd) Rajesh Dayal Khare, Member(Judicial)

For the Petitioners: Mr. Sunil Kumar Grover, Advocate
Mr. Anil Kumar, PCS.

For the Regional Director: Mr. Pradeep Singh Sisodia, CGSC.

For Official Liquidator : Mr. Kuldeep Singh, STA

For Reserve Bank of India: Mr. Vikash Budhwar, Advocate

Per: Justice (Retd) Rajesh Dayal Khare, Member(Judicial)

ORDER

1. The Present Petition is filed by Petitioner Companies under Sections 230 - 232 of the Companies Act, 2013 read with Rules framed there under as in force from time to time for the Sanction of the proposed Scheme of Amalgamation and Arrangement of Carefree Investment Company Limited (Petitioner Company 1 / Transferor Company 1), Divine Leasing and Finance Limited (Petitioner Company 2 / Transferor Company 2), Excellent Commercial Enterprises and Investment Limited (Petitioner Company 3 / Transferor Company 3), International Resources Limited (Petitioner Company 4 / Transferor Company 4), Moderate Investment and Commercial Enterprises Limited (Petitioner Company 5 / Transferor Company 5) with Hindustan Commercial Company Limited (Petitioner Company 6/ Transferee Company) and their respective Shareholders (**hereinafter referred to as "Scheme" or "Scheme of Amalgamation"**).

(A copy of the Scheme has been annexed and marked as Annexure- P1 to the Company Petition No. 26/ALD of 2019).

2. The proposed Scheme of Amalgamation and Arrangement has previously been approved by the Board of Directors of the Transferor Companies No. 1 to 5 and the Transferee Company in their respective meetings held on 23rd May, 2018.

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3. The factual position of the Authorized, Issued, Subscribed and Paid up share Capital of the Petitioner Companies as on 31st March, 2018 are described well in the present Company Petition, which are being reproduced hereunder:
- a. *The Authorised Share Capital of the Transferor Company No. 1 is ₹2,00,00,000 divided into 20,00,000 Equity Shares of ₹10 each. The issued, subscribed and paid-up Share Capital is ₹1,49,00,000 divided into 14,90,000 Equity Shares of ₹10 each.*
 - b. *The Authorised Share Capital of the Transferor Company No. 2 is ₹1,00,00,000 divided into 10,00,000 Equity Shares of ₹10 each. The issued, subscribed and paid-up Share Capital is ₹99,80,000 divided into 9,98,000 Equity Shares of ₹10 each.*
 - c. *The Authorised Share Capital of the Transferor Company No. 3 is ₹1,00,00,000 divided into 10,00,000 Equity Shares of ₹10 each. The issued, subscribed and paid-up Share Capital is ₹99,50,000 divided into 9,95,000 Equity Shares of ₹10 each.*
 - d. *The Authorised Share Capital of the Transferor Company No. 4 is ₹2,00,00,000 divided into 20,00,000 Equity Shares of ₹10 each. The issued, subscribed and paid-up Share Capital is ₹2,00,00,000 divided into 20,00,000 Equity Shares of ₹10 each.*
 - e. *The Authorised Share Capital of the Transferor Company No. 5 is ₹2,00,00,000 divided into 20,00,000 Equity Shares of ₹10 each. The issued, subscribed and paid-up Share Capital is ₹1,99,00,000 divided into 19,90,000 Equity Shares of ₹10 each.*
 - f. *The Authorised Share Capital of the Transferee Company is ₹2,00,00,000 divided into 20,00,000 Equity Shares of ₹10 each. The issued, subscribed and paid-up Share Capital is ₹2,00,00,000 divided into 20,00,000 Equity Shares of ₹10 each.*
4. Main objective of proposed Scheme, elaborately described in the present Company Petition is summarized as under:
- a. *That the objects and present business activities of the Transferor Companies and the Transferee Company are very similar and thus can be combined effectively and efficaciously.*
 - b. *That all the Transferor Companies and the Transferee Company are under same management and having registered office at same place.*
 - c. *The management of the Transferor Companies 1 to 5 and the Transferee Company are of the opinion that the consolidation of the activities of all the Companies will lead to synergies, in terms of economies of scale and integration of operation. The above Amalgamation would also enhance financial strength and flexibility of the Transferee Company.*
 - d. *The Amalgamation of the Transferor Companies 1 to 5 and Transferee Company would enable the Transferee Company to have better economies of scale, improved cost efficiencies, savings in administration costs and various other operational costs, elimination of duplication of services and operations and reduction of overhead expenses.*
 - e. *The Amalgamation of the Transferor Companies 1 to 5 and the Transferee Company would be conducive to better and more efficient and economical control and conduct of the Company. The management will not be required to divide their time for the management of six companies but for a single entity.*
 - f. *The Amalgamation of the Transferor Companies 1 to 5 and the Transferee Company would be beneficial to Equity Shareholders of the Transferor Companies in as much as they would have an opportunity to be able to*



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participate in the integrated and growing business of the Transferee Company.

5. The Petitioners have stated that the accounting treatment proposed in the Scheme of Amalgamation and Arrangement is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.

(Certificates from the respective Statutory Auditors of the Petitioner Companies are annexed and collectively marked as Annexure P36 to the Company Petition No. 26/ALD of 2019).

6. It has also been stated in the Petition that the Scheme is not prejudicial to the interest of the Shareholders and Creditors of the Petitioner Companies and the Petition is made *bona fide* and is in the interest of all the Petitioner Companies and their Equity Shareholders and Creditors as a whole and is also just and equitable.
7. It is also submitted that the Board of Directors of the Petitioner Transferor Companies 1 to 5 and the Transferee Company have determined the share exchange ratio as under:

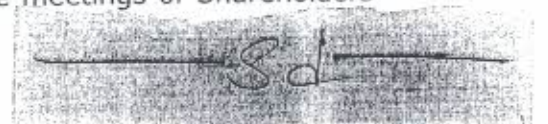
- a. The Transferee Company will issue **78 (Seventy-Eight)** Equity Shares of ₹10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of ₹10 each held in the Transferor Company No. 1-Carefree Investment Company Limited.
- b. The Transferee Company will issue **87 (Eighty-Seven)** Equity Shares of ₹10 each, credited as fully paid up, for every 100 (one hundred) Equity Share of ₹10 each held in the Transferor Company No. 2-Divine Leasing and Finance Limited.
- c. The Transferee Company will issue **131 (One Hundred Thirty-One)** Equity Share of ₹10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of ₹10 each held in the Transferor Company No. 3- Excellent Commercial Enterprises and Investment Limited.
- d. The Transferee Company will issue **85 (Eighty-Five)** Equity Share of ₹10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of ₹10 each held in the Transferor Company No. 4- International Resources Limited.
- e. The Transferee Company will issue **99 (Ninety -Nine)** Equity Share of ₹10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of ₹10 each held in the Transferor Company No. 5- Moderate Investment and Commercial Enterprises Limited.

8. The Petitioner Companies have also annexed the valuation report dated 21st May, 2018 given by M/s Rakesh Airon & Co., Chartered Accountants, New Delhi in relation to the share exchange ratio.

(Copy of Valuation Report is annexed and marked as Annexure P37 to the Company Petition No. 26/ALD of 2019)



9. A perusal of the present Petition discloses that initially the Petitioner Companies had filed Company Application No. 323/ALD/2018 seeking directions for dispensation from convening of/ convening Meetings of the Equity Shareholders and Creditors of the Petitioner Companies for approval of Scheme of Amalgamation/ Merger of Petitioner Companies 1 to 5 /Transferor Companies 1 to 5 with Petitioner Company 6/ Transferee Company and submitted CA certified list of Shareholders, Secured Creditors and Unsecured creditors.
10. The Petitioner Companies has also annexed with the Application the consents obtained from Equity Shareholders holding 90.39% equity shares of Petitioner Company 1, 89.61% equity shares of Petitioner Company 2, 90.08% equity shares of Petitioner Company 3, 80.74% equity shares of Petitioner Company 4, 95.04% equity shares of Petitioner Company 5 and 81.49% equity shares of Petitioner Company 6, 100% of unsecured creditors of each of the Petitioner Companies and declared that there were no secured creditors in any of the Petitioner Companies,
11. Accordingly, this Tribunal vide its order dated 15th November, 2018 in first motion application dispensed the meeting of Equity Shareholder of Petitioner No 1,3 & 5 and meeting of creditors (secured and unsecured) of all petitioner companies. Further directed to convene Meetings of the Equity Shareholders of Petitioner Company 2, 4 & 6 respectively on 05th January, 2019 i.e. Saturday, at 10:30 AM for Petitioner Company 2, at 11:30 AM for Petitioner Company 4 and at 12:30 PM for Petitioner Company 6 at Hotel Mint, Plot No. B-40, Block -B, Sector-1, Noida (UP)-201301, for the purpose of considering and, if thought fit, approving with or without modification(s), the said scheme of compromise or arrangement and appointed Mr. Sanjay Mani Tripathi, Advocate-Supreme Court and Mr. Avi Sangal,PCS as chairperson and scrutinizer of the said Meetings and should report the results thereof to this Tribunal.
12. A perusal of the present Petition discloses that in pursuance of the directions contained in Order dated 15th November, 2018 passed by this Tribunal in Company Application No. 323/ALD/2018, separate meetings of Shareholders



of the Transferor Company No. 2 (Divine Leasing and Finance Limited); Transferor Company No. 4 (International Resources Limited), and the Transferee Company (Hindustan Commercial Company Limited) were convened and held on Saturday, 05th January, 2019 at Hotel Mint, Plot No. B-40, Block -B, Sector-1, Noida (UP)-201301, as per the following schedule:

Sl. No.	Meeting of	Time
1.	Equity Shareholders of Divine Leasing and Finance Limited (Transferor Company No. 2)	10:30 AM
2.	Equity Shareholders of International Resources Limited (Transferor Company No. 4)	11:30 AM
3.	Equity Shareholders of Hindustan Commercial Company Limited (Transferee Company)	12:30 PM

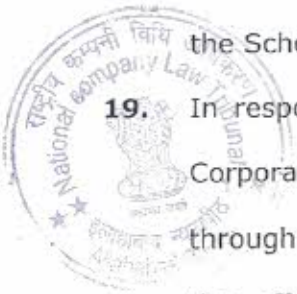
13. The chairman filed its report before this tribunal stating that requisite quorum was present and the Scheme was approved unanimously by the Shareholders holding shares more than 80% in value of the respective Petitioner Companies.

(Copy of the Chairman's Report has been annexed and marked as Annexure P53 to the Company Petition No. 26/ALD of 2019)

14. It is matter of record that the when the application seeking dispensations from convening of/ convening Meetings was moved on July 30, 2018. At that time all the six applicant companies were registered with Reserve Bank of India as NBFCs. As Transferor Company 1,2,3,4 & Transferee Company did not meet the Net Owned fund of Rs. 200 Lakh stipulated by Reserve bank of India to be achieved by all NBFCs and Certificate of Registration of Transferor Company 1 was cancelled vide order dated May 03, 2019 and of Transferor Companies 2, 3, 4 and Transferee Company were cancelled vide order dated August 29, 2018 respectively. In terms of directions of Reserve bank of India each of the above referred 5 Companies have passed Board resolutions and informed RBI that they will not carry on any NBFI activities as defined under Section 45-I(a) of the Reserve Bank of India Act, 1934 without obtaining the Certificate of Registration as NBFC from Reserve Bank of India. As such Transferee Company which alone will exist after approval of the Scheme is no more an NBFC.

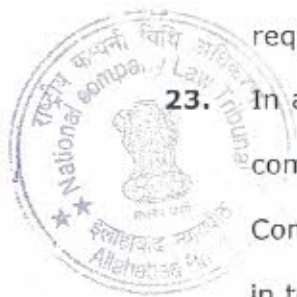


15. It has also been stated in the Petition that in compliance with the order dated 15th November 2018 of this Tribunal, the Petitioner Companies had served a Notice in form CAA-3 along with copy of the order to the Statutory Authorities i.e. (a) the Central Government through the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, Uttar Pradesh; (c) the Reserve Bank of India, Kanpur, (d) the Income Tax Authorities; and (d) the Official Liquidator, Uttar Pradesh for submission of their objections, if any.
16. This Hon'ble Tribunal vide its order dated 11th February, 2019 directed the Petitioner Companies to issue notice of hearing in respect of present Company Petition to the Statutory Authorities and also to make newspaper publication in this respect in English Newspaper "**Business Standard**", and Hindi Newspaper "**Dainik Jagran**".
17. In compliance thereof, the Petitioner Companies have filed Affidavit of service and publication, confirming that notices have been duly published in English Newspaper "**Business Standard**" and Hindi newspaper "**Dainik Jagran**" and the Petitioner Companies has duly served on notices to (a) the Central Government through the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, Uttar Pradesh; (c) the Reserve Bank of India, Kanpur, (d) the Income Tax Authorities; and (d) the Official Liquidator, Uttar Pradesh.
18. In response to the above stated notice, the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi submitted its report through a representation/ affidavit, wherein it has not raised any objection against the Scheme of Amalgamation and Arrangement.
19. In response to the above stated notice, the Official Liquidator, Ministry of Corporate Affairs, Allahabad, Uttar Pradesh has also submitted its report through a representation/affidavit, wherein it has stated that it appears that the affairs of the said Transferor Companies as such have not been conducted in a manner prejudicial to the interest of their members or to public interest, and in para 30 stated no objection to the Scheme of Amalgamation and Arrangement.





20. In response to the above stated notice a representation letter dated 02nd January 2019 stating the factual status that no demand is pending of Transferee Company was submitted by the Income tax Authority and no objection was raised in the said letter and no further comments/reports received from Income tax authorities; hence, it is assumed that Income tax authorities are having no objections to the proposed Scheme.
21. In response to the notices, the Reserve bank of India has submitted its comments/reports through a representation/affidavit with respect to all the Transferor and Transferee Companies stating that the NBFC licenses of the Petitioner Companies 1,2,3,4 & 6 have been cancelled and petitioner company no. 5 only remains to be an NBFC. The RBI vide supplementary submission dated 29/06/2019 in para 8 has submitted its no objection regarding proposed amalgamation of petitioner company no. 5 with another entity subject to compliance of instructions mentioned at para 7, 8 and 9 of RBI's letter dated 20/12/2018.
22. In response to the representation/affidavit filed by the Reserve Bank of India, the Petitioner Companies have filed their response by way of Affidavits. The Transferee Company i.e. Hindustan Commercial Company Limited has already given an undertaking that it shall submit the post Amalgamation Balance Sheet to DNBS RBI Kanpur for examination of its principal business activity and shall request RBI for obtaining Certificate of Registration (CoR) as NBFC under the provisions of RBI Act, which adequately address the request of RBI for such condition.
23. In addition to above, all the statutory compliance either seems to have been complied with or further undertaken for making compliances by Petitioner Companies. Therefore, the present Company Petition deserves to be allowed in terms of its Prayer clause. In the result, the Scheme of Amalgamation and Arrangement annexed to Company Petition is duly approved and hereby sanctioned.
24. In the result, the proposed Scheme of Amalgamation and Arrangement which is annexed to the Company Petition stand approved and sanctioned. Petitioner Companies are required to act upon as per terms and condition of



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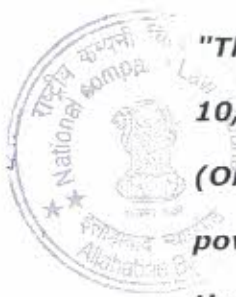
the sanctioned Scheme and the same to be binding on Shareholders and Creditors of the above-named Petitioner Companies and also on the Petitioner Companies with effect from the appointed date i.e. 1st day of April, 2018.

25. It is also declared that Transferor Companies i.e. Carefree Investment Company Limited (Transferor Company No. 1), Divine Leasing and Finance Limited (Transferor Company No. 2), Excellent Commercial Enterprises and Investment Limited (Transferor Company No. 3), International Resources Limited (Transferor Company No. 4) and Moderate Investment and Commercial Enterprises Limited (Transferor Company No. 5) shall stand dissolved without winding up.
26. Upon this Scheme becoming effective, the authorized share capital of the Transferor Companies shall stand merged with the authorized share capital of the Transferee Company. Accordingly, the words and figures in of the Memorandum and Article of Association of Association of the Transferee Company shall stand modified and be substituted to read as follows:

"The Authorised Share Capital of the Company is Rs. 10,00,00,000/- (Rupees Ten Crore Only) divided into 1,00,00,000 (One Crore) Equity Shares of Rs. 10 (Rupees Ten only) each".

And the words and figures in Article 5 of the Article of Association of the Transferee Company shall stand modified and be substituted to read as follows:

"The Authorised Share Capital of the Company is Rs. 10,00,00,000/- (Rupees Ten Crore Only) divided into 1,00,00,000 (One Crore) Equity Shares of Rs. 10 (Rupees Ten only) each with power to subdivide, consolidate and increase and with power from time to time issue any shares of the original capital with and subject to any preferential, qualified or special rights, privileges, or conditions as may be, thought fit and upon the subdivision of shares to apportion the right to participate in profits, in any manner as between the shares resulting from the subdivision"



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for the purposes of this Clause, the consent of the shareholders of the Transferee Company to this Scheme shall be deemed to be sufficient for the purposes of effecting this amendment and that no further resolution under any applicable provisions of the Act, would be required to be separately passed. The fees paid by the Transferor Companies on their respective Authorised Capital shall be set-off against any fees payable by the Transferee Company on its Authorised Capital subsequent to the amalgamation.

- 27. While approving the Scheme as above, it is clarified that this order should not be construed as, in any way, granting exemption from payment of stamp duty (if any is applicable), taxes (including Income Tax, GST or any other charges, if any are applicable) 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.
- 28. The 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.
- 29. All concerned regulatory authorities to act on a copy of this order annexed with the Scheme duly authenticated by the Assistant Registrar, National Company Law Tribunal, Allahabad Bench.
- 30. Leave is granted to the Petitioners to file the Schedule of Assets.
- 31. Any person interested shall be at liberty to apply before this Tribunal in the above matter for such directions as may be necessary.
- 32. Accordingly, the present Company Petition bearing **CP No. 26/ALD of 2019** is allowed and stands disposed of.



Dated: 20.11.2019

JUSTICE RAJESH DAYAL KHARE
MEMBER JUDICIAL

Date of Application: 20/11/19
 Amount of stamp duty along with receipt: 50/-
 Copy prepared/ready for delivery: Yes
 Balance amount, if any: Nil
 Date of Delivery: 20/11/19

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

20/11/19
P. P. PANDEY
 ASSISTANT REGISTRAR
 NATIONAL COMPANY LAW TRIBUNAL
 ALLAHABAD-U.P.

Compared by Me
 Mahesh Sahai
 20/11/19