BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

PRINCIPAL BENCH

NEW DELHI

Company Application (CAA) No. 34(PB) 2017

Present: CHIEF JUSTICE (Retd.) SHRI M.M.KUMAR, HON'BLE PRESIDENT

& SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

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

SARLA REALTORS PRIVATE LIMITED

(APPLICANT/AMALGAMATING COMPANY)

WITH

SARLA HOLDINGS PRIVATE LIMITED

(APPLICANT/AMALGAMATED COMPANY)

WITH

Their respective Shareholders and Creditors

MEMO OF PARTIES

SARLA REALTORS PRIVATE LIMITED

Company registered under the Companies Act, 1956

Having Registered Office at:

2, Sainik Farms,

New Delhi-110062

Through its authorized signatory: Mr. Mr.Prashant Jain

CIN NO. U45201DL2000PTC104244

.....Amalgamating Company

SARLA HOLDINGS PRIVATE LIMITED

Company registered under the Companies Act, 1956

Having Registered Office at:

2, Sainik Farms,

New Delhi-110062

Through its authorized signatory: Mr. Mr.Ramashanker Tiwari

CIN NO: U70101DL2001PTC111808

.....Amalgamated Company

Representative for the Applicants: Anirudh Das (Advocate)

ORDER

1) This is an application jointly filed by the applicant companies herein, namely Sarla holdings Private Limited (for brevity "Amalgamated Company/Applicant Company") and Sarla Retailors Private Limited (for brevity "Amalgamating Company/Applicant Company ")under Section 230 to 232 and other applicable provisions of the Companies Act, 2013(for brevity 'The Act') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016(for brevity 'The Rules') in relation to the Scheme of Amalgamation (hereinafter referred to as the "SCHEME") proposed between the applicants and the said Scheme is also annexed as Annexure "1" to the application. The applicants have preferred the instant joint application for the following purpose as is evident from the reliefs sought for in Paragraph I of the Application, namely:-

i) *Dispensing with the requirement of convening the meeting of the Shareholders of the Applicant/Amalgamating Company and the Applicant/Amalgamated Company, to consider the Scheme;*

ii) *Dispensing with the requirement of convening the meeting of the Secured Creditors of the Applicant / Amalgamated Company;*

iii) *Dispensing with the requirement of convening the meeting of the Unsecured Creditors of the Applicant/Amalgamating Company and the Applicant/Amalgamated Company, to consider the Scheme;*

iv) *Direct service of Notice of his Application on the Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryawaran Bhawan, CGO Complex, New Delhi-110003;*

v) *Direct service of notice of this Application on the Registrar of Companies at 4th Floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;*

vi) *Direct service of the notice of this Application on the office of the Official Liquidator, Lok Nayak Bhawan, 8th Floor, Khan Market, New Delhi-110001;*

vii) *Direct service of notice of this Application with respect to the Applicant/Amalgamating Company on the office of the Income Tax Department, Ward 22(3), CR Building, I. P. Estate, New Delhi-110002;*

viii) *direct service of notice of this Application with respect to the Applicant/Amalgamated Company on the office of the Income Tax Department, Circle 22(1), CR Building, I. P. Estate, New Delhi-110002;*

ix) *pass such further and other orders as deemed proper in the facts and circumstances of the case.*

2) An Affidavit in support of the above joint application has been sworn in for Amalgamating Company/Applicant Company No.1 by one Mr.Prashant Jain, and for Amalgamated Company/ Applicant Company No.2 by Mr.Ramashanker Tiwari, all being the authorized signatory of the respective Companies. The affidavits have been placed on record 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.

3) Learned Counsel for the applicants 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 as filed by the applicants are maintainable in view of Rule 3(2) of the 'Rules 'and it is also represented that the registered office of both the applicant companies are situated within the territorial jurisdiction of this Tribunal and falling within the domain of Registrar of Companies, NCT, New Delhi.

4) In relation to Sarla Realtors Private Limited being the Amalgamating Company/ Applicant Company No.1 in the Scheme marked as Annexure – "1", Learned Counsel represents that the Amalgamating Company/ Applicant Company No.1 is having Seven Equity Shareholders as on 21.03.2017 . It is further represented by the counsel for Applicants that the Applicant No. 1/ Amalgamating Company has no Secured and One Unsecured Creditor. In relation to Equity Shareholders as well as Unsecured Creditors, since consent from all of them have been

obtained for the proposed Scheme, a prayer has been made for dispensing with holding of various meetings. In relation to the Secured Creditors, there is no requirement of holding the meetings as there are no Secured Creditors.

5) In relation to the Applicant Company No.2 / Amalgamated Company is concerned, learned counsel for the applicants represent that the company is incorporated as a private limited company. It has 12 Equity Shareholders and One preferential shareholder. It is further represented that Applicant Company No.2 / Amalgamated Company is having Eight Secured Creditors and 20 Unsecured Creditors. In relation to Equity and Preference Shareholders, since consent from all of them have been obtained for the proposed Scheme, a prayer has been made for dispensing with holding of various meetings. In relation to the Secured and Unsecured Creditors consent since consent from the Secured and Unsecured Creditors to whom the Company owns more than 90% in value have been obtained for the proposed Scheme, a prayer has been made for dispensing with holding of various meetings.

6) Learned Counsel for the Applicants also represents that the provisions of Section 233 of the Act will not apply. The above joint application has been filed, as evident from the endorsement made by the Registry of this Tribunal on 31.01.2017 and therefore this Tribunal proceeds to entertain the above joint application filed under the 2013 Act. Further, the registered office of both the applicants is situated in New Delhi and subject to the Jurisdiction of Registrar of

Companies, NCT, and New Delhi and hence 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 the Amalgamating Company / Applicant Company No.1 was incorporated under the name and style of Sarla Realtors Private Limited on 7th March, 2000 as unlisted public company which was subsequently converted to a private limited by shares company and approval of Central Government was received vide SRN C79114658 on 19th February, 2016. It is pertinent to mention here that the Amalgamating Company is holding investments in the Amalgamated Company since March 31, 2004.

9) The authorized capital of the Amalgamating Company/ Applicant Company No.1, as on 31.03.2016 is Rs. 4,50,00,000/- divided into 450,000 Equity Shares of Rs. 100/- each and Rs. 50,00,000 Non-Cumulative Fully Convertible Redeemable Preference Shares divided into 5,00,000 shares of Rs. 10/- each. The issued, subscribed and Paid- up capital of the company is Rs. 1,14,04,000 /- divided into 1,14,040 equity shares of Rs. 100/- each.

10) The main objects for which the Applicant/Amalgamating Company has been incorporated are set out in its Memorandum of Association. The main objects of the Applicant/Amalgamating Company are as follows:

1) *To carry on the business as owners, builders, colonisers, developers, promoters, proprietors, occupiers, lessors, lessees and contractors, maintainer's and mortgagors of residential, commercial industrial buildings, colonies, mills and factory buildings, workshop's buildings, cinema houses and deal in all kinds of immovable properties whether belonging to the Company or not.*

2) *To buy, take on lease or in exchange, hire or otherwise acquire an interest in any immoveable property such as houses, buildings, lands or large areas within or outside the limits of municipal corporation or other local bodies and to provide roads, drains, water supply, electricity and lights within these areas, to divide the same into suitable plots and rent or sell the plots to the people for building houses, bungalows and business premises and to build residential houses and business premises and to build residential houses and business premises and colonies for workmen according to schemes approved by improvement Trusts, Development Board and Municipal Boards thereon and to rent or sell the same to the public and realise cost in lumpsum or on instalments or by hire purchase system or otherwise.*

3) *To prepare, build, construct, reconstruct, alter, improve, decorate, furnish and maintain buildings, houses, offices, flats, factory shed and*

building, warehouses, shops, wharves, civil and construction works and conveniences of all kinds and consolidate or connect or subdivide immoveable properties and to lease or otherwise dispose of the same.

4) *To purchase, acquire, take on lease or in exchange, develop, maintain, sell and deal in agricultural land and to build farm houses and sheds and to let out the same on rental or license basis and/or to sell the same on hire purchase or instalment system or otherwise.*

5) *To buy, sell, deal in shares and securities, foreign exchange, gold, silver cotton, jute, hessian, oil, oils-seeds and hold them as permitted under the law, from time to time, in force.*

6) *To establish, organise, manage, run, charter, conduct, contract, develop, handle, own, operate, manage and to do business as fleet carriers, transporters, in all its branches on land, air, water & space for transporting of good, articles or things on all routes and lines on National and International level subject to law in force through all sorts of carriers like truck, lorries, trawlers, dumpers, coaches, tankers, tractors, haulers, jeeps, trailers, motor buses, omnibuses, motor taxis. Managing school transport facility. Organising and managing travelling services.*

7) *Provide consultancy services, technical services, operation and management services, facilities management services, hospitality*

services, housekeeping services and other services, to any persons or entities, in relation to the residential or commercial projects including educational institutions, immoveable properties and other real estate assets and to enter into any arrangements of licensing, brokerage, commission, technical, business or financial collaboration with any other party or concern.

8) *To establish, provide, maintain and conduct research and such other laboratories, training colleges, schools and such other institutions for the training, education and instruction of students and other who may desire to avail themselves of the same and to provide for the delivery and holding of lectures, demonstration, exhibitions, classes, meetings and conferences in connection therewith."*

11) From the certificate of incorporation filed, it is evident that the Amalgamated Company / Applicant Company No.2 was incorporated under the name and style of Sarla Holdings Private Limited on 25th July, 2001 as a private limited company.

12) The authorized capital of the Amalgamated company/ Applicant Company No.2 as on 31.03.2016 is Rs. 34,00,00,000/-(Rupees Thirty four Crore) divided into 34,00,000 (Thirty four lakh) Equity Shares of Rs. 100/- each and Rs. 7,00,00,000/- (Rupees Seven Crore) Preference Shares divided into 7,00,000(Seven Lakh) Preference Shares of Rs. 100/- each. The issued, subscribed and Paid- up capital of the company is Rs. 27,66,69,500 /- (Rupees

Twenty Seven Crore Sixty Six Lakh Sixty Nine Thousand Five Hundred)divided into 27,66,695(Twenty Seven Lakh Sixty Six Thousand Six Hundred Ninety Five) Equity Shares of Rs. 100/- each and compulsorily convertible preference shares of Rs. 6,28,79,400(Rupees Six Crore Twenty Eight Lakh Seventy Nine Thousand Four Hundred) divided into 6,28,794(Six Lakh Twenty Eight Thousand Seven Hundred Ninety Four) compulsorily convertible preference shares of Rs. 100/- each.

13) The main objects for which the Applicant/Amalgamated Company has been incorporated are set out in its Memorandum of Association. The main objects of the Applicant/Amalgamated Company are as follows:

1) *To purchase hold, buy, acquire, develop, maintain and run agricultural land and farms houses so that they carry out the business of agriculture, horticulture, farming along with the business of acting as cultivators of all kinds of agricultural product, food grain, seeds, fruits, vegetables, plantation, of eucalyptus, trees and other trees and to run and set up orchard, along with the business of acting as traders, exporters, dealers and sellers of dairy products, and the products of horticulture, floriculture and dealing in beverage produced from such products and to extract by products and derivatives therefrom along with the business of dealing in preserved, de-hydrogenated, canned an*

converted agricultural products and to set up and run machinery for processing and preserving all or any of them.

2) *To acquire, purchase, run, own, take on rent, establish, manage, maintain, erect, construct, enlarge, to let out, give on contract and to set up educational institutes, public schools, vocational and professional centers, art center for the students from any part of India or abroad by imparting well developed educational methods and system and to carry out all other activities in respect thereof either alone and jointly with any other person, association of person, society trust, other companies and firms.*

3) *To establish and run educational institutions, training institutions, Schools, Colleges, University under curriculums designed for international educational Boards or Indian Board."*

14) A copy of the Scheme of Amalgamation as stated supra as Annexure – 1 has been placed on record and the salient features of the Scheme have been brought about by the applicants in the application amongst others which is stated to be that of consolidation of the businesses presently being carried on by the Amalgamating and Amalgamated Companies thereby benefitting all the stakeholders and creating better synergies and optimal utilization of resources. The proposed Scheme will result in formation of a larger Company enabling

further growth and development of the businesses of the said Amalgamated Company. The proposed Scheme will result in reduction of overheads and other expenses, reduction in administrative and procedural work, eliminate duplication of work, transaction cost, better and more productive utilization of various resources and will enable the undertakings concerned to effect internal economies and optimize productivity. It is further claimed that by effecting the Scheme better administration and cost reduction and significant growth potential can be achieved. The appointed date as specified in the Scheme is 01.04.2016 subject to the directions of this Tribunal.

15) The Board of Directors of the Amalgamating and the Amalgamated company vide separate meetings held on 22 December 2016 have unanimously approved the proposed Scheme of Amalgamation and copies of resolutions passed thereat, have been placed on record by the companies

16) Both the companies have submitted that no investigation proceedings are pending against them either under Sections 235 to 251 of the Companies Act, 1956 or under Sections 210 to 226 of the Companies Act, 2013. Further, the applicants have also submitted that the Scheme is not otherwise opposed to Public Policy or interests of the members of the respective applicant companies.

17) Taking into consideration the application filed jointly by the Amalgamating company and the Amalgamated 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 the Amalgamating Company/ Applicant Company No.1**:

(i) With respect to Equity shareholders:

Meeting of the Equity Shareholders of the Amalgamating Company/ Applicant Company is dispensed with as there are only Seven Equity Shareholders whose consents have been placed on record.

(ii) With respect to Secured Creditors:

The meeting of Secured Creditors is also dispensed with as there is no Secured Creditor in Amalgamating Company.

(iii) With respect to Unsecured Creditors:

The meeting of Unsecured Creditors is also dispensed with as there are only One Unsecured Creditor whose consents have been placed on record.

B) In relation to the Amalgamated Company/ Applicant Company No.2:-

(i) With respect to Equity Shareholders:

The meeting of Equity Shareholder is dispensed with as there are twelve equity shareholders in the company and consent letters from all the shareholders have been placed on record.

ii) With respect to Preference Shareholders:

The meeting of Preference Shareholders is dispensed with as there are One shareholders in the company and consent letters from the shareholder have been placed on record.

(iii) With respect to Secured Creditors:

The meeting of Secured Creditors is also dispensed with as the consent of Secured Creditors who are owe more than 95 % in value has been placed on record.

(iv) With *respect* to Unsecured Creditors:

The meeting of Unsecured Creditors is also dispensed with as the consent of Unsecured Creditors who are owe more than 95 % in value has been placed on record.

18. The application stands allowed in the aforesaid terms.

Sd/-

(CHIEF JUSTICE M.M.KUMAR)
PRESIDENT Rtd.

11.05.2017

(R. VARADHARAJAN)

(R.VARADHARAJAN)

Sd/-