

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

CA (CAA) No.264/MB/2023

[Under Sections 230 to 232, Section 66 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016]

IN THE MATTER OF

SCHEME OF AMALGAMATION OF

CHOKSI ASIA PRIVATE LIMITED

[CIN:U93090MH2007PTC168500]
Ground floor, Choksi Bhuvan,
Nehru Road and Nariman Road,
Vile Parle East,
Mumbai 400057.

Transferor Company

CHOKSI IMAGING LIMITED

[CIN: L24294MH1992PLC388063]
Ground floor, Choksi Bhuvan,
Nehru Road and Nariman Road,
Vile Parle East,
Mumbai 400057.

Transferee Company

AND

THEIR RESPECTIVE SHAREHOLDERS

Pronounced: 19.04.2024

Coram:

**SHRI SANJIV DUTT
HON'BLE MEMBER (TECHNICAL)**

**SHRI. K.R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)**

Appearances: Hybrid

For the Applicant(s) : Mr. Mrugank Shah, Advocate

ORDER

[PER: SANJIV DUTT, MEMBER (TECHNICAL)]

1. This is a Company Application jointly filed by Choksi Asia Private Limited, the Transferor Company and Choksi Imaging Limited, the Transferee Company (both being referred to hereinafter as “the Applicant Companies”) seeking appropriate directions from this Tribunal in relation to the proposed Scheme of Amalgamation (hereinafter referred to as the “Scheme”) of the Transferor Company with the Transferee Company and their respective Shareholders under the provisions of Sections 230 to 232, Section 66 and other applicable provisions of the Companies Act, 2013 (hereinafter referred to as “the Act”) read with relevant Rules of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
2. The registered offices of both the Applicant Companies are situated in Maharashtra and thus, the subject matter of this Company Application is within the territorial jurisdiction of this Tribunal.
3. The Boards of Directors of the Applicant Companies in their respective Board meetings held on 22.03.2023 have approved the proposed Scheme.
4. It is submitted that **the Appointed Date** of the proposed Scheme of Amalgamation is 01.04.2023.
5. It is submitted that the First Applicant Company (i.e., the Transferee Company) is a public listed company incorporated on 01.10.1992 having its shares listed on the Bombay Stock Exchange (BSE). It is engaged in the business of processing of Jumbo Rolls of X-Ray films by slitting and cutting these into various sizes of X-Ray Films as per requirement of the customers on a job work basis. The Second

Applicant Company (i.e., the Transferor Company) is a private limited company incorporated on 08.03.2007. It was originally incorporated with the name 'Hi-Tech Imaging Private Limited'. Its name was changed to 'Choksi Asia Private Limited' w.e.f. 05.12.2020. It is engaged in the business of import of Jumbo Rolls of X-Ray films and sale of X-Ray films and trading of other related products such as Radiography Camera, Radiation Shielding Materials, X-Ray Generator, Lead Screens, Radioactive Sources, photo-sensitive chemicals, etc.

6. The rationale for the proposed Scheme is stated as under:-
- a) Amalgamation to be value accretive to the shareholders of the Transferee Company as the shareholders would have direct access to the core profitable business of the Transferor Company;
 - b) Greater integration and greater financial strength and flexibility for the amalgamated entity which would result in maximizing overall shareholder value;
 - c) Greater efficiency in cash management of the Transferee Company and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities to maximize shareholder value;
 - d) The proposed amalgamation will improve organizational capability as well as competitive position of the combined entity arising from the pooling of human capital that has diverse skills, talent, vast experience and goodwill.;
 - e) Cost savings are expected to flow from more focused operational efforts, rationalization, standardisation and simplification of business processes, the elimination of

duplication, achievement of greater economies of scale and rationalization of administrative expenses;

- f) Reduction in the multiplicity of legal and regulatory compliances required at present to be separately carried out by the Transferor Company and the Transferee Company;
- g) Optimal leveraging of the larger assets base and cash flow of the amalgamated entity; and
- h) The proposed Amalgamation will result in the Transferee Company directly controlling and managing the business of the Transferor Company which would lead to simplification of the shareholding structure and reduction of shareholding tiers.

7. It is stated that with the proposed amalgamation of the Transferor Company into the Transferee Company, the Transferee Company shall undertake processing as well as selling of X-Ray films, Lead Screens, Chemicals, Radiation Shielding Materials, X-Ray Generator, Radiography Camera, Radioactive Sources and trading of other related accessories. It further proposes to deal in other healthcare and nuclear products leading to optimum utilization of the Silvassa factory and cost savings through larger operating leverage. The consolidation of operations of the Transferor Company and the Transferee Company by way of amalgamation will lead to a more efficient utilization of capital, administrative and operational rationalization and promote organizational efficiencies. It is thus submitted that the amalgamation will have beneficial results for the Transferee Company, their stakeholders and all concerned parties.
8. The details of Authorised, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies are as under: -

a. Transferor Company:

Authorised share capital		Amount in INR
10,000	Equity Shares of Rs. 10/- each	1,00,000/-
Total		1,00,000/-
Issued, Subscribed and Paid-up share capital		Amount in INR
10,000	Equity Shares of Rs. 10/-each	1,00,000/-
Total		1,00,000/-

b. Transferee Company:

Authorised share capital		Amount in INR
1,50,00,000	Equity Shares of Rs. 10/- each	15,00,00,000/-
Total		15,00,00,000/-
Issued, Subscribed and Paid-up share capital		Amount in INR
39,00,000	Equity Shares of Rs. 10/-each	3,90,00,000/-
Total		3,90,00,000/-

8.1 The Applicant Companies submit that there has been no change in the authorised, issued, subscribed and paid-up share capital of the Transferee Company and the Transferor Company subsequent to 31.03.2022.

8.2 The Promoters and Promotor Group hold 63.44% shares in the Transferee Company and balance 36.56% shares are held by the public.

8.3 The Transferee Company is an associate company of the Transferor

Company which holds 24.36% of equity shares in the Transferee Company.

- 8.4 Upon the proposed Scheme becoming effective, 9,49,896 equity shares of Rs.10/- each held by the Transferor Company in the Transferee Company shall stand cancelled without any further act or deed on part of the Transferee/Transferor Companies. Such Reduction and consequent cancellation of the equity share capital of the Transferee Company shall be effected as an integral part of the Scheme as it does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital.
- 8.5 Upon the Scheme coming into effect and in consideration of amalgamation of the Transferor Company with the Transferee Company in terms of the Scheme, the Transferee Company shall issue shares to the shareholders of the Transferor Company in the following manner:-
- A) *27,51,000 equity shares having face value of Rs.10/- each fully paid-up of INR 53.991 of the Transferee Company will be issued and allotted to the shareholders holding (total 10,000 in number) equity shares of Rs.10/- each fully paid-up in the proportion of their shareholding in the Transferor Company. These new equity shares will be listed on the stock exchange.*
- And*
- B) *9,97,545 Non-Convertible and Non-Cumulative Redeemable Preference Shares of Rs.54 (at par), which will not be listed unless required by extant regulations, will be issued and allotted to the shareholders of Transferor Company in the proportion of their shareholding in the Transferor Company.*
9. The Applicant Companies have not placed on record the valuation

report on share swap ratio prepared by the registered valuer. However, a Fairness Opinion Report on valuation prepared by Navigant Corporate Advisors Limited (Sebi Registered Merchant Banker) dated 22.03.2023 has been furnished. **The Applicant Companies are, therefore, directed to provide the Valuation Report obtained from the registered valuer in regard to the valuation of shares and determination of the Share Exchange Ratio along with the Company Scheme Application.** A perusal of said Fairness Opinion Report reveals that the fair value of equity shares of First Applicant Company/Transferee Company has been arrived at Rs.54/- per equity share of face value of Rs.10/- each. The Share Exchange Ratio is determined at 375 (Three hundred Seventy-five) equity shares of the Transferee Company for every 1 (one) equity share fully paid-up of the Transferor Company. However, consideration for amalgamation will be discharged in the manner stated in Para 9 above.

10. Upon the proposed Scheme becoming operative w.e.f. the Appointed Date, the entire business and undertaking including all the movable and immovable properties and assets and all the debts and liabilities of the Transferor Company shall stand transferred to and be vested in the Transferee Company as a going concern without any further act or deed.
11. The Learned Counsel for the Applicant Companies submits that the First Applicant Company, being a listed company, had applied to the BSE for their "Observation Letter" to file the Scheme for sanction of this Tribunal. The BSE *vide* its letter dated 04.10.2023 addressed to the First Applicant Company has given its "Observation Letter" to the First Applicant Company to file the Scheme with this Tribunal. **Further, the First Applicant Company undertakes to comply with the said**

Observations given by the BSE.

12. It is submitted that the Transferee Company shall account for amalgamation in accordance with Indian Accounting Standard (“INS AS”) 103-“Business Combinations” prescribed under Section 133 of the Act and other generally accepted accounting principles in India. It is observed that a CA certificate dated 22.03.2023 has been placed on record affirming that the accounting treatment of the proposed Scheme is in accordance with all the applicable Accounting Standards notified by the Central Government under the Act.
13. Both Transferor and Transferee Companies have furnished details of ongoing adjudication and recovery proceedings, prosecution initiated and all other enforcement actions taken, if any, against them or their Promoters and Directors. The Applicant Companies submit that no investigation or proceedings against the Applicant Companies have been instituted and/ or are pending under Sections 210 to 227 of the Act and that no winding-up/ insolvency petitions have been filed or are pending against either of them.
14. Upon the Scheme becoming effective, the Transferor Company shall be dissolved without winding up.
15. The Learned Counsel further submits that as per the Certificate of Parikh & Amin Associates, Chartered Accountants dated 31.10.2023, there are no Secured Creditors in the Second Applicant Company as on 30.06.2023. Therefore, the question of convening and holding meeting of Secured Creditors of the Transferor Company does not arise.
16. It is submitted that there are only 8 unsecured creditors of value of Rs.57,41,279- of the Second Applicant Company as on 30.06.2023. It is noticed that out of the said 8 unsecured creditors, 7 creditors were paid in full and part payment was made to the remaining 1 creditor as on

30.09.2023. It is observed that out of unsecured creditors having value of Rs.57,41,279/- as on 30.06.2023, 1 creditor having outstanding value of Rs.21,36,943/- was still outstanding as on 30.09.2023. In other words, unsecured creditors representing 37.22% in value terms have not given their consent to the proposed Scheme. It is noticed that the Second Applicant Company has furnished only consent letters of unsecured creditors whereas Section 230(9) of the Act mandates that such consent to the Scheme should be by way of Affidavit. **Accordingly, the requirement of holding and convening meeting of the Unsecured Creditors of the Second Applicant Company is dispensed with subject to the Second Applicant Company placing on record formal Affidavits of consent from such unsecured creditors along with Company Scheme Application.**

17. It is observed that there are 7 (Seven) equity shareholders of the Second Applicant Company as on 30.06.2023. Out of these, 5 (Five) Equity Shareholders collectively holding **99.80%** shareholding of the Transferor Company have filed their respective Affidavits dated 09.12.2023 enclosing their respective consent letters. The said Affidavits have been filed separately by way of Additional Affidavit dated 11.12.2023. **Accordingly, the requirement of holding and convening of meeting of the equity shareholders of the Second Applicant Company is dispensed with subject to the Transferor Company placing on record consent letters/Affidavits of the remaining two Equity Shareholders along with the Company Scheme Application.**
18. It is submitted that as per the Certificate of Karia & Shah, Chartered Accountants dated 27.10.2023, there are no Secured Creditors in the First Applicant Company as on 30.06.2023. Therefore, the question of convening and holding meeting of Secured Creditors of the Transferee

Company does not arise.

19. It is also submitted that there were 21 (Twenty-One) Unsecured Creditors amounting to Rs.11,29,154/- (Eleven Lakhs Twenty-Nine Thousand One Hundred Fifty-Four Rupees) in the Transferee Company as on 30.06.2023. However, it is observed that a few of the Unsecured Creditors were paid off by the Transferee Company as on 30.09.2023. Accordingly, there are only 14 (Four Only) Unsecured Creditors of value of Rs.4,13,595/- (Rupees four lakh thirteen thousand five hundred ninety-five Only) as on 30.09.2023 still remaining unpaid. Therefore, **the Transferee Company is directed to issue notice to its Unsecured Creditors** by Registered Post A.D./ Speed Post and email (to those creditors whose email addresses are duly registered with the Transferee Company for the purpose of receiving such notices by email) **as required under Section 230(3) of the Act** with instructions that they may submit their representation, if any, to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representation shall simultaneously be served upon the Transferee Company. The Notice shall state that *“If no representation/response is received by the Tribunal from Unsecured Creditor(s) within a period of thirty days from the date of receipt of such notice, it will be presumed that Unsecured Creditor(s) has no representation/ objection to the Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016”*.
20. It is also observed that there are **3029 (Three Thousand Twenty-Nine) equity shareholders** of the First Applicant Company (i.e. Transferee Company) holding 39,00,000 equity shares of Rs.10 each fully paid-up. The Learned Counsel for the Applicant Companies submits that directions may be passed by us for convening and

holding the meeting of Equity Shareholders of the First Applicant Company (i.e., Transferee Company), through Video-Conference. Accordingly, **it is directed that the meeting of the Equity Shareholders of the First Applicant Company be convened and held through Video-Conference (VC) on Tuesday, 21st May, 2024 at 11:00 a.m.**, for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of Second Applicant Company/Transferor Company with the First Applicant Company/Transferee Company.

21. The Bench further issues directions with regard to notices as follows:

21.1 That at least 30 (Thirty) clear days before the said meeting of the Equity Shareholders of First Applicant Company to be held as aforesaid, a notice convening the said meeting at the place, day, date and time aforesaid, together with a copy of the Scheme and the Explanatory Statement as required to be sent under Section 230 of the Act, shall be sent by Registered Post-AD/Speed Post, Hand Delivery and Email to each of the respective Equity Shareholders of the First Applicant Company at their respective registered or last known addresses or e-mails as per the records of the First Applicant Company.

21.2 That at least 30 (thirty) clear days before the meetings of the Equity Shareholders of First Applicant Company to be held as aforesaid, a notice convening the said meetings shall be published once each in the *Business Standard (English Daily)* and *Navshakti (Marathi Daily)*, both widely circulated at Mumbai, notifying the place, date and time of the meetings and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Act can be obtained free of charge at the Registered Office

of the First Applicant Company as aforesaid.

- 21.3 The quorum for the aforesaid meeting shall be as prescribed under Section 103 of the Act, present either in person or by authorized representative. In case the required quorum as stated above is not present at the commencement of the meeting, the meeting shall be adjourned by 30 (Thirty) minutes and thereafter the persons present shall be deemed to constitute the quorum.
- 21.4 The voting by proxy or by authorized representative in case of body corporate shall be permitted, provided that authorization duly signed by the person entitled to attend and vote at the meeting is filed with the Transferee Company at the Registered Office not later than 48 hours before the aforesaid meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- 21.5 The First Company being listed public limited company is required to provide the facility of e-voting to its shareholders. Accordingly, voting by the Equity Shareholders shall be carried out through e-voting, indicating the day, the date and the time as aforesaid. In addition to the above, the First Applicant Company shall also provide facility of remote e-voting to each of its Equity Shareholders to cast their vote.
- 21.6 That the value and number of shares of each equity shareholder shall be in accordance with the register of shareholders of the First Applicant Company or depository records for equity shareholders of the First Applicant Company and where the entries in the register/ depository records are

disputed, the Chairperson of the meeting shall determine the value and the number for the purpose of the said meeting and his decision in that behalf would be final.

- 21.7 This Bench hereby appoints **Dr. Deepti Mukesh, Mob. No 9820422630 Email ID: deeptimukesh2311@gmail.com** as the Chairperson for the meeting of the Equity Shareholders. The remuneration for the services to be rendered by the Chairperson shall be Rs.1,00,000/- (One Lakh Rupees) exclusive of taxes.
- 21.8 The Chairperson appointed for the meetings of the Equity Shareholders of the First Applicant Company is to issue the advertisement and send out the notices of the meeting referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting, including for deciding procedural questions that may arise at the meeting or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meetings by any person(s).
- 21.9 The Chairperson for the meeting is required to file an affidavit, not less than 7 (Seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- 21.10 The Transferee Company is directed to:
- i. Issue Notice convening meeting(s) of the shareholders of the

Transferee Company in Form No.CAA.2 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

- ii. Issue Statement containing all the particulars as per Section 230(3) of the Act;
- iii. Advertise the Notice convening meeting(s) in Form No.CAA.2 as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

21.11 The Chairperson for the meeting is required to report to this Tribunal the result of the aforesaid meeting within 7 (Seven) working days of the conclusion of the meeting and the said report shall be verified by his/ her Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

21.12 This Bench hereby appoints **Ms. Rachna Shanbhag, Practicing Company Secretary (M) +91 7738161169; E-mail ID: rhs@csdakamat.com , ICSI No.F8227 and COP No.9297** who shall be paid an amount of Rs.50,000/- (Fifty Thousand Rupees) exclusive of taxes for the services in respect of the entire Scheme as the Scrutinizer for the said Meeting of Equity Shareholders of the First Applicant Company.

21.13 The First Applicant Company undertakes to:

- i. Issue Notice convening meeting to its equity shareholders as per Section 230(3) of the Act in the prescribed Form No.CAA.2;
- ii. Issue Statement containing all the particulars as per

Section 230 of the Act read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016]; and

- iii. Advertise the Notice convening meetings of their equity shareholders as per Form No.CAA.2 [(Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016].

22. The Applicant Companies are directed to serve notices along with a copy of the Scheme under the provisions of Section 230 (5) of the Act and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, upon the following authorities: –

- a. Central Government through the office of Regional Director, Western Region, Mumbai.
- b. Jurisdictional Registrar of Companies, Maharashtra, Mumbai.
- c. Jurisdictional Income-tax Authority within whose jurisdiction the assessment of Applicant Companies is made:

Name	PAN	Assessing Officer
First Applicant Company	AABCS5708D	Circle 1 (2) (1) Mumbai
Second Applicant Company	AABCH8336A	Ward 10(1)(1), Mumbai

- d. Nodal Authority in the Income-tax Department having jurisdiction over such authority i.e., Pr. CCIT, Mumbai, Address:- 3rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400 020, Phone No.022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in];
- e. Jurisdictional GST Authority(s) (proper officer), within whose jurisdiction such companies are assessed to tax

under GST law; the details of the GST Department is as below :-

For First Applicant Company:

GST Number	GST Authority address	GST Authority
AABCS5708D1ZK	State – Maharashtra Zone – Thane Division –Thane Rural Charge – Mira_601	Commissionerate Mumbai East, Division X, Range I
AABCS5708D1ZM	State – Dadra and Nagar Haveli and Daman and Diu Headquarter – Silvassa Ward – Silvassa	Commissionerate– Daman, Division IX, Range V
AABCS5708D2ZL	State – Delhi Zone – Zone 2 Ward – Ward 8 Silvassa	Commissionerate – Delhi North, Division Darya Ganj, Range 1
AABCS5708D1ZR	State – Tamil Nadu Zone – South - I Division – Chennai South Circle – Alwarpet	Commissionerate – Chennai North, Division Mylapore, Range III

For Second Applicant Company:

GST Number	GST Authority address	GST Authority
AABCH8336A1ZV	State – Maharashtra Zone – Mumbai North West Division – SANTA CRUZ Charge - Vile Parle (East) 501	Commissionerate – Mumbai West, Division II, Range II
AABCH8336A1ZX	State – Dadra and Nagar Haveli and Daman and Diu Headquarter – Silvassa Ward – Silvassa	Commissionerate – Daman, Division IX, Range V

- f. BSE Limited pursuant to Regulations 37 and 59 of the SEBI (LODR) Regulations 2015 (in so far as the First Applicant Company is concerned);
- g. Securities and Exchange Board of India (in so far as the First Applicant Company is concerned);
- h. Any other Sectoral/ Regulatory Authorities relevant to the Applicant Companies or their business.

The Transferor Company is also directed to serve a Copy of the Scheme upon the Official Liquidator, Bombay High Court, Mumbai as per Section 233(1)(a) and Rule 25(1) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

- 23. The Notice shall be served through by Registered Post-AD/Speed Post and through email along with copy of the Scheme and state that *“If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice, it will be presumed that the concerned Authorities have no objection to the proposed Scheme”*. It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the noticee.
- 24. The First Applicant Company shall host the notices directed herein on its **website**, if any.
- 25. The Applicant Companies will submit:
 - a. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any.
 - b. List of pending IBC cases, if any, along with all other litigation

pending against the Applicant Companies having material impact on the proposed Scheme.

- c. Details of all Letters of Credit sanctioned and utilized as well as Margin Money details, if any.

26. The **Appointed Date** of the Scheme of Amalgamation is **01.04.2023**.

27. The Applicant Companies are directed to file Affidavit of Service with the Registry within 10 days from service of notices complete with enclosures upon the regulatory authorities mentioned above and report to this Tribunal that all the directions in this regard have been duly complied with. The Applicant Companies are also directed to include in the Affidavit of Service proof of dispatch of documents sent to their creditors, wherever applicable, and to report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

28. The Company Application is accordingly disposed of in terms of aforesaid directions.

Sd/-

SANJIV DUTT

MEMBER (TECHNICAL)

Deepa/JNK

Sd/-

K.R. SAJI KUMAR

MEMBER (JUDICIAL)