

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

**Coram: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)
SHRI V.K.SUBBURAJ, MEMBER (TECHNICAL)**

CA (CAA)-66(ND)/2018

**IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT,
2013**

In the matter of:

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Arrangements) Rules, 2016.

AND

In the matter of Scheme of Amalgamation

OF

SHHIBA AUTOMOBILES PRIVATE LTD.

(Transferor Company/Applicant Company-1)

WITH

PEARL APPARELS PRIVATE LTD

(Transferee Company/ Applicant Company-2)



MEMO OF PARTIES

SHHIBA AUTOMOBILES PRIVATE LTD
[CIN: U50400DL2010PTC204463]
Company Incorporated under Companies Act, 1956
Having its registered office at:
K-1989 G/F, CHITRANJAN PARK,
NEW DELHI-110019
Through its authorized representative Director:
Mr. Subhash Chand Gupta

..... TRANSFEROR COMPANY - (APPLICANT COMPANY-1)

PEARL APPARELS PRIVATE LIMITED
[CIN: U74999DL2017PTC315281]
Company Incorporated under Companies Act 1956
Having its registered office at:
S-68, OKHLA INDUSTRIAL AREA, PHASE-II,
NEW DELHI-110020
Through its authorized representative and Director:
Mr. Bishan Chand Gupta

...TRANSFEREE COMPANY - (APPLICANT COMPANY-2)

For the Applicants: Ms. NAVNEET KAUR, COMPANY SECRETARY



ORDER

Delivered on: 15.05.2018

1. This is an application which is filed by the petitioner companies herein, Shhiba Automobiles Private Limited (for brevity "Transferor Company"), with Pearl Apparels Private Limited (for brevity "Transferee Company") jointly under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement by way of Amalgamation (hereinafter referred to as the "SCHEME") proposed between the applicants. The said Scheme is also annexed as Annexure "A-19" to the application. The applicants above named have preferred the instant application in effect for the following purpose as evident inter alia from the reliefs sought for in the Application, namely:

- (a) Dispense with the requirement for convening and holding of meeting of the Equity Shareholders of the Transferor Company and also to dispense with the requirement of issue and publication of notice for the same;
- (b) Dispense with the requirement for convening and holding of meeting of the Unsecured Creditors of the Transferor



Company and also to dispense with the requirement of issue and publication of notice for the same;

- (c) The Transferor Company do not have any Secured Creditors;
- (d) Dispense with the requirement for convening and holding of meeting of the Equity Shareholders of the Transferee Company and also to Dispense with the requirement of issue and publication of notice for the same;
- (e) The Transferee Company do not have any Secured and Unsecured Creditors;
- (f) Issue direction for permitting the filing of application, petition or any other documents as may be required, for the purpose of sanctioning the proposed Scheme of Amalgamation between Shhiba Automobiles Private Limited (Transferor Company) and Pearl Apparels Private Limited (Transferee Company) and their respective shareholders and Creditors.
- (g) Passing such other and further Orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

2. An affidavit in support of the above application sworn for and on behalf of the Transferor Company by one Mr. Subhash Chand Gupta and for the Transferee Company by one Mr. Bishan Chand Gupta has been filed, being the Directors of the respective Companies along with the application and it is also represented that the registered office of both the applicant

companies are situated within the territorial jurisdiction of this Tribunal and falling within Registrar of Companies, NCT, New Delhi.

3. In relation to Shhiba Automobiles Private Limited being the Transferor Company, in the Scheme marked as Annexure "A-19", it is represented that it is having 6 Shareholders and all of them have given their respective consents by way of affidavit. It is further represented by the counsel for Applicants that the Transferor Company has 4 Unsecured Creditors and all of them have given their consents by way of affidavit. It is further represented by the counsel for Applicants that the Transferor Company has no Secured Creditor as on 31.12.2017. In relation to the shareholders and unsecured creditors of the Transferor Company, it seeks dispensation from convening and holding of the meetings in view of consent by way of affidavits having been obtained and the same has been placed on record.

4. In relation to Pearl Apparels Private Limited being Transferee Company in the Scheme marked as Annexure "A-19", Learned Counsel represents that company is having 7 Shareholders. It is further represented by the counsel for Applicants that the Transferee Company has "Nil" Secured and Unsecured creditor, as on 31.12.2017. In relation to the shareholders, it seeks dispensation from convening and holding of the meetings for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent by way of affidavit having been obtained all of which also been placed on record.

5. In relation to the territorial jurisdiction, Ld. Counsel for the applicant companies submit that since the registered office of the respective companies fall within the purview of Registrar of Companies, NCT, New Delhi, this Tribunal has the necessary territorial jurisdiction to entertain the joint application.
6. We have perused the joint application and the connected documents / papers filed therewith including the Scheme of Arrangement contemplated between the Applicant companies.
7. From the certificate of incorporation filed, it is evident that Transferor Company is a private limited company incorporated under the provisions of Companies Act, 1956 on 22nd June 2010 with Registrar of Companies, New Delhi under the name and style of "Shhiba Automobiles Private Limited", the Corporate Identity Number of the Transferor Company registered with the Registrar of Companies, NCT of Delhi & Haryana is U 50400DL2010PTC204463.
8. The Authorized Share Capital of the Transferor Company is Rs. 1,00,00,000/- (Rupees One Crore Only) divided into 10,00,000 (Rupees Ten Lac) Equity Shares of Rs.10/- (Rupees Ten only) each .The Paid-up Share Capital of the Transferor Company is Rs. 1,00,00,000/- (Rupees



One Crore) divided into 10,00,000 (Rupees Ten Lac)Equity Shares of Rs.10/- (Rupees Ten only) each.

9. From the certificate of incorporation filed, it is evident that the Transferee Company is a private limited company incorporated under the provisions of Companies Act, 2013 on 13th March 2017, vide CIN: U74999DL2017PTC315281 with Registrar of Companies, NCT of Delhi & Haryana under the name and style of "Pearl Apparels Private Limited".
10. The Authorized Share Capital of the Transferee Company is Rs. 10,00,000/- (Rupees Ten Lac Only) divided into 1,00,000 (One Lac) equity Shares of Rs.10/- (Rupee Ten only) each. The Paid-Up Share Capital of the Transferee Company as on date is Rs. 1, 00,000/- (Rupees One Lac Only) divided into 10,000/- (Rupees Ten Thousand only) Equity Shares of Rs.10/- (Rupee Ten only) each.
11. Both the applicants have filed their respective Memorandum and Articles of Association inter alia delineating their object clauses as well as their last available Audited Annual Accounts for the year ended 31.03.2017 and un-audited financial statements for the year ended 31.12.2017.
12. The Board of Directors of the Applicant companies vide meeting held on 03.01.2018 and 05.01.2018 respectively, have unanimously approved the



proposed Scheme of Amalgamation as contemplated above and copies of resolutions passed thereon have been placed on record by the companies.

13. The appointed date as specified in the Scheme is 1st April, 2017 subject to the directions of this Tribunal.

14. The Applicant companies have stated in the petition that no investigation proceedings are pending against them under Sections 210 or any other applicable provisions of the Companies Act, 2013.

15. Taking into consideration the application filed jointly by the Applicant Companies and the documents filed therewith, this Tribunal propose to issue the following directions with respect to calling, convening and holding of the meetings of the Equity Shareholders, Preference Shareholders, Secured and Unsecured Creditors, or dispensing with the same as well as issue of notices including by way of paper publication as follows:-

A) In relation to the Transferor Company:

(i) With respect to Equity shareholders:

Since it is represented by the Transferor Company there are 6 Equity shareholders in the Company whose consents have been obtained and are placed on record, therefore the necessity of convening and

holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

(ii) With respect to Secured Creditor:

Since it is represented by the Transferor Company that there is no Secured Creditor in the Company, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Since it is represented by the Transferor Company that there are 4 Unsecured Creditors in the company whose consents have been obtained and are placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

B) In relation to Transferee Company:

(i) With respect to Equity shareholders:

Since it is represented by the Transferee Company that there are 7 Equity shareholders in the Company whose consents have been obtained and are placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.



(ii) With respect to Secured Creditor:

Since it is represented by the Transferee Company that there is no Secured Creditor in the Company, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Since it is represented by the Transferee Company that there are no Unsecured Creditors in the company, the necessity of convening a meeting does not arise.

The application stands allowed on the aforesaid terms. Let the petition for approval of the scheme of Amalgamation be filed within a period of seven days from the date of this order.

Sd—

15/5/2018

(Dr.V.K.SUBBURAJ)
MEMBER (TECHNICAL)

Sd—

15/5/18

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D Mehta/K