

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

Coram: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

CA (CAA)-137(ND)/2017

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

M/s Girja Shankar Agrochem Private Limited

(First Applicant/Transferor Company)

WITH

Anurati Buildcon Private Limited

(Second Applicant/ Transferee Company)

And

Their Respective Shareholders and Creditors



ORDER

Delivered on: 19.01.2018

1. This is an application which is filed by the petitioner companies herein, M/s. Girja Shankar Agrochem Private Limited (for brevity "Transferor Company"), with Anurati Buildcon Private Limited (for brevity "Transferee Company") jointly 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/15" to the application. The applicants above named have preferred the instant application in effect for the following purpose as evident inter alia from the reliefs sought for in the Application, namely:

- (a) Pass orders/ directions dispensing with convening, holding and conducting of the meetings of the shareholders and unsecured creditors of the applicant companies;
- (b) Alternate to prayer made in paragraph (a) above, pass orders/ directions, directing the applicant companies to issue notices and to convene, hold and conduct separate meetings of shareholders and unsecured creditors of the applicant companies;



- (c) Pass orders/ directions appointing chairperson and alternate chairperson to conduct the separate meetings of the shareholders and unsecured creditors of the applicant companies;
- (d) Pass orders/ directions dispensing with publication of the notice(s) in relation to convening of meeting by the applicant companies in the newspaper; and/or
- (e) Pass such other and further order(s) as may be deemed fit and proper in the facts and circumstances of this case.

2. An affidavit in support of the above application sworn for and on behalf of the Transferor Company by one Mr. Krishan Kumar Aggarwal and for the Transferee Company by one Ms. Pragya Jain 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 M/s. Girja Shankar Agrochem Private Limited being the Transferor Company, in the Scheme marked as Annexure "A/15", it is represented that it is having 2 Equity Shareholders and 1 Preference Shareholder and all of them have given their respective consents by way of affidavit. It is further represented by the counsel for



Applicants that the Transferor Company has 3 Unsecured Creditors 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 has no Secured Creditor as on 31.03.2017. In relation to the shareholders and unsecured creditors of the Transferor Company, it seeks dispensation from convening and holding of the meetings in view of consent by way of affidavits having been obtained and the same has been placed on record.

4. In relation to Anurati Buildcon Private Limited being Transferee Company in the Scheme marked as Annexure "A/15", Learned Counsel represents that company is having 9 Equity Shareholders and all of them have given their respective consents by way of affidavit. It is further represented by the counsel for Applicants that the Transferee Company has only 1 Unsecured creditor, whose consent has been obtained by way of affidavit. It is further represented by the counsel for Applicants that the Transferee Company has no Secured Creditor as on 31.03.2017. In relation to the shareholders and unsecured creditors of the Transferee Company, it seeks dispensation from convening and holding of the meetings for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent by way of affidavit having been obtained all of which also been placed on record.
5. Learned Counsel for the Applicants also represents that the provisions of Section 233 of the Companies Act 2013 will not apply. In relation to the territorial jurisdiction, Ld. Counsel for the applicant companies submit that since the registered office of the respective companies fall within the purview of Registrar of Companies, NCT, New Delhi, this Tribunal has the necessary territorial jurisdiction to entertain the joint application.

6. We have perused the joint application and the connected documents / papers filed therewith including the Scheme of Arrangement contemplated between the Applicant companies.
7. From the certificate of incorporation filed, it is evident that Transferor Company is a private limited company incorporated under the provisions of Companies Act, 1956 on 4th September 1995 with Registrar of Companies, West Bengal under the name and style of "M/s Girja Shankar Agrochem Private Limited". Later on the Transferor Company as evidenced by Annexure – A/3 which brings forth the fact that the company has shifted its registered office to National Capital Territory of New Delhi and such alteration having been confirmed by an order dated 01.09.2017 of Regional Director, Kolkata. Presently, the Corporate Identity Number of the Transferor Company registered with the Registrar of Companies, NCT of Delhi & Haryana is U51109DL1995PTC324907.
8. The Authorized Share Capital of the Transferor Company is Rs. 1,74,50,000/- (Rupees One Crore Seventy Four Lac Fifty Thousand Only) divided into 14,55,000 (Fourteen Lac Fifty Five Thousand) Equity Shares of Rs.10/- (Rupees Ten only) each and 2,90,000 (Two Lac Ninety Thousand) Preference Shares of Rs. 10/- (Rupees Ten Only) each. The Issued, Subscribed and Paid-up Share Capital of the Transferor Company is Rs. 1,51,14,700/- (Rupees One Crore Fifty One Lac Fourteen Thousand Seven Hundred Only) divided into 14,82,270 (Fourteen Lac Eighty Two Thousand Two Hundred Seventy) Equity Shares of Rs.10/- (Rupees Ten only) each and 29,200 (Twenty Nine Thousand Two Hundred) Preference Shares of Rs.10/- (Rupees Ten only) each.

9. From the certificate of incorporation filed, it is evident that the Transferee Company is a private limited company incorporated under the provisions of Companies Act, 1956 on 21st January 2010 vide CIN: U45400DL2010PTC198256 with Registrar of Companies, NCT of Delhi & Haryana under the name and style of "Anurati Buildcon Private Limited".
10. The Authorized Share Capital of the Transferee Company is Rs. 2,41,00,000/- (Rupees Two Crore-Forty One Lac Only) divided into 24,10,000 (Twenty Four Lac Ten Thousand) Equity Shares of Rs.10/- (Rupee Ten only) each. The Issued, Subscribed and Paid-Up Share Capital of the Transferee Company as on date is Rs. 2,40,01,200/- (Rupees Two Crore Forty Lac One Thousand Two Hundred Only) divided into 24,00,120 (Twenty Four Lac One Hundred Twenty) Equity Shares of Rs.10/- (Rupee Ten only) each.
11. Both the applicants have filed their respective Memorandum and Articles of Association inter alia delineating their object clauses as well as their last available audited financial statements for the year ended 31.03.2017 along with the Provisional financial statement as on 30.09.2017.
12. The Board of Directors of the Applicant companies vide meeting held on 01.11.2017, have unanimously approved the proposed Scheme of Amalgamation as contemplated above and copies of resolutions passed thereon have been placed on record by the companies.
13. The appointed date as specified in the Scheme is 1st April, 2017 subject to the directions of this Tribunal.

14. The Applicant companies have stated in the petition that no investigation proceedings are pending against them under Sections 210 or any other applicable provisions of the Companies Act, 2013.
15. That the Applicant Companies have complied with the proviso to Section 230 (7) and Section 232 (3) by filing the certificate of the Company's Auditor in relation to compliance with the Accounting Standards under section 133 of the Companies Act, 2013.
16. 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 Equity Shareholders, Preference 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 Company:

- (i) With respect to Equity shareholders:

Since it is represented by the Transferor Company there are 2 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 Preference shareholder:

Since it is represented by the Transferor Company there is only 1 Preference shareholder in the Company whose consent has also 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 Secured Creditor:

Since it is represented by the Transferor Company that there is no Secured Creditor in the Company, the necessity of convening a meeting does not arise.

(iv) With respect to Unsecured Creditors:

Since it is represented by the Transferor Company that there are 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.

B) In relation to Transferee Company:

(i) With respect to Equity shareholders:

Since it is represented by the Transferee Company that there are 9 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 Creditor:

Since it is represented by the Transferor Company that there is no Secured Creditor in the Company, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditor:

Since it is represented by the Transferor Company that there is only 1 Unsecured Creditor in the company whose consent has 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.

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


19/1/18
(R. VARADHARAJAN)
MEMBER (JUDICIAL)

U.D Mehta/M