

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

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

COMPANY PETITION NO. 822 OF 2016

CONNECTED WITH

COMPANY APPLICATION (MAIN) NO. 96 OF 2016

(TRANSFERRED FROM THE FILE OF HON'BLE HIGH COURT OF DELHI)

IN THE MATTER OF SECTION 391 & 394 OF

THE COMPANIES ACT, 1956

(PRESENTLY SECTIONS 230-232 OF THE COMPANIES ACT, 2013)

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

AMONGST

KALEDIO IMPEX PRIVATE LIMITED

Company incorporated under Companies Act, 1956

Having registered office at:

220-D-288/10, Laxmi Nagar,

New Delhi-110092

...TRANSFEROR COMPANY NO.1/ PETITIONER NO.1

AND

HITECH CANS AND PACKAGING PRIVATE LIMITED

Company incorporated under Companies Act, 1956

Having registered office at:

220-D-288/10, Laxmi Nagar,

New Delhi-110092

...TRANSFEROR COMPANY NO.2/ PETITIONER NO.2



AND

MISHA LEASING AND CREDITS LIMITED

Company incorporated under Companies Act, 1956

Having registered office at:

220-D-288/10, Laxmi Nagar,

New Delhi-110092

...TRANSFEROR COMPANY NO.3/ PETITIONER NO.3

AND

RELIANCE MUTUAL BENEFITS LIMITED

Company incorporated under Companies Act, 1956

Having registered office at:

220-D-288/10, Laxmi Nagar,

New Delhi-110092

...TRANSFEROR COMPANY NO.4/ PETITIONER NO.4

AND

DATCAL SYSTMES PRIVATE LIMITED

Company incorporated under Companies Act, 1956

Having registered office at:

220-D-288/10, Laxmi Nagar,

New Delhi-110092

...TRANSFEROR COMPANY NO.5/ PETITIONER NO.5

AND

RAJ NAGAR SERVICE STATION PRIVATE LIMITED

Company incorporated under Companies Act, 1956

Having registered office at:

220-D-288/10, Wadhwa Complex, Laxmi Nagar,

New Delhi-110092

...TRANSFEROR COMPANY NO.6/ PETITIONER NO.6

AND



B.V. GARMENTS LIMITED

Company incorporated under Companies Act, 1956

Having registered office at:

220-D-288/10, Laxmi Nagar,

New Delhi-110092

...TRANSFEROR COMPANY NO.7/ PETITIONER NO.7

WITH

RELIANCE INTERCONTINENTAL LIMITED

Company incorporated under Companies Act, 1956

Having registered office at:

A-100, IInd Floor,

Anand Vihar, New Delhi-110092

...TRANSFeree COMPANY/ PETITIONER NO.8

AND

Their respective Shareholders and Creditors

ADVOCATE FOR THE PETITIONERS: Mr. Tariq Muneer, Advocate

FOR REGIONAL DIRECTOR, (NR), MCA: Mr. Manish Raj, Company Prosecutor

FOR OFFICIAL LIQUIDATOR: Ms. Chetana Kandpal, Company Prosecutor, Office of Official Liquidator, Delhi



Order Reserved on:10.07.2017

Order Delivered On: 08.08.2017

ORDER

RENDERED BY: SHRI.R.VARADHRAJAN, MEMBER (J)

1. This petition filed by the companies above named is coming up finally before us on 10.07.2017 for the purpose of the approval of the scheme of amalgamation, as contemplated between the companies and its shareholders by way of amalgamation of the Transferor Companies No.1 to 7/ Petitioner 1 to 7, with the Transferee Company/ Petitioner No.8. A perusal of the petition discloses that initially the application seeking the dispensation of the meetings of equity shareholders, secured and unsecured creditors were filed before the Hon'ble High Court of Delhi in CA (M) 96/2016. The Hon'ble High Court of Delhi vide its order dated 12th August, 2016 was pleased to dispense with the requirement of convening the meetings of the equity shareholders of the Petitioner Companies, in view of their consents having been obtained and produced before it. In relation to the Secured and Unsecured creditors of the Petitioner Companies, it is represented that they have none, therefore necessity of convening the meetings did not arise.
2. Under the circumstances, the petitioners have filed their joint petitions for sanction of the Scheme of Amalgamation before the Hon'ble High Court of Delhi under the erstwhile provisions, subsequent to the order of dispensation of the meeting ordered by the Hon'ble High Court of Delhi on 12th August, 2016.



3. On 09.09.2016 the Hon'ble High Court of Delhi ordered Notice in the Second Motion petition in C.P. No.822 /2016 moved by the petitioners under Sections 391 to 394 of the Companies Act, 1956 read with relevant Rules of the Companies (Court) Rules, 1959 in connection with the scheme of amalgamation, to the Registrar of Companies, Regional Director and the Official Liquidator and also to upload on the website of the Companies, official Liquidator and Ministry of Corporate affairs.. The Petitioners were also directed vide said order to carry out publication in the newspapers "Financial Express" in English and "Jansatta" Hindi edition.
4. While the joint petition in C.P.No. 822 of 2016 was pending disposal since the provisions relating to compromises, arrangements and amalgamation as contemplated under Sections 230-232 had been notified w.e.f. 15.12.2016 wherein the power to consider such schemes have now been vested with the National Company Law Tribunal, the Hon'ble High Court of Delhi pursuant to the notification bearing No. DL.33004/99 dated 7.12.2016 issued by the Ministry of Corporate Affairs has transferred/transmitted the records of the above petition to this Tribunal vide order dated 06.03.2017, for our consideration.
5. In view of the above, the petition of Second Motion as above filed by the petitioners jointly before the Hon'ble High Court and subsequently transferred is taken up for final consideration by us. The petitioners, it is seen from the records have filed an affidavit dated 03.03.2017 in relation to the compliance of the orders passed by the Hon'ble High Court of Delhi dated 09.09.2016 and a perusal of the same discloses that the petitioners have effected the paper publication as directed by the



Hon'ble High Court of Delhi in one issue of the 'Financial Express' in English and "Jansatta" Hindi edition on 08.02.2017. Further, it has also been stated by the Learned Counsel for the Petitioner Companies that notices have been issued to the Regional Director, Northern Region, Official Liquidator attached to the High Court, Delhi as well as to the Registrar of Companies, NCT of Delhi and Haryana in compliance with the order dated 09.09.2016 and in proof of the same acknowledgement made by the respective offices have also been enclosed.

6. Further, it is also seen that pursuant to the directions from Regional Director, Northern Region, a copy of the Company Petition has also been served on the jurisdictional Income Tax Officer of the Petitioner Companies from whom no specific comments have been received.
7. The representative of the Official Liquidator has filed an affidavit dated 07.04.2017 stating that the office of Official Liquidator does not have any objection to the scheme being approved and it further stated that Petitioner No.3 and 4 are not an NBFC and nor it had ever applied for any NBFC Registration Certificate with RBI and even they are not carrying any NBFC activities.
8. In respect to Regional Director, Northern Region, it has also filed the Affidavit dated 07.04.2017 and have stated that there is no objection to the sanction of the Scheme by the Hon'ble Court. However some pertinent observations has been made by the RD at para 6 of his report in which he has stated that as per RBI records, the applications of Misha Leasing and Credits Limited for grant of NBFC Certificate was rejected by RBI.



9. In response to the aforestated observation the petitioner companies have filed a reply stating that in the year 1999-2000, the previous management of the M/s Misha Leasing and Credits Limited wanted to diversify the business as NBFC Company and for that purpose they approached RBI for registration but the same was rejected by the RBI. Since there was the rejection from RBI, M/s Misha Leasing and Credits Limited never commenced any NBFC activities.
10. Another observation made by Regional Director is about the absence of the audited financial statements of the Petitioner Companies in order to ascertain their NBFC activities. Therefore, the petitioner companies have stated that they have filed the same and there is no objection from the Regional Director. The Learned representative of the RD also confirms the same and in the circumstances the said observation stands closed.
11. However on going, through the records it was seen that the valuation report of the valuer in relation to fixing of the share exchange ratio was not available and in the circumstances the counsel for the petitioners was directed to file the same vide order dated 18.07.2017 which has been complied with. Going through the valuation Report along with the scheme of Amalgamation, it is seen that by virtue of clause 12.3 fractional entitlements are contemplated to be dealt as under:

"Any fraction arising out of allotment of equity shares as per clause 12.1 shall be rounded off to the nearest integer."

Further perusal of the scheme shows that in view of cancellation of shares of the Transferor Companies under clause 12.10, it is provided as follows:



"In view of the above proposition the interest of shareholders of Transferee Company is not affected in any manner whatsoever. There will be no introduction of new shareholders or issue of new shares by Transferee Company subsequent to amalgamation of the Transferor Companies."

12. The counsel for Petitioners had stated that they have not received any objections from the third party and public at large for the purpose of according sanction to the present Scheme of Amalgamation. The above statement is taken on record. In view of absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the scheme of amalgamation annexed as Annexure -A with the Company Petition as well as the prayer made therein.
13. That the Petitioner Company it is seen have also complied with proviso to Section 230 (7)/ proviso Section 232 (3) by filing the certificate of the Company's Auditor's.
14. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners
15. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any payment in accordance with law or in respect to any




permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER

- (1) That all the property, rights and powers of the Transferor Companies be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and vest in the Transferee company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same; and
- (2) That all the liabilities and duties of the Transferor Companies be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee company; and
- (3) That all proceedings now pending by or against the Transferor Companies be continued by or against the Transferee company; and
- (4) That as per clause 8 of the scheme, all the employees of the Transferor Companies in service on date immediately preceding the date on which the scheme finally take effect shall become the employees of the Transferee company without any break or interruption in their service.



- (5) That Transferor 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 and on such certified copy being so delivered the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies and registered with him on the file kept by him in relation to the Transferee company and the files relating to the said both companies shall be consolidated accordingly;
- (6) That the Transferee Company do without further application allot to such members of the Transferor Company, as have not given such notice of dissent, as is required by clause 12 of the SCHEME OF AMALGAMATION herein the shares in the transferee company to which they are entitled under the said SCHEME OF AMALGAMATION;
- (7) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.


(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D Mehta