

By Registered Post



NATIONAL COMPANY LAW TRIBUNAL

Corporate Bhawan,
Residency Area, Civil Lines,
Jaipur-302001
Dated: - 05.03.2020

Sr. No. 49/2020

CA(CAA) 299/230-232/JPR/2019
CA(CAA) 72/230-232/JPR/2018

To,

Bhargava Lodha Stock Brokers Pvt. Ltd.
578, Mahaveer Nagar, Tonk Road,
Jaipur, (Rajasthan)- 302018

In the Matter of :-

Bhargave Lodha Stock Brokers Transferor Company/Petitioner Company-1

with

B. Lodha Securities Limtied Transferee Company/Petitioner Company- 2

Subject: - Order Dated 04.03.2020 in the matter of Bhargave Lodha Stock Brokers with B. Lodha Securities Limtied CA(CAA) 299/230-232/JPR/2019, CA(CAA) 72/230-232/JPR/2018.

Sir/Madam.

The certified copy of aforesaid order is enclosed herewith this letter for your reference.


(Tara Chand Kumawat)
Assistant Registrar

05/03/2020

Sr. No. 45/2020

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

Coram: SHRI P. S. N. PRASAD
HON'BLE JUDICIAL MEMBER
SHRI RAGHU NAYYAR
HON'BLE TECHNICAL MEMBER

CA[CAA] 229/230-232/JPR/2019

CONNECTED WITH

CA[CAA] 72/230-232/JPR/2018

IN THE MATTER OF:

(SECTIONS 230-232 OF THE COMPANIES ACT, 2013)

AND

IN THE MATTER OF SCHEME OF AMALGAMATION OF

**BHARGAVA LODHA STOCK BROKERS
PRIVATE LIMITED**

**578, Mahaveer Nagar, Tonk Road,
Jaipur, (Rajasthan)- 302018**

Transferor Company/Petitioner Company - 1

WITH

B. LODHA SECURITIES LIMITED

**578, Mahaveer Nagar, Tonk Road,
Jaipur, (Rajasthan)- 302018**

Transferee Company/Petitioner Company - 2

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For the Petitioners:

Amol Vyas, Adv.

For Income Tax:

Prateek Kedawat, Adv.

For Roc:

U.S. Patole, Roc-OL

Order Pronounced on: 04.03.2020

ORDER

Per: Shri Raghu Nayyar, Technical Member

1. This Joint petition has been filed by the Petitioner Companies under Sections 230 and 232 of the Companies Act, 2013 ('Act') read with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ('Rules') for the purpose of approval of the Scheme of Arrangement for Amalgamation ('Scheme') of Bhargava Lodha Stock Brokers Private Limited ('Transferor Company') into B. Lodha Securities Limited ('Transferee Company'), hereinafter collectively referred to as 'Applicant Companies' / 'Petitioner Companies'; and the said Scheme is also annexed with the first motion Application.

2. From the records, it is seen that the First Motion Application seeking directions for dispensing with the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Companies was filed before this Tribunal on 28.09.2018 vide CA (CAA) No. 72/230-232/JPR/2018 and, based on such joint application moved under Sections 230-232 of the Companies Act, 2013, directions were issued by this Tribunal

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vide order dated 03.05.2019, wherein the meeting of the Equity shareholders of the Transferor Company was dispensed with. With respect to the Transferee Company, a meeting of equity shareholders was directed to be held on 10.06.2019 at the specified time given in the order dated 03.05.2019. It was also represented that there were no secured creditors and unsecured creditors of Applicant Companies, therefore, the necessity of convening the meeting did not arise.

3. As a consequence of the above order, the Applicants filed an IA No. 145/JPR/2019. It is submitted in the IA that the Transferee Company has in all 48 equity shareholders out of which consent of 44 equity shareholders, constituting 99.01% shareholding is on record. Since 8 equity shareholders are common in Transferor Company and Transferee Company, therefore a single affidavit regarding no objection was given by the aforesaid 8 equity shareholders which has been annexed. Out of the remaining 4 equity shareholders, the affidavit of 3 equity shareholders regarding no objection to the scheme of amalgamation has been annexed and the 4th equity shareholder died on 15.08.2002; hence irrespective of his legal heirs and considering the quantum of shareholding, his decision is not relevant for the purpose of the resolution approving scheme of amalgamation. The Companies further submitted that if the Hon'ble Tribunal is not inclined to dispense with the

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meeting of equity shareholders, then the date of holding of equity shareholders meeting may be changed from 10.06.2019 to 10.07.2019.

4. In relation to the directions sought in the IA for dispensing of the meeting, this Tribunal vide order dated 06.06.2019, did not allow for the same. However, the date of the meeting was changed from 10.06.2019 to 10.08.2019.
5. As per the directions in order dated 06.06.2019, the corresponding meeting was held and report of Chairperson for holding of meeting of Equity Shareholders of the Transferee Company was filed on 16.08.2019.
6. Thereafter, the Petitioner Companies filed 2nd motion joint petition vide Diary No. 1675/2019, for sanction of the Scheme of Amalgamation before this Tribunal on 27.08.2019 which is in time. On 04.09.2019 this Tribunal passed an order to issue Notice in this Second Motion of the above petition on the following authorities, namely, the Central Government, Jurisdictional Income Tax Authorities, Registrar of Companies, Jaipur as well as other sectoral regulators and to such other objector(s), if any. The Applicants were also directed vide said order to carry out publication in the newspapers, namely, "Rajasthan Patrika" (Hindi) and "Times of India", Jaipur Edition.

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7. The Applicants filed an IA No. 315/JPR/2019 on 17.09.2019 for changing the name of newspapers in which the advertisement of notice has to be published. This Tribunal vide order dated 18.09.2019 allowed the said IA and directed the Applicants to publish the advertisement in Mahanagar Times (vernacular) and Indian Express (English) circulated in the city of Jaipur.
8. It is seen from the records that Petitioner / Applicant Companies have filed affidavits dated 01.10.2019, affirming compliance of the orders passed by this Tribunal dated 04.09.2019 and 18.09.2019, with respect to service to authorities and publication in relation to the date of hearing of the petition, which was fixed for 10.10.2019.
9. The Regional Director, North Western Region, MCA to whom notice was issued has made the following observations before this Tribunal:

A. The scheme is silent about any clause for merging of authorised capital of the Transferor Company with the Transferee Company. The Hon'ble NCLT may therefore be pleased to direct the Petitioner Companies to amend the clause accordingly. However, the Companies have mentioned in their reply dated 20.07.2019 that "...the same is clearly mentioned in the company application filed

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before the Hon'ble Tribunal vide Clause 38 having title Combination and Enhancement of Authorised Share Capital".

B. Both the Petitioner Companies are unlisted companies having registration with SEBI and membership of BSE and NSE. The Petitioner Companies have obtained NOC in the matter from the abovementioned stock exchanges vide BSE letter dated 13.06.2017 and NSE letter dated 10.01.2019. In this regard, the Petitioner Company may please be directed to place before the Hon'ble NCLT, confirmation that the company has complied with the directions conveyed in the aforesaid letters of BSE and NSE.

C. In case the merging of authorised share capital as proposed by the companies is not approved by the Tribunal, then the Petitioner Transferee Company is required to increase its authorised share capital in order to issue shares to the Petitioner Transferor Company. In this regard, the Hon'ble NCLT may please direct the Petitioner Transferee Company to take necessary steps to increase the authorised share capital of the Petitioner Transferee Company and comply with the provisions of Section 61 of the Companies Act, 2013, payment of stamp duty, registration fees and file the relevant e-form with the respective ROC. The Petitioner Transferee Company may please be directed to place on record all the relevant facts of the matter.

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D. Clause 4.1 and 4.2 of the Scheme mentions that "Upon the requisite sanction and orders of the NCLT approving the scheme, the Board of Directors of the Transferee Company shall fix the Record Date in accordance with Clause 1.9". It is seen that "Record Date" is not defined in the scheme. Hence, the Petitioner company be directed to clarify and place on record all the relevant facts of the matter.

E. The report of the ROC-cum-OL, Jaipur has been received vide letter No. ROC/Amal/2018-19/792 dated 13.09.2019 stating there are no complaints against the Petitioner Companies as well as the scheme of amalgamation of the Companies.

10. The aforesaid objections of the Regional Director, North Western Region, MCA are proposed to be met by the Petitioner / Applicant Companies, as per their pleadings and submissions before the Tribunal, in the following manner and the Petitioner / Applicant Companies are directed to ensure due compliance of the same:

a. With respect to the scheme being silent about any clause for merging of authorized capital, the Petitioner / Applicant Companies by means of affidavit dated 10.12.2019, have submitted and reiterated that the Company has clearly mentioned about the same in the Company application filed before the Hon'ble Tribunal vide Clause 38 under the title "Combination and

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Enhancement of Authorised Share Capital” and also in the reply dated 20.07.2019 filed before the Tribunal and the copy of the same has been served on the ROC. The Regional Director’s observations with regard to the proposed Amalgamation is thus met in this way and the same is taken on record by the Hon’ble Tribunal vide order dated 10.01.2020.

- b. With regards to the NOC obtained by the BSE and NSE, it is seen that the conditions laid down by the NSE in its NOC dated 10.01.2019 are required to be complied with. Additionally, any further requirements raised by NSE, BSE or any other authorities, are also needed to be complied with.
- c. With respect to increase in the authorised share capital of the Transferee Company, it is mentioned in Clause 38.1 of the application filed by the Petitioner / Applicant Companies that upon this Scheme becoming effective, the authorised share capital of the Transferee Company shall automatically stand increased by the authorised share capital of the Transferor Company as on the Effective Date, without any further act, instrument or deed on the part of the Transferee Company, including payment of stamp duty and fees payable to ROC.
- d. With respect to the record date, the Board of Directors of the Transferee Company shall fix an appropriate record date, in

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accordance with the clauses of the Scheme, after the requisite sanction and order of the NCLT approving the Scheme. Further, the record date should not be taken outside the canvas / span of the supporting documents filed before the Tribunal or any other authorities and should not affect the share allotment / swap ratio as proposed under the Scheme.

11. The report of the Official Liquidator, Jaipur, which was filed on 18.10.2019 has been placed on record which states that Scheme of Amalgamation is not prejudicial to the interest of its shareholders, creditors and did not object to the said Scheme.
12. The Department of Income Tax has filed an affidavit along with no objection certificate dated 21.01.2020. It is stated in the certificate that the office has no objection to the Scheme, if the Tribunal secures the interest of the revenue to the extent that if any demand arises then the company may pay the demand as and when it arises.
13. The Petitioner Companies have already submitted at the first motion stage that no investigation proceedings are pending against them.
14. In compliance with the proviso to sub-section (7) of Section 230 of the Companies Act, 2013, the Petitioner Companies have placed on record the Certificate of the Chartered Accountant dated 25.07.2018 confirming that



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the accounting treatment envisaged under the Scheme of Arrangement is in compliance with the applicable accounting standards notified by the Central Government in Section 133 of the Companies Act, 2013.

15. On 10.10.2019, the Counsel for the Petitioner Companies submitted before this Tribunal that they have not received any objection from any shareholder, creditor or any other person in respect of the proposed scheme of arrangement.
16. Heard the learned counsel for petitioners and perused the documents placed on record and also considering the approval accorded by the members and creditors of the Petitioner Companies to the proposed Scheme, and the affidavits / no objection filed by the respective regulatory authorities, there appears no impediment in sanctioning the present Scheme. Consequently, sanction is hereby granted to the Scheme under section 230 to 232 of the Companies Act, 2013. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.
17. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal 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.

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

19. **THIS TRIBUNAL FURTHER ORDERS AS FOLLOWS:**

- i. Upon the Scheme becoming effective, on and from the Appointed Date in the Scheme, i.e. 01.04.2018, the entire business and undertaking of the Transferor Company shall, together with all the property, membership with National Stock Exchange of India Limited, if any, rights and powers of the Transferor Company be transferred without further act or deed to the Transferee company and accordingly the same shall, pursuant to section 232 of the Act, stand transferred to and vest in the Transferee company for all the estate and interest of the Transferor Company therein but subject, nevertheless, to all charges now affecting the same.
- ii. All licenses, permissions, permits, quotes, approvals, certificates, clearances, authorities, leases, tenancy, assignments, rights, claims, liberties, special status, other benefits or privileges and any power of attorney relating to the Transferor Company stand transferred to and vested

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in the Transferee Company, without any further act or deed and be in full force and effect in favour of the Transferee Company, as if the same were originally given to, issued to or executed in favour of the Transferee Company. The Transferee Company shall be bound by the terms thereof, the obligations and duties thereunder, and the rights and benefits under the same shall be available to the Transferee Company.

- iii. All the debts, liabilities, duties and obligations of the Transferor Company 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.
- iv. All contracts, agreements, undertakings, insurance policies, bonds and all other instruments of whatsoever nature or description, of the Transferor Company which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it, as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto.
- v. All taxes paid or payable by the Transferor Company and all existing and future incentives, un-availed credits and exemption, benefit of carried forward losses and other statutory benefits, to which the Transferor

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Company is entitled to, shall be available to and vest in the Transferee Company.

- vi. All proceedings now pending by or against the Transferor Company be continued by or against the Transferee company.
- vii. All employees in the service of the Transferor Company shall be deemed to become the employees and the staff of the Transferee Company, on the date immediately preceding the date on which the scheme finally takes effect and shall stand transferred to the Transferee Company without any interruption of service and on terms and conditions, no less favourable than those on which they are engaged by the Transferor Company, as on the Effective Date.
- viii. With effect from the Effective Date and till such time that the respective bank accounts of the Transferor Company are replaced with that of the Transferee Company, the Transferee Company shall be entitled to operate the respective bank accounts of the respective Transferor Company in their respective name, as the case may be, in so far as necessary.
- ix. The Transferee Company shall, without any further act or deed and without any consideration (cash or non-cash), issue and allot equity shares of Rs. 10/- each, as fully paid-up (hereinafter referred to as the 'New Equity Shares'), at par to each shareholder of the Transferor

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Company whose name is recorded in the register of shareholders of the Transferor Company as on the Record Date in the following ratio:

“739 (Seven Hundred Thirty Nine) fully paid up Equity Shares of the face value of Rs. 10/- (Rupees Ten) each of B. Lodha Securities Limited against 1000 (One Thousand) fully paid-up equity shares of Rs. 10 (Ten) each shall be issued and allotted to the equity shareholders of Bhargava Lodha Stock Brokers Pvt. Ltd.”

- x. The Transferor Company shall be dissolved without winding up and without any further act by the parties.
- xi. The Transferor Company 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 Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him/ his office, in relation to the Transferee company and the files relating to the said companies shall be consolidated accordingly.
- xii. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

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The Scheme of Amalgamation as proposed is approved together with the directions as stated in this order.

Sd—

SH. RAGHU NAYYAR,
MEMBER (Technical)

Sd—

SH. P.S.N. PRASAD,
MEMBER(Judicial)



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