

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No 138
CA(CAA)/41(AHM)2021

Order under Section 230-232 Co.Act,2013

IN THE MATTER OF:

Agarwal Fabtex Pvt Ltd

.....Applicant

Order delivered on ..16/08/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)

Chockalingam Thirunavukkarasu, Hon'ble Member(T)

PRESENT:

For the Applicant :

ORDER

The matter is listed for pronouncement of order. The common order is pronounced in the open court, vide separate sheet.



(CHOCKALINGAM THIRUNAVUKKARASU)
MEMBER (TECHNICAL)



(MADAN B.GOSAVI)
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA (CAA) No.42/230-232/NCLT/AHM/2021
CA (CAA) No.43/230-232/NCLT/AHM/2021
CA (CAA) No.44/230-232/NCLT/AHM/2021
CA (CAA) No.41/230-232/NCLT/AHM/2021

In the matter of:

M/s.APL Corporation Pvt. Ltd.

CIN: U17120GJ2010PTC059403

A Company incorporated under the provisions of the Companies Act, 1956 and having its Registered office at Shop No.22-23, Super Yarn Market, Zampabazar, Surat-395 003.

.... Applicant
(Transferor Company No.1)

M/s.APL Yarn Traders Pvt. Ltd.

CIN: U17309GJ2019PTC107433

A Company incorporated under the provisions of the Companies Act, 2013 and having its Registered office at Shop No.30, Ground Floor, Super Yarn Market, Zampabazar, Surat-395 003

.... Applicant
(Transferor Company No.2)

M/s.Rayontex Yarn Traders Pvt. Ltd.

CIN: U17120GJ2008PTC053194

A Company incorporated under the provisions of the Companies Act, 1956 and having its Registered office at Shop No.22-23, Super Yarn Market, Zampabazar, Surat-395 003

.... Applicant
(Transferor Company No.3)

Shankar

[Signature]

M/s.Agarwal Fabtex Pvt. Ltd.

CIN: U17119GJ2002PTC040675

A Company incorporated under the provisions of the Companies Act, 1956 and having its Registered office at Shop No.22-23, Super Yarn Market, Zampabazar, Surat-395 003

.... Applicant
(Transferee Company)

Order Reserved on : 08.08.2021

Order Pronounced on : 16.08.2021

**Coram: Madan Bhalchandra Gosavi, Member (Judicial)
Chockalingam Thirunavukkarasu, Member (Technical)**

Appearance:

Mrs. Natasha D. Shah, Advocate, for the Applicant Companies.

COMMON ORDER

[PER BENCH]

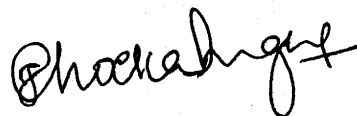
1. The Applicant Companies filed separate applications under Sections 230 to 232 of the Companies Act, 2013, seeking dispensation of meetings of the Equity Shareholders, Secured and Unsecured Creditors of the Applicant Companies for the purpose of considering and, if thought fit, approving, with or without modification(s), the Scheme of Arrangement in the nature of Amalgamation of M/s. APL Corporation Pvt. Ltd.

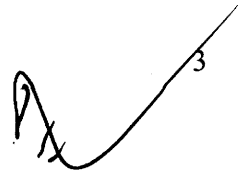
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(Transferor Company No.1), M/s. APL Yarn Traders Pvt. Ltd. (Transferor Company No.2) and M/s. Rayontex Yarn Traders Pvt. Ltd. (Transferor Company No.3) with M/s. Agarwal Fabtex Pvt. Ltd. (Transferee Company) and their respective Shareholders and Creditors ('the Scheme') with effect from the Appointed Date as mentioned in the Scheme.

2. At present the registered offices of the Applicant Companies are situated in the State of Gujarat, hence, falls under the jurisdiction of this Tribunal.
3. The Applicant Companies are empowered by its Memorandum of Association to enter into Scheme of Arrangement. Copies of Memorandum of Association are annexed as Annexure B in the applications.
4. It is stated that Amalgamation of the Transferor Companies with the Transferee Company would have the following benefits:
 - (i) To consolidate the business of Transferor Companies with Transferee Company;






- (ii) Further expansion of the Transferee Company's business which would benefit the respective shareholders, as it is expected that the combined entity resulting out of such an arrangement will have better prospects of growth and that this would enable the management of the Transferee Company to vigorously pursue revenue growth and expansion opportunities;
- (iii) Availability of increased resources and assets for the Transferee Company which can be utilized for strengthening the customer base and servicing existing as well as new customers innovatively and efficiently;
- (iv) Leading to increased competitive strength and efficiencies for the Transferee Company; and
- (v) Giving a chance to willing shareholders to have an exit route in future, if they want to part there ways from the company, without the company being going for any capital reduction or Buy Back of Shares.
- (vi) Create enhanced value for the shareholders and allow a focused strategy in operations which would be in the best interest of all shareholders, creditors, employees and all persons connected with Transferor Companies and Transferee Company

5. The Applicant Companies have obtained Valuation Reports dated 20.02.2021 issued by CS Ranjit Kejriwal, Registered



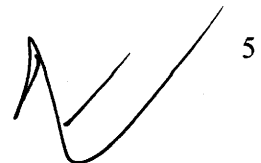
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Valuer (SFA) bearing registration number
IBBI/RV/03/2019/11612, dated 16.05.2019, vide Annexure.
H to the Company Applications.

6. It is stated that the Board of Directors of Applicant Transferor Companies in the meeting held on 19.02.2021 passed a resolution approving the proposed Scheme. The Applicant Transferor Companies have filed Audited Balance Sheets for the period ended on 31.03.2020 and Unaudited Balance Sheets for the period ended 30.12.2020 as well a Certificate dated 30.04.2021 issued by Chartered Accountant M/s Pradeep Singhi and Associates certifying compliance with Section 133 of the Companies Act, 2013.

7. Further stated that the Board of Directors of Applicant Transferee Company in the meeting held on 19.02.2021 passed a resolution approving the proposed Scheme. The Applicant Transferee Company has filed its Audited Balance Sheet for the period ended on 31.03.2020 and Unaudited Balance Sheet for the period ended 30.12.2020 as well a Certificate dated 30.04.2021 issued by Chartered Accountant



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M/s Pradeep Singhi and Associates certifying compliance with Section 133 of the Companies Act, 2013. Copies of audited balance sheet for the period ended on 31.03.2020 and unaudited balance sheet for the period ended 30.12.2020 as well as Certificate dated 30.04.2021 issued by Chartered Accountant are annexed as Annexure – C, Annexure – D and Annexure – I in the applications respectively

8. The applicants submit that there is no change subsequently on the Capital structure of the Applicant Companies till the date of the application.
9. It is stated that no investigation or proceedings against the Applicant Companies under Section 210 to 226 of the Companies Act, 2013 are pending.
10. It is further submitted that the provisions of the Competition Act, 2002 are not applicable in the present case. Hence, no notice is required to be served to the Competition Commission of India.

Pradeep Singhi

[Signature]

11. It is further stated by the Applicant Companies that no winding up petition is pending against the Applicant Companies.

12. It is stated that the

12.1 Transferor Company No.1 is having Twenty Six (26) Equity Shareholders and One (1) Secured Creditor and all the Equity Shareholders have given their consent by way of affidavits and the Sole Secured Creditor by way of No Objection Certificate, by approving the proposed company Scheme of Amalgamation in the nature of Amalgamation and, thus, waived their right to attend the meeting for considering and, if thought fit, with or without modification(s) of the proposed company Scheme.

Further stated that the Transferor Company No.1 is having Fifty Four (54) Unsecured Creditors out of which 37 Unsecured Creditors amounting to 99.82% of the total value of the Unsecured Debt have given their consent by way of affidavits to the Scheme of



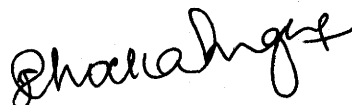


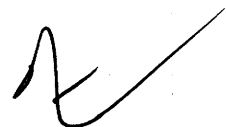
Arrangement in the nature of Amalgamation and, thus, waived their right to attend the meeting for considering and, if thought fit, with or without modification(s) of the proposed company Scheme.

Consent affidavits of all the Equity Shareholders, Sole Secured Creditor and the Unsecured Creditors are annexed as Annexure-J, Annexure-L and Annexure-K, respectively, to the application.

12.2 Transferor Company No.2 is having Two (2) Equity Shareholders and all the Equity Shareholders have given their consent by way of affidavits, by approving the proposed company Scheme of Amalgamation in the nature of Amalgamation and, thus, waived their right to attend the meeting for considering and, if thought fit, with or without modification(s) of the proposed company Scheme.

Further stated that the Transferor Company No.2 is having NIL Secured and Unsecured Creditor.

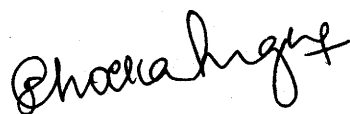





Consent affidavits of all the Equity Shareholders are annexed as Annexure-J to the application.

12.3 Transferor Company No.3 is having Thirteen (13) Equity Shareholders and One (1) Secured Creditor and all the Equity Shareholders have given their consent by way of affidavits and the Sole Secured Creditor by way of No Objection Certificate, by approving the proposed company Scheme of Amalgamation in the nature of Amalgamation and, thus, waived their right to attend the meeting for considering and, if thought fit, with or without modification(s) of the proposed company Scheme.

Further stated that the Transferor Company No.3 is having Nineteen (19) Unsecured Creditors out of which 18 Unsecured Creditors amount to 99.31% of the total value of the Unsecured Debt have given their consent by way of affidavits to the Scheme of Arrangement in the nature of Amalgamation and, thus, waived their right to attend the meeting for considering and, if thought fit,



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with or without modification(s) of the proposed company Scheme.

Consent affidavits of all the Equity Shareholders, Sole Secured Creditor and the Unsecured Creditors are annexed as Annexure-J, Annexure-L and Annexure-K, respectively, to the application.

12.4 Transferee Company No.3 is having Eleven (11) Equity Shareholders and One (1) Secured Creditor and all the Equity Shareholders have given their consent by way of affidavits and the Sole Secured Creditor by way of No Objection Certificate, by approving the proposed company Scheme of Amalgamation in the nature of Amalgamation and, thus, waived their right to attend the meeting for considering and, if thought fit, with or without modification(s) of the proposed company Scheme.

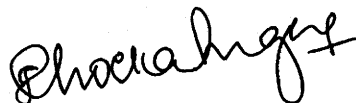
Further stated that the Transferee Company is having Ninety Three (93) Unsecured Creditors out of which 75 Unsecured Creditors amounting to 95.05% of the total




value of the Unsecured Debt have given their consent by way of affidavits to the Scheme of Arrangement in the nature of Amalgamation and, thus, waived their right to attend the meeting for considering and, if thought fit, with or without modification(s) of the proposed company Scheme.

Consent affidavits of all the Equity Shareholders, Sole Secured Creditor and the Unsecured Creditors are annexed as Annexure-J, Annexure-L and Annexure-K, respectively, to the application.

13. We heard Learned Counsel Ms. Natasha D Shah, for the applicant companies and considered the consent affidavits filed on behalf of the Equity Shareholders of all the applicant companies, Secured Creditors of Transferor Companies 1,3 and Transferee Company and Unsecured Creditors Transferor Companies 1,3 and Transferee Company, for approving the proposed company Scheme and waving their right to participate in such meeting. Therefore, the meetings of the Shareholders of all the applicant companies, Secured Creditors of Transferor



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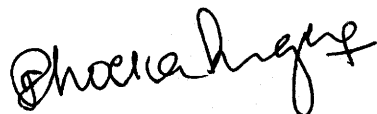
Companies 1,3 and Transferee Company and Unsecured Creditors of Transferor Companies 1,3 and Transferee Company are hereby dispensed with.

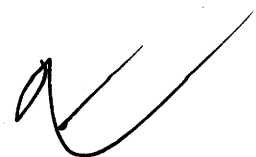
Since there are NIL Secured and Unsecured Creditors in Applicant Transferor Company No.2, question for convening of meetings of Secured and Unsecured Creditors in Applicant Transferor Company No.2 does not arise.

14. It is further directed that the Applicant Companies to issue a notice, in Form No. CAA.3 along with disclosure mentioned under Rule 6, as per the provisions of Section 230 (5) read with Rule 8 of the Companies Act, to the

- (i) Central Government through the Regional Director, North Western Region;
- (ii) Registrar of Companies, Gujarat;
- (iii) Income Tax authorities concerned; and
- (iv) Official Liquidator (in case of Applicant Transferor Companies)

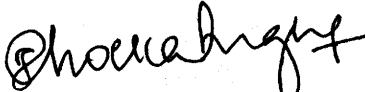
by informing that their representations, if any, to be made within a period of 30 days from the date of receipt of such






notice, failing which it would be presumed that they have no objection to make on the proposed company Scheme. The such notices shall be sent forthwith by registered post or by speed post or by courier or by hand delivery 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 representation under sub-section (5) of Section 230, 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.

15. With the aforesaid directions, the present Company Applications are allowed and stands disposed of accordingly.


**(CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL))**


**(MADAN B GOSAVI
MEMBER (JUDICIAL))**

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