

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

NEW DELHI

CA (CAA)-107 (ND)/2017

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

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 Amalgamations) Rules, 2016.

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

OF

ARGENTIUM INTERNATIONAL PRIVATE LIMITED

(APPLICANT COMPANY-I/ TRANSFEROR COMPANY NO.1)

AND



RAJLAXMI PLAZA PRIVATE LIMITED
(APPLICANT COMPANY-II/ TRANSFEROR COMPANY NO.2)

WITH
SHAKTI COMMODITIES PRIVATE LIMITED
(APPLICANT COMPANY-III / TRANSFEREE COMPANY)

WITH
Their respective Shareholders and Creditors

MEMO OF PARTIES

ARGENTIUM INTERNATIONAL PRIVATE LIMITED

A Company incorporated under the provisions of the Companies Act, 1956

Having its Registered Office at:

79, Shyam Lal Road, 2nd Floor, Darya Ganj,

New Delhi-110002APPLICANT NO.1/ TRANSFEROR COMPANY NO.1

RAJLAXMI PLAZA PRIVATE LIMITED

A Company incorporated under the provisions of the Companies Act, 1956

Having its Registered Office at:

Room No.22, 79, Second Floor,



Shyam Lal Road, 2nd Floor, Darya Ganj,

New Delhi-110002

.....APPLICANT NO.II/ TRANSFEROR COMPANY NO.1

SHAKTI COMMODITIES PRIVATE LIMITED

A Company incorporated under the provisions of the Companies Act, 1956

Having its Registered Office at:

79, Shyam Lal Road, 2nd Floor, Darya Ganj,

New Delhi-110002

.....APPLICANT NO.III/ TRANSFEREE COMPANY

Counsel for the Applicants: **Mr. Rajan Khanna, Advocate**

Mr. Naresh Kumar, Advocate



ORDER

Order Delivered on: 6.10.17

1. This is an application which is filed by the applicant companies herein, namely Argentium International Private Limited (for brevity "Applicant No.1/ Transferor Company-1"), Rajlaxmi Plaza Private Limited (for brevity "Applicant No.2/ Transferor Company-2) and Shakti Commodities Private Limited (for brevity "Applicant No.3/Transferee Company") under sections 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-5" to the application. The applicants above named have preferred the instant application in effect for the following purpose as evident from the reliefs sought for in the Application, namely:-

- a. Dispense with the requirement of convening separate meetings of Shareholders of the Transferor Companies No.1 & 2 and of the Transferee Company.



- b. Dispense with the requirement of convening separate meetings of Secured and Un-secured Creditors of the Transferee Company. None of the Transferor Companies has any Secured and Un-secured Creditors.
 - c. Pass such other/further order(s) as this Hon'ble Tribunal may deem fit and proper; and
 - d. Notice of the present Application may be directed to be served on (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, Delhi and Haryana, New Delhi; (c) The Official Liquidator, Ministry of Corporate Affairs, New Delhi; and (d) the Income Tax Department.
2. An Affidavit in support of the above application sworn for and on behalf of all the applicant companies has been filed by one Mr. Subhash Kedia being a Director in the respective companies along with the application. Counsel for the joint applicants took us through the averments made in the application as well as the typed set of documents annexed there with. Learned Counsel represents that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. It is further represented that a joint application filed by the applicants are maintainable in view of Rule 3(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016. The Transferee Company, it



is averred, is a subsidiary of the Transferor Company No.1, as it holds 54.41% of the total equity shares of the Transferee Company.

3. In relation to Argentium International Private Limited being the Applicant No.1/ Transferor Company-1, in the Scheme marked as Annexure – “A-5”, it is represented that it is having 2 (Two) Equity Shareholders and that both of them have given their consents by way of affidavit. It is further represented by the counsel for Applicants that Applicant No.1/ Transferor Company-1 has no Secured Creditor or Unsecured Creditor. In relation to the shareholders of the Applicant No.1 / Transferor Company-1, it seeks dispensation from convening and holding of the meetings in view of consent affidavits having been obtained and placed on record.
4. In relation to Rajlaxmi Plaza Private Limited being Applicant No.2/ Transferor Company No.2 in the Scheme marked as Annexure-“A-5”, Learned Counsel represents that company is having 2 (Two) Equity Shareholders and both of them have given their consents by way of affidavit. It is further represented by the counsel for Applicants that Applicant No.2/ Transferor Company No.2 has no secured or Unsecured

Creditors. In relation to the Equity Shareholders of the Applicant No.2/Transferor Company No.2, it seeks dispensation of the meeting for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent affidavits having been obtained and placed on record.

5. In relation to Shakti Commodities Private Limited being Applicant No.3/ Transferee Company in the Scheme marked as Annexure-"A-5", Learned Counsel represents that the company is having 9 (Nine) Equity Shareholders and all nine of them have given their consents. It is further represented by the counsel for Applicants that Applicant No.3/ Transferee Company has 3 (Three) secured creditors and 7 Unsecured Creditors and all of them have given their consents by way of affidavit. In relation to the Equity Shareholders, Secured Creditor and Unsecured creditors of the Applicant No.3/ Transferee Company, it seeks dispensation of the meeting for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent having been obtained and placed on record.



6. Learned Counsel for the Applicants also represents that the provisions of Section 233 of 2013 Act will not apply as the Scheme is a composite Scheme. Further, the registered office of all the applicant Companies are situated within New Delhi and subject to Registrar of Companies, NCT, New Delhi and hence are amenable to the territorial jurisdiction of this Tribunal.
7. We have perused the joint application and the connected documents / papers filed therewith including the Scheme of Amalgamation contemplated between the Applicant companies.
8. From the certificate of incorporation filed, it is evident that Applicant No.1 was originally incorporated under the provisions of Companies Act, 1956 as a private limited company with the name and style "AKA Impex Pvt Ltd.". The Company has changed its name to "Argentium International Pvt Ltd vide fresh certificate of incorporation dated 26th September, 2013, issued by the Registrar of Companies, New Delhi."
9. The Authorized Share Capital of the Applicant Company No.1/ Transferor Company No.1 is Rs.1,20,00,000/- divided into 12,00,000 equity shares of



Rs.10/- each. The issued and paid up capital is Rs.1,04,40,600 divided into 10,44,060 equity shares of INR 10 each/-.

10. From the certificate of incorporation filed, it is evident that the Applicant No.2 was incorporated under the provisions of the Companies Act, 1956, as a private limited company under the name of Rajlaxmi Plaza Pvt Ltd on 2nd July, 1997.

11. The Authorised Share Capital of the Applicant No.2/ Transferor Company No.2 is Rs. 12,00,000/- divided into 1,20,000 equity shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital is Rs.11,48,000 divided into 1,14,800 equity shares of INR 10/- each.

12. From the certificate of incorporation filed, it is evident that the Applicant No.3/Transferee Company is a private limited company incorporated under the provisions of Companies Act, 1956 on 22nd March, 2001 under the name and style of Shakti Commodities Private limited.

13. The Authorised Share Capital of the Applicant No.3/ Transferee Company is Rs. 130,000,000/- divided into 1,30,00,000 equity shares of Rs 10/- each. The



Issued, Subscribed and Paid-up Share Capital is Rs. 1,22,743,000/-divided into 1,22,74,300 equity shares of Rs.10/-each.

14. The applicant companies have filed their respective Memorandum and Articles of Association stating their object clause.
15. The applicants 1 and 2 have filed their last available audited financial statements for the year ended 31.03.2017 and the transferee company has filed audited financial statements for the period ended 31.3.2016 and provisional for the period ended 31.03.2017.
16. The appointed date as specified in the Scheme is 01.04.2017 subject to the directions of this Tribunal.
17. The Board of Directors of the Transferor companies and the Transferee company vide separate meetings held on 15th May, 2017, have unanimously approved the proposed Scheme of Amalgamation as contemplated above and copies of resolutions passed there at have been placed on record by the companies.



18. All the companies have submitted that no investigation proceedings are pending against them under Sections 210 or any other applicable provisions of the Companies Act, 2013.

19. Taking into consideration the application filed jointly by the Transferor companies and the Transferee company and the documents filed therewith, we propose to issue the following directions with respect to calling, convening and holding of the meetings of the 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 Applicant Companies/ Transferor Companies No.1 and 2

(i) With respect to Equity shareholders:

Since it is represented by the Transferor Companies No.1 and 2 that all the Equity shareholders in each of the Transferor Companies have given their consent affidavits and 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 Creditors:

Since it is represented by the Transferor Companies 1 and 2 that there is no Secured Creditors in any of the Transferor Companies therefore the necessity of convening and holding a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Since it is represented by the Transferor Companies 1 and 2 that there is no unsecured creditors in the Transferor Companies No.1 and 2 therefore the necessity of convening and holding a meeting does not arise.

B) In relation to Applicant No.3/ Transferee Company:

(i) With respect to Equity shareholders:

Since it is represented by the Applicant No.3/ Transferee Company that there are 9 Equity shareholders in the Company whose consents have been obtained and 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 Creditors:

Since it is represented by the Applicant No.3 / Transferee Company that there are only 3 (Three) Secured Creditors in the Company whose consents have been obtained and 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.

(iii) With respect to Unsecured Creditors:

Since it is represented by the Applicant No.3/ Transferee Company that there are only 7 Unsecured Creditors in the Company who have given their consents and 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.

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



(R.VARADHARAJAN)

MEMBER (JUDICIAL)

U.D Mehta