

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH**

CA (CAA) NO. 6/Chd/HP/2017

Date of Order: 28.04.2017

**IN THE MATTER OF THE COMPANIES ACT, 2013 (18 OF 2013)
SECTIONS 230, 232 & 66**

AND

IN THE MATTER OF SCHEME OF ARRANGEMENT

AND

**IN THE MATTER OF
BAGRRYS FINANCE PVT LTD**

**..APPLICANT/TRANSFEROR
COMPANY NO. 1**

KANAK GLOBAL SECURITIES PVT LTD

**...APPLICANT/TRANSFEROR
COMPANY NO. 2**

OASIS SECURITIES PVT LTD

**....APPLICANT/RESULTING
COMPANY**

AND

BAGRRYS INDIA LTD

**....APPLICANT/TRANSFeree
COMPANY**

Present: Mr. Rajeev K.Goel, Advocate for applicants

**Coram: HON'BLE MR. JUSTICE R P NAGRATH, MEMBER (JUDICIAL)
HON'BLE MS DEEPA KRISHAN, MEMBER (TECHNICAL)**

**JOINT APPLICATION UNDER SECTIONS 230, 232 & 66 OF THE COMPANIES
ACT, 2013, READ WITH THE COMPANIES (COMPROMISES,
ARRANGEMENT AND AMALGAMATION) RULES, 2016, AND OTHER
APPLICABLE PROVISIONS, IF ANY, IN CONNECTION WITH THE SCHEME
OF ARRANGEMENT OF BAGRRYS FINANCE PVT LTD, KANAK GLOBAL
SECURITIES PVT LTD, OASIS SECURITIES PVT LTD AND BAGRRYS INDIA
LTD**



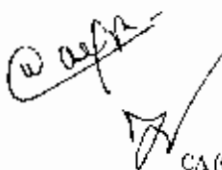

ORDER

The learned counsel for the applicants has filed the affidavit of Sushi Kumar Chetani, the whole time Director of the transferee company to furnish the address of the Commissioner of Income Tax in compliance with the previous order.

2. This Application has been jointly filed by the applicant companies herein, namely Bagrrys Finance Private Limited (for brevity "Transferor Company No. 1/Applicant No. 1"), Kanak Global Securities Private Limited (for brevity "Transferor Company No. 2/Applicant No. 2"), Oasis Securities Private Limited (for brevity "Resulting Company/Applicant No. 3"), Bagrrys India Ltd. (for brevity "Transferee Company/ Applicant No. 4") under Section 230, 232 and 66 of the Companies Act, 2013 read with the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, duly supported by the affidavits of the Applicant Companies, for seeking appropriate orders/directions for dispensing with/convening of the respective meetings of Shareholders, Secured Creditors and Un-secured Creditors of the Applicant Companies in connection with the proposed Scheme of Arrangement Annexure A-6 (hereinafter referred to as the "Scheme").

3. The Learned counsel for the Applicants represent that the Scheme provides for the following:

- i. De-merger of Investment and other NBFC Business (except strategic investments in Bagrrys India Ltd) (Demerged Business 1 & 2,



respectively) of Bagrrys Finance Pvt Ltd and Kanak Global Securities Pvt Ltd into Oasis Securities Pvt Ltd;

- ii. Amalgamation of Bagrrys Finance Pvt Ltd and Kanak Global Securities Pvt Ltd (with residual business consisting of strategic investments in Bagrrys India Ltd) with Bagrrys India Ltd;
- iii. De-merger of Investment Business (Demerged Business 3) of Bagrrys India Ltd into Oasis Securities Pvt Ltd; and
- iv. Re-organisation of Share Capital of Bagrrys India Ltd.

4. It is represented by learned Counsel for the Applicants that the registered office of all the Applicant Companies is situated at Plot No. 28 and 41, Himuda Industrial Area, Bhatoli Kalan, Baddi-173 205, District Solan, Himachal Pradesh, within the jurisdiction of this Chandigarh Bench of NCLT.

5. Copies of the Memorandum and Articles of Association along with the relevant certificate of incorporation, etc., of all the Applicant Companies are attached to the Application as Annexure A-1/1, A-2/1, A-3/1 and A-4/1, respectively.

6. The learned counsel for the applicant companies would further contend that the Transferor Companies No. 1 & 2 and the Resulting Company are engaged in investment in securities and other NBFC business like providing loans and advances and other related activities. The Transferor Companies No. 1 & 2 and the Resulting Company are registered with the Reserve Bank of India as non-deposit accepting Non-Banking Finance Company (NBFC), whereas the Transferee Company is primarily engaged in manufacturing and marketing of breakfast cereals and health food such as muesli, oats, bran, cornflakes plus, etc., which are marketed under the

Brand names '*Bagrrys*' and '*Lawrence Mills*'; odoriferous products (Ilavan Samagri); flour milling and other related activities. The Group operates and runs Quick Service Restaurants under the brand- '*Bagrry's Health Café*'. The Transferee Company has also made investments in shares, mutual funds and other securities. Thus, the Transferee Company has two distinct business lines food & other manufacturing business; and investment business.

7. The learned Counsel represents that the main objects of these Companies have been clearly laid down in their respective Memorandums of Association and Articles of Association, which are annexed with the Application as Annexure A-1/1, A-2/1, A-3/1 and A-4/1 respectively.

8. The learned Counsel further submits that the proposed Scheme is at Annexure 'A-6' to the Application and the respective Board of Directors of all the Applicant Companies have unanimously approved the Scheme by passing Board resolutions dated 18th March, 2017. The resolutions are at Annexure A-1/5, A-2/5, A-3/5 and A-4/5 respectively.

9. The learned Counsel would further represent that the Authorised Share Capital of the Transferor Company No. 1 is ₹3,50,00,000 divided into 35,00,000 Equity Shares of ₹10 each. The Issued, Subscribed and Paid-up Share Capital of the Company is ₹3,00,00,000 divided into 30,00,000 Equity Shares of ₹10 each.

10. The learned Counsel would further represent that the Authorized Share Capital of the Transferor Company No. 2 is ₹1,00,00,000 divided into 10,00,000 Equity Shares of ₹10 each. The present Issued, Subscribed and Paid-up Share Capital of the Company is ₹96.19,000 divided into 9,61,900 Equity Shares of ₹10 each.

11. With regard to third company, Resulting Company, the Authorised Share Capital is ₹4,61,20,000 divided into 46,12,000 Equity Shares of ₹10 each. The present Issued, Subscribed and Paid-up Share Capital of the Company is ₹3,20,95,260 divided into 32,09,526 Equity Shares of ₹10 each.

12. Learned Counsel further represents that the Authorised Share Capital of the Transferee Company is ₹4,00,00,000 divided into 40,00,000 Equity Shares of ₹10 each. The present Issued, Subscribed and Paid-up Share Capital of the Company is ₹3,22,63,000 divided into 32,26,300 Equity Shares of ₹10 each.

13. The Learned Counsel for the Applicants has also represented that accounts of all the Applicant Companies have been prepared and audited for the financial year ended 31st March, 2016, which are attached with the Application as Annexure A-1/2, A-2/2, A-3/2 and A-4/2, respectively. Further, the latest financial position of the Applicant Companies is reflected in the unaudited provisional financial statements for the period ended 31st December, 2016, which are attached with the Application as Annexures A-1/3, A-2/3, A-3/3 and A-4/3, respectively.

14. The Share Exchange Ratio under the Scheme have been determined in accordance with the Report on Valuation of Shares & Share Exchange Ratio dated 9th March, 2017, issued by M/s Khandelwal & Sharma, Chartered Accountants, New Delhi, as per the settled principles of valuation (annexed with the Application as Annexure A-5). The following Share Exchange Ratio has been proposed:

- i. Share Exchange Ratio for the proposed De-merger of Demerged Business 1 & 2 of the Transferor Companies No. 1 & 2 into the Resulting Company will be:

- a. The Resulting Company will issue 1 (one) 8% non-cumulative compulsorily redeemable Preference Shares of ₹10 each at a premium of ₹12 (Rupees twelve) per share, credited as fully paid up, for every 1 (one) Equity Share of ₹10 each held in the Transferor Company No. 1.
 - b. The Resulting Company will issue 1 (one) 8% non-cumulative compulsorily redeemable Preference Shares of ₹10 each at a premium of ₹14 (Rupees fourteen) per share, credited as fully paid up, for every 1 (one) Equity Share of ₹10 each held in the Transferor Company No. 2.
- ii. Share Exchange Ratio for the proposed Amalgamation of the Transferor Companies No. 1 & 2 (with residual business) with the Transferee Company will be:
- a. The Transferee Company will issue 10,06,600 (ten lacs six thousand six hundred) Equity Shares of ₹10 each, credited as fully paid up, to the Shareholders of the Transferor Company No. 1 in proportion to their shareholding in the Transferor Company No. 1.
 - b. The Transferee Company will issue 3,34,000 (three lacs thirty-four thousand) Equity Shares of ₹10 each, credited as fully paid up, to the Shareholders of the Transferor Company No. 2 in proportion to their shareholding in the Transferor Company No. 2.
- iii. Share Exchange Ratio for the proposed De-merger of Demerged Business 3 of the Transferee Company into the Resulting Company will be:
- a. The Resulting Company-Oasis Securities Pvt Ltd will issue 1 (one) 8% non-cumulative compulsorily redeemable Preference Shares of ₹10 each at a premium of ₹247 (Rupees two hundred forty-seven) per share, credited as fully paid up, for every 1 (one) Equity Share of ₹10 each held in the Transferee Company-Bagrrys India Ltd.

- b. Further, to give effect to the de-merger in its books of accounts, the Transferee Company-Bagrrys India Ltd will reduce, on a proportionate basis, its issued, subscribed and paid up equity share capital to 25% by **extinguishing 75%** of its issued, subscribed and paid up equity share capital.

15. All the Applicant Companies have submitted that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013, is pending against the Transferee Company. Further, the Applicants have also submitted that the Scheme is not otherwise opposed to public policy or interest of the members of the respective Applicant Companies.

16. Learned Counsel for the Applicants has submitted that all the Applicant Companies are un-listed Group Companies under common shareholding, management and control. Status of the Shareholders, Secured Creditors and Un-Secured Creditors of these Companies and written consents/NOC obtained for the proposed Scheme of Arrangement is summarized in following table:

Company	No. of Share Holders	Consent Given	No. of Secured Creditors	Consent Given	No. of Un-secured Creditors	Consent Given
Transferor Company No. 1	11	10 ¹	NIL	N.A	2	All
Transferor Company No. 2	4	All	NIL	N.A.	NIL	N.A.
Resulting Company	5	All	NIL	N.A.	NIL	N.A.
Transferee Company	776	Not Obtained ²	3	2 ²	292 ³	Not Obtained ²

- ¹ Constituting 90.91% of total numbers and 99.98% of total paid up share capital of the Company. It is pertinent to mention that the consents obtained are more than the requisite majority of 90% of total value required in terms of the provisions of section 230(9) of the Companies Act, 2013.
- ² Constituting 66.67% of total numbers and 93.35% of total value of secured debt of the Company. Consents obtained are more than the requisite majority of 90% of total value required in terms of the provisions of section 230(9) of the Companies Act, 2013.
- ³ In addition to the aforesaid Un-Secured Creditors, there were some 'statutory and other dues' which have been paid since then. Certificate from Chartered Accountants to this effect is enclosed.
- ⁴ Separate meetings are proposed to be held under the supervision of this Hon'ble Tribunal.

17. Learned Counsel for the Applicant Companies submitted that in view of the written consents/NOC given by Shareholders of the Applicant Transferor Companies No. 1 & 2 and of the Resulting Company; consents given by the Un-secured Creditors of the Transferor Company No. 1; and consents given by the Secured Creditors of the Transferee Company, as detailed in the aforesaid table, no useful purpose will be served by convening their meetings under the supervision of this Hon'ble Tribunal for the purpose of considering and approving the proposed Scheme of Arrangement. It is prayed that appropriate order(s)/ direction(s) may be passed for dispensing with convening, holding and conducting of these meetings, in the interest of justice.

18. Prayer has been made for convening, holding and conducting of separate meetings of Shareholders and Un-Secured Creditors of the Transferee Company under the supervision of this Tribunal for the purpose of considering and approving the proposed Scheme of Arrangement.

19. It is further submitted that the Transferee Company is registered with NSDL and CDSL. The Transferee Company wishes to provide facility of e-voting to its shareholders and that such vote exercised by a shareholder may be considered as a valid exercise of their vote, on the Scheme in accordance with sections 230 & 232 of the Companies Act, 2013.

20. Taking into consideration the Application filed jointly by the Transferor Companies No. 1 & 2, the Resulting Company and the Transferee Company and documents filed therewith, we propose to issue the following directions with respect to calling, convening and holding of the meeting of shareholders, secured and un-secured 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 No.1/ Applicant No.1:

i. With respect to Equity Shareholders:

Meeting of Equity Shareholders is dispensed with as Written Consents/No Objections have been given by 10 Shareholders out of total 11 shareholders for the proposed Scheme of Arrangement constituting 90.91% in number and 99.98% of total paid up share capital of the Company.

ii. With respect to Secured Creditors:

Meeting of secured creditors is dispensed with as there is no secured creditor in the Transferor Company No.1/Applicant No. 1.

iii. With respect to Un-Secured Creditors:

Meeting of Un-Secured Creditors is dispensed with as Written Consents/No Objections have been given by all the Un-Secured Creditors of the Transferor Company No. 1/Applicant No.1.

Accepted
[Signature]

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

i. With respect to Equity Shareholders:

Meeting of Equity Shareholders is dispensed with as Written Consents/No Objections have been given by all the equity shareholders of Transferor Company No. 2/ Applicant No. 2.

ii. With respect to Secured Creditors:

Meeting of secured creditors is dispensed with as there is no secured creditor in the Transferor Company No.2/ Applicant No. 2.

iii. With respect to Unsecured Creditors:

Meeting of Un-Secured Creditors is dispensed with as there is no Un-Secured Creditor in the Transferor Company No.2/ Applicant No. 2.

C. In relation to the Resulting Company/Applicant No.3:

i. With respect to Equity Shareholders:

Meeting of Equity Shareholders is dispensed with as Written Consents/No Objections have been given by all the Equity Shareholders of the Resulting Company/Applicant No. 3

ii. With respect to Secured Creditors:

Meeting of Secured Creditors is dispensed with as there is no Secured Creditor in the Resulting Company/Applicant No. 3.

iii. With respect to Unsecured Creditors:

Meeting of Un-Secured Creditors is dispensed with as there is no Un-Secured Creditor in the Resulting Company/Applicant No.3.

D. In relation to the Transferee Company/Applicant No.4:

i. With respect to Equity Shareholders:

Meeting of Equity Shareholders of Transferee Company will be convened and held on 24th June, 2017, at 11.30 a.m. at Hotel Royal Park, Baddi, Pinjore-Nalagarh Highway, NH 21-A, Bhud. Baddi-173205, District Solan, Himachal Pradesh, subject to notice of meeting being issued. The

quorum for shareholders meeting shall be 25 in number and 25% of total paid up share capital of the Company.

ii. With respect to Secured Creditors:

Meeting of Secured Creditors of the Transferee Company will be convened and held on 24th June, 2017, at 1.00 p.m. at Hotel Royal Park, Baddi, Pinjore-Nalagarh Highway, NH 21-A, Bhud, Baddi-173205, District Solan, Himachal Pradesh, subject to notice of meeting being issued. The quorum for Secured Creditors' meeting shall be 2 in number and 25% of total secured debt of the Company.

iii. With respect to Un-Secured Creditors:

Meeting of Un-Secured Creditors of the Transferee Company will be convened and held on 24th June, 2017, at 3.00 p.m. at Hotel Royal Park, Baddi, Pinjore-Nalagarh Highway, NH 21-A, Bhud, Baddi-173205, District Solan, Himachal Pradesh, subject to notice of meeting being issued. The quorum for Un-Secured Creditors' meeting shall be 25 in number and 25% of total value of Un-Secured Creditors of the Company.

E. In case the Quorum as noted above for the above meetings of the Applicant Companies is not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter, the person present 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 registered office of the Applicant Companies at least 48 hours before the meetings.

F. Mr Justice (Retd.) R.S.Madan (Mobile Number) 9872244661. Address 128, Sector 15, Panchkula, Haryana is appointed as the Chairperson for all the aforesaid meetings to be called under this order and the relevant law and shall be paid a consolidated fee of ₹2,00,000/- for his services as the Chairperson. Mr.Vaibhav Sahni (Mobile Number) 9988300038, Address 721, Sector 8-B, Chandigarh is appointed as Alternate Chairperson for all the meetings to be called under this order and the relevant law and shall be paid a consolidated fee

of ₹1,00,000/-for his services as Alternate Chairman. The Scrutinizer for all the meetings shall be Mr. Manish Aggarwal (Mobile Number) 9988114441, Address SCO 64, 11nd floor, Sector 20-C, Dakshin Marg, Chandigarh who shall be paid a consolidated fee of ₹75,000/- in lump sum for rendering his services. The aforesaid fees shall be paid by the transferee Company. The said fees shall be in addition to any expenses incurred by the Chairperson, Alternate Chairperson and the Scrutinizer and such expenses shall be borne by the transferee company.

- G. The individual notices of the said meetings shall be sent by the Applicant Companies through registered post or speed post or through courier or through e-mail, 30 days in advance before the scheduled date of the meeting as per the relevant rules applicable, indicating the day, date, place and time as aforesaid, together with a copy of Scheme of Arrangement, a copy of Explanatory Statement, required to be sent under the Companies Act, 2013 and the prescribed Form of Proxy shall be sent along with. In addition to the above, any other documents as may be prescribed under the Act may also be duly sent with the notice.

21. That the Applicant Companies shall jointly publish advertisement with a gap of at least 30 days before the aforesaid meetings, indicating the day, date, place and time as aforesaid, to be published in the "The Tribune" (English, Chandigarh Edition) and "Amar Ujala" (Hindi, Chandigarh Edition) stating that the copies of Scheme of Arrangement, the Explanatory Statement required to be furnished pursuant to Sections 230 to 232 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Applicant Companies. The applicant companies shall also publish the notice on the website, if any, of each company.

22. It shall be the responsibility of the respective Companies to ensure that the notices are sent under the signature and supervision of the authorized representative of each company on the basis of Board Resolutions and that they shall

file their affidavit in the Tribunal at least ten days before the date fixed for the meetings.

23. As prayed for in the Application, voting shall be allowed on the proposed Scheme by voting in person or by proxy. Further, for the purpose of the meeting of Shareholders of the Transferee Company, Shareholders of the Transferee Company shall also be allowed to vote through electronic means in terms of the Rules framed under the Companies Act, 2013, for this purpose.

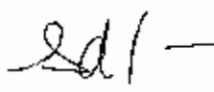
24. The Chairperson shall be responsible to report the result of the meetings to the Tribunal in Form No. CAA.4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, within one week of the conclusion of the meeting. Learned Counsel and other authorised Representatives of the Applicant Companies and the Scrutinizer appointed by this Tribunal will assist the Hon'ble Chairperson and Alternate Chairperson in preparing and finalizing the reports.

25. Voting by proxies is permitted and will be considered for the purpose of computing the Quorum of the aforesaid meetings, provided that the proxy in the prescribed form and duly signed by the person entitled to attend and vote at the said meeting, or by his authorized representative, is filed with the registered office of the Applicant Companies, as applicable, at least 48 hours before the said meeting. The Chairperson or Alternate Chairperson appointed for the aforesaid meetings shall verify that the proxy registers are properly maintained.

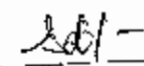
26. The Applicant Companies shall, individually and in compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, send notices in Form No. CAA.3, along with copy of the Scheme, the Explanatory Statement and the disclosures mentioned in Rule 6, to (a) the Central Government through the office of the Regional

Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the **Registrar of Companies**, Himachal Pradesh, Chandigarh; (c) The **Official Liquidator**, Himachal Pradesh, Chandigarh; (d) the **Income Tax Department**, through Commissioner of Income Tax, Income Tax office, AG Chowk, Opposite AG Post Office, Mall Road, Shimla-171003 Himachal Pradesh; and (e) The **Reserve Bank of India**, Department of Non-banking Supervision (DNBS), Chandigarh and other sectoral regulators who may have significant bearing on the operations of the applicant companies stating that representation, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representation shall be simultaneously sent to the concerned companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

The application stands allowed in the aforesaid terms. It is directed that the learned Counsel/authorized representative of the Applicant Companies shall deliver the copy of this order to the Chairperson, Alternate Chairperson and Scrutinizer immediately. A copy of the order be supplied to the Counsel for the Applicant Companies forthwith.



(Deepa Krishan)
Member (Technical)



(Justice R.P. Nagrath)
Member (Judicial)

April 28, 2017.
 Subbu