

NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH

COURT NO. 1

Proceedings under Section 230-232 of the Companies Act, 2013

CA(CAA) 04 OF 2024

In the matter of:

IFF Overseas Pvt Ltd
(Transferor Company)
Brand Concepts Ltd
(Transferee Company)

.....Applicant

Order delivered on 23.08.2024

Coram:

Chitra Ram Hankare, Hon'ble Member (Judicial)
Kaushalendra Kumar Singh, Hon'ble Member (Technical)

ORDER

An order under section 230-232 of the Companies Act, 2013 was pronounced on 21.08.2024. It is noted that the applicant companies had prayed for convening of the meetings of the secured creditors of the transferor company alongside the convening of meetings for the equity shareholders and unsecured creditors of the transferee company and the unsecured creditors of the transferor company. However, the meetings of the secured creditors of the transferor company have been dispensed with in the said order. Therefore, rectification is required in respect of the convening of meetings of the secured creditors of the transferor company.

Accordingly, certain rectifications are made as under:

1. The sentence mentioned in paragraph 1 '*...seeking for dispensation of the meetings of Equity Shareholders and Secured Creditors of the Transferor Company as well as dispensation of meetings of Secured Creditors of the Transferee Company. Further, the Applicant Companies prayed for*

directions to convene meetings of Equity Shareholders and Unsecured Creditors of the Transferee Company as well as for convening meetings for Unsecured Creditors of the Applicant Transferor Company for considering and approving with or without modification(s), a composite scheme of amalgamation' is amended with the following corrections:

.....seeking for dispensation of the meetings of Equity Shareholders of the Transferor Company as well as dispensation of meetings of Secured Creditors of the Transferee Company. Further, the Applicant Companies prayed for directions to convene meetings of Equity Shareholders and Unsecured Creditors of the Transferee Company as well as for convening meetings of the Secured Creditors and Unsecured Creditors of the Applicant Transferor Company for considering and approving with or without modification(s), a composite scheme of amalgamation

2. Furthermore, Paragraph 07 (ii) states that '*The meetings of the secured creditors of the transferor company may kindly be dispensed with in view of the consent affidavits received from all the secured creditors of the transferor company.*' The same is amended with the following corrections:

As far as the secured creditors of the transferor company are concerned, it is submitted that appropriate directions be given for holding and convening of meetings of the secured creditors of the transferor company and for appointment of Chairman and Scrutinizers for the meetings.

3. Subsequently, in Paragraph 08, it is stated that '*.....Accordingly, the meetings of the equity shareholders and secured creditors of the transferor company and the meetings of the secured creditors of the transferee company are dispensed with. However, meetings of equity shareholders and unsecured creditors of the transferee company and unsecured creditors of*

the transferor company will have to be convened.' The aforementioned sentence is amended with the following corrections:

Accordingly, the meetings of the equity shareholders of the transferor company and the meetings of the secured creditors of the transferee company are dispensed with. However, meetings of equity shareholders and unsecured creditors of the transferee company and secured and unsecured creditors of the transferor company will have to be convened.

4. The following additions are made in the order regarding convening of the meetings of the secured creditors of the transferor company

The meeting of Secured Creditors of Transferor Company shall be convened on Saturday, 5th October 2024 at 3:30 PM through video conference or other Audio-Visual means, for the purpose of considering and, if thought fit, approving with or without modification(s) of the Scheme.

5. The matter is to be listed for filing of Chairman's Report on 14.10.2024.

Hence, rectification is made under Rule 154(1) of the National Company Law Tribunal Rules, 2016, to that extent, in the order dated 21.08.2024.

With these observations, the Registry is directed to upload the corrected copy of the order in the e-portal/DMS.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Sd/-

CHITRA RAM HANKARE
MEMBER (JUDICIAL)

**THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

CA(CAA) 4 OF 2024

(Company Application filed under Sections 230-232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016)

In the matter of

IFF Overseas Private Limited

CIN: U51102MP1994PTC008165

Having its registered office at:

Ring Road Square, Musakhedi, Indore,
Madhya Pradesh – 452001

.... Applicant/Transferor Company

Brand Concepts Limited

CIN: L51909MP2007PLC066484

Having its registered office at:

4th Floor, UNO Business Park,
Indore Bypass Road, Opposite Sahara
City, Bicholi Mardana, Indore,
Madhya Pradesh – 452016

.... Applicant/Transferee Company

Order Pronounced on: 21.08.2024

Order amended under Rule 154 on: 23.08.2024

Coram:

Hon'ble Chitra Ram Hankare, Member (Judicial)

Hon'ble Kaushalendra Kumar Singh, Member (Technical)

Appearance:

For the Applicant Companies: Ld. PCS Manju Mundra

JUDGMENT

1. This joint company application is filed by the Applicant Companies, namely IFF Overseas Limited (Applicant Transferor Company) and Brand Concepts Limited (Applicant Transferee Company), under Sections 230-232 of the Companies Act, 2013 (the Act), read with Companies (Compromise, Arrangements, and Amalgamations) Rules, 2016, seeking for dispensation of the meetings of Equity Shareholders of the Transferor Company as well as dispensation of meetings of Secured Creditors of the Transferee Company. Further, the Applicant Companies prayed for directions to convene meetings of Equity Shareholders and Unsecured Creditors of the Transferee Company as well as for convening meetings of the Secured Creditors and Unsecured Creditors of the Applicant Transferor Company for considering and approving with or without modification(s), a composite scheme of amalgamation.
2. The registered offices of the Applicant Companies are situated in the State of Madhya Pradesh and are under the jurisdiction of the National Company Law Tribunal, Bench in Indore.
3. Applicant Transferor Company is a Private Limited Company having CIN No. U51102MP1994PTC008165, incorporated under the provisions of the Companies Act, 1956 on 04.03.1994, having its registered office at Ring Road Square, Musakhedi, Indore, MP – 452001. The Transferor Company is in the business of fabrics, woven & non-woven products, and textiles including cotton, linen, hemp, jute, silk etc. The Authorized Share Capital of the Applicant Transferor Company is Rs. 6,10,00,000/- and its Issued and Subscribed

Share Capital is Rs. 4,25,04,000/-.

4. Applicant Transferee Company is a Public Limited Company having CIN No. L51909MP2007PLC066484, incorporated under the provisions of the Companies Act, 1956 on 04.10.2007, having its registered office at 4th Floor, UNO Business Park, Indore Bypass Road, Opposite Sahara City, Bicholi Mardana, Indore, Madhya Pradesh – 452016. Transferee Company is a listed company and its shares are listed on the Bombay Stock Exchange/ National Stock Exchange. The Transferee Company is in the business of stabilizing, promoting, and developing the image as marketing consultants and market researchers in all kinds of consumer products including garments, apparels, fashion wears, luggage, and related accessories. The Authorized Share Capital of the applicant transferee company is Rs.15,00,00,000/- and its Issued, Subscribed, and Paid-up Share Capital is Rs 11,13,28,000/-.
5. Submissions made by the applicant companies in its application and as presented by the learned PCS are summarized here under:
 - (i) The purpose of this Scheme of Amalgamation is:
 - (a) To realize benefits of greater synergies between businesses and to make available financial resources, technological upgradation, technological resources as well as the managerial, technical, distribution and marketing resources of each other in the interest of maximizing shareholder and stakeholder value.
 - (b) Better integration, financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholder value, and will improve

the competitive position of the combined entity and reduction in operational costs and increase operational efficiency.

- (c) Better control on utilization of production capacity due to integration of the manufacturing process and optimization of the working capital.
- (ii) The Board of Directors of the Applicant Companies in its Board Meetings held on 09.11.2023 and 29.03.2024 passed resolutions for the preparation of the proposed Scheme of Amalgamation as placed before the Board. The Applicant Companies have filed the scheme and its audited balance sheets; the same is placed on record.
- (iii) The accounting treatment proposed in the Scheme of Arrangement is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013. The Certificates from the respective Statutory Auditors of the Applicant Companies have been filed along with the Application.
- (iv) The Transferee Company, being a Listed Public Company, has a prerequisite to provide prior intimation to the Stock Exchange and Security and Exchange Board of India. The Transferee Company has submitted the scheme along with the documents with BSE and NSE. No Objection Certificate from NSE and BSE dated 03.05.2024 and the same is placed on record.
- (v) No investigation or proceedings under the Companies Act, 1956/2013 has been instituted or pending in relation to the Applicant Companies.
- (vi) There is no specific sectoral regulator or authority

governing the business of the Applicant Companies which are likely to be affected by the proposed scheme of arrangement.

- (vii) There will not be any adverse implications affecting the Competition in the Industry. Further, the provisions of the Competition Act, 2002 are not applicable in the present case, and therefore no notice is required to be served to the Competition Commission of India.

6. The learned PCS for the Applicant Companies submitted that as per the certificate of the Chartered Accountant placed on record by the Applicant Companies, the details of shareholders, secured creditors, and unsecured creditors are as follows:

- i. The applicant transferor company has 6 equity shareholders.
- ii. The applicant transferor company has 2 secured creditors and 147 unsecured creditors.
- iii. The applicant transferee company has 8730 equity shareholders.
- iv. The applicant transferee company has 6 secured creditors and 187 unsecured creditors.

7. The learned PCS seeks directions with respect to the dispensation and convening of the meetings of the creditors and equity shareholders of the Applicant Companies as under:

- i. The meetings of the equity shareholders of the transferor company may kindly be dispensed with, in view of the consent affidavits received from all the shareholders of the transferor company.
- ii. As far as the secured creditors of the transferor company are

- concerned, it is submitted that appropriate directions be given for holding and convening of meetings of the secured creditors of the transferor company and for appointment of Chairman and Scrutinizers for the meetings.
- iii. The meetings of the secured creditors of the transferee company may kindly be dispensed with in view of the consent affidavits received from two secured creditors representing 95.45% in value of the Secured Creditors of the transferee company.
 - iv. As far as the equity shareholders and unsecured creditors of transferee company are concerned, it is submitted that appropriate directions be given for holding and convening of meetings of the equity shareholders and unsecured creditors of the transferee company and for appointment of Chairman and Scrutinizers for the meetings.
 - v. As far as the unsecured creditors of transferor company are concerned, it is submitted that appropriate directions be given for holding and convening of meeting of the unsecured creditors of the transferor company and for appointment of Chairman and Scrutinizer for the meetings.
8. We have heard the learned PCS for the Applicant Companies and have perused the material available on record. It is noted that consent affidavits from Equity Shareholders of the Applicant Transferor Company are received and the same is also placed on record. Further, the consent affidavits of the Secured Creditors of the Applicant Transferee Company representing 95.45% in value which is more than 90% in value are received and placed on record. There is no consent received from the unsecured creditors of the Transferor Company, and Equity Shareholders and Unsecured Creditors of the Transferee Company. Accordingly, the meetings of the equity shareholders of the transferor company and the meetings of the secured creditors of

the transferee company are dispensed with. However, meetings of equity shareholders and unsecured creditors of the transferee company and secured and unsecured creditors of the transferor company will have to be convened.

9. This Tribunal, therefore, directs to hold the meeting of Equity Shareholders of Transferee Company on Friday, 4th October 2024 at 11:00 AM, through video conference or other Audio-Visual means for the purpose of considering and, if thought fit, approving with or without modification(s) of the Scheme.
10. The meeting of Unsecured Creditors of Transferee Company shall be convened on Friday, 4th October 2024 at 03:30 PM through video conference or other Audio-Visual means for the purpose of considering and, if thought fit, approving with or without modification(s) of the Scheme.
11. The meeting of Unsecured Creditors of Transferor Company shall be convened on Saturday, 5th October 2024 at 11:00 AM through video conference or other Audio-Visual means, for the purpose of considering and, if thought fit, approving with or without modification(s) of the Scheme.
12. The meeting of Secured Creditors of Transferor Company shall be convened on Saturday, 5th October 2024 at 3:30 PM through video conference or other Audio-Visual means, for the purpose of considering and, if thought fit, approving with or without modification(s) of the Scheme.
13. At least one month before the date of aforesaid meetings, an advertisement about the convening of the said meetings, indicating the day, date, place, and time, as aforesaid, shall be published in English daily, i.e., 'Free Press' and in Hindi daily, i.e., 'Chautha Sansar' in the Indore edition. The publication shall indicate the time within which copies of the scheme shall be made

available to the concerned persons free of charge from the Registered Office of the Applicant Companies. The publication shall also indicate the statement required to be furnished according to Section 102 of the Act read with Section 230 to 232 of the Act.

14. At least one month before the date of the meetings to be held as aforesaid, a notice in Form No. CAA 2 convening the said meetings, indicating the day, the date, the place and time aforesaid, together with a copy of the Scheme of Arrangement, a copy of statement required to be furnished pursuant to Sections 230 and 232 read with Section 102 of the Companies Act, 2019, and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent by Registered Post or Speed Post or Registered Post or by Courier or E-Mail or Hand Delivery, addressed to each of the Shareholders and Unsecured Creditors of the Transferee Company and Unsecured Creditors of the Transferor Company, as the case may be, at their respective registered or last known addresses or e-mail addresses as per the records of the Applicant Companies.
15. Mr. Jay Kocheta, Tax Consultant and in his absence Mr. Aditya Kumar Gupta, Practising Chartered Accountant having membership no. 422218 shall be the Chairman/ Chairperson of the aforesaid meetings of the Applicant Companies to be held on 4th and 5th October 2024 and in respect of any adjournment thereof.
16. Mr. Palash Jain, a Practising Company Secretary (CP 18542) is appointed as the Scrutinizer for the aforesaid meetings of the Applicant Companies.
17. The Applicant Companies will make suitable arrangements for the Chairman and the Scrutinizer.

18. The quorum for the meeting of shareholders and unsecured creditors will be determined by the Chairman in such a manner that members/creditors present in the meeting represent at least 25% and 50% in value as a whole of the class of members/creditors respectively as the case may be.

In case, the quorum is not present within half an hour from the time appointed for holding the meeting, then the Chairman shall adjourn the meeting to the same day in the next week at the same time and place. The intimation about the adjourned meeting should be given to each member/creditor as the case may be through e-mail or by any other mode. If the quorum is still not present on such adjournment date, then the Chairman may furnish a report to that effect to NCLT within seven days thereafter.

19. It is further directed that the voting through a valid proxy has been dispensed by the Ministry of Corporate Affairs vide circular no. 14/2020 dated 08.04.2020, hence, meetings of members of Equity Shareholders and any class of creditors shall not be conducted or counted through proxy.
20. The Chairperson appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the aforesaid meetings. The Chairperson is free to avail the services of the Applicant Companies or any agency for carrying out the aforesaid directions. The Chairperson shall have all the powers under the Articles of Association of the Applicant Companies and also under the Rules in relation to the conduct of the meetings, including to decide any procedural questions that may arise at the meetings or adjournment(s) to the aforesaid scheme or resolution, if any, proposed at the aforesaid meetings by any person(s) and to ascertain the decision of the sense of the meetings by ballot/polling paper.

21. The Chairperson to file an Affidavit not less than 7 (seven) days before the date fixed for the hearing of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meetings have been duly complied with as per Rule 12 of the Companies(CAA) Rules, 2016.
22. It is further ordered that the Chairperson shall report to this Tribunal on the result of the meeting in Form No. CAA-4 along with an affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 within 7 (seven) working days from the date of conclusion of the aforesaid meetings.
23. In compliance with sub-section (5) of Section 230 and Rule 8 of the Companies (CAA) Rules, 2016, the Applicant Companies shall send a notice in Form No. CAA 3 along with disclosures mentioned under Rule 6 to, (i) the Central Government through the Regional Director, North- Western Region, (ii) the Registrar of Companies, Gwalior, (iii) Official Liquidator, (iv) the concerned Income Tax Authorities of both the Companies, (v) the Reserve Bank of India and (vi) the Bombay Stock Exchange and National Stock Exchange stating that the representation, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed scheme. The said notices shall be sent forthwith by registered post or by speed post or by courier or by hand delivery or by e-mail at the office of the authority as required by sub-rule (2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid authorities, who desire to make any representations under sub-section (5) of section 230 of the Act, shall send the same to the Tribunal within a period of 30 days from the date of receipt of such notice, failing which, it will be deemed that they have no representation to make on the proposed arrangement.

ORDER

Company Application CA(CAA)/4(MP)2024 is allowed and listed for filing of Chairman's Report on 14.10.2024.

Sd/-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Sd/-
CHITRA RAM HANKARE
MEMBER (JUDICIAL)