

THE NATIONAL COMPANY LAW TRIBUNAL, COURT-V, NEW DELHI
Company Application No. **CA (CAA) 57 (ND) of 2020**

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

In the Matter of:

YAHOO PROPERTIES PRIVATE LIMITED,

108, Ansal Bhawan,
16, Kasturba Gandhi Marg,
New Delhi- 1100012

Transferor Company/ Applicant No. 1

AND

CHATURANAN INDUSTRIES LIMITED,

H-108-A, Connaught Circus,
New Delhi- 110001

Transferee Company/Applicant No. 2

Order Delivered on: 09.09.2020

Coram:

Hon'ble Abni Ranjan Kumar Sinha, Member (J)
Hon'ble K.K. Vohra, Member (T)

Present:

For the Applicant: Mr. Amit Goel, Advocate

ORDER

Per: K.K. Vohra, Member (T)

1. This is an Application which is filed jointly by the Applicant Companies named above under section 230-232 of Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Arrangement by way of Amalgamation (Scheme) proposed among the Applicants. The said Scheme is also annexed as Annexure "A-1" to the Application. The Applicants above named have preferred the

instant Application in effect for the following purpose as evident inter alia from the reliefs sought for in the Application:

- a. Order that the requirement for convening and holding meeting of the Equity Shareholders of both the applicant Companies to consider and approve the Scheme of Amalgamation of Applicant No.1, with Applicant No. 2, be dispensed with.
 - b. Order that the requirement for convening and holding meeting of the secured creditors of both the applicant companies and convening and holding meeting of the unsecured creditors of both the applicant companies to consider and approve the Scheme be dispensed with.
 - c. Pass such other order or further order(s) which this Hon'ble Tribunal deem fit and proper and just under the circumstances.
2. Affidavits in support of the above Application sworn for and on behalf of the Applicant Companies by Mr. Ghansyam Swain and Mr. Sanjiv Soni have been filed, being the Authorized Signatories along with the Application. It is represented that a Joint Application filed by the Applicants is maintainable in view of Rule 3(2) of the Rules and it is also represented that the registered offices of the Applicant Companies are situated within the territorial jurisdiction of this Tribunal.
3. The Applicants have furnished the details of the Shareholders, Secured Creditors and Unsecured Creditors in the Scheme as on date as follow:

S. No.	Company	Shareholders	Secured Creditors	Unsecured Creditors
1.	Applicant No.1	04	NIL	NIL
2.	Applicant No. 2	194	NIL	1

4. The Applicant Companies contend that all the equity shareholders have given their consent for the Scheme and necessary affidavits have been filed and seek dispensation from convening and conducting the meetings of the shareholders. The Applicant Companies plead that there is no need to conduct meetings of the Secured Creditors as both the Applicant Companies have 'NIL' Secured creditors. The Applicant Companies further plead that there is no need to conduct meeting of the Unsecured Creditors as there is 'NIL' Unsecured Creditors in Transferor Company and the sole

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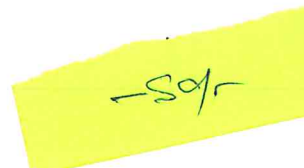
Unsecured Creditor of Transferee Company has given its consent by way of affidavit for the Scheme and the affidavit has been filed.

5. Perusal of the Application filed by the Applicants indicates the details of the capital structure of the Companies which are given as follows;

S. No.	Company	Date of incorporation	Authorized Share Capital (Rs)	Issued, paid up and subscribed share capital (Rs)	CIN No.
1.	Applicant No. 1	16.02.2000	1,65,10,000 divided into 16,51,000 Equity Shares of Rs. 10 each	Rs. 1,15,02,000 divided into 11,50,200 Equity Shares of Rs. 10 each	U701 01DL 2000 PTC1 03807
2.	Applicant No. 2	12.04.1982	Rs. 10,02,00,000 divided into 1,00,20,000 Equity Shares of Rs. 10 each	Rs. 73,34,600 divided into 7,33,460 Equity Shares of Rs. 10 each	U742 10DL 1982 PLC0 21548

6. Both the Applicants have filed their respective Memorandum and Articles of Association inter alia delineating their object clauses as well as their last available Audited Annual Accounts for the year ended 31.03.2019. A perusal of the object clause of the applicant no.1 (Transferor Company) reveals that it is mainly engaged in the business of construction, contracting relating to immovable properties etc. However, the object clause of applicant no. 2 (Transferee Company) reveals that it is mainly engaged in the business of import, export etc. Para 4.2 of the application indicates the justification of the proposed amalgamation as simplification of management structure, operational and management efficiency and combining of resources etc. **The rationale of the proposed merger of companies engaged in diverse business needs more elaboration. The Transferor Company is a profit making company and it's amalgamating in loss making Transferee Company.**
7. The Board of Directors of the Applicant Companies have unanimously approved the proposed Scheme on 15.02.2020 and copies of resolutions passed thereon have been placed on record.
8. The appointed date as specified in the Scheme is 1st January, 2020 subject to the directions of this Tribunal.

9. The Applicant Companies have stated in the Application that no investigation proceeding is pending against them under Sections 210 or any other applicable provisions of the Act.
10. The Applicant Companies have, in pursuance of the proviso to Section 230 (7) and Section 232 (3) of the Act, filed the certificates dated 09.03.2020 of the respective Company's Auditors in relation to compliance with the Accounting Standards under section 133 of the Act.
11. The Valuation Report dated 04.02.2020 prepared by Mr. Devinder Arora, Registered Valuer has also been placed on record. It is represented that the share exchange ratio is based upon Net Value of Assets Method on financials of the company for the year ending on 31.12.2019.
12. A preliminary perusal of the financials of the Applicants reveals that:
- The Transferee company has carried forward losses in the F.Y. ending 31.03.2019 to the tune of Rs. 8, 79, 967 and on the other hand the Transferor company has a profit to tune of Rs. about 13 crore in the F.Y. ending 31.03.2019.
 - It is seen in Note no. 20 (page 132) that applicant no. 1 (Transferor company) received a sum of Rs. 13.14 Crore during F.Y. 2018-19 as against Rs. 2.11 crore paid to Bhai Manpreet Singh HUF.
 - Derivative share transactions resulted in profit of Rs. 8,59,985 during the F.Y 2017-18 mentioned at page 213 of application note no. 15 of applicant no. 2 (transferee company).
13. A prayer has been made for dispensation from holding and convening shareholder meetings of both Companies on the ground that the shareholders have given their written consent in favour of the Scheme. Heard the submissions of the Ld. Counsel for the Applicant Companies. In terms of section 230 of the Companies Act, 2013, there are no enabling provision to dispense with the meetings of shareholders of the companies. In terms of Section 230(9) of the Act, the meetings of the creditors can be dispensed.
14. The same view was adopted by Principal Bench of NCLT in various matters including *Jachana Estate Private Limited and Ors CA .CAA. 81(PB) 2019* in which prayer was made in application for dispensation of meetings. However, directions were issued for convening of meetings vide order dated 15.05.2020. A special Bench of NCLT New Delhi vide order dated 19.06.2020 in matter of *Lifestyle Magazines Pvt Ltd and Ors , CA. CAA. 40*



(ND)/2019 has also expressed the same view.

15. Therefore, in light of mandatory statutory provisions of Section 230 of the Act, we are not inclined to dispense meetings of shareholders of both the companies. In respect of secured creditors, since there is no secured creditor in any of the two companies, the prayer for dispensation is allowed. In relation to the unsecured creditors, the applicant no.1 has no unsecured creditor and there is one unsecured creditor in applicant no. 2 whose consent affidavit has been placed on record; hence the prayer for dispensation is allowed.

16. This Tribunal issues the following **directions** with respect to calling, convening and holding of the meetings:

A) Applicant Company No.1:

(i) With respect to Equity shareholders:

The Meeting of the shareholders of the transferor company shall be convened on 31.10.2020 at 11:30 am at H-108, Connaught Circus, New Delhi - 110001. The quorum of the meeting shall be 2 in number or 75 % in value.

(ii) With respect to Secured Creditors:

Since, it is represented that there are no Secured Creditors, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Since it is represented that there are no unsecured creditors, the necessity of convening a meeting does not arise.

B) Applicant Company No. 2:

(i) With respect to Equity shareholders:

The Meeting of the shareholders of the transferee company shall be convened on 31.10.2020 at 12:30 pm at H-108, Connaught Circus, New Delhi - 110001. The quorum of the meeting shall be 50 in number or 75% in value.

(ii) With respect to Secured Creditors:

Since, it is represented that there are no Secured Creditors, the necessity of convening a meeting does not arise.



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(iii) With respect to Unsecured Creditors:

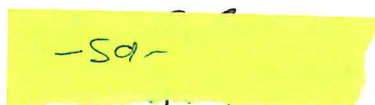
It is represented by the Company that there is one Unsecured Creditor whose consent has been obtained. Hence, the request for dispensing with the meeting is accepted.

- C) Mr. Ram Phal Bhardwaj, CA (bhardwajca@hotmail.com) is appointed as the Chairperson and Mr. K. Subhra Narayan Mohapatra (ksnm72@hotmail.com) is appointed as the Alternate Chairperson and Mr. Abhishek Dutta (Abhishek.dutta@aureuslaw.com) is appointed as Scrutinizer for the aforementioned meetings as directed to be convened by this Tribunal.
- D) In case the quorum as noted above for the above meetings are not present at the meetings, the meetings shall be adjourned by 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 Applicant Companies at least 48 hours before the meetings. The Chairperson and Alternate Chairperson appointed herein along with scrutinizer shall ensure that the proxy registers are properly maintained.
- E) The fee of the Chairperson for the aforesaid meetings shall be Rs. 50,000 and the fee of the Alternate Chairperson shall be Rs. 40,000. The fee of the Scrutinizer shall be Rs. 40,000. All these fees will be in addition to incidental expenses. The Chairpersons will file their reports within a week from the date of holding of the meetings.
- F) Individual notices of the said meetings shall be sent by the Applicant Companies through speed post and e-mail, 30 days in advance of the date of meetings, indicating the day, date, place and the time, together with a copy of Scheme, copy of explanatory statement, required to be sent under the Companies Act, 2013. The prescribed form of proxy shall also be sent, along with any other document as may be prescribed under the Act or Rules.
- G) The Applicant Companies shall publish advertisement at least 30 days before the date of aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in Delhi editions of 'Business Standard' both English and Hindi stating the copies of Scheme, 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 offices of the Applicant Companies.



- H) Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be applicable for the respective meetings of the Applicant Companies under the Companies Act, 2013 and Rules framed there under.
- I) The authorized representative of the Applicant Companies 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.
- J) All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.
- K) The Application stands allowed on the aforesaid terms.
- L) The Tribunal further directs the presence of the Auditors, at the time of hearing of second motion petition, who have certified the compliance of Section 133 of the Act, Share Exchange Ratio and other financials for elaborating the details. The Applicants will also elaborate the rationale of the merger of companies engaged in diverse business (see para 6 above).


(K. K. VOHRA)
MEMBER (T)


(ABNI RANJAN KUMAR SINHA)
MEMBER (J)