

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

CA (CAA)-121(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 Arrangements) Rules, 2016.

AND

In the matter of Scheme of Amalgamation

OF

Chauran Sales Private Limited

(Transferor Company 1 / Applicant)

And

Carriers Portfolio Management Private Limited

(Transferor Company 2 / Applicant)



WITH

Huron Builders Private Limited

(Transferee Company/Applicant)

And

Their Respective Shareholders and Creditors

MEMO OF PARTIES

CHAURAN SALES PRIVATE LIMITED

Having registered office at:

S-19, 2nd Floor, Star City Mall, District Center

Mayur Vihar Phase-1

Delhi-110091

..... TRANSFEROR COMPANY-1/ APPLICANT

CARRIERS PORTFOLIO MANAGEMENT PRIVATE LIMITED

Having registered office at:

C-304, 3rd Floor, Ansal Plaza, Khel Gaon Marg

HUDCO Place,

New Delhi-110049

..... TRANSFEROR COMPANY-2/ APPLICANT

HURON BUILDERS PRIVATE LIMITED

Having registered office at:

S-19, 2nd Floor, Star City Mall, District Center

Mayur Vihar Phase-1

Delhi-110091

.....TRANSFEEE COMPANY/APPLICANT

For the Applicants: Mr. Rajiv. K. Goel, Advocate

ORDER

Order Delivered on: 27.10.2017

1. This is an application which is filed by the petitioner companies herein, namely Chauran Sales Private Limited (for brevity "Transferor Company-1"), Carriers Portfolio Management Private Limited (for brevity "Transferor Company-2"), with Huron Builders Private Limited (for brevity "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:

- I. Dispense with the requirement of convening meetings of Equity Shareholders of the Transferor Companies No. 1 & 2 and the Transferee Company.
- II. Dispense with the requirement of convening meeting of Preference Shareholders of the Transferor Company No. 2.



- III. Dispense with the requirement of convening meetings of Un-secured Creditors of the Transferor Companies No. 1 & 2 and the Transferee Company. None of the Transferor Companies No. 1 & 2 and the Transferee Company has any Secured Creditors.
 - IV. Direct service of notice of the present Application 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; and
 - V. Pass such order/further order (s) as this Hon'ble Tribunal may deem fit and proper.
2. An Affidavit in support of the above application sworn for and on behalf of the Applicant Companies by one Mr. Dinesh Chandra Saxena has been filed, being the Directors of 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 Arrangements) Rules 2016 and it is also represented that the registered office of all the applicant companies are situated within the territorial jurisdiction of this Tribunal and falling within Registrar of Companies, NCT, New Delhi.



3. In relation to Chauran Sales Private Limited being the Transferor Company-1, in the Scheme marked as Annexure – “A-5”, it is represented that it is having 3 Equity Shareholders and all of them have given their consents by way of affidavit . It is further represented by the counsel for Applicants that the Transferor Company-1 has no Secured Creditor and 1 Unsecured Creditor who has given their consent. In relation to the shareholders and unsecured creditors of the Transferor Company-1, it seeks dispensation from convening and holding of the meetings in view of consent affidavits being obtained and are placed on record.
4. In relation to Carriers Portfolio Management Private Limited being the Transferor Company-2 in the Scheme marked as Annexure-“A-5”, Learned Counsel represents that company is having 2 Equity and 2 Preference Shareholders and all of them have given their consents by way of an affidavit. It is further represented by the counsel for Applicants that the Transferor Company-2 has no secured creditor and 1 Unsecured Creditor who has given his consent. In relation to the Equity Shareholders, Preference shareholders and Unsecured creditor of the Transferor Company-2, it seeks dispensation of the meeting for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent being obtained and are placed on record.



5. In relation to Huron Builders Private Limited being Transferee Company in the Scheme marked as Annexure-"A-5", Learned Counsel represents that company is having 5 Equity Shareholders and all of them have given their consents by way of an affidavit. It is further represented by the counsel for Applicants that the Transferee Company has no secured creditor and 3 Unsecured Creditors and all 3 of them have given their consents. In relation to the Equity Shareholders, secured creditors and unsecured creditors of the 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 being obtained which are 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 the jurisdiction of this Tribunal and subject to Registrar of Companies, NCT, New Delhi and Haryana 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 Arrangement contemplated between the Applicant companies.



8. From the certificate of incorporation filed, it is evident that Transferor Company-1 is a private company incorporated under provision of Companies Act, 1956 on 28th February, 2006 with Registrar of Companies, NCT of Delhi & Haryana under the name and style of "Chauran Sales Private Limited".
9. The Authorized Share Capital of the Transferor Company-1 is Rs. 20,00,000/- divided into 2,00,000 Equity Shares of Rs.10/- (Rupees Ten only) each. The Issued, Subscribed and Paid-up Share Capital of the Transferor Company-1 is Rs. 18,44,000/- divided into 1,84,400 Equity Shares of Rs.10/- (Rupees Ten only) each.
10. From the certificate of incorporation filed, it is evident that the Transferor Company-2 is a private company incorporated under provision of Companies Act, 1956 on 3rd January, 2011 with Registrar of Companies, NCT of Delhi & Haryana under the name and style of "Carriers Portfolio Management Private Limited".
11. The Authorized Share Capital of the Transferor Company-2 is Rs. 50,00,000/- divided into 1,00,000 Equity Shares of Rs.10/- (Rupees Ten only) each aggregating Rs. 10,00,000 and 4,00,000 Convertible Preference Shares of Rs. 10 each aggregating Rs. 40,00,000 and the Issued, Subscribed and Paid-Up Share



Capital of the Transferor Company-2 as on date is Rs. 49,40,250/- divided into 94,720 Equity Shares of Rs.10/- (Rupees Ten only) each aggregating Rs. 9,47,200 and 3,99,305 Convertible Preference shares of Rs. 10 each aggregating Rs. 39,93,050.

12. From the certificate of incorporation filed, it is evident that the Transferee Company" is a private company incorporated under the Companies Act, 1956 on 14th February, 2006 with Registrar of Companies, NCT of Delhi & Haryana under the name and style of "Huron Builders Private Limited".

13. The Authorized Share Capital of the Transferee Company was Rs.31,00,000/- divided into 3,10,000 Equity Shares of Rs.10/- (Rupees Ten only) each and the Issued, Subscribed and Paid-up Share Capital of the Transferee Company as on such date was Rs.29,99,210/- divided into 2,99,921 Equity Shares of Rs.10/- (Rupees Ten only) each.

14. The applicant companies have filed their respective Memorandum and Articles of Association interalia delineating their object clauses.

15. All the Applicants have filed their last available audited financial statements for the period 31.03.2017.



16. The Board of Directors of the Applicant companies vide separate meetings held on 19.08.2017, have unanimously approved the proposed Scheme of Amalgamation as contemplated above and copies of resolutions passed thereat have been placed on record by the companies.

17. 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.

18. Taking into consideration the application filed jointly by the Applicant Companies and the documents filed therewith, this tribunal 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 the Transferor Companies 1 and 2:

(i) With respect to Equity shareholders:

Since it is represented by the Transferor Companies 1 and 2 that all the Equity shareholders in the Transferor Companies whose consents have



been obtained and are 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 Preference shareholders of Transferor Company No.2:

Since it is represented by the Transferor Company No.2 that all the preference shareholders in the Transferor Company whose consents have been obtained and are 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 Secured Creditors:

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

(iv) With respect to Unsecured Creditors:

Since it is represented by the Transferor Companies 1 and 2 that from all the Unsecured Creditors in the respective Companies, whose consent affidavits have been obtained and are 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.

B) In relation to Transferee Company:

(i) With respect to Equity shareholders:

Since it is represented by the Transferee Company that there are 5 Equity shareholders in the Company whose consents have been obtained and are 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 Transferee Company that there is no Secured Creditor in the Company, therefore, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Since it is represented by the Transferee Company that there are only 3 unsecured Creditors in the Company, whose consents have been obtained



and are 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 of this order.

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-Sd/-
R. VARADHARAJAN 27.10.2017
(R. VARADHARAJAN)
MEMBER (JUDICIAL)

U.D Mehta