

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

Coram: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

COMPANY PETITION NO. 232 OF 2013

CONNECTED WITH

COMPANY APPLICATION (MAIN) NO. 44 OF 2013

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

IN THE MATTER OF SECTION 391 to 394 OF

THE COMPANIES ACT, 1956

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

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

OF:

SARNA RAJ TEXTILES PRIVATE LIMITED

(TRANSFEROR COMPANY / APPLICANT No. 1)

WITH

LOHIA METALS LIMITED

(TRANSFeree COMPANY / APPLICANT No. 2)

AND

Their respective Shareholders and Creditors



MEMO OF PARTIES:

SARNA RAJ TEXTILES PRIVATE LIMITED

A company incorporated under The Companies Act, 1956

Having registered office at:

**201, Progressive Chambers,
D-3, Central Market, Prashant Vihar,
Delhi-110085**

TRANSFEROR COMPANY / APPLICANT No. 1

LOHIA METALS LIMITED

A company incorporated under The Companies Act, 1956

Having registered office at:

**201, Progressive Chambers,
D-3, Central Market, Prashant Vihar,
Delhi-110085**

TRANSFeree COMPANY / APPLICANT No. 2

Present:

Advocate for the Petitioners:

**Mr. Rajeev Kumar, Advocate
Mr. Sanjay Bansal, Advocate
Mr. Subhranshu Dash, Advocate
(Equity Law Offices)**

For Regional Director, (NR), MCA: Mr. Manish Raj, Company Prosecutor

For OL: Ms. Chetana Kandpal, Company Prosecutor



ORDER

Delivered on: 09.02.2018

1. The present petition has been filed by the companies above named for the purpose of the approval of the scheme of arrangement, as contemplated between the companies and its shareholders by way of amalgamation of the Transferor/ Petitioner Company with the Transferee/ Petitioner Company. A perusal of the petition discloses that initially the application seeking the dispensation of the meetings of equity shareholders, secured and unsecured creditors was filed before the Hon'ble High Court of Delhi in Co. App (M) No. 44 of 2013.
2. The Hon'ble High Court of Delhi vide its order dated 15.04.2013, was pleased to dispense with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the Petitioner Companies in view of their consents having been obtained and produced before it or there was none therefore the necessity of convening the meeting did not arise as the case may be.
3. Under the circumstances, the Petitioner Companies had filed their joint petition 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 as stated in paragraph 2 above.



4. On 21.05.2013 the Hon'ble High Court of Delhi ordered Notice in the Second Motion petition in C.P. No.232 of 2013 moved by the Petitioner Company 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, Central Government as well as to the Official Liquidator. The Petitioners were also directed vide said order to carry out publication in the newspaper "Business Standard" in English Edition and Hindi Edition fixing the date of hearing of the petition on 23.10.2013.
5. While the joint petition in C.P. No.232 of 2018 was pending disposal since the provisions relating to compromises, arrangements and amalgamation as contemplated under Sections 230-232 of Companies Act 2013 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. D.L.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 16.01.2017, for our consideration.
6. 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 Petitioner Companies, it is seen from the records have filed an affidavit dated 07.12.2017 in relation to the compliance of the orders passed by the Hon'ble High Court of Delhi dated 21.05.2013 and a perusal of the same discloses that the petitioners have affected the paper publication as directed by the



Hon'ble High Court of Delhi in one issue of "Business Standard" in English Edition and Hindi Edition on 26.07.2013.

7. Further, the notices have been issued to the Registrar of Companies, Regional Director (Northern Region) as well as to the Official Liquidator attached to the High Court, Delhi in compliance with the order dated 21.05.2013 and the same were accepted by their respective counsels/ representative.
8. The Regional Director, Northern Region, to whom notice was issued has filed an Affidavit dated 14.07.2016 and have stated the following:

"at Paragraph 6 as follows:-

That the deponent states that Registrar of Companies vide para 31 of his report (copy marked as Exhibit C) has observed that it has been mentioned in para 10 of the scheme inter alia that upon the scheme being sanctioned and finally effective, the Transferee Company shall subject to the provisions of the scheme and without any application or deed, issue and allot to the shareholders of the Transferee Company, 39160 equity shares of Rs. 100/- each credited as fully paid for every 67993 equity share of Rs. 17.24 each as fully paid up held by such shareholders in the Transferor Company. In this regard, it is submitted that the face value of shares of Transferor Company and the Transferee Company is wrongly mentioned as Rs. 100/- and Rs. 17.24 instead of Rs. 10 and Rs. 100 respectively.

Therefore, the petitioner companies are required to amend the said clause accordingly."

9. The Official Liquidator, Delhi High Court, to whom notice was issued has filed a report dated 08.05.2015 and have stated the following:

"at Paragraph 15 as follows:-

That it is pertinent to mention here that as per the valuation report prepared by M/s Ashwani singhal & Co., Chartered Accountant, the share exchange ratio is as under:

M/s. Lohia Metals Limited to allot the eligible holders of equity shares of M/s Sarna Raj Textlies Private Limited 17363 equity shares of Rs. 10/- each to each shareholder of Sarna Raj Textile Private Limited as against 1 share of Rs. 100/- each held by equity shareholder in Sarna Raj Textile Private Limited and eligible for same position in Lohia Metals Limited after amalgamation

However, as per Para 10 of the scheme, the share exchange ratio is as under:-

Transferee Company shall subject to the provision of the scheme and without any application or deed, issue and allot to the shareholders of the Transferor Company, 39160 equity shares of Rs. 100/- each credited as fully paid for every 67993



equity share of Rs. 17.24 each as fully paid up held by such shareholders in the Transferor Company

It is observed that the above para in the scheme is not correct as per the share valuation report, Petitioner Companies may be asked to clarify the above discrepancies.

Further at Paragraph 16 it has been observed as follows:-

That it is further observed that as per para 4 of the scheme, the Appointed Date is 01st April 2012. The Petitioner Companies may be asked to fix the appointed date as per the availability of the Audited Balance Sheet for the year ended 2014”

10. In response to the observation made by the Regional Director and Official Liquidator, the Petitioner Companies has filed affidavits on 30.05.17 stating that there has been certain typographical error in the scheme in mentioning the exchange ratio as per the valuation report. To consider the same the Board of the Petitioner Companies met on 14.04.2017 and resolved that the scheme be corrected by removing the typographical error. The Extra Ordinary General Meeting of the shareholders of the Petitioner Companies was called on 15.05.2017 where it was decided to rectify the typographical error in the scheme. The Petitioner Companies has also placed on record consent letters given by the respective shareholders, copy of the Board Resolution dated 14.04.2017 and copy of the minutes of the Extra Ordinary General Meeting dated 15.05.2017.

11. That accordingly, an application no. CA 17/C-3/ND/2017 was moved for amendment to clause 10.1 of the scheme in view of inconsistency between the valuation report and the scheme. The said application was allowed by this Tribunal by an order dated 18.08.2017 under the circumstances stated therein.

12. That the Petitioner Companies has also placed on record a copy of Form MGT-14 filed before MCA after approval of shareholder for correction of typographical error in scheme of amalgamation.

13. The objection raised by the Regional Director and Official Liquidator in the above circumstances has been dealt with by the petitioner company and hence the said objections are closed. In relation to change of appointed date as sought for by the official liquidator ^{under} ~~order~~, Section 232(6) of the Companies Act, 2013 it is provided as follows:

232(6):- The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

14. Further taking into consideration the decision of the Hon'ble NCLAT rendered in the matter of *MBS IT Institute Pvt. Ltd. vs. ROF Intratech and Housing Pvt. Ltd. in Company Appeal (AT) No. 194 of 2017* wherein at paragraph 10 of the said order it has been specifically held that grounds should be shown for postponing the date to a subsequent appointed date and in the present instance apart from a mere statement no grounds has been shown by the official liquidator. This tribunal is not in a position to accept the same.

15. Further, it is also seen from the report of the RD, Northern Region, Ministry of Corporate Affairs, Noida dated 08.09.2015 that pursuant to the notice issued by the Regional Director no specific comments/ observation have been received by the Income Tax Department raising any objections to the scheme for which sanction is sought presently.
16. 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 to the main petition and as amended vide application no. CA 17/C-3/ND/2017 with the prayer made therein.
17. 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.
18. 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.



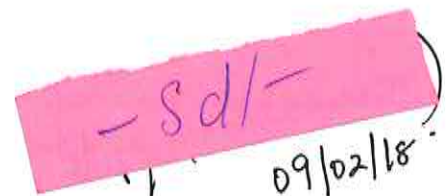
THIS TRIBUNAL DO FURTHER ORDER:

- (1) That all the property, rights and powers of the Transferor Company 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 Company therein but subject nevertheless to all charges now affecting the same;
- (2) That all the liabilities and duties of the Transferor Company 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;
- (3) That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee company;
- (4) That 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 the Transferee Company do without further application allot to the persons entitled of the Transferor Company, as have not given such notice of dissent, the shares in the transferee company to which they are entitled under clause no. 10 of the said



SCHEME OF AMALGAMATION and as duly amended in relation to typographical errors which stood allowed vide order dated 18.08.2017 passed by this Tribunal.

- (6) That Transferor Company 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 Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file kept by him in relation to the Transferee company and the files relating to both the companies shall be consolidated accordingly;
- (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.


09/02/18
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D Mehta/M