

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

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

CAA-149/ ND/2017

CONNECTED WITH

COMPANY APPLICATION (CAA) 42 (PB) 2017

IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT, 2013

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

BETWEEN

APAKSH BROADBAND LIMITED

Having its registered office at
F-1080, RIICO Industrial Area, Phase-III,
Bhiwadi (Rajasthan) -301019, India

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

WITH

AKSH OPTIFIBRE LIMITED

Having its registered office at
F-1080, RIICO Industrial Area, Phase-III,
Bhiwadi (Rajasthan) -301019, India

.....Transferee Company/ Applicant Company No.2

AND

Their respective Shareholders and Creditors

ADVOCATE FOR THE PETITIONERS: Mr. Pankaj Jain, Advocate

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ORDER

Order Delivered on:

08.11.2017.

1. This petition filed by the companies above named is coming up finally before us on 23.10.2017 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 Company/ Applicant Company No.1 with the Transferee Company /Applicant Company No.2. A perusal of the petition discloses that initially the application seeking the dispensation/ convening of the meetings of equity shareholders, secured and unsecured creditors were filed before the Tribunal in Company Application CAA 42 (PB) /2017. The Tribunal vide its order dated 09.05.2017, was pleased to dispense with the requirement of convening the meetings of the unsecured creditors of the Transferor Company/ Applicant Company No.1 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. In relation to Equity shareholders, Secured Creditors of Applicant Companies and unsecured creditors of the Applicant Company No.2, the Tribunal directed the Applicant Companies to convene the respective meetings.

2. Under the circumstances, the petitioners have filed their joint petitions for sanction of the Scheme of Amalgamation before the Tribunal, subsequent to the order of dispensation and/or convening of the meeting ordered by the Tribunal on 09.05.2017.



3. On 08.08.2017 the Tribunal ordered Notice in the Second Motion petition in CAA-149(ND) 2017 moved by the petitioners under Sections 230-232 of the Companies Act, 2013 read with Rules in connection with the scheme of amalgamation, to the Registrar of Companies, Regional Director and the Official Liquidator, DOTE, SEBI and stock exchanges. The Petitioners were also directed vide said order to carry out publication in the newspapers "Business Standard" in English (Delhi Edition) and "Jansatta" in Hindi (Delhi Edition).
4. The petitioners, it is seen from the records have filed an affidavit dated 1st September, 2017 in relation to the compliance of the orders passed by the Tribunal dated 08.08.2017 and a perusal of the same discloses that the petitioners have effected the paper publication as directed by the Tribunal in one issue of the 'Business Standard' in English edition on 30.08.2017 and 'Jansatta' Hindi edition on 31.08.2017. Further, it has also been stated by the Learned Counsel for the Petitioner Companies that notices have been issued to the Regional Director, Ahmedabad on 12.08.2017, Registrar of Companies, Jaipur by hand on 11.08.2017, Deputy Commissioner of Income Tax on 12.08.2017 and to the Official Liquidator by hand on 11.08.2017 and to the DOTE, BSE and NSE and as well as SEBI on 12.08.2017 in compliance with the order dated 08.08.2017 and in proof of the same acknowledgement made by the respective offices have also been enclosed.
5. The representative of the Official Liquidator has filed an affidavit dated 08.09.2017 stating that the office of Official Liquidator does not have any objection to the scheme being approved.

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6. Further, Regional Director, Northern Region has also filed the Affidavit dated 22.07.2017 before the Tribunal and have stated that there is no objection to the sanction of the Scheme. However, the Regional Director has stated in its report that the transferee company is listed with BSE and NSE and their approval is required to be taken.
7. In response to this observation the petitioner companies have filed affidavit dated 11th September, 2017 stating that the Transferee Company has already taken necessary approvals from the BSE and NSE and their no objection letter has already been annexed to the first motion application.
8. Further a perusal of the affidavit of service filed by the Applicants shows that notice to the Deputy Commissioner of Income Tax, Income Tax Department had been duly served as given under the provisions of section 230 (5) of Companies Act, 2013 and that no specific comments/ observation have been received raising any objections.
9. That the Petitioner Companies have complied with proviso to Section 230 (7) proviso/ Section 232 (3) by filing the certificate of the Company's Auditor's in relation to compliance with the Accounting Standards under section 133 of the Companies Act, 2013.
10. The counsel for Petitioners have filed an affidavit dated 11th September, 2017 stating that they have not received any objections from third party and public at large for the purpose of 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-1 with the Company Petition as well as the prayer made therein.

11. 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.

12. 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; and



- (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; and
- (3) That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee company; and
- (4) That as per clause 13 of the scheme, all the employees of the Transferor Company 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, as is required by clause 5 of the SCHEME OF AMALGAMATION herein the shares in the transferee company to which they are entitled under the said SCHEME OF AMALGAMATION;
- (6) That Applicant 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 Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company 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;

(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.

Sd-
08/11/17
(R. VARADHARAJAN)
MEMBER (JUDICIAL)

U.D Mehta