

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT – VI

Item No. 809
CAA-50/ND/2022

IN THE MATTER OF:

M/s. LMJ Energy Infralogistics Ltd. and M/s. Arise Commercial Pvt. Ltd.

...APPLICANTS

Order under Section 230-232 of Companies Act, 2013.

Order delivered on: 14.09.2023

Coram:

Shri. Bachu Venkat Balaram Das, Hon'ble Member (Judicial)

Shri. Rahul Bhatnagar, Hon'ble Member (Technical)

ORDER

Order pronounced in open Court vide separate sheets.

CAA-50/ND/2022 stands allowed.

SD/-

(RAHUL BHATNAGAR)

MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)

MEMBER (JUDICIAL)

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. VI, NEW DELHI
COMPANY PETITION (CAA)-50/(ND)/2022**

(Under Section 230, 232 of the Companies Act, 2013)

In the Matter of:

M/s. Prime Asset Reconstruction Company Limited

Registered Office at: 9, Hanuman Road, Connaught Place,
New Delhi- 110001

...Transferor Company/Applicant Company-1

AND

M/s. LMJ Energy Infralogistics Limited

Registered Office at: 9, Hanuman Road, Delhi- 110001

...Transferor /Applicant Company-2

WITH

M/s. Arise Commercial Private Limited

Registered office at: 6010/2 6010/2 Pocket-6 Vasant Kunj,
New Delhi- 110070

...Transferee Company/ Applicant Company-3

CORAM:

Shri. Bachu Venkat Balaram Das,Member(Judicial)

Shri. Rahul Bhatnagar,Member (Technical)

For the Applicants: Mr. Arun Saxena, Advocate

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER(JUDICIAL)

Date: 14.09.2023

1. This application has been filed by the Applicant Companies under Sections 230 to 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation proposed between the Applicants. The copy of the Scheme of Amalgamation (hereinafter referred as the “Scheme”), has been placed on record.
2. From the records, it is seen that the First Motion joint application was filed before this Tribunal vide C.A.(CAA)/7/(ND)2022. Vide order dated 26.04.2022, the meeting of Equity Shareholders and Unsecured Creditors of Transferor Company No. 1 & 2 was dispensed with. There were nil Secured Creditors of both the Companies; therefore, the necessity of convening/dispensing a meeting did not arise. Vide same order, the meeting of Equity Shareholders and Unsecured

Creditors of Transferee Company was also dispensed with. The Transferee Company also had nil Secured Creditors, therefore, the necessity of convening/dispensing a meeting did not arise.

- 3.** The Applicant Companies were directed to carry out publication in the newspapers. It is seen from the records that the petitioners have filed an Affidavit affirming compliance and disclosing that the applicants have effected publication in 'Business Standard' English edition as well as Hindi edition, both dated 22.06.2022. In addition to the public notice, notices were served on to the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other relevant sectoral regulators.
- 4.** Pursuant to the notice issued to the Regional Director, RoC, and Official Liquidator, they have filed their response/reply in the matter.
- 5.** The Regional Director has in its report dated 17.01.2023 raised an objection with respect to the Transferee Company stating as follows: The Transferee Company may have been used as conduit for siphoning money to "Rose Valley Real Estate and

Constructions Ltd” which a company under investigation by Serious Fraud Investigation Organisation (SFIO). The Transferee Company has filed an affidavit dated 18.05.2023 in which they have clearly stated that the Transferee Company is not under investigation by SFIO and that even the transaction between Transferee Company and Rose Valley Estate Construction Ltd. is not under investigation by SFIO. Further, since this observation of the Regional Director is with respect to Transferee Company and since the Transferee Company will continue to remain in existence, the Regional Director and the RoC will always remain at liberty to take whatever action and seek whatever report from the company in accordance with law.

- 6.** The Official Liquidator has filed its report dated 17.11.2022 wherein no specific objection has been raised against the approval of the Scheme. It is submitted in the report that the affairs of the Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.
- 7.** The Income Tax Department was set ex-parte vide order dated 21.02.2023. the Transferee Company has filed an affidavit

dated 29.08.2022 whereby it has undertaken that the Transferee Company shall pay any outstanding dues towards income tax and shall meet the tax liability if any demanded from the Transferor Companies or the Transferee Company as per laws.

- 8.** In this petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.
- 9.** Certificate of the Statutory auditor of the Petitioner Companies has been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.
- 10.** The shareholders of the applicant companies are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial

decisions. It is well settled that the Tribunal evaluating the Scheme, of which sanction is sought under Section 230-232 of the Companies Act of 2013, will not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors.

- i.* It has also been affirmed in the petition that the Scheme is in the interest of the Transferor Companies and the Transferee Company, including their shareholders, creditors, employees and all concerned.
- ii.* In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner Companies to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and the report of official liquidator, there appears to be no impediment in sanctioning the present Scheme.

A. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.

B. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

C. Notwithstanding the above, if there is any deficiency found or, violation committed, qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit in accordance with law, against the concerned persons, directors and officials of the petitioners.

D. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

E. THIS TRIBUNAL DO FURTHER ORDER:

1. *That the Transferor Companies shall stand dissolved without following the process of winding-up; and*
2. *That all the property, rights and powers of the Transferor Companies, be transferred without further act or deed, to the Transferee Company and accordingly the same shall,*

pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee Company.

- 3. That all the liabilities and duties of the Transferor Companies, be transferred without further act or deed, to the Transferee Company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee Company; and*
- 4. That all proceedings now pending by or against the Transferor Companies, be continued by or against the Transferee Company; and*
- 5. That all the employees of the Transferor Companies in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date, shall become the employees of the Transferee Company on such date, without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the concerned Transferor Company on the said date.*
- 6. That Petitioner companies shall, within thirty days of the date of the receipt of this order, cause a certified copy of this*

order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor company registered with him on the file, kept by him in relation to the Transferee Company and the files relating to all the petitioner companies shall be consolidated accordingly; and

7. *That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.*

The petition stands disposed off on the above terms.

Let copy of the order be served to the parties.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)