

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

Company Application No.75/ALD/2017

(Under Section 230/232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules 2016)

IN THE MATTER OF THE COMPANIES ACT, 2013

IN THE MATTER OF

1. SHREE GANESH CREDIT PRIVATE LIMITED

(APPLICANT/TRANSFEROR COMPANY NO.1)

Having its Registered office at
Apsara Cinema Building, Meerut (UP).

2. PRERNA CHITS PRIVATE LTD.

(APPLICANT/TRANSFEROR COMPANY NO.2)

Having its Registered office at
Apsara Cinema Building, Meerut (UP).

WITH

1. SANGAL PAPERS LIMITED

(APPLICANT/TRANSFeree COMPANY)

Having its Registered office at
Village Bhainsa, 22 Km, Mawana Road,
Meerut (UP).

JUDGMENT/ORDER DELIVERED ON 28.07.2017


Coram : Hon'ble Shri H.P. Chaturvedi, Member (J)

For the petitioner : Shri Rakesh Kumar, Advocate.

ORDER

1. The present application is filed under Sections 230 (1) read with 230 (9) of the Companies Act, 2013 (hereinafter referred to as "**the Act**") and Rule 3 and 5 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, (hereinafter referred to as "**the Rules**") in relation to the Scheme of Arrangements by way of Amalgamations (hereinafter referred to as the "**SCHEME**"). The abovesaid Scheme is also annexed with the present application as Annexure. The above named applicants have preferred the

instant application for the following purposes as is evident from the relief sought for in the Application, namely:-

- a. To dispense with the convening of separate meetings of the Equity Shareholders of the Transferor Company No.1 and 2;
 - b. To dispense with the convening of separate meetings of the Secured Creditor and Unsecured Creditors of the Transferee Company;
 - c. To Issue directions for convening the meeting of the equity shareholders of the Transferee Company in pursuance of rule 5 of the rules;
 - d. For issuing directions for permitting the filing of application, Application, other documents as may be required for the purpose of sanctioning the proposed Scheme of Amalgamation; and
 - e. And for further order(s) as this Tribunal may deem fit and proper in the facts and circumstances of the case.
2. An affidavit in support of the above application sworn for and on behalf of Transferor Company No.1 has been filed by Shri Amit Sangal, the Director of the Company. Further, on behalf of the Transferor Company No.2 also filed an affidavit being the Director of the Transferor Company No.2. The affidavit for and on behalf of Transferee Company has been filed one Shri Himanshu Sangal, being the Managing Director of the Transferee Company. The counsel for the joint applicants drew our attention through the averments made in the present application as well as on the typed set of the documents annexed therewith. The 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 also stated that the joint application filed by the applicants are maintainable in view of Rule 3(2) of the Companies
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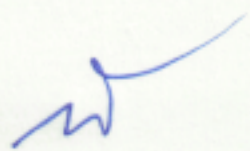
(Compromises, Arrangements and Amalgamations) Rules 2013. It is also stated that the registered offices of all the three applicant Companies are situated in the Meerut (UP), which are also falling within the jurisdiction of the Registrar of Companies, Kanpur.

3. In relation to Shree Ganesh Credit Private Limited being the Transferor Company No.1. It is represented that the company is having 10 Shareholders as on 20.03.2017 and all of them have consented to the proposed Scheme. A statement to this effect has been made in para no.3.6 of the scheme of amalgamation. The Transferor Company No.1 is having no secured and unsecured creditors. In respect of Prerna Chits Private Limited being the Transferor Company No.2, it is represented that it is having 10 shareholders as on 20.03.2017 and all them have consented to the proposed Scheme. A statement to this effect has been made in para no.3.11 of the scheme of amalgamation. The Transferor Company No.2 is having no secured and unsecured creditors. In view of the consent given by all the shareholders of both the Transferor Companies i.e., the applicants herein seek dispensation with convening of meeting of the shareholders of both the Transferor Companies. As there are no secured and unsecured creditors of the Transferor and Transferee Company, no question of convening their meeting arises.
4. It is stated that the Sangal Papers Limited being the Transferee Company, is a listed Company with the Bombay Stock Exchange. It is represented that this Company is having **9290 shareholders** as on 20.03.2017. The Company is having one secured creditor and it has also consented to the proposed Scheme. The number of unsecured creditors in Transferee Company is 215 and out of which 157, constituting 93.75%, have consented to the Scheme. In view of the consent given by the 93.75% of the unsecured creditors and consent of the



only Secured Creditors having been obtained, the applicant Transferee Company seek dispensation of convening of the meetings of the secured and unsecured Creditors. The Transferee Company further seeks the directions for convening its meeting of the equity shareholders.

5. We have gone through the contents of the proposed petition and perused the documents/papers annexed therewith including the scheme of amalgamation as proposed between the applicant companies.
6. The brief facts relating to the present petition are stated as under:
 - i. From the Certificate of incorporation filed, it is evident that the Transferor Company No.1 **SHREE GANGESH CREDITS PRIVATE LIMITED** is a Private Limited Company incorporated on 22nd February, 1988 vide CIN; U65921UP1988PTC009362 originally under the name and style of SHREE GANESH CREDITS PRIVATE LIMITED under the provisions of the Companies Act, 1956. The Authorized Share Capital of the Transferor Company No.1 as per the Audited Provisional Balance Sheet as on 31st December, 2016 is Rs.10,000,000/- (Rupees One Crore Only) divided into Rs.1,00,000/- (One Lakh) Equity Shares of Rs.100/- (Rupees Hundred) each. The issued/subscribed/paid-up share capital of the Transferor Company No.1 as per the Audited provisional Balance Sheet as on 31st December, 2016 is Rs.10,000,000/- (Rupees One Crore Only) divided into Rs.1,00,000/- (One Lakh) Equity Shares of Rs.100/- (Rupees Hundred) each fully paid-up. The audited balance sheet of the Transferor Company no.1 as at 31.03.2016 and the provisional balance sheet as at 31.12.2016 are annexed herewith and marked as “**Annexure P-2 (Colly)**”.

7. The main object of the Transferor Company no.1 as stated in the application are described as under-:
- a. "To carry on the business as financiers, concessionaries and to give and take loans with or without security and on such terms and conditions as the Board may at its absolute discretion deem fit to any person or persons to enable them to purchase either by themselves or jointly with other person or persons and to undertake and carry on and execute all kinds of financial and commercial operations but the company shall not do any banking business as is banned in the Banking Regulation Act, 1949 and the Prize Chits and Money Circulation Schemes (Banning) Act, 1978." The memorandum and Articles of Association of the Transferor Company No.1 is annexed herewith and marked as "**Annexure P-1**".
8. A perusal of the certificate of incorporation filed alongwith the present petition, it is evident that the Transferor Company No.2 PRERNA CHITS PRIVATE LIMITED is a Private Limited Company incorporated on 4th January, 1988 vide CIN; U65992UP1988PTC009247 originally under the name and style of "PRERNA CHITS PRIVATE LIMITED" under the provisions of the Companies Act, 1956. The Authorized Share Capital of the Transferor Company No.2 as per its Audited Provisional Balance Sheet as on 31st December, 2016 is Rs.10,000,000/- (Rupees One Crore Only) divided into Rs.1,00,000/- (One Lakh) Equity Shares of Rs.100/- (Rupees Hundred) each. The issued/subscribed/paid-up share capital of the Transferor Company No.2 as per the Audited provisional Balance Sheet as on 31st December, 2016 is Rs.10,000,000/- (Rupees One Crore Only) divided into Rs.1,00,000/- (One Lakh) Equity Shares of Rs.100/- (Rupees Hundred) each fully paid-up. The audited balance sheet of the Transferor Company no.2 as at 31.03.2016 and
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the provisional balance sheet as at 31.12.2016 are annexed herewith and marked as "Annexure P-4 (Colly)".


9. The main object of the Transferor Company no.2 as stated in the application are-:
 - a. "To carry on the business of conducting chits (auction and other chits) daily, weekly, bi-weekly, monthly, quarterly and at such intervals as the company may decide from time to time, but the company shall not carry any business as is banned under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978." The memorandum and Articles of Association of the Transferor Company No.2 is annexed herewith and marked as **"Annexure P-3"**.
10. Further, perusal of certificate of incorporation filed in the petition, it is evident that the Transferee Company SANGAL PAPERS LIMITED is a LISTED Public Limited Company incorporated on 25th November, 1980 vide CIN; L21015UP1980PLC005138 originally under the name and style of "SANGAL PAPERS LIMITED" (under the provisions of the Companies Act, 1956). The shares of the Transferee Company are listed on Bombay Stock Exchange and the Authorized Share Capital of the Transferee Company as per the Audited Provisional Balance Sheet as on 31st December, 2016 is Rs.70,000,000/- (Rupees Seven Crore Only) divided into Rs.7,000,000/- (Seventy Lakhs) Equity Shares of Rs.10/- (Rupees Ten) each. The issued/subscribed/paid-up share capital of the Transferor Company as per the Audited provisional Balance Sheet as on 31st December, 2016 is Rs.13,072,600/- (Rupees One Crore Thirty Lakhs Seventy Two Thousand Six Hundred Only) divided into Rs.1,307,260/- (Thirteen Lakhs Seven Thousand Two Hundred and Sixty) Equity Shares of Rs.10/- (Rupees Ten) each fully paid-up. The audited balance

sheet of the Transferee Company as at 31.03.2016 and the provisional balance sheet as at 31.12.2016 are annexed herewith and marked as "Annexure P-6 (Colly)".

11. The main object of the Transferee Company has been stated in the application are:
 - a. "To carry on in India and/or elsewhere the business of manufacturing, importing, exporting and dealing in all kinds of products of paper and board, industrial and all kinds of paper products such as cups, dishes, containers.
 - b. To buy, sell, import, export, manipulate, treat, prepare and deal in merchandise, commodities, articles and things, mentioned herein before and to carry on the business as merchants, traders, suppliers, agents, importers and exporters etc. of the aforesaid commodities. The memorandum and Articles of Association of the Transferee Company are annexed herewith and marked as "**Annexure P-5**".
12. All the petitioners have filed their respective Memorandum and Articles of Association as well as the last available audited financial statements as on 31st March, 2016 and provisional balance sheet as at 31.12.2016.
13. The proposed scheme of amalgamation contemplates the amalgamation of Transferor Companies with Transferee Company. The circumstances which necessitate the proposed scheme of Amalgamation are stated, interalia as under:
 - a. The proposed scheme will result in formation of a larger company enabling further growth and development of the businesses of the said companies. The scheme will enable the undertakings and business of



the said companies to obtain greater facilities possessed and enjoyed by one large company compared to small companies for raising capital, securing and conducting trade and business on favourable terms and other related benefits.

- b. The proposed scheme will enable the companies concerned to rationalise and streamline their management, businesses and finances and lead to a better economic control, over the running and management of the businesses and undertakings of the said companies.
 - c. The businesses of the Transferor Companies and the Transferee Company could be combined conveniently and advantageously and in such a manner so as to take up the activities, which will relate more to the business of the Transferee Company.
 - d. The proposed scheme will result in reduction of overheads and other expenses, reduction in administrative and procedural works, eliminate duplication of work, transaction cost, better and more productive utilization of various resources and will enable the undertakings concerned to effect internal economics and optimise productivity.
 - e. The proposed scheme will contribute in the furthering and fulfilling the objects of the companies concerned and enabling the optimum growth and development of their combined businesses.
 - f. The amalgamation will enable the companies to put in their financial, managerial, technical and other resources and to use the financial, managerial, technical and marketing, and distribution expertise of each other.
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14. The board of Directors of the Companies, vide separate meeting held on 14.03.2017 have unanimously passed resolutions and approved the proposed Scheme of amalgamations as contemplated above and copies of resolution have also been placed on record by the Companies.
15. Having heard the submission of the Learned Petitioner Counsel and by considering the present joint application/petition and the documents filed therewith, we feel appropriate 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 paper publication which are described as under:-

A. In relation to the Transferor Companies No.1/Applicant company No.1:

- i) With respect to Equity Shareholders, the holding of meeting is dispensed with as there are only 10 equity shareholders in the company and their consent letters have been placed on record.
- ii) The meetings of the secured and unsecured Creditors are also dispensed with because there are no Secured and Unsecured Creditors in it.

B. In relation to the Transferor Company No.2/Applicant Company No.2:

- i) With respect to Equity Shareholders, the holding of meeting is dispensed with as there are only 10 equity shareholders in the company and their consent letters have been placed on record.



- ii) The meetings of the secured and unsecured Creditors are also dispensed with because there are no Secured and Unsecured Creditors in it.

C. In relation to the Transferee Company:


- i) With respect to equity shareholders: Meeting of equity shareholders of the Transferee Company be held at "Sangal Papers Limited", Vill. Bhainsa, 22 km. stone, Meerut-Mawana Road, Meerut, Uttar Pradesh-250401 preferably on 04.09.2017 or on a convenient date that may be mutually agreed among the Chairperson/Alternate Chairperson, Scrutinizer and Board of Directors of the Transferee Company and subject to notice of meeting being issued. The quorum for the meeting of the equity shareholders shall be 30 in number.
- ii) With respect to secured creditors: The meeting of the secured creditors is dispensed with as there is only 1 (one) secured creditor and its consent has been placed on record.
- iii) With respect to the unsecured creditors: The meeting of the unsecured creditors is also dispensed with as there are 215 unsecured creditors majority (93.57%) of whom have given their consent and their consent have been placed on record.

- D. In case the quorum as noted above for the above meeting of the equity shareholders of the Transferee/Applicant Company are not present, then the meeting shall be adjourned for half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person

entitled to attend and vote at the meeting, is filed with the registered office of the Transferee/Applicant company at least 48 hours before the meeting. The Chairperson and Alternate Chairperson appointed herein alongwith Scrutinizer shall ensure that the proxy registers are properly maintained.


E. Sh. P.K. Malhotra (Former Law Secretary to the Government of India and former Member Securities, Appellate Tribunal, Bombay) (Mobile No.09818559029) (Add:- K-31 South Extension Part-II, New Delhi and e-mail:- malhotrapk@hotmail.com) is appointed as the **Chairperson**. Further Advocate **Sh. Arun Saxena**, (Mobile No.09810037364) (Add:- Law Chambers 603-604 New Delhi House 27 Barakhamba Road, New Delhi-110001) is appointed as the **Alternate Chairperson** to conduct the meeting of the equity shareholders as per direction of this Tribunal which is to be convened in respect of Applicant Transferee Company. In addition to the above, **Sh. Mukesh Mohan**, Chartered Accountant (Mobile No.- 09811024647) (Add:- Flat No.504 Tower 6, Commonwealth Game Village, Delhi-110092) is also appointed as **Scrutinizer** in the said meeting.

F. The fee of the Chairperson for the aforesaid meeting shall be **Rs.1,00,000/- (Rupees One Lakh)** and the fee of the alternate Chairperson shall be **Rs.50,000/- (Rupees Fifty Thousand)** in addition to meeting his incidental expenses. The fees of the Scrutinizer shall be **Rs.50,000/- (Rupees Fifty Thousand)** for his services in addition to meeting his incidental expenses. The Chairperson/Alternate Chairperson is expected to file his report by two weeks from the date of holding of the meeting of equity shareholders of the Transferee/Applicant Company.

- G.** That individual notices of the said meeting shall be sent by Transferee/Applicant Company through registered post of speed post or through courier or through e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, the place and the time as aforesaid, together with a copy of Scheme of Amalgamation, copy of explanatory statement required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall also be sent along and in addition to the above any other document as may be prescribed under the Act may also be duly sent with the notice.
- H.** That the Transferee Company shall publish advertisement indicating the day, date and the place and the time as aforesaid, to be published in the English Daily "The Statesman", Hindi Daily, "Jansatta" stating that the copies of the Scheme of Amalgamation, the Explanatory Statement required to be furnished pursuant to Section 230 of the Act, and the form of proxy shall be provided free of charge at the registered office of the Transferee/Applicant Company.
- I.** Voting shall be allowed on the proposed scheme by voting in person, by proxy or by electronic means to the Transferee Company under the Act and Rules framed there under. The Chairperson is expected to report the result and conclusion of the meeting with vote on the proposed scheme, by two weeks from the date of such meeting.
- J.** The companies shall individually send notice to Central Government, the Income Tax Authorities, RBI and concerned Registrar of Companies who may have significant bearing on the operation of the applicant companies alongwith copy of required documents and disclosure required under the provisions of the Companies Act, 2013 read with rules.
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- K.** The applicant companies further shall furnish copy of the scheme free of charges within 1 day of any requisition for the scheme made by every member of the Transferee/Applicant Companies.
- L.** The authorized representative of the Transferee Company shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.
- M.** All the aforesaid directions are to be complied with strictly by the applicants in accordance with the law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 applicable to the present case. The application stands allowed on the aforesaid terms.
- N.** The applicant companies are at liberty to file second motion/company petition annexing with the compliance report of the abovementioned directions issued.
- 16.** Registry of this Tribunal, to communicate a copy of this order to the Learned Chairperson/Alternate Chairperson and the Scrutinizer on their contact address.
- 17.** The present petition is allowed and stands disposed of accordingly.

Dated:28.07.2017


Shri H.P. Chaturvedi,
Member (Judicial)

Typed by:
Kavya Prakash