

**THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH,
AT NEW DELHI
CA (CAA)-48 OF 2017**

**PRESENT: Chief Justice (Retd.) Shri M.M.Kumar, Hon'ble President
Shri S. K. Mohapatra, Member (Technical)**

In the matter of:

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

AND

**IN THE MATTER OF SCHEME OF AMALGAMATION
OF**

3 WAY TECHNO FOODS PVT LTD

APPLICANT/ TRANSFEROR COMPANY NO. 1

AFTE TECHNOLOGIES PVT LTD

APPLICANT/TRANSFEROR COMPANY NO. 2

GENERAL CLOTHIERS PVT LTD

APPLICANT/ TRANSFEROR COMPANY NO. 3

BABA CERAMICS LTD

APPLICANT/ TRANSFEROR COMPANY NO. 4

DS CANPACK PVT LTD

APPLICANT/ TRANSFEROR COMPANY NO. 5

BABA GALVA PVT LTD

APPLICANT/ TRANSFEROR COMPANY NO. 6



BABA TOBACCO LTD

APPLICANT/ TRANSFEROR COMPANY NO. 7

AAR ESS INTERNATIONAL PVT LTD

APPLICANT/ TRANSFEROR COMPANY NO. 8

AND

DHARAMPAL PREMCHAND LTD

APPLICANT/TRANSFeree
COMPANY

MEMO OF PARTIES:

1. 3 Way Techno Foods Pvt. Ltd.

A Company incorporated under the provisions of the Companies Act, 2013 and having its registered office at 4873, Chandni Chowk, Delhi-110 006

(APPLICANT NO.1)
(Transferor Company No. 1)

2. Affe Technologies Pvt. Ltd.

A Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 4873, Chandni Chowk, Delhi-110 006

(APPLICANT NO.2)
(Transferor Company No. 2)

3. General Clothiers Pvt. Ltd.

A Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 4873, Chandni Chowk, Delhi-110 006

(APPLICANT NO.3)
(Transferor Company No. 3)



4. Baba Ceramics Ltd.

A Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 4873, Chandni Chowk, Delhi-110 006

(APPLICANT NO.4)
(Transferor Company No. 4)

5. DS Canpack Pvt. Ltd.

A Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 4828/42, Prahlad Lane, Ansari Road, Daryaganj, New Delhi-110 002

(APPLICANT NO.5)
(Transferor Company No. 5)

6. Baba Galva Pvt. Ltd.

A Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 4873, Chandni Chowk, Delhi-110 006

(APPLICANT NO.6)
(Transferor Company No. 6)

7. Baba Tobacco Ltd.

A Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 4872, Chandni Chowk, Delhi-110 006

(APPLICANT NO.7)
(Transferor Company No. 7)

8. Aar Ess International Pvt. Ltd.

A Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 4828/42, Prahlad Lane, Ansari Road, Daryaganj, New Delhi-110 002

(APPLICANT NO.8)
(Transferor Company No. 8)



9. Dharampal Premchand Ltd.

A Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 4873, Chandni Chowk, Delhi-110 006

(APPLICANT NO.9)
(Transferor Company No. 9)

Counsel for the Applicants: Rajeev K. Goel, Advocate



Date of Order: 08.05.2017

ORDER

(Order Reserved on 01.05.2017)

1. This Application has been jointly filed by the Applicant Companies, namely, 3 Way Techno Foods Private Limited ("Transferor Company No. 1/ Applicant No. 1"), Affe Technologies Private Limited ("Transferor Company No. 2/ Applicant No. 2"), General Clothiers Private Limited ("Transferor Company No. 3/ Applicant No. 3"), Baba Ceramics Limited ("Transferor Company No. 4/ Applicant No. 4"), DS Canpack Private Limited ("Transferor Company No. 5/ Applicant No. 5"), Baba Galva Private Limited ("Transferor Company No. 6/ Applicant No. 6"), Baba Tobacco Limited ("Transferor Company No. 7/ Applicant No. 7"), Aar Ess International Private Limited ("Transferor Company No. 8/ Applicant No. 8") and Dharampal Premchand Limited ("Transferee Company/ Applicant No. 9"), under sections 230 and 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, duly supported by the separate affidavits of the Applicant Companies, for seeking appropriate orders/directions for dispensing with/convening of the respective



meetings of Shareholders, Secured Creditors and Un-secured Creditors of the Applicant Companies, in connection with the proposed Scheme of Amalgamation of all the Transferor Companies with Dharampal Premchand Ltd. (Transferee Company). The Scheme of Amalgamation proposed between all Applicants Companies (hereinafter referred to as the "SCHEME") has been placed on record along with the joint Application.

2. Affidavits in support of the above joint application sworn for Transferor Company No.1 by one Ahutosh Premswarup Gupta, for Transferor Company No.2 by one Mr. Ritesh Kumar, for Transferor Company No.3 by one Mr. Raghav Kumar, for Transferor Company No.4 by one Ritesh Kumar, for Transferor Company No.5 by one Mr. Gaurav Gupta, for Transferor Company No. 6 by one Mr. Ravinder Kumar, for Transferor Company No. Ravinder Kumar and for Transferee Company by one Mr. Ravinder Kumar, all being the Directors of the respective Companies have also been filed along with the application. Counsel for the joint applicants took us through the averments made in the application as well as the typed set of documents annexed there with.
3. Learned Counsel represents that the Scheme does not contemplate any corporate debt restructuring exercise as provided under Section 230(2) of the Act. It is further represented that a joint application filed by the applicants are maintainable in view of Rule 3(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and it is also represented



that the registered office of all the applicant companies are situated within the territorial jurisdiction of this Tribunal and falling within the ambit of Registrar of Companies, NCT, New Delhi.

4. In relation to 3 Way Techno Foods Private Limited ("Transferor Company No. 1/ Applicant No. 1"), in the Scheme, Learned Counsel represents that the Transferor Company No.1, having 7 Equity Shareholders as on 15.12.2016 and from whom no objections letters have been obtained. It is further represented by the counsel for Applicants that the Transferor Company No. 1 as on 15.12.2016 has no Secured Creditors and therefore, question of meeting of secured Creditor of Transferor Company No. 1 does not arise. The Transferor Company No. 1 as on 15.12.2016 has 2 Unsecured Creditors from whom consent letters have been obtained in favour of the Scheme. In view of the above the Transferor Company No. 1 seeks dispensation of convening and holding of the respective meetings of shareholders and both secured and unsecured creditors.
5. In relation to the Affe Technologies Private Limited ("Transferor Company No. 2/ Applicant No. 2") in the Scheme, Learned Counsel represents that company is having 2 Equity Shareholders as on 15.12.2016 and from whom no objections letters have been obtained. It is further represented by the counsel for Applicants that the Transferor Company No. 2 as on 15.12.2016 has no Secured Creditors and therefore, question of meeting of secured Creditor of Transferor Company No. 2 does not arise.



The Transferor Company No. 2 as on 15.12.2016 has 2 Unsecured Creditors from whom consent letters have been obtained in favour of the Scheme. In view of the above the Transferor Company No. 2 seeks dispensation of convening and holding of the respective meetings of shareholders and both secured and unsecured creditors.

6. In relation to General Clothiers Private Limited ("Transferor Company No. 3/ Applicant No. 3") in the Scheme, Learned Counsel represents that company is having 7 Equity Shareholders as on 15.12.2016 and from whom no objections letters have been obtained. It is further represented by the counsel for Applicants that the Transferor Company No. 3 as on 15.12.2016 has no Secured Creditors and therefore, question of meeting of secured Creditor of Transferor Company No. 3 does not arise. The Transferor Company No. 3 as on 15.12.2016 has 3 Unsecured Creditors from whom consent letters have been obtained in favour of the Scheme. In view of the above the Transferor Company No. 3 seeks dispensation of convening and holding of the respective meetings of shareholders and both secured and unsecured creditors.

7. In relation to the Baba Ceramics Limited ("Transferor Company No. 4/ Applicant No. 4"), in the Scheme, Learned Counsel represents that company is having 7 Equity Shareholders as on 15.12.2016 and from whom no objections letters have been obtained. It is further represented by the counsel for Applicants that the Transferor Company No. 4 as on 15.12.2016 has no

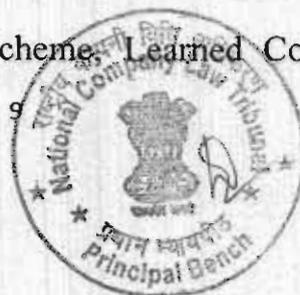


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Secured Creditors and therefore, question of meeting of secured Creditor of Transferor Company No. 4 does not arise. The Transferor Company No. 4 as on 15.12.2016 has 1 Unsecured Creditors from whom consent letters have been obtained in favour of the Scheme. In view of the above the Transferor Company No. 4 seeks dispensation of convening and holding of the respective meetings of shareholders and both secured and unsecured creditors.

8. In relation to the DS Canpack Private Limited (“Transferor Company No. 5/ Applicant No. 5”) in the Scheme, Learned Counsel represents that company is having 8 Class-A, 8 Class-B, Equity Shareholders and 1 Preference shareholder as on 15.12.2016 and from whom no objection letters have been obtained. It is further represented by the counsel for Applicants that the Transferor Company No. 5 as on 15.12.2016 has no Secured Creditors and therefore, question of meeting of secured Creditor of Transferor Company No. 5 does not arise. The Transferor Company No. 5 as on 15.12.2016 has 28 Unsecured Creditors out of whom consent letters from 22 Unsecured Creditors (97.17% in value) have been obtained in favour of the Scheme. In view of the above the Transferor Company No. 5 seeks dispensation of convening and holding of the respective meetings of shareholders and both secured and unsecured creditors.

9. In relation to the Baba Galva Private Limited (“Transferor Company No. 6/ Applicant No. 6”), in the Scheme, Learned Counsel represents that



company is having 3 Equity Shareholders as on 15.12.2016 and from whom no objections letters have been obtained. It is further represented by the counsel for Applicants that the Transferor Company No. 6 as on 15.12.2016 has no Secured Creditors and therefore, question of meeting of secured Creditor of Transferor Company No. 6 does not arise. The Transferor Company No. 6 as on 15.12.2016 has 1 Unsecured Creditors from whom consent letter has been obtained in favour of the Scheme. In view of the above the Transferor Company No. 6 seeks dispensation of convening and holding of the respective meetings of shareholders and both secured and unsecured creditors.

10. In relation to the Baba Tobacco Limited (“Transferor Company No. 7/ Applicant No. 7”), in the Scheme, Learned Counsel represents that company is having 7 Equity Shareholders as on 15.12.2016 and from whom no objection letters have been obtained. It is further represented by the counsel for Applicants that the Transferor Company No. 7 as on 15.12.2016 has no Secured Creditors and Unsecured Creditor, and therefore question of meeting of secured Creditor and Unsecured Creditor of Transferor Company No. 7 does not arise. In view of the above the Transferor Company No. 7 seeks dispensation of convening and holding of the respective meetings of shareholders and both secured and unsecured creditors.

11. In relation to the Aar Ess International Private Limited (“Transferor Company No. 8/ Applicant No. 8”) in the Scheme, Learned Counsel



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represents that company is having 2 Equity Shareholders as on 15.12.2016 and from whom no objection letters have been obtained. It is further represented by the counsel for Applicants that the Transferor Company No. 8 as on 15.12.2016 has no Secured Creditors and therefore, question of meeting of secured Creditor of Transferor Company No. 8 does not arise. The Transferor Company No. 8 as on 15.12.2016 has 3 Unsecured Creditors from whom consent letters have been obtained in favour of the Scheme. In view of the above the Transferor Company No. 8 seeks dispensation of convening and holding of the respective meetings of shareholders and both secured and unsecured creditors.

12. In relation to the Dharampal Premchand Limited (“Transferee Company/ Applicant No. 9”) in the Scheme, Learned Counsel represents that company is having 14 Equity Shareholders as on 15.12.2016 from whom consent letters have been obtained. It is further represented by the counsel for Applicants that the Transferee Company as on 15.12.2016 has 4 Secured Creditors and 2,356 Unsecured Creditors. In relation to the shareholders, the Transferee Company seeks dispensation of the meetings for the purpose of obtaining their approval to the proposed Scheme, in view of consent being obtained from all the equity shareholders and in relation to Secured and Unsecured Creditors the transferee company seeks directions for convening and holding their respective meetings.



13. Learned Counsel for the Applicants also represents that the provisions of Section 233 of 2013 Act will not apply as the Scheme is a composite Scheme which also contemplates the amalgamation of all the transferor companies with the Transferee Company. In light of the notification of the provisions for Sections 230 to 232 of Companies Act, 2013 and as well as Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 framed there under, this Tribunal proceeds to entertain the above joint application filed under the 2013 Act. Further, the registered office of all the applicants is situated within New Delhi and subject to Registrar of Companies, NCT, New Delhi and hence are amenable to the territorial jurisdiction of this Tribunal.
14. We have perused the joint applications and the connected documents / papers filed herewith including the Scheme of Amalgamation contemplated between the Applicant companies.
15. From the certificate of incorporation filed, it is evident that the Transferor Company No.1 was incorporated under the name and style of "3 Way Techno Foods Pvt. Ltd." on 1.10.2014.
16. The authorized capital of the Transferor company No.1, is Rs. 20, 00, 000/- divided into 2,00, 000 equity shares of Rs. 10/- each. The issued, subscribed and Paid- up capital of the company is Rs.5,00,000/- divided into 50,000 equity shares of Rs. 10/- each.

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17. The main objects of Transferor Company No.1, as stated in the application are as follows:

- *To cultivate, grow, manufacture, trade, process, purify, prepare, treat, blend, buy, sell, import, export, store, render marketable whether in bulk or in packed or concentrated form, rice, wheat, gram maize, other grains & cereals, pulses, seeds, spices, oil, oil seeds, flour, besan, dalia, maida, suzi, fruits, tobacco, tobacco products and all kinds of agricultural products, dairy products & other processed food & allied products.*
- *To manufacture, produce, process, finish, treat, blend, pack, purify, sell, buy, import, export and deal in all types of food/dairy items/products made from agro/dairy-based ingredients/inputs and to act & deal as whole sellers and/or retailers, dealers, principals, agents, commission agents, distributors, processors, cultivators, producers, manufacturers of all kinds of food grains, food products, dairy products, eatables, processed foods, food items and agro-based products.*
- *To carry on in India or elsewhere the business to process, prepare, disinfect, ferment ate, compound, mix, clean, wash, concentrate, crush, grind, segregate, pack, repack, add, remove, heat, grade, preserve, freeze, distillate, boil, sterilize, improve, extract, refine, buy, sell, resale, import, export, barter, transport, store, forward,*



distribute, dispose, develop, handle, manipulate, consultant, collaborator, adatia, stockiest, liaison, middleman, export house, job worker or otherwise to deal in all types, descriptions, tastes, uses and packs of consumer food items, there by-products, ingredients, derivatives, residues, including foods and vegetables, packed foods, powders, pastes, liquids, drinks, beverages, juices, jams, jelly, squashes, pickles, sausages, concentrates, extracts, essences, flavos, syrups, sorbets, flavoured drinks, health and diet, drinks, mineral waters, extruded foods, frozen foods, dehydrated foods, precooked foods, canned foods, preserved foods, health foods, protein foods, cream, cheese, butter, biscuits, breads, cakes, pastries, confectionery, sweets, chocolates, toffees, fun foods, breakfast foods, protein foods, dietic products, strained baby foods, instant foods, cereal products, table delicacies and all other items whether natural, artificial or synthetic.

- *To undertake manufacturing, engineering, designing, maintenance, installation, commissioning, repairing, refurbishing, consulting engineers annual maintenance contract, Import-export, trading, agency or otherwise deal in all types & varieties of Food Processing/ Dairy sector's machineries /equipment /plants/ parts/ accessories /tools/systems/ hardware/software and other similar items.*



- *To carry on the business of generation, production, transmission, distribution, supply, sale, purchase, exchange, trade or otherwise deal in solar energy based electricity/power and to engaging manufacturing, engineering, processing, value addition, design, casting, installation, commissioning, R&D, export, import, trade, consultancy or otherwise deal in solar energy technologies, systems, solutions, plants, equipment, tools, accessories, hardware, software and other related & allied products & items thereto.*

18. From the certificate of incorporation filed, it is evident that the Transferor Company No.2 was incorporated under the name and style of Affe Technologies Pvt. Ltd. on 23.06.2006.

19. The authorized capital of the Transferor Company No.2, is Rs. 1, 00, 000/- divided into 10, 000 equity shares of Rs. 10/- each. The issued, subscribed and Paid- up capital of the company is Rs.1,00, 000 /- divided into 10,000 equity shares of Rs. 10/- each.

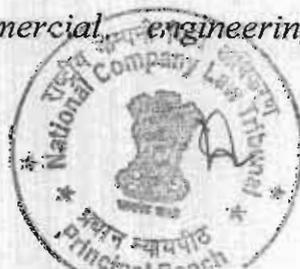
20. The main objects of Transferor Company No.2, as stated in the application are as follows:

- *To set up software technology park.*
- *To provide all the infrastructure facilities, space to software companies including video conferencing, internet, telephone, cafeteria, restaurants, ticketing, convention, conferences and any other related activities.*



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- *To develop systems, applications, general purposes and all kind of software including micro programming for demonstration, sales within and outside the country or to carry on research consultants, computer service bureaus and advisors, market surveyors projects engineers, quality control and efficiency experts, export and marketing service and/or management consultancy, connected with information and technology and computerization.*
- *To hold seminars, courses, business conferences, for training in computers, computer programming, system analysis, operational research computer operations and data entry, websites, e-commerce and other activities related to computer within India and abroad, either singly or all in collaboration with any other organization, institution, body corporate, manufacture, assembler.*
- *To manufacture, buy, take on hire, keep maintain, sellout on hire and deal in all kinds of computer hardware, computer software, computers, processors and micro-processors and all other business, in all there respective branches of running computer bureaus and hiring out computer time and services specially data storage and data-processing on both turnkey and time basis for commercial, engineering and all other*



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applications, system analysis and design, programming, services lending and provision if all type of output facilities.

- To advice and render services like transcription services, technical analysis of data-electronic data processing, preparation of project reports, survey and analysis for implementation of projects and there progress review and other economic, mathematical, statistical, scientific and to undertake assignments and to enter into any contract in relation thereto including all activities of e-commerce, web designs and satellite in India and abroad.
- To act as manufacture, importer, exporter, re-seller distributors, agent for software and hardware in relation to audio, video, information technology, telecommunication, mobile phones, mobile phones accessories and other medias including satellities, cable and other channels, Internet, e-commerce, web sites, web hosting, design, web pages in India and abroad.
- To render consultancy, solutions and act as implements in the field of internet, networking, connectivity, information technology, e-mails, e-commerce supply of professional manpower and other related fields in India and abroad.”

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21. From the certificate of incorporation filed, it is evident that the Transferor Company No. 3 was initially incorporated under the name and style of 3-General Clothiers Private Limited on 23.06.1993.
22. The authorized capital of the Transferor company No. 3, Rs. 20, 00, 000/- divided into 2,00, 000 equity shares of Rs. 10/- each. The issued, subscribed and Paid- up capital of the company is Rs. 3,00400 /- divided into 30,040 equity shares of Rs. 10/- each.
23. The main objects of Transferor Company No.3 , as stated in the application are as follows:
- *To manufacture, buy, sell, Exports, Imports, any type of Garments or made up from silk, cotton, Jute or any other fabric or natural and manmade fiber.*
24. From the certificate of incorporation filed, it is evident that the Transferor Company No. 4 was initially incorporated under the name and style of "Baba Ceramics Private Limited" on 7.12.2006 the name of the company was changed to "Baba Ceramics Ltd." on 18.01.2007 .
19. The authorized capital of the Transferor company No. 4, is Rs. 20, 00, 000/- divided into 2,00, 000 equity shares of Rs. 10/- each. The issued, subscribed and Paid- up capital of the company is Rs.10,70,000/- divided into 1,07,000 equity shares of Rs. 10/- each.
20. The main objects of Transferor Company No.4, as stated in the application are as follows:



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- *To carry on the business as manufactures, importers and exporters, agents, brokers, installers, fitters, traders and dealers in, or otherwise engage in ceramic, refractory such as glazed or unglazed ceramic or vitrified tiles; marbles; granites; ceramic products; pipes, paving, lining, roofing material; sinks; bathroom and kitchen fixtures and fittings and all kinds of prefabricated construction materials, frames, slabs and tiles; sanitary wares; cement and grouting compounds of all types; glass or china wares; porcelain wares; earthen wares; stone wares; terracotta; all type of any such class such as crockery wares, table wares, glass wares, figures and statues, electrical insulators, laboratory, hospital and industrial requisites, sparking plugs, drainage and water supply pipes, refractory and insulation cements, bricks and other shapes and linings and all other such types and kinds or any class of clay and ceramic products.*
- *To carry on the business of mine owners, manufactures, processors, job workers, importers and exporters, traders and sellers, of china clay, ball clay, quartz, feldspar, fire clay, gypsum, bauxite, steatite, kyanite, bentonite, silliminite, dolomite, magnesite, calcite, lime stone chrome, zirconium, graphite, manganesite, calcite, lime stone chrome, zirconium, graphite, manganese, red oxide, yellow ocher, kiselguhr, ceramic colours, glass frit, or other additives, associate minerals and chemicals needed for manufacturing, producing and dealing in all*



ceramic products particularly ceramics or vitrified tiles, pottery products and refractory products, bricks tiles, sewer pipes, drain pipes, lime, cement artificial stones, glass and enamel products and such other products , articles and things made synthetically or made, composed or prepared, wholly or in part of any mineral or such other substances or substance.

- *To purchase, take on lease or otherwise acquire mines, mining rights and metalliferous land and any interest therein and to explore, exercise, develop and turn to account the same and to crush smelt, calcine, refine, dress, raise, get win fabricate, grind, amalgamate, manipulate and prepare for market, purchase, sell and otherwise deal in ore, minerals sands, stones, artificial stones, metal and mineral substances of all kinds and to carryon any other operations in connection therewith.*

21. From the certificate of incorporation filed, it is evident that the Transferor Company No. 5 was incorporated under the name and style of “ DS Canpack Private Limited” on 19.06.2013.

22. The authorized capital of the Transferor company No. 5, is Rs. 3,00, 00, 000/- divided into 5,00, 000 Class-A equity shares of Rs. 10/- each, 5,00, 000 Class-B equity shares of Rs. 10/- each and 20,00,000 10% cumulative preference shares of Rs. 10/- each. The issued, subscribed and Paid- up capital of the company is Rs. 61,03,560 /- divided into 1,39,880 Class-A



equity shares of Rs. 10/- each, 1, 39, 880 Class-B equity shares of Rs. 10/- each and 3, 32, 180 10% cumulative preference shares of Rs. 10/- each.

23. The main objects of Transferor Company No.5, as stated in the application are as follows:

- *To carry on in India or elsewhere the business as manufacturers, distributors, buyers, sellers, dealers, founders, and developers, traders, importers, and exporters, stockists of all kinds of card packaging, plastic packaging, polythene packing gunny bags, hollow wares, containers, cartoons, boxes, corrugated crates, drums, bottle's, jars, tubes, bags, sacks, pouches, foils, stickers, leaflets, folders, tarpaulin and other packaging articles made from all type of packing materials.*
- *To carry on the business as manufacturers, sellers, traders, importers and exporters, dealers, stockists in all kinds of laminates of glassline, paper board, cellophane, bi-axial oriented poly prolene, polyester, foil, craft, flexible films and manufacturers and dealers of printed or unprinted cartons, leaflets, folders, stickers and pouches of various types and to carry on business of manufacturers, distributors, sellers, buyers, exporters, importers of containers, bottles, tubes, drums and packing articles made from all types of material and substance of different shapes, dimensions and thickness and suitable for all types of packaging.*



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- *To carry on in India or elsewhere the business of printers, rotogravure printers, stereotypers, electrotypers, photographic printers, screen printers, lithographers, chromo-lithographers, art printers, engravers, block makers, die stampers, die sinkers, machine rulers, numeric printers, paper makers, paper bags, diary printers, card printers and to all acts for the purpose of pursuing the main objects mentioned above.*
- *16. To carry on in India or elsewhere the business of manufacturers, buyers, sellers, importers, exporters, commission agents and dealers in all kinds of packaging and printing machines, components, ancillaries, auxiliaries and parts thereof.*

24. From the certificate of incorporation filed, it is evident that the Transferor Company No. 6 was incorporated under the name and style of “Baba Galva Private Limited” on 04.08.2004.

25. The authorized capital of the Transferor company No. 6, is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs. 10/- each. The issued, subscribed and Paid- up capital of the company is Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10/- each.

26. The main objects of Transferor Company No.6, as stated in the application are as follows:



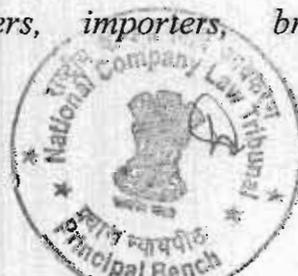
- *To carry on the business of galvanization of steel and iron sheets and other related activities.*
- *To carry on business as manufactures, producers, fabricators, processors, stockists, distributors, dealers, exporters, importers, buyers, sellers and commission agents of or otherwise deal in all kinds and types of ferrous and non-ferrous metals; all kinds of iron and steel such as carbon steel, spring steel, tools and mould steel, stainless steel and alloys in different grades; all kinds of iron and steel products; hot rolled and cold rolled steel, galvanized steel, electrolytic tin plates, seamless and welded steel pipes, steel and iron founders.*

27. From the certificate of incorporation filed, it is evident that the Transferor Company No. 7 was incorporated under the name and style of "Baba Tobacco Limited" on 20.08.2008.

28. The authorized capital of the Transferor company No. 7, is Rs. 5, 00, 000/- divided into 5,00, 00 equity shares of Rs. 10/- each. The issued, subscribed and Paid- up capital of the company is Rs. 5,00,000/- divided into 50,000 equity shares of Rs. 10/- each.

29. The main objects of Transferor Company No.7, as stated in the application are as follows:

- *To carry on the business as manufacturers, processors, dealers, distributors, agents, exporters, importers, brokers, stockists,*



processors/ packers, commissions agents, buyers and sellers o buyers and sellers of tobacco, sounff, pan masala, khaini, gutka, beatelnut preparations, mouth fresheners, chewing tobacco, scented elaichi & supari, pan chatni, kiwam, etc of all kinds and types, pepper, spices, perfumes & perfumery compounds & essences, rose and keora water, natural spring/mineral water, essential oil, soap components, saffron, silver/gold leaves, flavoring materials, packing and wrapping materials and other raw-material used or required therein including all kinds of chemicals and chemical products required for the manufacturing and processing of above, laboratory reagents and raw material used or required therein.

- To carry on the business as buyers, sellers, importers, exporters, distributors, agents, broker, stockiest, processors/packers, commission agents and dealers of all kinds of food items and products including kirana items, tobacco products, biri and cigarettes, paper products.*

30. From the certificate of incorporation filed, it is evident that the Transferor Company No. 8 was incorporated under the name and style of “ Aar Ess International Private Limited” on 05.08.1994.

31. The authorized capital of the Transferor company No. 8, is Rs. 50, 00, 000/- divided into 5,00, 000 equity shares of Rs. 10/- each. The issued,

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subscribed and Paid-up capital of the company is Rs. 9,02,000/- divided into 90,200 equity shares of Rs. 10/- each.

32. The main objects of Transferor Company No.8, as stated in the application are as follows:

- *To carry on the business as Exporters, importers, Traders, sellers, distributors, agent, brokers, stockists, agency business, commission agents and dealers of:*

(a) All kinds of manufactured, semi-manufactured goods and raw materials and other commodities.

(b) Tea, Garments, Engineering goods, sewing machine, hand tools, small tools, metals, alloys, Iron pipe fittings, nuts and bolts, bicycles and accessories, automobile parts, steel and stainless steel, iron products, ores and scraps, metallurgical residues, hides, skins, leather goods, furs, bristles, tobacco (raw and manufactured), hemp, seeds, oils and cakes, vanaspati, textile, fiber waste, coir, jute and products thereof, wood and timber, bones crushed and uncrushed industrial diamonds, coal and charcoal, glue, gums and resins, ivory, lac, shellac, manures, pulp rags, rubber, tanning substances, wax quartz, crystal, chemical preparation, plastic and linoleum articles, glass and glass ware, handloom, toys, liquid gold's, precious stones, ornament, pearls, drugs and medicines, soaps, paints, instruments, apparatus



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and appliances, machinery and mill work and parts thereof, paper and stationery, sports goods, cosmetics, wigs, belling, cinematograph, films exposed, gramophone records, rubber and plastic goods, starch, umbrellas, crown, corks, batteries, surgical and musical instruments, marble and hardware items, traditional calendars, all kinds of books and manuscripts, electric and electronic products of all kinds, sanitary ware and fittings, woolen textiles, natural fibre products, cellulose and non-cellulosic products, mixed blended products, fish and fish products, fodder bran fruits, nuts, cashew nuts, kernels, grains, pulses, flour, confectionery, provisions, alcohol, beverages, perfumed, spirits spices and tea, coffee, sugar and molasses, vegetables products, processed foods and packed load products.

33. The Transferee Company seems to have been incorporated under the name and style of "Dharampal Premchand private limited" company on 06.04.1972 under the Companies Act, 1956 with the Registrar of Companies, NCT of Delhi. The name of the company was subsequently changed to "Dharampal Premchand Limited" on 31.12.2004.
34. The authorized capital of the Transferee company is Rs. 10,00,00,000/- divided into 10,00,000 equity shares of Rs. 100/- each. The issued, subscribed and Paid- up capital of the company is Rs5,77,17,600/- divided into 5,77,1776 equity shares of Rs. 100/- each.

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35. The main objects of Transferee Company, as stated in the application are as follows:

- *To carry on the business of manufacturing and processing of Tobacco, Snuff, Pan Masala, Betal nuts preparations, Spices, Perfumes and to deal in any other articles or things commonly dealt in by tobacconist, and Perfumers hitherto carried on by M/s. Dharampal Premchand, Delhi and Dharampal Premchand Distributors, Delhi and to hold, possess and manage the assets thereof and to discharge the liabilities of the same and to acquire and undertake the whole of the properties, assets, rights, privileges, goodwill, established business and liabilities thereof and pay for the same in cash or in shares or in both.*
- *To carry on the business as manufacturers, dealers, importers and exporters of Chewing Tobacco, Pan Masala, Perfumery, Cosmetics and Aggar Batti and other commodities which are generally required for the manufacturing of these products.*
- *To carry on the business of buying, stocking, selling, exporting, importing, blending, treating or otherwise dealing in raw material or any description which are generally used in the manufacturing of Tobacco, Pan Masala and snuff, such as, Tobacco Tender Leaves, Betel nuts, Spices, Silver leaves, Perfumery and Flavoring Essences, Packing Material and such other articles as are generally used by*



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Manufacturers of Chewing Tobacco and Pan Masala as finished products.

- *To acquire, take over and continue as a going concern any existing tobacco and Perfumery business and/or manufacturing establishment or establishments in India and to enter into agreement or agreements with such concern or concerns for the purpose of acquiring and taking over the stock of raw material, other articles, things rights, liabilities and privileges of the said concern.*
- *To carry on the business of manufacturing and/or dealers in Chewing Tobacco, Pan Masala, Betel nuts, Rose and Keora water, Perfumes and Aggar Batti is and any other article required by or which may be convenient to be used for human consumption and to deal in any other articles and things dealt by Tobacconists and Perfumers.*
- *To plant, grow, cultivate, produce, buy, sell prepare for market, treat, cure and otherwise deal in tobacco, Betal nuts, Spices, Saffron Natural Musk, Silver leaves, Perfumery and Flavouring Materials, packing and wrapping materials required for this trade.*
- *To carry on the business as manufacturers, dealers, importers, exporters and distributors of all kinds of chemicals products, Pharmaceuticals, acids, drugs, tannins, essences, medicines, compounds, dyestuffs perfumes, proprietary articles of all kinds laboratory reagents, required for the purpose of the Company.*



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36. All the applicants have filed their respective Memorandum and Articles of Association as well as their last available audited financial statements for the year ended 31.03.2016.

37. The Board of Directors of the Transferor company No. 1, 2 & 3 on 14.02.2017 and of the transferor Company No. 4, 5, 6, 7, and 8 on 13.02.2017 and of the Transferee company on 14.02.2017 vide separate meetings have unanimously approved the proposed Scheme of Arrangement and copies of resolutions passed therein have been placed on record by the companies.

38. Learned Counsel submitted that the Transferee Company has large number of Un-secured Creditors with small value, as reflected in the following table:

Particulars	No.	Value	% of total Value
Un-secured Creditors with individual value of less than ₹ 50,000	1,856	1,75,13,429	0.98
Un-secured Creditors with individual value of ₹ 50,000 or more	500	1,77,41,01,091	99.02
Total	2,356	1,79,16,14,520	100.00

A prayer has been made for dispensation from service of individual notice to the Un-secured Creditors with individual value of less than ₹ 50,000/-. It has also been



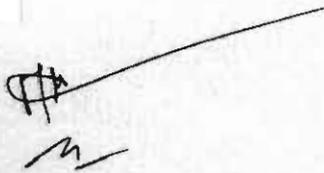


prayed that the notice of meeting as published in the newspapers will be deemed to be the notice to all these Un-secured Creditors. It is however, submitted that these Un-secured Creditors with individual value of less than ₹ 50,000/ shall be entitled to attend and vote at the meeting.

39. All the companies have submitted that no investigation proceedings are pending against them either under Sections 235 to 251 of the Companies Act, 1956 or under Sections 210 to 226 of the Companies Act, 2013. Further, the applicant companies have also stated that the Scheme does not involve any corporate debt restructuring exercise.
40. Taking into consideration the application filed jointly by the Transferor companies and the Transferee company and the documents filed therewith, we propose to issue the following directions with respect to calling, convening and holding of the meetings of the shareholders, secured and Unsecured Creditors or dispensing with the same as well as issue of notices including by way of paper publication as follows:-

A) In relation to the Transferor Company No. 1:-

- (i) With respect to Equity Shareholders, the holding of meeting is dispensed with as there are only seven equity shareholders and their consent letters have been placed on record.





(ii) The meeting of Secured Creditors is also dispensed with because there is no Secured Creditor, and therefore requirement of convening meeting of secured creditors does not arise.

(iii) The meeting of Unsecured Creditors is also dispensed with because there are only 2 Unsecured Creditors, and their consent letters have been placed on record.

B) In relation to the Transferor Company No. 2:-

(i) With respect to Equity Shareholders, the holding of meeting is dispensed with as there are only two equity shareholders and their consent letters have been placed on record.

(ii) The meeting of Secured Creditors is also dispensed with because there is no Secured Creditor and therefore requirement of convening meeting of secured creditor does not arise.

(iii) The meeting of Unsecured Creditors is also dispensed with because there are only 2 Unsecured Creditors, and their consent letters have been placed on record.



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C) In relation to the Transferor Company No. 3:-

(i) With respect to Equity Shareholders, the holding of meeting is dispensed with as there are only seven equity shareholders and their consent letters have been placed on record.

(ii) The meeting of Secured Creditors is also dispensed with because there is no Secured Creditor and therefore requirement of convening meeting of secured creditors does not arise.

(iii) The meeting of Unsecured Creditors is also dispensed with because there are only 3 Unsecured Creditors, and their consent letters have been placed on record.

D) In relation to the Transferor Company No. 4:-

(i) With respect to Equity Shareholders, the holding of meeting is dispensed with as there are only seven equity shareholders and their consent letters have been placed on record.

(ii) The meeting of Secured Creditors is also dispensed with because there is no Secured Creditor and therefore requirement of convening meeting of secured creditors does not arise.





(iii) The meeting of Unsecured Creditors is also dispensed with as there is only one Unsecured Creditor whose consent has been placed on record.

E) In relation to the Transferor Company No. 5:-

(i) With respect to Equity Shareholders, the holding of meeting of members is dispensed with as there are 8 Class-A, 8 Class-B, Equity Shareholders and 1 Preference shareholder and consent letters of all of them have been placed on record.

(ii) The meeting of Secured Creditors is also dispensed with because there is only one Secured Creditor, whose consent has been placed on record.

(iii) The meeting of Unsecured Creditors is also dispensed with as there are only twenty-eight Unsecured Creditor out of which consent letters of twenty-two Unsecured Creditors (97.17% in value) has been placed on record. It is pertinent to state that under section 230 (9) of the Companies Act, 2013 this tribunal has been empowered to dispensed with calling of meeting of creditors when such creditors having at least 90% in value, agree and confirm to the Scheme.



F) In relation to the Transferor Company No. 6:-

- (i) With respect to Equity Shareholders, the holding of meeting is dispensed with as there are only three equity shareholders and their consent letters have been placed on record.
- (ii) The meeting of Secured Creditors is also dispensed with because there is no Secured Creditor, so requirement of convening meeting of secured creditors does not arise.
- (iii) The meeting of Unsecured Creditors is also dispensed with as there is only one Unsecured Creditor whose consent has been placed on record.

G) In relation to the Transferor Company No. 7:-

- (i) With respect to Equity Shareholders, the holding of meeting is dispensed with as there are only seven equity shareholders and their consent letters have been placed on record.
- (ii) The meeting of Secured Creditors is also dispensed with because there is no Secured Creditor, and therefore requirement of convening meeting of secured creditors does not arise.
- (iii) The meeting of Unsecured Creditors is also dispensed with as there is no Unsecured Creditor, and therefore requirement of convening meeting of unsecured creditors does not arise.






H) In relation to the Transferor Company No. 8:-

- (i) With respect to Equity Shareholders, the holding of meeting is dispensed with as there are only two equity shareholders and their consent letters have been placed on record.
- (ii) The meeting of Secured Creditors is also dispensed with because there is no Secured Creditor, so requirement of convening meeting of secured creditors does not arise.
- (iii) The meeting of Unsecured Creditors is also dispensed with as there is only three Unsecured Creditor whose consent has been placed on record.

I) In relation to Transferee Company:

- (i) With respect to Equity Shareholders, the holding of meeting is dispensed with as there are only Fourteen equity shareholders and their consent letters have been placed on record.
- (ii) Meeting of the Secured Creditors of the Transferee Company/ Applicant Company No.9 is directed to be held at 3:30 PM At '**The Pearl Banquets**', 21, Shivaji Marg, Main Najafgarh Road, Opposite DLF Commercial Tower, Moti Nagar, New Delhi-110 015 on 3rd July, 2017 subject to the notice of meeting being issued. The quorum for the meeting of the Secured Creditors of the Transferee Company shall be 2 in number.



(iii) Meeting of the Unsecured Creditors of the Transferee Company/ Applicant Company No.9 is directed to be held at 3:30 PM At 'The Pearl Banquets', 21, Shivaji Marg, Main Najafgarh Road, Opposite DLF Commercial Tower, Moti Nagar, New Delhi-110 015 on 3rd July, 2017 subject to the notice of meeting being issued. The quorum for the meeting of the Unsecured Creditors of the Transferee Company shall be 200 in number or 75% in value.

J. In case the Quorum as noted above for the above meetings of the applicant companies are not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter, the person 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 registered office of the applicant companies at least 48 hours before the meetings. The Chairperson and the Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained.

K. Mr. P.K. Malhotra, Ex-Law Secretary, Govt. of India, (Mobile No. 9818559029) is appointed as the Chairperson and Mohd. Farhan Khan, Advocate (Mobile no. 9582526224) is appointed as Alternative Chairperson for the meetings as may have been directed to be convened by this Tribunal as above of the applicant companies.



L. The fee for the Chairperson for the aforesaid meetings shall be Rs 1,00,000 (One Lac only) and the fee for the Alternate Chairperson shall be Rs. 75,000 (Seventy-Five Thousand only) in addition to meeting their incidental expenses. Mr. Gopal Prasad Agrarwal, Chartered Accountant (Mobile No. 9437052192) is appointed as a Scrutinizer and would be entitled to fee of Rs. 75,000 (Seventy-Five Thousand only) for his services in addition to meeting his incidental expenses. The Chairperson will file their reports within two weeks from the date of holding of the above said meetings.

M. The individual notices of the said meetings shall be sent by the applicant companies through registered post or speed post or through courier or through e-mail 30 days in advance before the scheduled date of the meeting, indicating the day, date, place and time as aforesaid, together with a copy of scheme of amalgamation, a copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall be sent alongwith and in addition to above any other documents as may be prescribed under the Act may also be duly sent with the notice.

N. As prayed, dispatch of individual notice to the Un-Secured Creditors of Transferee Company with individual value of less than ₹ 50,000 is dispensed with. Notice of meeting as published in the newspapers will be deemed to be the notice to all these Un-Secured Creditors. It is, however, clarified that such dispensation will not affect the right of these unsecured creditors to attend the meeting and cast vote. Therefore, it is clarified that Un-Secured Creditors with



individual value of less than ₹ 50,000 shall be entitled to attend and vote at the meeting.

- O. That the applicant companies shall publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date, place and time as aforesaid, to be published in the English Daily 'Business Standard' and Hindi Daily 'Jansatta' (Delhi Edition) stating the copies of Scheme of Amalgamation, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the applicant companies.
- P. 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 to the respective companies under the Act and rules framed there under. The Chairperson shall be responsible to report the result of the meeting within two weeks of the conclusion of the meeting with a vote on the proposed Scheme.
- Q. The companies shall individually send notice to the Central Government, the Income Tax Authorities, concerned Registrar of Companies, NCT of Delhi & Haryana, Official Liquidator and other sectoral regulators who may have significant bearing on the operation of the applicant companies along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.



R. The applicant companies further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every creditor of the applicant companies entitled to attend the meetings as aforesaid.

S. 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.

T. 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.

The application stands allowed in the aforesaid terms.

Sd/-

(S.K. Mohapatra)
Member (T)

(SHIPRA MITTAL)



Sd/-

Chief Justice (Retd.) M.M. Kumar
(President)

08/05/17

दीपक परसेया / Deepak Persoya
उप निदेशक / Deputy Director
राष्ट्रीय कंपनी विधि अधिकरण / National Company Law Tribunal
भारत सरकार / Government of India