

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

COMPANY SCHEME APPLICATION NO 398 (MAH) OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 ;


AND

In the matter of Scheme of Arrangement and Aamalgamation between Arshiya Industrial & Distribution Hub Limited (“The First Transferor Company”) and Arshiya Transport and Handling Limited (“The Second Transferor Company”) with Arshiya Rail Infrastructure Limited (“Transferee Company”) and their respective Shareholders

Arshiya Industrial & Distribution Hub Limited, a Company }
Incorporated under the provisions of Companies }
Act 1956 having its registered office at 302, Level 3, }
Ceejay House, F- Block, Shiv Sagar Estate, Dr. Annie Besant Road, }
Worli, Mumbai- 400018, India }
.....First Applicant Company

Arshiya Transport And Handling Limited, a Company }
Incorporated under the provisions of Companies }
Act 1956 having its registered office at 302, Level 3, }
Ceejay House, F- Block, Shiv Sagar Estate, Dr. Annie Besant Road, }
Worli, Mumbai- 400018, India }
.....Second Applicant Company

AND

Arshiya Rail Infrastructure Limited, a Company } 

Incorporated under the provisions of Companies }
Act 1956 having its registered office at 302, Level 3, }
Ceejay House, F- Block, Shiv Sagar Estate, Dr. Annie Besant Road, }
Worli, Mumbai- 400018, India }

.....Third Applicant Company

Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocates for the Applicant Company

Coram: Ina Malhotra, Member (Judicial)

Date: 21st June 2017

MINUTES OF THE ORDER

1. The Counsel for the Applicants states that the present Scheme is an Amalgamation of Arshiya Industrial & Distribution Hub Limited (“The First Transferor Company”) and Arshiya Transport and Handling Limited (“The Second Transferor Company”) with Arshiya Rail Infrastructure Limited (“The Transferee Company”) and their respective Shareholders.
2. The Counsel for the Applicants further submit that the First Transferor Company is engaged in the business of providing facility of warehousing including temperature controlled storage and other cargo/logistics related activities through Inland Container Depot (ICD) and to build, operate, setup, manage & maintain Special Economic Zone (SEZ). The Second Transferor Company is engaged in the business of transport and handling of containers / goods within India including movement of containers, cargo, goods train using Indian Railway Network and also to acquire, procure obtain on lease / license or otherwise container trains, rakes, wagon, bogies and create, develop or obtain on lease / license basis Railway sidings, rail yards and warehouse required for business of the Company and to build, operate, setup, manage & maintain Special Economic Zone (SEZ). The Transferee Company is engaged in the business of developing, operating and maintaining infrastructure facilities – Rail System, which consist of Pan India Rail Freight and allied Operations. ARIL holds Category I Private Container Train Operator (PCTO) license which allows the company to operate on Indian rail network on pan India basis catering to both Domestic and Exim traffic.
3. The Rationale of the Scheme is that the First Transferor Company, Second Transferor Company and Transferee Company are fellow subsidiaries and their businesses are related to each other. ARIL offers rail infrastructure, including modern rakes, customised containers, new sidings, pan-India network connectivity.

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AIDHL is engaged in providing facility of warehousing including temperature controlled storage and other cargo/ logistics related services through Inland Container Depot (“ICD”) and ATHL is into transport and handling business of cargo / containers. The businesses of all the companies complement each other. In the industry, there are other companies who are doing consolidated business of offering rail infrastructure, cargo/container handling services and providing ICD services. The demand in the market for the entities providing consolidated services is higher than the entities providing individual services. In order to earn higher revenue and to cater to the needs of the market, the management intends to consolidate the rail infrastructure, transport handling business and ICD business. Pursuant to the consolidation, the management intends to have better synergy of the businesses, avail other common benefits and to widen the market reach of the rail and container businesses. Thus with a view to rationalize the holding structure and have a single consolidated entity, AIDHL and ATHL are proposed to be amalgamated with ARIL. This would lead to achieve operational synergy by better administration and reduction in costs from more focused operation efforts, rationalisation, standardisation and simplification of business processes. It would eliminate duplication of administrative expenses and simplify the management structure. Further, it would also result in financial and tax efficiencies.

4. That the meeting of the Equity Shareholders of the First Applicant Company be convened and held at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018, Maharashtra on 16th August 2017 at 10:00 A.M for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Amalgamation of Arshiya Industrial & Distribution Hub Limited (“The First Transferor Company”) and Arshiya Transport and Handling Limited (“The Second Transferor Company” or “ATHL”) with Arshiya Rail Infrastructure Limited (“The Transferee Company”) and their respective Shareholders.

5. That the meeting of the Equity Shareholders of the Second Applicant Company be convened and held at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018, Maharashtra on 16th August 2017 at 11:30 A.M for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Amalgamation of Arshiya Industrial & Distribution Hub Limited (“The First Transferor Company”) and Arshiya Transport and Handling Limited (“The Second

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Transferor Company”) with Arshiya Rail Infrastructure Limited (“The Transferee Company”) and their respective Shareholders.

6. That the meeting of Equity Shareholders of the Third Applicant Company be convened and held at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018 on 16th August 2017 at 01.00 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Amalgamation of Arshiya Industrial & Distribution Hub Limited (“The First Transferor Company”) and Arshiya Transport and Handling Limited (“The Second Transferor Company”) with Arshiya Rail Infrastructure Limited (“The Transferee Company”) and their respective Shareholders.
7. That the meeting of the Secured creditors of the First Applicant Company be convened and held at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018 on 17th August 2017 at 10.00 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) of the proposed Scheme of Amalgamation of Arshiya Industrial & Distribution Hub Limited (“The First Transferor Company”) and Arshiya Transport and Handling Limited (“The Second Transferor Company”) with Arshiya Rail Infrastructure Limited (“The Transferee Company”) and their respective Shareholders.
8. That the meeting of the Unsecured creditors of the First Applicant Company be convened and held at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018 on 18th August 2017 at 10.00 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) of the proposed Scheme of Amalgamation of Arshiya Industrial & Distribution Hub Limited (“The First Transferor Company”) and Arshiya Transport and Handling Limited (“The Second Transferor Company”) with Arshiya Rail Infrastructure Limited (“The Transferee Company”) and their respective Shareholders.
9. That the meeting of the Unsecured creditors of the Second Applicant Company be convened and held at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018 on 18th August 2017 at 11.30 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) of the proposed Scheme of Amalgamation of Arshiya Industrial & Distribution Hub Limited (“The First Transferor Company”) and Arshiya Transport

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and Handling Limited (“The Second Transferor Company”) with Arshiya Rail Infrastructure Limited (“The Transferee Company”) and their respective Shareholders.

10. That the meeting of the Secured creditors of the Third Applicant Company be convened and held at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018 on 17th August 2017 at 1.00 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) of the proposed Scheme of Amalgamation of Arshiya Industrial & Distribution Hub Limited (“The First Transferor Company” or “AIDHL”) and Arshiya Transport and Handling Limited (“The Second Transferor Company”) with Arshiya Rail Infrastructure Limited (“The Transferee Company”) and their respective Shareholders.
11. That the meeting of the Unsecured creditors of the Third Applicant Company be convened and held at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018 on 18th August 2017 at 1.00 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) of the proposed Scheme of Amalgamation of Arshiya Industrial & Distribution Hub Limited (“The First Transferor Company”) and Arshiya Transport and Handling Limited (“The Second Transferor Company”) with Arshiya Rail Infrastructure Limited (“The Transferee Company” or “ARIL”) and their respective Shareholders.
12. That at least one month before the said Meetings of the Shareholders and Secured and Unsecured Creditors of the First, Second and Third Applicant Company to be held as aforesaid, a notice convening the said Meeting at the place date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14th December 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the First, Second and Third Applicant Company for the purpose of receiving such notices by email), addressed to each of the Shareholders of the First, Second and Third Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.

13. That at least one month before the meetings of the Shareholders of the First, Second and Third Applicant Company to be held as aforesaid, a notice convening the said Meetings, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the First and Second Applicant Company as aforesaid and / or at the office of its Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.
14. That the Notice of the Meetings shall be advertised in two local newspapers viz. “Free Press Journal” in English and “Navshakti” in Marathi, both circulated in Mumbai not less 30 days before the date fixed for the meeting.
15. That Mr. Ajay S Mittal, Director of the First Applicant Company, and failing him, Mr. Navnit Choudhary, Director of the First Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the First Applicant to be held at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018, Maharashtra on 16th August 2017 2017 at 10:00 A.M or any adjournment or adjournments thereof.
16. That Mr. Ajay Mittal, Director of the Second Applicant Company, and failing him, Mr. Navnit Choudhary, Director of the Second Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Second Applicant Company to be held at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018, Maharashtra on 16th August 2017 at 11:30 A.M or any adjournment or adjournments thereof.
17. That Mr. Ajay Mittal, Director of the Third Applicant Company, and failing him, Mr. Navnit Choudhary, Director of the Third Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Third Applicant Company to be held at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018, Maharashtra on 16th August 2017 at 01.00 P.M. or any adjournment or adjournments thereof.

18. That Mr. Ajay S Mittal, Director of the First Applicant Company, and failing him, Mr. Navnit Choudhary, Director of the First Applicant Company shall be the Chairman of the aforesaid meeting of the Secured and Unsecured Creditors of the First Applicant to be held at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018, Maharashtra on 17th August 2017 at 10:00 A.M or any adjournment or adjournments thereof.
19. That Mr. Ajay Mittal, Director of the Second Applicant Company, and failing him, Mr. Navnit Choudhary, Director of the Second Applicant Company shall be the Chairman of the aforesaid meeting of the Unsecured Creditors of the Second Applicant Company to be held at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018, Maharashtra on 17th August 2017 at 11:30 A.M or any adjournment or adjournments thereof.
20. That Mr. Ajay Mittal, Director of the Third Applicant Company, and failing him, Mr. Navnit Choudhary, Director of the Third Applicant Company shall be the Chairman of the aforesaid meeting of the Secured and Unsecured Creditors of the Third Applicant Company to be held at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018, Maharashtra on 17th August 2017 at 01.00 P.M. or any adjournment or adjournments thereof.
21. That the Chairman appointed for the aforesaid Meetings to issue the advertisement and send out the notices of the Meetings referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act 2013 in relation to the conduct of the meetings, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meetings by any person(s).
22. That the quorum of the aforesaid meetings of the Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
23. That the quorum of the aforesaid meetings of the Secured and Unsecured Creditors of the First and Third Applicant Company and the Unsecured Creditors of Second Applicant Company shall be five present in person or through proxy.
24. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form / authorization duly signed



by the person entitled to attend and vote at the meetings, are filed with the First, Second and Third Applicant Company at its Registered Office at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018, Maharashtra and Second Applicant Company at its Registered Office at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018, Maharashtra, respectively, not later than 48 hours before the aforesaid meeting.

25. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books / register of the First, Second and Third Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the Meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.
26. That Mr. Mohammad Aabid, Practising Company Secretary partner of Aabid & Co., Company Secretaries, is hereby appointed as Scrutinizers of the meetings of the Equity shareholders of the First Applicant Company proposed to be held on 16th August 2017 at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018, Maharashtra, the Second Applicant Company proposed to be held on 16th August, 2017 at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018, Maharashtra, and Third Applicant Company proposed to be held on 16th August 2017 at 302, Level 3, Ceejay House, Shiv Sagar Estate, F Block, Dr. Annie Besant Road, Worli, Mumbai – 400018 respectively and his remuneration is fixed as Rs. 5,000/- excluding taxes.
27. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
28. That the Chairman of the meetings to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meetings.
29. The First Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the First Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies, Mumbai, with a direction that they may submit their representations,



- if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the First Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
30. The Second Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the First Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies, Mumbai, with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Second Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
31. The First and Second Applicant Company are also directed to serve notice along with copy of scheme upon Official Liquidator. M/s. G.D Bangard & Co. Chartered Accountants are appointed to assist the Official Liquidator to scrutinize books of accounts of the First and Second Applicant Company for the last 5 years. The First and Second Applicant Company collectively to pay fees of Rs. 2,00,000 /- .
32. The Third Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the First Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies, Pune, with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Second Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
33. The First, Second and Third Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, Creditors, publication of notices in newspapers and to the regulatory authorities and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

Ina Malhotra, Member (Judicial)