



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - IV

Item No. 104
CP(CAA)34/ND/2023

IN THE MATTER OF:

HG Industries Limited

...

Applicant

And

Greenlam Industries Limited

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

Order delivered on 31.10.2023

CORAM:

MR. MANNI SANKARIAH SHANMUGA SUNDARAM,

HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,

HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets.

CP(CAA)34/ND/2023 stands allowed.

Sd/-

DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)

Sd/-

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)



PIC
1.11.2023

Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV
C.P. (CAA)/34 (ND)2023
IN
C.A. (CAA)/6/ND/2023**

Under Sections 230 to 232 of the Companies Act, 2013 read with
Companies (Compromise, Arrangements ad Amalgamation Rules, 2016)

IN THE MATTER OF SCHEME OF ARRANGEMENT

HG Industries Limited

... Transferor Company/Petitioner Company No.1

AND

Greenlam Industries Limited

...Transferee Company/Petitioner Company No. 2

Hereinafter the Petitioner Company No.1 and Petitioner Company No. 2 are
collectively referred to as 'the Petitioner Companies')

Order Delivered on: 31.10.2023

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER
(JUDICIAL)
DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant : Ms. Sonam Gupta & Mr. Saumay Kapoor, Advs.
For the RD : Ms. Shankari Mishra, Adv.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. This second motion petition has been jointly filed by the petitioner
companies herein namely M/s HG Industries Limited (Petitioner
Company No. 1/Transferor Company) and M/s Greenlam Industries
Limited (Petitioner Company No. 2/Transferee Company) under section
230-232 of the Companies Act, 2013, read with the Companies
(Compromises, Arrangements, Amalgamations) Rules, 2016, ("Rules")





and the National Company Law Tribunal Rules, 2016, for the purpose of the sanction of the proposed Scheme of Amalgamation of the Transferor Company with Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred as the "Scheme"), has been placed on record.

2. The Petitioner Company No. 1/Transferor Company i.e., M/s HG Industries Limited was incorporated under the Provisions of Companies Act, 1956 on 11.12.1987 vide CIN: L20100DL1987PLC408363 having its registered office at 203, 2nd Floor, West Wing, Worldmark 1, Aerocity, IGI Airport, Hospitality District, New Delhi-110037. Thus, this Tribunal is having territorial jurisdiction. The Authorized Share Capital of the Transferor Company is Rs. 4,00,00,000/- divided into 80,00,000 Equity Shares of Rs. 5/- each. The Issued, Subscribed and Paid-up Share Capital is Rs. 2,31,67,840/- divided into 46,33,568 Equity Shares of Rs. 5/- each.
3. The Petitioner Company No. 2/Transferee Company i.e., M/s Greenlam Industries Limited was incorporated under the Provisions of Companies Act, 1956 on 12.08.2013 vide CIN: L21016DL2013PLC386045 having its registered office at 203, 2nd Floor, West Wing, Worldmark 1, Aerocity, IGI Airport, Hospitality District, New Delhi-110037. Thus, this Tribunal is having territorial jurisdiction. The Authorized Share Capital of the Transferee Company as on 31.12.2022 is Rs. 15,00,00,000/- divided into 15,00,00,000 Equity Shares of Rs. 1/- each. The Issued, Subscribed and Paid-up





Share Capital as on 31.12.2022 is Rs. 12,69,92,550/- divided into 12,69,92,550 Equity Shares of Rs. 1/- each.

4. The Petitioner Companies submit that the rationale for the scheme of amalgamation between the Transferor Companies and Transferee Company would have the following benefits: -
- i. It would enable the Transferee Company to leverage its combined assets and create a more competitive business, both in scale and operations.
 - ii. It would consolidate the businesses of the Transferor Company and the Transferee Company which will result in focused growth, operational efficiencies, business synergies and unlock the value of assets of the Transferor Company.
 - iii. It would enhance operational, organizational and financial efficiencies and achieve economies of scale by pooling of resources and ultimately enhancing overall shareholders' value.
 - iv. It would achieve synergies in costs (particularly in respect of customer relationship management and establishing sales and marketing channels), operations, stronger and wider capital and financial base for future growth.
 - v. It would allow for an integrated and coordinated approach to investment strategies and more efficient allocation of capital and cash management.
 - vi. It would broaden the Transferee Company's product portfolio by adding plywood and allied products.





- vii. It would prevent overlap of sales and marketing channels of the Transferor Company and the Transferee Company.
- viii. It would inter alia, consolidate administrative and managerial functions and eliminate multiple record keeping other expenditure and ensure optimal utilization of resources by elimination of unnecessary duplication of activities and related costs thus resulting in reduced expenditure.
5. The Appointed Date as fixed for the proposed scheme of Amalgamation is 1st April, 2022 or such other date as may be directed by the National Company Law Tribunal.
6. From the record, it is seen that the First Motion joint application seeking direction for dispensation/convening the meeting of Shareholders, Secured Creditors and Unsecured Creditors was filed before this bench vide CA(CAA)06(ND)OF2023 and based on such application moved under Section 230-232 of the Companies Act, 2013, this Tribunal vide order dated 22.02.2023 (pronounced order) read with order dated 11.04.2023 has passed the following directions: -
- The meeting of the Secured Creditors of the Transferor Company and Transferee Company is dispensed with.
 - The meeting of the Equity Shareholders and Unsecured Creditors of the Transferor Company/Petitioner Company No. 1 and Transferee Company/Petitioner Company No. 2 was directed to be convened within 60 days of the passing of the order at such time and place mutually decided between the Petitioner





Companies and their respective Chairperson at registered office of the companies or such other place as me decided.

7. The Chairperson of the meeting of Shareholders of the Transferor Company had placed on record Chairperson's report dated 18.04.2023. As per their report shareholders holding 99.38% value of the equity shares were present and 91.26% shareholders have voted in favor of the scheme.
8. The Chairperson of the meeting of Unsecured Creditors of the Transferor Company had placed on record Chairperson's report dated 18.04.2023. As per their report 100% value of the unsecured creditor have voted in favor of the scheme.
9. The Chairperson of the meeting of Shareholders of the Transferee Company had placed on record Chairperson's report dated 28.04.2023. As per their report shareholders holding 96.80% value of the equity shares were present and 92.80% shareholders have voted in favor of the scheme.
10. The Chairperson of the meeting of Unsecured Creditors of the Transferee Company had placed on record Chairperson's report dated 28.04.2023. As per their report, it transpires that 100% value of the unsecured creditors have voted in favor of the scheme.
11. In the present second motion petition, vide order dated 16.05.2023 passed by this Tribunal, the Tribunal directed the Petitioner Companies to issue notices to the (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; (b)





Registrar of Companies, NCT of Delhi & Haryana; (c) Assistant/Deputy Commissioner of Income Tax, Dibrugarh, Assam; (d) NSE, Mumbai; (e) BSE, Mumbai; (f) SEBI, Mumbai and (g) Official Liquidator and to such other sectoral regulators or authorities that may be affected by the proposed scheme.

12. In compliance with the order dated 16.05.2023, the petitioner companies have filed an affidavit of service on 21.06.2023 affirming and disclosing that notices were served on the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Income Tax Department, Official Liquidator, NSE & BSE and SEBI. The applicants have effected publication in "Business Standard" (English, Delhi Edition) and "Business Standard" in (Hindi Delhi Edition) both dated on 27.05.2023 and also published in "Financial Express" in English language dated on 27.05.2023.
13. Pursuant to the notice issued, the Regional Director, and the Official Liquidator have filed their response/reply in the matter.
14. The Regional Director (RD) in its report affidavit dated 14.07.2023 has made certain observations regarding the proposed scheme of Amalgamation among the Petitioner Companies. In response to the same, the Petitioner Company No. 2 had filed reply dated 18.07.2023 wherein the Petitioner Company No. 2 gave clarification to the observations made by the Regional Director, the details of the same are given below:

Observation	Observation by the Regional Director in its report dated 14.07.2023	Reply by Petitioner Company dated 18.07.2023
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1. As per audited financial statements of the Transferee Company for the F.Y. 2021-2022, it is seen that the company has not paid certain statutory dues on account of dispute and case for the same is pending before their respective authority.

- A. The independent Auditor's Report of Petitioner No. 2 has not deposited the statutory duties levied by the statutory authorities as the same are disputed.
- B. Appended is the table containing details of the cases where Petitioner No. 2 has not deposited the statutory dues on account of the dispute:

Sr.	Particulars	Status	Stage
1.	Himachal Pradesh VAT Act, 2005 Brief Facts: The Deputy Commissioner of States Taxes and Excise Cum Assessing Authority, BBN Baddi disallowed the Input Tax Credit claimed by Petitioner No. 2, under the Himachal Pradesh Value Added Tax Act, 2005 for the purchase of diesel for the manufacturing plant at Nalagarh, Himachal Pradesh for the period FY 2010-2011. Amount involved: INR 18.56 Lakhs	Appeal against the order of the Deputy Commissioner, has been filed before Additional Excise and Taxation Commissioner Cum- Appellate Authority (South Zone) Shimla Himachal Pradesh The appeal has been disposed off in favour of Petitioner No. 2	First appeal
2	Finance Act, 1994 Brief Facts: Assistant Commissioner, CGST Division-E, Behror by its order held that the Petitioner No. 2 had failed to pay requisite service tax on Ocean Freight, for the	Appeal against the order of Assistant Commissioner, CGST Division-E, Behror has been filed against the Commissioner Appeals, Central Excise and Central	First Appeal



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Sr.	Particulars	Status	Stage
	period April 2016 to June 2017. Amount involved: INR 11.73 Lakhs	Goods & Services Tax, Jaipur The appeal has been disposed off in favour of Petitioner No. 2	





		<table border="1"> <tr> <td data-bbox="869 224 925 929">3.</td> <td data-bbox="925 224 1157 929"> <p>Income Tax Act, 1961</p> <p>Brief Facts: Income Tax Officer, National Faceless Assessment Center, Delhi by its Order under Section 154 of the Income Tax Act, 1961 has directed Petitioner No. 2 to pay tax on account of failure to properly calculate the depreciation of assets post the demerger of Greeply Industries Ltd with and into Petitioner No. 2 for the FY 2013-14.</p> <p>Amount involved: INR 4.84 Lakhs</p> </td> <td data-bbox="1157 224 1300 929"> <p>Appeal against the Order of the Income Tax Officer has been filed before Commissioner of Income Tax (Appeals).</p> <p>The appeal is pending adjudication.</p> </td> <td data-bbox="1300 224 1540 929"> <p>First appeal</p> <p>Interim stay granted in favour of Petitioner No. 2. The demand of the Income tax department is kept in abeyance till the conclusion of the appeal.</p> </td> </tr> <tr> <td data-bbox="869 929 925 1377">4.</td> <td data-bbox="925 929 1157 1377"> <p>Income Tax Act, 1961</p> <p>Brief Facts: Assistant Commissioner of Income Tax Circle, Dibrugarh, by its Order directed the reassessment of the taxes paid by Petitioner No. 2, for the Financial Year 2013-14.</p> <p>Amount involved: INR 652.83 Lakhs</p> </td> <td data-bbox="1157 929 1300 1377"> <p>Appeal against the order of the Assistant Commissioner of Income Tax Circle, Dibrugarh has been filed before Commissioner of Income Tax (Appeals).</p> </td> <td data-bbox="1300 929 1540 1377"> <p>First appeal</p> <p>Interim stay granted in favour of Petitioner No. 2. The demand of the Income tax department is kept in abeyance till</p> </td> </tr> </table>	3.	<p>Income Tax Act, 1961</p> <p>Brief Facts: Income Tax Officer, National Faceless Assessment Center, Delhi by its Order under Section 154 of the Income Tax Act, 1961 has directed Petitioner No. 2 to pay tax on account of failure to properly calculate the depreciation of assets post the demerger of Greeply Industries Ltd with and into Petitioner No. 2 for the FY 2013-14.</p> <p>Amount involved: INR 4.84 Lakhs</p>	<p>Appeal against the Order of the Income Tax Officer has been filed before Commissioner of Income Tax (Appeals).</p> <p>The appeal is pending adjudication.</p>	<p>First appeal</p> <p>Interim stay granted in favour of Petitioner No. 2. The demand of the Income tax department is kept in abeyance till the conclusion of the appeal.</p>	4.	<p>Income Tax Act, 1961</p> <p>Brief Facts: Assistant Commissioner of Income Tax Circle, Dibrugarh, by its Order directed the reassessment of the taxes paid by Petitioner No. 2, for the Financial Year 2013-14.</p> <p>Amount involved: INR 652.83 Lakhs</p>	<p>Appeal against the order of the Assistant Commissioner of Income Tax Circle, Dibrugarh has been filed before Commissioner of Income Tax (Appeals).</p>	<p>First appeal</p> <p>Interim stay granted in favour of Petitioner No. 2. The demand of the Income tax department is kept in abeyance till</p>
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Sr.	Particulars	Status	Stage
		This appeal is pending final adjudication.	the conclusion of the appeal.





		<table border="1"> <tr> <td data-bbox="973 224 1165 1120"> <p>5. Income Tax Act, 1961</p> <p>Brief Facts: Income Tax Officer, National Faceless Assessment Center, Delhi by its Order has held that the savings made by foreign subsidiary of Petitioner No. 2 on account of corporate guarantee/Standby Letter of Credit (SBLC) provided by Petitioner No. 2, should be considered as income of Petitioner No. 2 and therefore should be taxable. Income Tax Officer has disallowed the benefit on the expense claimed by Petitioner No. 2 on the Education cess and treatment of MEIS income as capital receipt in India for Financial year 2016-17.</p> <p>Amount involved: INR 206.29 Lakhs</p> </td> <td data-bbox="1165 224 1292 1120"> <p>Appeal against the Order of the Income Tax Officer, National Faceless Assessment Center, Delhi has been filed before Commissioner of Income Tax (Appeals). The appeal is pending adjudication.</p> </td> <td data-bbox="1292 224 1532 1120"> <p>First appeal</p> <p>Interim stay granted in favour of Petitioner No. 2. The demand of the Income tax department is kept in abeyance till the conclusion of the appeal.</p> </td> </tr> <tr> <td data-bbox="973 1120 1165 1433"> <p>6. Income Tax Act, 1961</p> <p>Brief Facts: The Assessing Officer, Income Tax by its order disallowed the amortization expenses claimed by Petitioner No. 2 for FY 2014-15.</p> </td> <td data-bbox="1165 1120 1292 1433"> <p>Income Tax Appellate Tribunal</p> <p>This appeal has been disposed of in favour of Petitioner No. 2</p> </td> <td data-bbox="1292 1120 1532 1433"> <p>Second appeal</p> </td> </tr> </table>	<p>5. Income Tax Act, 1961</p> <p>Brief Facts: Income Tax Officer, National Faceless Assessment Center, Delhi by its Order has held that the savings made by foreign subsidiary of Petitioner No. 2 on account of corporate guarantee/Standby Letter of Credit (SBLC) provided by Petitioner No. 2, should be considered as income of Petitioner No. 2 and therefore should be taxable. Income Tax Officer has disallowed the benefit on the expense claimed by Petitioner No. 2 on the Education cess and treatment of MEIS income as capital receipt in India for Financial year 2016-17.</p> <p>Amount involved: INR 206.29 Lakhs</p>	<p>Appeal against the Order of the Income Tax Officer, National Faceless Assessment Center, Delhi has been filed before Commissioner of Income Tax (Appeals). The appeal is pending adjudication.</p>	<p>First appeal</p> <p>Interim stay granted in favour of Petitioner No. 2. The demand of the Income tax department is kept in abeyance till the conclusion of the appeal.</p>	<p>6. Income Tax Act, 1961</p> <p>Brief Facts: The Assessing Officer, Income Tax by its order disallowed the amortization expenses claimed by Petitioner No. 2 for FY 2014-15.</p>	<p>Income Tax Appellate Tribunal</p> <p>This appeal has been disposed of in favour of Petitioner No. 2</p>	<p>Second appeal</p>
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Sr.	Particulars	Status	Stage
	Amounts involved: INR 20.65 Lakhs		





		<p>7. Income Tax Act, 1961</p> <p>Brief Facts: The Assistant Commissioner of Income Tax, Tinsukia by its Order held that the savings made by foreign subsidiary of Petitioner No. 2 on account of corporate guarantee/SBLC provided by Petitioner No. 2, should be considered as income of Petitioner No. 2 and therefore should be taxable and further the Assistant Commissioner of Income Tax disallowed the deduction of amortization of leasehold land by Petitioner No. 2 for Financial Year 2015-16.</p> <p>Amount involved: INR 42.91 Lakhs</p>	<p>Appeal against the order of the Assistant Commissioner has been filed before Commissioner of Income Tax (Appeals). The appeal is pending final adjudication.</p>	<p>First appeal</p> <p>Interim stay granted in favour of Petitioner No. 2. The demand of the Income tax department is kept in abeyance till the conclusion of the appeal.</p>
		<p>8. Section: Income Tax Act, 1961</p> <p>Brief Facts: Income Tax Officer, National Faceless Assessment Center, Delhi by its Order has held that the savings made by foreign subsidiary of Petitioner No. 2 on account of corporate guarantee/SBLC provided by Petitioner No. 2, should</p>	<p>Appeal against the Order of the Income Tax Officer has been filed before Commissioner of Income Tax (Appeals). The appeal is pending adjudication.</p>	<p>First appeal</p> <p>Interim stay granted in favour of Petitioner No. 2. The demand of the Income tax department is kept in abeyance till</p>



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Sr.	Particulars	Status	Stage
	be considered as income of Petitioner No. 2 and therefore should be taxable. Income Tax Officer has disallowed the benefit on the expense claimed by Petitioner No. 2 on the Education cess and treatment of MEIS income as capital receipt in India for the Financial year 2017-18.		the conclusion of the appeal.
	Amount involved: INR 132.05 Lakhs		





C. It is pertinent to note that Petitioner No. 2 on 26 May 2023 issued notice to the Income Tax Department requesting for representations/ objections to the Scheme. However, no representations/objections have been received from Income Tax Department, in particular to the pending disputes as mentioned above.

D. Regardless, the Petitioner No. 2 submits that the present Scheme, envisages amalgamation of Petitioner No. 1 with and into Petitioner No. 2. Therefore, post the sanction of the Scheme, Petitioner No. 2 will continue to exist and will continue to contest the above listed disputes and subject to the outcome of the above listed proceedings and after exhausting all the legal remedies available to it, and the matters in dispute achieving finality, the Petitioner No. 2 will and undertakes to pay the statutory dues demanded in compliance with the law.





2.	<p>With reference to Transferee Company auditor has stated "Emphasis of Matter" in his report for the FY 2021-22 which are: - We draw attention to note no. 48 to the financial statements which describes significant uncertainties due to the COVID-19 pandemics on the company's operations and result as assessed by the management."</p>	<p>A. The RD's affidavit has relied on the emphasis of matter section of the Auditor's Report, which draws attention to "Note No. 48 of the financial statements which describes significant uncertainties due to the outbreak of COVID-19 pandemic on the Company's operations and results as assessed by the management."</p> <p>B. In this regard, it is pertinent to note that Note No. 48 to the financial statements of the Petitioner No. 2 for the year ended 31 March, 2022, in fact clarifies that on account of the pandemic relating to Covid-19, the Petitioner No. 2 "...does not anticipate any impairment to its financial and non-financial assets..." therefore, note no. 48 to the financial statements of the Petitioner N. 2 for the year ended 31st March, 2022, does not in fact reveal the uncertainties due to Covid-19 pandemic on Petitioner No. 2's operations, the results and the carrying amounts of property, plant and equipment, investments, receivables and other current assets.</p> <p>C. It is respectfully submitted that note no. 48 to the financial statements of the Petitioner No. 2 was included on account of circular issued by the SEBI dated 20th May, 2020, bearing no. SEBI/IO/CFD/CMD 1 / CIR\I 2020 I 8 4, pursuant to which listed companies such as the Petitioner Companies were advised to evaluate the impact of the Covid-11t pandemic on their businesses to the extent possible. On account of this circular, the Petitioner No. 2 has inserted the note no. 48 to its financial statements, which has merely been referred to (draw attention) by the Auditor without making any adverse observation or comment or caution on any lasting impact that the pandemic relating to Covid-19 has or may have had on the Petitioner No. 2.</p> <p>D. Petitioner No. 2 further states that post-pandemic revenues and profit after taxes of the Petitioner No. 2 are in fact higher than the pre-pandemic years. The details of the revenues and profit for the past five years on standalone basis is set out below:</p>
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Sr. No.	FY 2018 - 19	FY 2019- 20	FY 2020- 21	FY 2021- 22	FY-2022- 23
Revenue from Operations (In INR Lakhs)	119598.97	122722.18	112605.20	155918.55	185106.81
Profit after Tax (In INR Lakhs)	6508.25	9262.73	6684.87	8536.50	12288.06

E. It is also respectfully submitted that the post of the sanction of the Scheme, the Petitioner would be able to leverage the combined assets of both the Petitioner Companies and create a more competitive business, both in scale and operations and therefore the petition seeking amalgamation of Petitioner companies should be allowed.

3. With reference to Transferee Company, auditor has stated in his report for the F.Y. 2021-2022 that the "title deeds of all immovable properties disclosed in the financial statements include under the property, Plant and Equipment (other than properties where the company is the lessee and the lease agreements are duly executed in favor of the lessee) are held in the name of the company as at balance sheet date except for the following property (Refer note 1.3 to the stand alone financial statements):-

(Rs. In Lacs)

Description of the property	Gross carrying value as on 31.03.2022	Held in the Name of	Whether promoter, director or their relative or employee	Period held	Reason for not being held in the name of the company
Building	286.98	SDB Infrastructure Private Ltd	No	Since 2013	The company has obtained peaceful possession over the said property and taking necessary steps including discussion with the seller for transfer of the title deed to the Company

A. The RD's Affidavit has relied on the Auditor's Report to observe that one of the properties i.e., office building (Property) is held by Petitioner No. 2, which is in the name of SDB Infrastructure Private Limited (SDB). Accordingly, the RD's affidavit has prayed for directions to the Petitioner No. 2 comply with the provision of Section 187 of the Companies Act, 2013.

B. The Petitioner No. 2 submits that it is not in breach / non-compliance of Section 187 of the Companies Act, 2013 for the following reasons, which demonstrates that the title to the Property is not yet transferred to it for reasons which are beyond its control and domain:

- i. Greenply Industries Limited (GIL) (predecessor in interest of Petitioner No. 2) on 16 March 2005 entered into an Agreement to Sell (Agreement) with SDB for the purchase of the Property;
- ii. GIL paid the entire consideration to SDB in terms of the Agreement. Thereafter, GIL was put in possession of the Property. In terms of the Agreement, SDB was required to take steps to register the Sale deed to





Hence, the company may be asked to ensure the compliances of the provision of the section 187 of the Companies Act, 2013.

- transfer the Property (Sale Deed) in the name of GIL in the records of the Sub-Registrar;
- iii. SDB delayed in getting the Sale Deed registered. In the meanwhile, the Guwahati High Court on 31 October 2014 sanctioned a composite scheme of arrangement under Sections 100 to 104 and 391 to 395 of the Companies Act, 2013 between GIL and Petitioner No. 2, whereby GIL's decorative business was demerged and transferred to Petitioner No. 2. The interest in the said Property was also transferred to Petitioner No. 2 in light of the said composite scheme.
- iv. Even thereafter, SDB has failed to register the Sale Deed. Constrained by the failure of SDB, the Petitioner No. 2 filed Suit (Comm) No. 1232 of 2018 before the Hon'ble Delhi High Court against SDB and the Delhi Development Authority. The said suit was withdrawn by Petitioner No. 2 on 4 December 2018 with a liberty to file afresh suit on the same cause of action, after approaching the Land & Development Office, Delhi for making a fresh application for registration of the Property; and
- v. However, Land & Development Office, Delhi did not respond to Petitioner No. 2's request to register the Property in the name of Petitioner No. 2. Prejudiced by the actions of SDB and Land & Development Office, Delhi, the Petitioner No. 2 has filed CS (COMM) 464 of 2022 before the Hon'ble Delhi High Court seeking inter alia specific performance against SDB for registration of the Sale Deed. This suit is presently pending adjudication.
- C. It is therefore evident that due to the actions of a third party (SDB), which has wrongly refused to register the Property in the name of the Petitioner No. 2, that the Property is not reflected in the name of the Petitioner No. 2 in the land records. Petitioner No. 2 states that it is diligent in prosecuting the suit to have the Property registered in its name and is paying property taxes and all other outgoings, statutory or otherwise, in respect of the Property without any delay or failure. As stated above, the Petitioner No. 2 is also in exclusive and peaceful possession of the Property.





		D. The Petitioner No. 2 undertakes to take all steps necessary to hold the Property in its name, on the conclusion of the proceedings before the Hon'ble Delhi High Court, if it is successful.
4.	The Transferee Company may kindly be directed to comply with the provisions of the Section 232(3)(i) of the Companies Act, 2013 regarding fee payable of its revised Authorized Share Capital.	Clause 9.2. of the Scheme provides for aggregation on the Authorised Share Capital of the Petitioner Companies post the sanction of the Scheme. In this regard, pursuant to the aggregation of the Authorise Share Capital the Petitioner No. 2 undertakes to comply with the Section 232 (3) (i) of the Companies Act, 2013, if any, on its revised authorized share capital.

15. Vide order dated 08.08.2023 this Tribunal had afforded an opportunity to the Regional Director file final report, dealing with the clarifications given by the Petitioner Companies to the observations raised. However, no final report was filed. Thus, after considering the replies filed by the Petitioner Company No. 2, no new observations/objections have been raised by the Regional Director. It is also noticed that all the observations raised by the RD is in respect of the Transferee Company which will continue to exist.

16. The Official Liquidator have filed its report dated 07.07.2023 wherein it is stated the affairs of the aforesaid Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest in terms of the provisions of the Companies Act, 2013.

17. The Petitioner Companies have placed on record the no objection letter dated 11.01.2023 issued by BSE Limited in respect of Transferor Company and Transferee Company.





18. The Petitioner Companies have placed on record the no objection letter of National Stock Exchange of India Limited dated 11.01.2023 with respect of Transferee Company.
19. It is noticed that despite notice was served, no comments were received from the Income Tax Department with respect to any of the Petitioner Companies.
20. The Petitioners vide their reply affidavit filed in response to the RD's report have given clear undertaking to comply with all legal provisions including section 187 and section 232(3)(i) of the Companies Act, 2013. The Petitioners have also undertaken to pay all statutory dues as per law.
21. Certificates of Statutory auditor of the petitioner companies, have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies Accounts Rules, 2014 and Companies (Accounting Standards) Amendment Rules, 2016, and other generally accepted accounting principles in accordance with the Companies Act, 2013, as applicable.
22. The shareholders of the petitioner companies are the best judges of their interest, being fully conversant with market trends. Therefore, their decisions are not supposed to be interfered with by the Tribunal for the reason that it is not proper on the part of the judicial function





of the Tribunal to examine and evaluate entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme, of which sanction is sought under Section 230-232 of the Companies Act of 2013, will do not ordinarily go into the merits of the corporate decisions of companies as approved by their respective shareholders and creditors.

23. It has also been affirmed in the petition that no one will be prejudiced if the proposed Scheme of Amalgamation is sanctioned and the sanction of the said Scheme will benefit all and is in the interest of the Transferor Company and the Transferee Company, their Shareholders, Creditors, Employees and all concerned. In view of the foregoing and upon considering the approval accorded by the members and creditors of the Petitioner Companies to the proposed Scheme, there appears to be no impediments to sanctioning the proposed scheme.

24. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013 with the following directions: -

- i. The Petitioners shall always remain bound to comply with the statutory requirements in accordance with law.
- ii. Notwithstanding the sanction, if there is any deficiency found or, violation committed, qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken in accordance





with the law, against the concerned persons, directors and officials of the petitioners.

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

25. This Tribunal further directs with respect to both the Transferor Company and the Transferee Company, that: -

- i. Upon the sanction becoming effective from the appointed date i.e., 01.04.2022, the Transferor Company shall stand dissolved without undergoing the process of winding up.
- ii. All contracts 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;
- iii. All the employees of the Transferor Company shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption





of service and on the terms and conditions no less favorable than those on which they are engaged by the Transferor Company, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;

- iv. All liabilities of the Transferor Company, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Companies Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company, as if it had incurred such liabilities.
- v. All proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company.
- vi. Any person interested or affected shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

26. Further, the Petitioner Companies shall within thirty days of the date of the receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be





dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company on the file kept by him in relation to the Transferee Company and the files relating to all the Petitioner Companies shall be consolidated accordingly.

27. In compliance with the requirement of Section 232 (7) of the Act, the Transferee Company shall until the full implementation of the Scheme of Amalgamation shall file a statement every year in the Form CAA 8 along with the required fees with the Registrar of Companies as prescribed in the Companies (Registration offices and fees) Rules 2014 within 210 days from the end of each financial year.
28. The petition stands disposed of in the above terms.
29. Let copy of the order be served to the parties.

Sd/-

**DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)**

Sd/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**



PK 1.11.2023
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003