

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH**

CA (CAA) No.12/Chd/Pb/2024

(1st Motion)

Under Section 230 to 232 of 'The Companies Act, 2013' read with 'The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016'

IN THE MATTER OF:

Shankar Embroidery Private Limited

with its registered office at
39/14-15, Village: Muradpura,
Fatehgarh Churian Road, Amritsar-143001
CIN: U17291PB1998PTC021553
PAN: AADCS3153L

...Applicant No. 1/Transferor Company

And

Shanker Printing Mills Private Limited

with its registered office at
18-19, VPO Pandori Waraich
Majitha Road, Pandori Warraich
Amritsar-143008
CIN: U13999PB2023PTC059023
PAN: AACFS8579C

...Applicant No. 2/Transferee Company

Order delivered on: 03.07.2024

**Coram: HON'BLE DR. P.S.N. PRASAD, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:-

For the Applicant Companies: Mr. G. S. Sarin, PCS

Per: Dr. P.S.N. Prasad, Member (Judicial)

Sh. Subrata Kumar Dash, Member (Technical)

ORDER

This is a Joint First Motion Application filed by Applicant Companies under Section 230-232 of 'The Companies Act, 2013' read with 'The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016' in relation to the Scheme of Arrangement of **Shankar Embroidery Private Limited** (for short hereinafter referred to as Applicant No. 1/Transferor Company) with **Shankar Printing Mills Private Limited** (for short hereinafter referred to as Applicant No. 2/Transferee Company). The said Scheme is attached as Annexure A-11 of the Application. The registered office of both the Applicant Companies is Amritsar, Punjab India and therefore, it is under the territorial jurisdiction of this bench.

FACTS OF THE CASE

2. The facts of the case, as stated in the application, have been summarised below:
 - (i) Applicant No. 1 is a Private Limited Company, limited by shares, incorporated under the Companies Act, 1956, under CIN: U17291PB1998PTC021553 and having its Registered Office at 39/14-15, Village Muradpura, Fatehgarh Churian Road, Amritsar-143001 (hereinafter referred to as the "Transferor Company"). A copy of the Master data and Memorandum of Association is enclosed at Annexure A-2 & A-3 of the application. The Main Objects of the Transferor Company are:
 1. *To Carry on the business as a manufacturer, whole seller, retailers, importers, exporters, processors, bleachers, dyers, finishers of all kinds of embroiders, embraided cloth*

2. *To carry on the business as manufacturers, spinners, weavers, knitters, stitching's, dyeing of cloths, combers, producers, fabricators, importers, dealers in all kinds of yarn, fabrics, worsted, shoddy, cotton, synthetic, woollen, silk, jute, rayon, artificial silk, nylon, polyester, acrylic, or any other synthetic, fiber, or yarn allied products, by products, and to treat and utilise any waste arising from any such manufacture production and process, and further to carry on or be interested in the business of ginning, bailing of cotton waste, liner cotton, yarn waste, hemp, and jute and the cultivation thereof.*
3. *To carry on the business of manufacturers, importers, exporters, processors, and dealers in all kinds of cloth, knitted cloth, woollen fabrics, synthetic fabrics, cotton fabrics, synthetic tops, worsted shoddy, and all kinds of blankets, shawls, hosiery, and readymade garments.*

(ii) The share capital of the transferor Company as of 31.03.2023, is as under

S.No.	Authorised Capital	Amount in Rs. as of 31.03.2023
1.	15,00,000 equity shares of Rs. 10 each	1,50,00,000.00
2.	Issued, subscribed and paid up capital 15,00,000 equity shares of Rs. 10 each	1,50,00,000.00

After 31.03.2023 and 31.01.2024, there has been no change in the Authorized, Issued, Subscribed and Paid-Up Capital of the Transferor Company.

(iii) The Details of Directors of Transferor Company as of 31.01.2024 is as per the Certified Copy by the Practicing Company Secretary which is annexed at Annexure-A-14 of the application.

(iv) Shareholding pattern of Transferor Company as on 31.01.2024 is as follows:

S.NO	NAME OF SHAREHOLDER	No. of Shares	Face value per share	Percentage
1	SHIVAM MEHRA	739400	10	49.29%
2	RAJIV MEHRA	399500	10	26.63%
3	RAGHAV MEHRA	350500	10	23.37%
4	RAKESH MEHRA	10600	10	0.71%
	TOTAL	15,00,000		100%

(v) Transferee Company is a Private Limited Company, limited by shares, incorporated under the Companies Act, 2013, under Corporate Number Identification CIN: U13999PB2023PTC059023. Earlier it was a Partnership Firm running in the name and style of Shanker Printing Mills, which was later on converted into a Private Limited Company on 10th July, 2023. The Company has increased its Authorized Capital from Rs.10.00 lakhs to Rs. 7.00 Crores on 14th July, 2023, and increased its Paid-up Capital from Rs.10.00 lakhs to Rs.2.50 Crores on 18th Sept, 2023. The main objects of the Transferee Company are:

1. *To convert Partnership Firm in the name of Shanker Printing Mills to a Company under Section 366 of the Companies Act, 2013, together with all its rights, including intellectual property rights, privileges, goodwill, licenses, assets and liabilities whereupon the said firm stand dissolved.*
2. *To carry on the business of Manufacturing, Printing, Computerized Printing, Digital Printing, Embroidery, Bleaching, Finishing, Knitting,*

Processing and Dyeing of all types of clothes and to carry all Allied activities relating to Textile Industries.

A copy of the Master data, and Memorandum of Association of the Transferee Company is enclosed at Annexure A-5 & A-6 of the application.

(vi) The share capital of the transferee Company as of 31.03.2023, is as under

Authorised Capital	Amount in Rs. as of 31.03.2023
70,00,000 equity shares of Rs. 10 each	7,00,00,000.00
Issued, subscribed and paid up capital 25,00,000 equity shares of Rs. 10 each	2,50,00,000.00

(vii) The Details of Directors of Transferee Company as of 31.01.2024 is as per Certified Copy by the Practicing Company Secretary which is annexed at Annexure-A-21 of the application.

(viii) The Shareholding pattern of Transferor Company as on 31.01.2024 is as follows:

S.NO.	Name of Shareholder	No. of shares	Face value per share	Percentage
1	Rajiv Mehra	12,50,000	10	50%
2	Rakesh Mehra	12,50,000	10	50%
	Total	25,00,000		100%

(ix) The Financial position of the Transferee Company as per the Provisional Balance Sheet as of 31.01.2024 is annexed as Annexure A-4 of the application. As the Company was incorporated on 10 July, 2023, hence, the

Audited Financial Statement for the Financial year ending on 31.03.2024 has not been prepared and audited.

- (x) A Joint Affidavit on behalf of the Transferor Company and the Transferee Company under Section 230(2) is annexed as Annexure A-30 of the application.
- (xi) A copy of the Valuation Report is annexed as Annexure A-12 of the application.
- (xii) The Board of Directors of the Transferor and Transferee Companies have approved the Scheme of Arrangement in their respective Board meetings held on 15.02.2024. Copies of the Board resolutions passed by the Board of Directors of the Transferor and Transferee Company are annexed as Annexure A-9 and 10, respectively of the application.
- (xiii) The objects and rationale for the scheme of amalgamation is as follows:

(i). Shankar Embroidery Private Limited (Transferor Company) and Shanker Printing Mills Private Limited (Transferee Company) both are group Companies having common directors and shareholders.

(ii) The proposed Merger of the Transferor company into the Transferee Company would inter-se result in the alignment of business of the Transferor Company and the Transferee Company as both the Companies are in the same line of business thereby resulting in rationalization and standardization of the business processes, reduction in overheads, administrative, managerial and other expenditure, organizational efficiency, and optimal utilization of resources which would be beneficial for all members and other stakeholders.

(iii) The Merger would benefit the shareholders, creditors, employees, and other stakeholders of the respective companies. Further, there is no adverse effect of the Scheme on the directors, key management personnel, promoters, non-promoter members, creditors, and employees of the Companies and the same would be in the best interest of all stakeholders.

(iv) The Merger would bring more productive and optimum utilization of various resources of the transferor company.

(v) The Merger would result in a significant reduction in multiplicity of legal and regulatory compliances, multiple record-keeping, and cost-saving by way of reduction in administrative and other expenditures.

(vi) Better operational efficiencies, revenue and cost synergies;

(vii) Better sales and supply chain opportunities with a wider variety of product offerings which will help in gaining market share;

(viii) Optimization of capital, operational (including promotion)

expenditure, leveraging sales and distribution network and simplification of overlapping infrastructure;

(ix) Augmenting the capabilities of the group to effectively meet future challenges in the sector; and

(x) Creation of value for all the stakeholders.

(xi) Because of the aforesaid, the Board of Directors of the Transferor Company and the Transferee Company have considered and proposed

the Merger of the Transferor Company with the Transferee Company to benefit the stakeholders of both the Companies. Accordingly, the Board of Directors of the Transferor Company and the Transferee Company have formulated this Scheme of Merger Under the provisions of Section 230 to 232 and other relevant provisions of the Act.

(xiv) Key terms of the scheme of merger, as mentioned in the Application, is as follows:

1. The business of the Transferor Company shall be transferred and vest in the Transferee Company upon Amalgamation as per Clause 2 of the Scheme.

2 The staff, workmen, and employees of the Transferor Company shall be deemed to have become employees of the Transferee Company upon Amalgamation as per Clause -2.6 of the Scheme.

3 The legal proceedings by/against the Transferor Company shall be upon Amalgamation as per Clause 2.5 of the Scheme.

4 The Transferor Company shall conduct its business on behalf of the Transferee Company from the Appointed Date upon the Effective date as per Clause 2.1 of the Scheme.

5 The contracts, deeds, and other instruments of the Transferor Company shall be treated as that of the Transferee Company upon Amalgamation as per Clause 2.3 of the Scheme.

6 The Taxes, duties, cess, etc of the Transferor Company shall be treated as that of the Transferee Company upon Amalgamation as per Clause 2.5 of the Scheme.

7 The Scheme attached as per Annexure A-11 has been drawn upon to comply with the laws applicable at present.

8 The Authorised Capital of the Transferor Company shall stand transferred to the Transferee Company as per Clause 3 of the Scheme.

9 Consideration to be discharged to shareholders of the Transferor Company as per Clause 2.10 of the Scheme.

10. The Amalgamation of the Transferor and Transferee Companies shall be accounted for in the books of the Transferee Company as per Clause 3.3 of the Scheme.

11 The Transferor Company shall make necessary applications to the Tribunal as per Clause 4.1 of the Scheme.

12 The Transferor Company and the Transferee Company may make modifications or amendments to the Scheme as per Clause 4.2 of the Scheme.

13 The Effective Date of the Scheme shall be as per Clause 4.3 of the Scheme.

- (xv) A copy of the Valuation Report Dated 15.02.2024 obtained from Mr Harman Jit Singh, approved Registered Valuer having Reg.No IBBI/RV/06/2019/12115 specifying the consideration for the proposed Amalgamation is enclosed as Annexure A-12 of the application.
- (xvi) Upon the coming into effect of the Scheme, and in consideration of the transfer of and vesting of the said assets and the said liabilities of the Transferor Companies in the Transferee Company in terms of the Scheme, the Transferee Company shall, without any further application, act, or deed, issue

and allot equity shares to the Members of the Transferor Companies as per the valuation Report and Exchange ratio as on the Appointed date in the following manner:

S.No.	Transferor Company	Equity Shares	Exchange Ratio	No. of shares to be issued	Face value per-share Amt in Rupees
1	Shankar Embroidery Private Limited	15,00,000	2:1	7,50,000	10

The Transferee Company shall issue and credit the above shares having a face value of Rs 10/- each as fully paid up in the Transferee Company to the shareholders of the Transferor Company, resulting in an issue of 7,50,000 (Seven Lakhs fifty thousand) equity shares of Rs 10/-each.

- (xvii) No fractional certificate shall be issued by the Transferee Company in respect of the fractional entitlements. All the members of the Transferor Company shall accept the shares, to be allotted and issued to them in full and final satisfaction of their claims.
- (xviii) No Special Resolution under Section 62 of the Act shall be required to be passed by the Transferee Company separately in a General Meeting for issuance of shares to the shareholders of the Transferor Company under this Scheme and on the members of the Transferee Company approving this Scheme, it shall be deemed that they have given their consent to the issuance and allotment of equity shares of the Transferee Company to the shareholders of the Transferor Company in the share exchange ratio as stated above.

- (xix) All the equity shares in the share capital of the Transferor Company, to be issued and allotted as aforesaid, shall rank pari-passu in all respects with the existing equity shares in the Transferee Company.
- (xx) Upon the coming into effect of this Scheme all the share certificates issued by the Transferor Company shall automatically stand cancelled.
- (xxi) Upon the coming into effect of this Scheme, the Authorized Share Capital of the Transferee Company shall without further act or deed, stand enhanced by an amount equivalent to the Authorized Share Capital of the Transferor Company. For this sub-clause, the consent of the shareholders to the Scheme shall be deemed to be sufficient for effecting this arrangement and no further resolution under the provisions of the said Act would be required to be passed separately, and that the Transferee Company will not be required to comply with any other procedural formalities under the Act.
- (xxii) There are 4 (Four) Equity Shareholders in the Transferor Company. All the equity shareholders have given their consent and No Objection by way of an affidavit to the present Scheme of Arrangement. A copy of the list of equity shareholders as of 31.01.2024 signed by a Director of Transferor Company and certified by a PCS, along with the respective No Objection Certificates by way of affidavit received from the equity shareholders, are enclosed as Annexure A- 13 of the application.
- (xxiii) There are 98 (Ninety-Eight) Unsecured Creditors as of 31.01.2024, in the Transferor Company. In this regard, a certificate from the Chartered Accountant certifying that there are 98 (Ninety eight) unsecured creditors as of 31.01.2024 in the Transferor Company is enclosed as Annexure A-18 of the application. The unsecured creditors, more than 90% in value, have given their

consent and No Objection by way of an affidavit to the present Scheme of Arrangement which is enclosed as Annexure 19 of the application.

- (xxiv) There are 03 (Three) secured creditors in the Transferor Company who have given their consent and No Objection by way of an affidavit to the present Scheme of Arrangement which is enclosed as Annexure 17 of the application. A certificate from the Chartered Accountant certifying that there are 03 (Three) secured creditors as of 31.01.2024 in the Transferor Company is enclosed as Annexure A-16 of the application.
- (xxv) There are 2 (Two) Equity Shareholders in the Transferee Company. 100% Consent has been given by the equity shareholders of the Transferee Company along with No Objection Certificate by way of an Affidavit to the said Scheme of Arrangement. A copy of the list of equity shareholders as of 31.01.2024 certified by the Transferee Company and by the PCS along with respective No Objection Certificates by way of Affidavits are enclosed as Annexure A-20 and A-21 of the application.
- (xxvi) There are 02 (Two) secured creditors in the Transferor Company who have given their consent and No Objection by way of an affidavit to the present Scheme of Arrangement which is enclosed as Annexure A-22, A-23 of the application. A certificate from the Chartered Accountant certifying that there are 02 (Two) secured creditors as of 31.01.2024 in the Transferor Company is enclosed as Annexure A-24 of the application.
- (xxvii) There are 236 (Two Hundred and Thirty-six) Unsecured Creditors as of 31.01.2024 in the Transferee Company In this regard, a certificate from the Chartered Accountant certifying that there are 236 (Two Hundred and Thirty-six) unsecured creditors as of 31.01.2024 in the Transferee Company is

enclosed as Annexure A-23 and 25 of the application. The unsecured creditors more than 90% in value have given their consent and No Objection by way of an affidavit to the present Scheme of Arrangement. Copies enclosed as Annexure A-26 of the application.

- (xxviii) After the date of the audited accounts, there has been no substantial change in the financial position of the Transferor and the Transferee Companies, except those arising or resulting from the normal course of business.
- (xxix) Neither the Directors of the Transferor nor the Transferee Company have any material interest in the said Scheme of Arrangement, except as Director and/or shareholders in general, the extent of which appears in the Register of Directors Shareholdings maintained by the respective Companies.
- (xxx) The said Scheme will not adversely affect the rights of any of the creditors of any of the Companies in any manner whatsoever and due provisions have been made for payment of all liabilities as and when the same fall due in the usual course. In this connection, the Applicants crave leave to refer to the books of accounts, and records of the companies at the time of the hearing, if necessary.
- (xxxi) There are no proceedings pending under Sections 210 to 227 of the Companies Act, 2013 against either the Transferor or the Transferee Company.
- (xxxii) The Applicant Companies are not being governed by any Sectoral Regulator, an affidavit to this extent is attached in Annexure A-28 of the application.
- (xxxiii) There is no approval required from the Competition Commission of India on Section 6 of the Competition Act, 2002. Hence, the provisions of Competition

Commission of India are not applicable. An affidavit to this extent is attached as Annexure A-29 of the application.

(xxxiv) The Scheme does not involve any buyback of securities or Corporate Debt Restructuring. An affidavit to this effect under Section 230(2) is attached as

(xxxv) Annexure A-30 of the application.

(xxxvi) No proceedings are pending for inspection/investigation under the Companies Act, 1956/2013 Foreign Exchange Management Act, 1999, and the Indian Penal Code, 1860, against any of the Applicant Companies. A list of court cases for and against the Transferor and Transferee Company is attached as Annexure A-31 of the application.

(xxxvii) It is proposed to transfer and vest all the properties, rights, and claims, of whatsoever nature of the Transferor Company and its entire undertakings, together with all the rights and obligations relating thereto, in the Transferee Company, on the terms and conditions fully stated in the said Scheme of Arrangement.

(xxxviii) The applicants prayed that the requirement of the convening of separate meetings of the said Equity Shareholders, Unsecured Creditors and Secured Creditors of the Transferor company and the Transferee Company may please be dispensed with, and if dispensation is not considered in that eventuality an Order for calling of meetings of the equity shareholders, Secured and unsecured creditors of Applicant 1 and Applicant 2 Companies.

(xxxix) The Joint Application has been filed bona fide and in the interest of justice and no stakeholders in the Applicant Companies would be prejudicial if the reliefs sought are not granted by this Tribunal.

- (xi) The present Scheme will be effective from the Appointed Date, i.e., 1st January, 2023.
- (xli) In compliance of the order dated 05.04.2024, the joint additional affidavit for reconciliation of consents of shareholders, unsecured creditors and secured creditors of the applicant companies, along with Annexure A-2 to 4 was filed vide diary no.01118/1 dated 18.04.2024. The joint affidavit for non applicability of Competition commission of India (CCI) was also submitted.

3. The Applicant Companies have also furnished the details of the Shareholders, Secured Creditors, and Unsecured Creditors as follow:

Particulars	Applicant No. 1		Applicant No. 2	
	Total	Consent	Total	Consent
Equity Shareholders	4	4 holding 100% of shareholding	2	2 holding a 100% of shareholding
Preference Shareholders	Nil	N/A	Nil	N/A
Secured Creditors	3	3 holding 100% of shareholding	2	2 holding a 100% of shareholding
Unsecured Creditors	98	25 holding 95.87% of shareholding	236	68 holding 93.94% of shareholding

ANALYSIS AND FINDING

4. Accordingly, the directions of this Bench in the present case are as under:
- I. The Appointed date, as proposed by the Applicant Companies, shall be 01.01.2023.
 - II. The meetings of the equity shareholders of the Applicant No. 1 are dispensed with keeping in view the shareholding and ownership pattern and the fact that the consent to the proposed scheme of amalgamation by way

of affidavits has been furnished by 4 equity shareholders (out of 4 equity shareholders). The requirement of issue and publication of notices for the same are also being dispensed.

- III. The meetings of the equity shareholders of the Applicant No. 2 are dispensed with keeping in view the shareholding and ownership pattern and the fact that the consent to the proposed scheme of amalgamation by way of affidavits has been furnished by 2 equity shareholders (out of 2 equity shareholders). The requirement of issue and publication of notices for the same are also being dispensed.
- IV. The convening of meetings of Preference shareholders of the Applicant Companies, and the requirement of issue and publication of notices are dispensed with, as there are no Preference Shareholders in the Applicant Companies.
- V. The meetings of the secured creditors of the Applicant No. 1 are dispensed with keeping in view the shareholding and ownership pattern and the fact that the consent to the proposed scheme of amalgamation by way of affidavits has been furnished by 3 secured creditors (out of 3 secured creditors). The requirement of issue and publication of notices for the same are also being dispensed.
- VI. The meetings of the secured creditors of the Applicant No. 2 are dispensed with keeping in view the shareholding and ownership pattern and the fact that the consent to the proposed scheme of amalgamation by way of affidavits has been furnished by 2 secured creditors (out of 2 secured

creditors). The requirement of issue and publication of notices for the same are also being dispensed.

VII. The meetings of the unsecured creditors of the Applicant No. 1 are dispensed with keeping in view the shareholding and ownership pattern and the fact that the consent to the proposed scheme of amalgamation by way of affidavits has been furnished by 25 unsecured creditors (out of 98 unsecured creditors). The requirement of issue and publication of notices for the same are also being dispensed.

VIII. The meetings of the unsecured creditors of the Applicant No. 2 are dispensed with keeping in view the shareholding and ownership pattern and the fact that the consent to the proposed scheme of amalgamation by way of affidavits has been furnished by 68 unsecured creditors (out of 236 unsecured creditors). The requirement of issue and publication of notices for the same are also being dispensed subject to strict compliance of the conditions laid down herein:

a. The Applicant Companies to serve the notice upon the (a) Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) concerned Registrar of Companies; (c) Official liquidator and (d) Concerned Income Tax Authorities, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with suitable changes in the notice relating to waiver of the meetings. If no response is received by the Tribunal from the above authorities within 30 days of the date of receipt of the notice it will be presumed that such authorities have no

objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

b. All the Applicant Companies shall file an affidavit in compliance of all the conditions laid down herein along with original proof of service to all the authorities and creditors.

IX. In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition in accordance with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 15 days after the expiry of period of 30 days as mentioned in Section 230(5) of the Companies Act, 2013.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

July 03, 2024

Reet

Sd/-

(Dr. P.S.N. Prasad)
Member (Judicial)