IN THE NATIONAL COMPANY LAW TRIBUNAL

SPECIAL BENCH, NEW DELHI

CA(CAA) NO.40/ND/2020

Under Sections 230-232 & 66 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

In the Matter of:

M/S RISHU AGENCIES PRIVATE LIMITED
A Company incorporated under the Companies Act, 1956 and having its Registered office at Plot No 167, First Floor, Block No 2, Functional Industrial Estate, Patparganj, Delhi-110092.

.....Transferor Company No. 1/Applicant Company No. 1

M/S GIRIRAJ METALS PRIVATE LIMITED

A Company incorporated under the Companies Act, 1956 and having its Registered office at Plot No 167, First Floor, Block No 2, Functional Industrial Estate, Patparganj, Delhi-110092.

.....Transferor Company No. 2/ Applicant Company No. 2

M/S SAFEX COMPLEX PRIVATE LIMITED
A Company incorporated under the Companies Act, 1956 and having its Registered office at Plot No 167, Second Floor, Block No 2, Functional Industrial Estate, Patparganj, Delhi-110092.

.....Transferee Company/ Applicant Company No. 3

ORDER DELIVERED ON:01.06.2020

CORAM:

(Dr.) P.S.N PRASAD, HON'BLE MEMBER (J)
MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (T)

For Petitioner(s): Iswar Mohapatra, Advocate.

ORDER

Per Smt. Sumita Purkayastha, Hon'ble Member (Tech.)

1. This is an application filed by the applicant company under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (for brevity `The Act') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'The Rules') in relation to the Scheme of Amalgamation (for brevity the "SCHEME") proposed between the applicants. In terms of Sections 230 and 232 of the 2013 Act following prayers have been made for orders:-

   a) *Dispensing with requirement of convening meeting of the Equity Shareholders of the Transferor and Transferee companies and also to dispense with the requirement of issue and publication of notices of the same and appointment of chairman for the meetings;*

   b) *Dispensing with requirement of convening the meeting of the unsecured creditors of the transferor company and transferee company in view of their consents of more than 90% and also to dispense with the requirement of issue and publication of notices of the same and appointment of chairman for the meetings;*

c) *That the leave may please be granted for filing the final Joint Petition for sanction of the Scheme of Amalgamation.*

d) *Issue such other orders or directions be given as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

2. Affidavits in support of the application sworn for and on behalf of the Applicant Companies have been filed by Mr. Anoop Kumar Chhawchharia, being the authorized representatives.

3. It is represented 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 the application filed by the applicants is maintainable in view of Rule 3(2) of the Rules and it is also represented that the registered office of the applicants company are situated within the territorial jurisdiction of this Tribunal and falls within the domain of Registrar of Companies, NCT, New Delhi.

4. In relation to the Applicant/Transferor Company No. 1, it has been represented that the company has 5 Equity Shareholders and consent affidavits from all the shareholders have been obtained constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. We are further apprised that

the Applicant Company has NIL Secured Creditor and NIL Unsecured Creditors. In relation to the shareholders, the transferor company seeks dispensation from convening and holding of meetings, on the ground that all the shareholders have given their consent affidavit in favour of the Scheme.

5. In relation to the Applicant/Transferor Company No. 2, it has been represented that the company has 5 Equity Shareholders and consent affidavits from all the shareholders have been obtained constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. We are further apprised that the Applicant Company No. 2 has NIL Secured Creditors and 1 Unsecured Creditor, who has given consent by way of deposing individual affidavits. In relation to the shareholders, Secured and unsecured creditors, the transferor company seeks dispensation from convening and holding of their respective meetings, on the ground that all the shareholders, all the unsecured creditors who are holding more than 100% in value have given their consent affidavit in favour of the Scheme.

6. In relation to the Applicant No. 3/Transferee Company, it has been represented that the company has 7 Equity Shareholders and consent affidavits from all the shareholders have been obtained constituting 100% in value and 100% in number. The consent affidavits of each of

the members have been placed on record. We are further apprised that the Applicant Company has NIL Secured Creditors and 10 Unsecured Creditors. 8 out of 10 Unsecured Creditors representing 99% of the total value have given their consents by way of deposing individual affidavits. In relation to the Shareholders, Secured and Unsecured Creditors, the Transferee Company seeks dispensation from convening and holding of their respective meetings, on the ground that all the shareholders, as well the unsecured creditors who are holding more than 99% in value have given their consent affidavit in favour of the Scheme.

7. The above application has been placed before us and this Tribunal proceeds to entertain the same. The registered offices of all the applicant companies are situated within New Delhi which are subject to the territorial jurisdiction of Registrar of Companies, NCT, New Delhi as well as that of this Tribunal.

8. We have perused the application and the connected documents filed along with the Scheme of Arrangement contemplated between the Companies.

9. Applicant Company No.1- M/S RISHU AGENCIES PRIVATE LIMITED was incorporated on 21.02.1990 in the State of Delhi under the provisions of Companies Act, 1956. The authorised share capital of the

Company is Rs 1,00,00,000/- only divided into 10,00,000/- equity shares of Rs. 10 each. The issued, subscribed and paid- up share capital of the Company is Rs. 67,45,700/- divided into 6,74,570 equity shares of Rs. 10/- each.

10. Applicant Company No.2- M/S GIRIRAJ METALS PRIVATE LIMITED was incorporated on 15.03.1991 in the state of Delhi under the provisions of Companies Act, 1956. The authorised share capital of the Company is Rs. 15,00,000/- divided into 1,50,000 equity shares of Rs.10/- each . The issued, subscribed and paid- up share capital of the Company is Rs. 11,28,250/- divided into 1,12,825 equity shares of Rs. 10/- each.

11. Applicant Company No.3- M/S SAFEX COMPLEX PRIVATE LIMITED was incorporated on 20.08.1998 in the state of Delhi under the provisions of Companies Act, 1956. The authorised share capital of the Company is Rs. 4,00,00,000/- divided into 40,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid- up share capital of the Company is Rs. 34,73,500/- divided into 3,47,350 equity shares of Rs. 10/- each.

12. It is seen that the Board of Directors of both the applicant companies vide meetings held on 16.12.2019 have unanimously approved the

proposed Scheme of Amalgamation. Copies of such resolutions passed thereat have been placed on record by the Applicant Companies.

13. The Applicant Companies have filed the Audited Financial Statements for the financial year ended 31" March, 2019.

14. 1t is submitted that the proposed merger is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013 and the same if sanctioned by this Tribunal, the appointed date as provided in the Scheme shall be 01.04.2019.

15. The Applicant Companies has submitted that no inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under the provisions of the Companies Act, 1956 is pending against any of the applicant companies.

16. Certificate of respective statutory auditors of the applicant companies have been placed on record confirming that the accounting treatment in the scheme is in conformity with Section 133 of the Companies Act, 2013.

17. In the light of the facts and taking into consideration the application filed by the Applicant Companies the following directions are issued: -

A. In relation to the Applicant Company No. 1:

i. With respect to Shareholders:

It is represented by the Applicant that all the shareholders have already placed their consent-affidavits on record. Therefore the necessity of convening and holding a meeting is dispensed with.

ii. With respect to Secured Creditors:

Since the Applicant Company has NIL Secured Creditors, hence requirement of holding meeting does not arise.

iii. With respect to Unsecured Creditors:

Since the Applicant Company has NIL Unsecured Creditors, hence requirement of holding meeting does not arise.

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

i. With respect to Shareholders:

It is represented by the Applicant that all the shareholders have already placed their consent-affidavits on record. Therefore the necessity of convening and holding a meeting is dispensed with.

ii. With respect to Secured Creditors:

Since the Applicant Company has NIL Secured Creditors, hence requirement of holding meeting does not arise.

iii. With respect to Unsecured Creditors:

Since it is represented by the Applicant that 100% of Unsecured Creditors in the Company have already placed their consent in form of affidavits, the necessity of convening and holding a meeting is dispensed with.

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

i. With respect to Shareholders:

It is represented by the Applicant that all the shareholders have already placed their consent-affidavits on record. Therefore the necessity of convening and holding a meeting is dispensed with.

ii. With respect to Secured Creditors:

Since the Applicant Company has NIL Secured Creditors, hence requirement of holding meeting does not arise.

iii. With respect to Unsecured Creditors:

Since it is represented by the Applicant that 99.99% of Unsecured Creditors in the Company have already placed their consent in form of affidavits, the necessity of convening and holding a meeting is dispensed with.

Notice of this Application shall also be served on the Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryavaran Bhavan, CGO Complex, New Delhi-110 003, Registrar of Companies at 4th Floor, IFCI Tower, 61, Nehru Place, New Delhi-110 019; the Official Liquidator, Lok Nayak Bhavan, 8th Floor, Khan Market, New Delhi -110 001; the office of the Income Tax Department, Income Tax Officer, Ward – 7(4), Central Revenue Building, IP Estate, New Delhi-110 002 and Office of the Income Tax Department, Income Tax Officer, Additional Commissioner of Income Tax, Special Range-4, Central Revenue Building, IP Estate, New Delhi-110 002. The notices to Income Tax authorities shall disclose sufficient details like PAN card

numbers, ward numbers and assessing officers so that timely and proper reply may be filed.

— Sd —

(SUMITA PURKAYASHA)
MEMBER (TECHNICAL)

— Sd —

(DR. PS.N. PRASAD)
MEMBER (JUDICIAL)

Tanya Kushwaha