

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CSA NO 1092 (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 Companies Act, 2013

And

In the matter of Scheme of Merger (by absorption) of Ganjam Trading Company Private Limited ("Transferor Company 1") and Rupee Finance and Management Private Limited ("Transferor Company 2") and Intrex India Private Limited ("Transferor Company 3") and ITX Trading and Financial Services Private Limited ("Transferor Company 4") with Vyoman Tradelink India Private Limited ("Transferee Company") and their respective Shareholders ("Scheme")

Ganjam Trading Company Private Limited, a }

Company incorporated under the provisions of }

the Companies Act, 1956 with Corporate Identity}

No. U51900MH1982PTC028131 and having its }

Registered Office at New Prakash Cinema, N. M.}

Joshi Marg, Lower Parel, Mumbai – 400 013 }... **Applicant Company**

Transferor Company 1, Transferor Company 2, Transferor Company 3 and Transferor Company 4 defined hitherto are collectively referred to as "Transferor Companies".

Order delivered on **12th January, 2018.**

CORAM: Hon'ble M. K. Shrawat, Member (Judicial)
Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

For the Applicant: Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocates

Per: M. K. Shrawat, Member (Judicial)

ORDER

1. The Counsel for the Applicant Company states that the present Scheme of Merger (by absorption) of Ganjam Trading Company Private Limited ("Transferor Company 1") and Rupee Finance and Management Private Limited ("Transferor Company 2") and Intrex India Private Limited ("Transferor Company 3") and ITX Trading and Financial Services Private Limited ("Transferor Company 4") with Vyoman Tradelink India Private Limited ("Transferee Company") and their respective Shareholders ("Scheme") under the provisions of Sections 230 to Section 232 and other applicable provisions of the Companies Act, 2013.
2. The Counsel for the Applicant Company further submits that, Applicant Company is engaged in the business of Non Banking Finance Company and also dealing in investments, trading in shares and securities, lending of funds etc. The company is registered as a Non-banking financial Company (NBFC) with Reserve Bank of India.
3. The Counsel for the Applicant Company further submits that the present Scheme *inter alia* proposes for:
 - (a) Merger (by absorption) of Transferor Company 1 with the Transferee Company;
 - (b) Merger (by absorption) of Transferor Company 2 with the Transferee Company;
 - (c) Merger (by absorption) of Transferor Company 3 with the Transferee Company; &
 - (d) Merger (by absorption) of Transferor Company 4 with the Transferee



Company;

with effect from Appointed Date of April 1, 2017. From the Appointed Date, all the Transferor Companies shall stand dissolved without winding up.

4. The Counsel for the Applicant Company further submits that the rationale for the present Scheme is as under:

The proposed Merger of Transferor Companies with the Transferee Company would inter alia have following benefits:

- a) The Transferee Company shall have better leveraging capabilities due to its enlarged net worth base and increased capability of offering a wider portfolio of products and services by virtue of its diversified businesses and resource base and deeper client relationships, resulting in enhanced businesses potential and better prospects for the Group
- b) Synergies arising out of consolidation of alike and supporting businesses through the Merger will lead to improved earnings and cash flow of amalgamated Transferee Company
- c) The Merger will result not only in consolidating and improving the internal systems, procedures and controls but will also bring greater management and operational efficiency due to integration of various similar functions presently being carried out in each individual entity within the group and this will lead to the organisation becoming more efficient and capable of responding swiftly to volatile and rapidly changing market scenarios
- d) The Merger will bring about simplicity in work, reduce various statutory and regulatory compliances and related costs, which presently have to be duplicated in different entities, reduction in operational and administrative expenses and overheads, and better cost and operational efficiencies
- e) It would be advantageous to combine the activities and operations of the Transferor Companies into a single company for synergistic linkages and

mev

the benefit of combined financial resources. This will be reflected in the profitability of the Transferee Company.

- f) The Merger is expected to provide other intangible benefits that Transferor Companies has built over decades, while at the same time enhancing the scale of operations and enabling better attention and focus to be given in an integrated manner to all the businesses so as to enable achievement of their full potential.

The proposed merger is expected to be beneficial to Transferor Companies and Transferee Company and their shareholders and all other stakeholders and will enable Transferor Companies and Transferee Company to achieve and fulfil their objectives more efficiently and economically.

5. It is ordered that the meeting of the Equity Shareholders of the Applicant Company be convened and held at Top 14th Floor, Times Tower, Kamala City Senapati Bapat Marg, Lower Parel, Mumbai – 400 013 on Monday, 19th day of February, 2018 at 09:30 AM, for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Merger (by absorption) embodied in the Scheme of Merger (by absorption) of Ganjam Trading Company Private Limited, Rupee Finance Management Private Limited, Intrex India Private Limited, ITX Trading and Financial Services Private Limited with Vyoman Tradelink India Private Limited and their Shareholders.
6. It is ordered that the meeting of the sole Preference Shareholder of the Applicant Company be convened and held at Top 14th Floor, Times Tower, Kamala City Senapati Bapat Marg, Lower Parel, Mumbai – 400 013 on Monday, 19th day of February, 2018 at 10:30 AM, for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Merger (by absorption) embodied in the Scheme of Merger (by absorption) of Ganjam Trading Company Private Limited, Rupee Finance Management Private Limited, Intrex India

Private Limited, ITX Trading and Financial Services Private Limited with Vyoman Tradelink India Private Limited and their Shareholders.

7. That at least one month before the said Meeting of the Equity Shareholders and sole Preference Shareholder of the 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) Rules, 2016 notified on 14th December, 2016 along with Ballot Form and the prescribed Form of Proxy, shall be sent by Hand Delivery or by Courier / Registered Post / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders and Sole Preference Shareholder of the Applicant Company at their last known address or email addresses as per the records of the Applicant Company.
8. That the Notice of the aforesaid Meetings, indicating the place, date and time of said Meeting, shall be published and advertised in two local newspapers viz. "Free Press Journal" in English and "Navshakti" in Marathi, both circulated in Mumbai, by the Applicant Company not less than 30 days before the date fixed for the said Meetings, 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) Rules, 2016 along with the Ballot Form and the Form of Proxy can be obtained free of charge at the Registered Office of the 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 – 400 071.

22/7

9. That Mr. Devesh Pandya, Group CFO, and in his absence Mr. R. C. Gupta, Group Director-Finance, shall be the Chairman of the aforesaid meeting of the Equity Shareholders to be held at Top 14th Floor, Times Tower, Kamala City Senapati Bapat Marg, Lower Parel, Mumbai – 400 013 on Monday, 19th day of February, 2018 at 09:30 AM or any adjournments thereof.
10. That Mr. Devesh Pandya, Group CFO, and in his absence Mr. R. C. Gupta, Group Director-Finance, shall be the Chairman of the aforesaid meeting of the Preference Shareholder to be held Top 14th Floor, Times Tower, Kamala City Senapati Bapat Marg, Lower Parel, Mumbai – 400 013 on Monday, 19th day of February, 2018 at 10:30 AM or any adjournments thereof.
11. That the Chairman appointed for the respective Meeting 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 any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s) eligible to vote at the aforesaid Meetings.
12. That the quorum of the aforesaid Meeting of the Equity Shareholders of the Applicant Company shall be as prescribed under Section 103 of the Companies Act, 2013.
13. That the quorum of the aforesaid Meeting of the aforesaid sole Preference Shareholder of the Applicant Company shall be one Preference Shareholder personally present.

mm

14. That in connection with the Applicant Company, the voting shall be allowed on the proposed Scheme by voting in person or by proxy. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form / authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at its Registered Office not later than 48 hours before the aforesaid Meeting.
15. That the value and number of the shares held by each Equity Shareholder of the Applicant Company shall be in accordance with the Books / Register of Members of the Applicant Company and/or records maintained by its Depositories, if any, and where the entries in the Register of Members / Depository records are disputed, the Chairman of the aforesaid Meeting shall determine the value for the purpose of the aforesaid Meeting and his decision in that behalf would be final.
16. That the value and number of the shares held by each Preference Shareholder of the Applicant Company shall be in accordance with the Books / Register of Members of the respective Applicant Company and/or records maintained by its Depositories, if any, and where the entries in the Register of Members / Depository records are disputed, the Chairman of the aforesaid Meeting shall determine the value for the purpose of the aforesaid Meeting and his decision in that behalf would be final.
17. That Ms. Dipti Nagori, Proprietor of Dipti Nagori & Associates, Practicing Company Secretary, is hereby appointed as Scrutinizer of the meeting of Equity shareholders of the Applicant Company proposed to be held at Top 14th Floor, Times Tower, Kamala City Senapati Bapat Marg, Lower Parel, Mumbai – 400 013 on Monday, 19th day of February, 2018 at 09:30 AM or any adjournments thereof.

mw

18. That Ms. Dipti Nagori, Proprietor of Dipti Nagori & Associates, Practicing Company Secretary, is hereby appointed as Scrutinizer of the meeting of Preference shareholder of the Applicant Company proposed to be held at Top 14th Floor, Times Tower, Kamala City Senapati Bapat Marg, Lower Parel, Mumbai – 400 013 on Monday, 19th day of February, 2018 at 10:30 AM or any adjournments thereof.
19. That the Chairman of the Meeting of the Applicant Company to file an affidavit not less than seven (7) days before the date fixed for the holding of the respective Meeting and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
20. That the Chairman of the respective Meeting of the Applicant Company to report to this Tribunal, the results of the aforesaid Meeting within thirty days of the conclusion of the respective Meetings.
21. That the Applicant Company is directed to serve notices of meeting of the Equity Shareholders and Preference Shareholder of the Applicant Company along with copy of Scheme upon:- (i) the Central Government through the office of Regional Director, Western region, Mumbai, (ii) Official Liquidator, (iii) the Registrar of Companies, Mumbai, (iv) concerned Income Tax Authority (Ward no - Circle 7 (1) (1), Mumbai) within whose jurisdiction the Applicant Company's (PAN No - AAACG3975H) assessments are made, (v) Reserve Bank of India with an intimation that they may, if they so wish, 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 Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposed arrangement embodied in the Scheme.
22. The Applicant Company is also directed to serve a notice of meeting of the Equity Shareholders and Preference shareholder of the Applicant Company along with the copy of the Scheme upon the Official Liquidator. M/s Bharat Bakshi &

me/7

Associates, Chartered Accountants, who are hereby appointed to assist the Official Liquidator to scrutinize books of Accounts of the Applicant Company for the last 5 years. The fees of the Chartered Accountant is fixed at Rs. 50,000 to be paid within a period three week from today. The Official Liquidator may submits his 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 Applicant Company, failing which, it shall be presumed that the Official Liquidator have no representations to make on the proposed arrangement embodied in the Scheme.

23. The Counsel for the Applicant Company further submit that since the Scheme of Merger (by absorption) of Transferor Companies with Transferee Company and their respective Shareholders as contemplated under section 230(1)(b) of the Companies Act, 2013, and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013 as there is no compromise or arrangement with the Secured or Unsecured Creditors as no sacrifice is called for. This bench hereby directs the Applicant Company to issue notice of the meeting of the Equity Shareholders of the Applicant Company to all its Secured Creditors and its Unsecured Creditors, which are due and payable as on 30th September 2017 as required under section 230(3) of the Companies Act 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
24. That the Applicant Company to file affidavit of service in the registry proving dispatch of notices to the shareholders and creditors, publication of notices in newspapers and service of notice to the regulatory authorities as stated in clauses above and do report to this Tribunal that the direction regarding the issue of notices have been duly complied with.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER(JUDICIAL)
12.01.2018

Sd/-

M. K. SHRAWAT
MEMBER(JUDICIAL)