

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

**Company Application No.286/ALD/2018**

*(Under Section 230/232 of the Companies Act,2013 with  
Companies (Compromises, Arrangements and Amalgamation Rules,  
2016)*

**IN THE MATTER OF:**

**Vishnu Holding Private Limited**

*(A Company Incorporated and  
Registered under Companies Act,1956,  
Having Registered Office at 8/4/138 Jharkhandi, Rakabganj  
Faizabad-U.P-224001.*

**.....Transferor/ Applicant No.1 Company**

**AND**

**AMF International Limited**

*(Having its Registered Office at:  
9/6/60, Rekabganj, Faizabad-224001(U.P)*

**.....Transferor/Applicant No.2 Company**

*With*

**Brij Kishore Saraf & Sons Private Limited.**

*(Having its Registered Office at:  
9/8/5, Aquab, Bajaja Chowk, Faizabad-224001(U.P)*

**.....Transferee/ Applicant No.3 Company**

**JUDGMENT/ORDER DELIVERED ON 29.08.2018**

**CORAM :**

**Sh. V.P. Singh, Hon'ble Member (Judicial)**

**Ms Saroj Rajware, Hon'ble Member (Technical)**

**For the Applicant:**

Surendra Kumar Sahu, PCS.  
alongwith  
B.S Maur, PCS.

**For the Central Government:**

**AS PER: Saroj Rajware, Member (Technical)**

**Order/Judgment**

1. The Present application is filed under section 230/232 of the Companies Act,2013 by the applicants before this Tribunal for approval of the Scheme of Merger of **Vishnu Holding Private**

**Limited (Transferor/ Applicant No.1 Company) and AMF International Limited (Transferor/ Applicant No.2 Company) with Brij Kishore Saraf & Sons Private Limited (Transferee/Applicant No.3 Company).**

2. Principal objects/purpose of the Proposed Scheme of Merger are: -

(a) Transferor/ Applicant Company-1, Transferor/Applicant Company-2, and Transferee/Applicant Company-3 are in the same line of business, and their merger will increase valuation of the Business and result in optimum utilisation of capital, assets and facilities.

(b) Merger of business and undertaking of Transferor/applicant Companies with Transferee /Applicant Company-3, i.e. BRIJ KISHORE SARAF & SONS PRIVATE LIMITED shall create synergies by consolidating ownership and will result in achieving a simple and transparent ownership structure. It will also eliminate areas of potential conflict of interest and considerably ease out related party transactions.

(c) Merger of business and undertaking of Transferor / Applicant Companies with Transferee/Applicant company-3, i.e. BRIJ KISHORE SARAF & SONS PRIVATE LIMITED shall increase the financial strength and flexibility. The said merger shall enhance the capabilities of the Transferee Company to face

competition more effectively and to raise resources for future growth and expansion of the business.

(d) Merger of business and undertaking of Transferor/Applicant Companies with Transferee/Applicant Company-3, i.e. BRIJ KISHORE SARAF & SONS PRIVATE LIMITED will result in reduction of administrative cost and overhead expenses which would further lead to greater and effective executive control, synergy of operations, optimum utilisation of the available resources and economics of scale.

(e) Merger of business and undertaking of Transferor/Applicant companies with Transferee/Applicant company-3, i.e. BRIJ KISHORE SARAF & SONS PRIVATE LIMITED shall also result in significant reduction in the multiplicity of legal and regulatory compliances.

(f) Merger of business and undertaking of Transferor/Applicant companies with Transferee/Applicant Company-3 i.e. BRIJ KISHORE SARAF & SONS PRIVATE LIMITED shall ensure beneficial results for the companies, their shareholders, creditors, employees and will not prejudice the interest of any concerned member/creditor or general public at large.

3. The Board of Directors of the Transferor Company and the Transferee Company at their respective meeting held on 15.05.2018, dully approved the said scheme of Amalgamation

**(A copy of scheme and board resolution of the applicant company is annexed as annexure no 4 and 1.3,2.3,3.3)**

4. The Appointed date of the Proposed Scheme of Amalgamation is 01.04.2018.
5. It is stated that **Transferor / Applicant No.1** has **5** Equity Share Holders and **NIL** Secured Creditors and **1** unsecured Creditor, Applicant has annexed No objection from all Equity Share Holders, certificate from Chartered Accountant certifying NIL secured creditors, and no objection in form of affidavit from 1 unsecured creditor **(Copy of the relevant documents is annexed at p.48-p.57 and as Annexure 1.7 and 1.8 of the Application)**
6. It is stated in **Transferor/ Applicant No.2** there are **46** Shareholders, **NIL** Secured Creditor and Unsecured Creditor and all the 46 Equity shareholders has filed no objection to proposed scheme of merger in form of affidavit. **(Copy of affidavit and certificate of Chartered Accountant is annexed from p.85 to p.176 and as annexure 2.7,2.8 of the application)**
7. It is further stated that there are only **5** Equity shareholders, **Nil** Secured Creditor and **8** Unsecured Creditor in the **Transferee/ Applicant No.3 Company** and all the shareholders and unsecured creditor have given their no objection in form of affidavit to the proposed Scheme of Merger. **(Copy of affidavit is annexed from p.205 to p.216 for equity shareholders and as annexure 3.7,3.8,3.9 of the application).**

8. Given the facts above as stated in the application, applicant's companies have prayed for:

***(a) Grant of exemption from convening of meetings of equity shareholders and creditors of the Applicant company-1 as it has obtained Consent/NoC from all the Share Holders and unsecured creditors of the Applicant company-1 by way of affidavits. The company does not have any secured creditors;***

***(b) Grant of exemption from convening of meetings of equity shareholders and Creditors of the applicant company-2 as it has obtained Consent/NoC from all the Share Holders by way of Affidavits and it and does not have any creditor;***

***(c) Grant of exemption from convening Of meetings of equity shareholders and creditors of the transferee company as it has obtained Consent/Noc from all the Shareholders and also from all the unsecured creditors by way fo affidavits and that company does not have any Secured Creditors;***

***(d) Sanction the merger of the Transferor Companies with the Transferee Company as***

***per the Scheme of the Merger annexed with the present application.***

9. Heard the Ld. counsel for the applicants and perused the record annexed to the application, the following order are passed.

- (i) In view of the fact that all the Equity shareholders of **Transferor/ Applicant No.1 Company** and **Transferor/Applicant No.2 Company** and **Transferee/Applicant No.3 Company** have given unconditional consent for dispensing with the meeting of equity shareholders, by way of affidavits, to the proposed scheme of merger, hence the requirement of convening and holding separate meetings of equity shareholders of the Transferor/ Applicant No.1 and Transferor/ Applicant No.2 and Transferee /Applicant No.3 company are dispensed with.
- (ii) Given the fact there is no secured creditor of the Transferor/ Applicant No.1 Company, and Transferor/ Applicant No.2 Company and Transferee / Applicant No.3 Company, hence the requirement of convening and holding separate meetings of the secured creditor of the Transferor and Transferee company are dispensed with.
- (iii) Given the fact, there are 1 unsecured creditors of the Transferor/ Applicant No.1 Company, Nil unsecured creditor in Transferor/ Applicant No.2

Company and 8 unsecured creditors in Applicant No.3 Company and all have given unconditional support to Propose Scheme of Merger, hence the requirement of convening and holding separate meetings of the unsecured creditor of the Transferor and Transferee company are dispensed with.

- (iv) Let notices be served by the applicant companies, as per the requirement of subsection(5) of section 230 of the Companies Act,2013,alongwith copy of the application and other documents including copy of the Scheme of Merger to the Central Government through the office of Regional Director(N.R.), ROC Kanpur, OL Allahabad, and income tax department stating PAN no of the applicant companies and having jurisdiction of the Transferor and the Transferee Company and such other relevant sectoral regulators/ authorities, if applicable, which are likely to be affected by the proposed scheme, by sending the same by hand delivery through Special Messenger or by registered post/speed post within 7 days for filing there representation, if any, on the petition within 30 days from date of notice .
- (v) The Applicants shall file affidavit regarding service of notice within seven days .

(vi) The Applicants are further directed to send notice through e-mail and also file affidavit of service. The notice shall specify that representation if any should be filed before this Tribunal within 30 days of date of receipt of such notices. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation. Such notices shall be under Section 230(5) of the Companies Act, 2013 in specified form **(CAA.3) of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.**

(vii) If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation/ objection on the proposed Scheme of Amalgamation.

10. The Company Application bearing No. 286/ALD/2018 is disposed of accordingly.

11. Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

**(Ms. Saroj Rajware)**  
**(Member Technical)**  
**Dated- 29.08.2018**

**( V.P Singh)**  
**Member Judicial**

