

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
Court-I**

**CP (CAA) No. 20/Chd/Hry/2022
(Second Motion)**

**Under Sections 230 to 232 of
the Companies Act, 2013 read
with Companies
(Compromises, Arrangements
and Amalgamations) Rules,
2016**

IN THE MATTER OF SCHEME OF MERGER BETWEEN:

Hologram Holdings Private Limited

with its registered office at
Khasra No. 31/11, MIE Part-1,
Mama Chowk, Opp-Metro Pillar No. 772,
Behind Shivam Properties, Bahadurgarh,
District-Jhajjar, PIN Code-124507, Haryana
CIN: U67120HR2012PTC044991

Transferor Company No. 1/Petitioner Company No. 1

AND

Swen Holdings Private Limited

with its registered office at
Khasra No. 31/11, MIE Part-1,
Mama Chowk, Opp-Metro Pillar No. 772,
Behind Shivam Properties, Bahadurgarh,
District-Jhajjar, PIN Code-124507, Haryana
CIN: U93000HR2012PTC044958

Transferor Company No. 2/Petitioner Company No. 2

With

Sulphur Securities Private Limited

with its registered office at
Khasra No. 31/11, MIE Part-1,
Mama Chowk, Opp-Metro Pillar No. 772,
Behind Shivam Properties, Bahadurgarh,
District-Jhajjar, PIN Code-124507, Haryana
CIN: U67120HR2012PTC044988

Transferee Company/Petitioner Company No. 3

Order delivered on: 23.07.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present: -

For the Petitioner Companies : Mr. Vaibhav Sharma, Advocate
For the OL : Mr. Edward George Augustine, Advocate
For the Income Tax Department: Mr. Yogesh Putney, Senior Standing Counsel
For ROC : ARoC in person, Delhi and Haryana

PER: SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

ORDER

This is a joint second motion company petition filed by the Petitioner-Companies, namely Hologram Holdings Private Limited (Transferor Company No. 1/Transferor Company No. 1), Swen Holdings Private Limited (Transferor Company No. 2/Transferor Company No. 2) and Sulphur Securities Private Limited (Transferee Company/Applicant Company No. 3) under Sections 230-232 of Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Merger between the petitioner companies.

2. The matter was relisted on 17.08.2023 to seek clarification about the pending Income Tax demand of Rs. 481,09,43,020 in respect of the Transferee Company i.e. M/s Sulphur Securities Pvt. The Department has further alleged that the Transferee Company belongs to S.K. Jain Group and is a conduit paper company. It was also noted that no response is filed by the petitioner companies

with respect to the allegations made by the Income Tax Department. In compliance of the same, affidavit has been filed vide Dairy No. 00525/9 dated 13.09.2023 wherein it is deposed that in point no. 13 of the affidavit dated 08.05.2023, the reference to clause 4.2.7 was wrongly mentioned and it will be replaced with clause 4.2.6 given at page no. 108 of the second motion petition. The extract of clause 4.2.6 are as under:

"4.2.6 With effect from the Appointed date, all debts, liabilities (including contingent liabilities), guarantee, bonds given to custom authorities or any other person or statutory authorittes, duties and obligations of every kind, nature and description of the Transferor Company, shall be deemed to have been transferred to the Transferee Company and to the extent they are outstanding on the Effective Date shall, without any further act, deed, matter or thing be and stand transferred to the Transferee Company and shall become the liabilities and obligations of the Transferee Company which shall undertake to meet, discharge and satisfy the same and it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such debts, liabilities, contingent liabilities, guarantee(s), duties and obligations have arisen in order to give effect to the provisions of this Clause".

Subsequently, another affidavit was filed vide Dairy No. 00525/10 dated 27.10.2023 wherein it is reiterated that the Transferee Company undertakes unconditionally and irrevocably to pay the entire demand of income tax of the transferor companies as well as transferee company if the appeal filed against the said demand is decided in favour of the Income Tax Department and the same is also captured in the Scheme of merger vide clause 4.2.6 of the said Scheme. Further, it was submitted that the allegation of Income Tax Department that Sulphur Securities Private Limited is a conduit paper company is baseless. Further, it was argued that if the Income Tax Department allegation is presumed to be correct, then on what basis the demand of Rs.481,09,43,020 /-was raised in respect of the conduit paper

company by the Department. Further, it is submitted that the transferee company is not a conduit paper company because the said Transferee Company has been regular in filing the return of Income Tax with the Income Tax Department and Balance Sheet and Annual Returns with the ROC and to the relevant authorities on time till date since the date of incorporation. It is averred that in response to the observation report given by Income Tax Department, it has been observed that the company is working independently and is declared an independent entity. It does not belong to any group companies.

3. The Petitioner Companies have prayed for sanctioning of the Scheme of Merger between the respective companies. The said Scheme is attached as Annexure- 5 of the petition.

4. The first motion application seeking directions for dispensing with the meetings of the equity shareholders, secured and unsecured creditors of the applicant companies was filed before this Tribunal vide Company Application No. CA(CAA) No.48/Chd/Hry/2021 and based on such application the meetings of equity shareholders, secured creditors and unsecured creditors of all the applicant companies have been dispensed with for the reasons recorded in the aforementioned order dated 24.03.2022.

5. The main objects, date of incorporation, authorized and paid-up share capital, and rationale of the Scheme have been discussed in detail in the order dated 24.03.2022.

6. In the second motion proceedings, certain directions were issued by this Tribunal by order dated 24.03.2022 and the same were compiled by filing an

affidavit vide Diary No. 00525/01 dated 08.07.2022. The notice of hearing was published in "Business Standard" (English) and "Jansatta" (Hindi), both in Delhi NCR Edition on 05.11.2022 and the original copies of the newspapers are attached as Annexure 4 of the aforesaid affidavit. It has also stated in the affidavits that copies of notices were served upon the a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; New Delhi; (b) Registrar of Companies, NCT of Delhi & Haryana (c) Official Liquidator attached to Punjab and Haryana High Court and (d) Jurisdictional Income Tax Authority through the Nodal Officer-Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh by way of speed post and emails. Acknowledgement receipts, Original postal receipts along with tracking reports and emails showing duly service of notices are attached as Annexure-2-3 of the aforesaid affidavit. The further notices were issued which have been filed vide Dairy Nos. 00525/3 dated 18.10.2022, 00525/5 dated 14.12.2022, 00525/7 dated 9.05.2023, 00525/8 dated 15.06.2023.

7. In response to the abovementioned notices, the statutory authorities have furnished their responses.

7.1 **Registrar of Companies (RoC)/Regional Director (RD)**

7.1.1. The petitioner companies have also served notices to Registrar of Companies (RoC)/Regional Director (RD) and Copies of notices issued are attached as Annexure- 2 of Diary No.00525/01 dated 08.07.2022, Annexure- 2 of Diary No.00525/3 dated 18.10.2022 Annexure- 2 of Diary No.00525/5 dated 14.12.2022, Annexure- 2 of Diary No.00525/7 dated 09.05.2023. The report of ROC was filed vide Dairy No. 00525/11 dated 05.06.2024 wherein it is deposited

that vide order dated 27.05.2024 of this Tribunal, ROC office carried out physical verification of Registered Office of the company namely Sulphur Securities Pvt. Ltd. in terms of Rule 25B of the Companies incorporation Rules 2014 and the provisions of sub-section 9 of section 12 of Companies Act, 2013 situated at Shop No. 1 at Dashrath Market, Anangpur, Faridabad-121003, Haryana. However, in pursuance to the directions given by this Tribunal physical verification of corporate office of the company, namely, Sulphur Securities Pvt. Ltd. Situated at 3198/5, Gali No.1, Sangatrashan, Paharganj-110055, New Delhi was carried out on 27.05.2024. The concerned official of ROC, NCT of Delhi & Haryana visited the corporate office wherein he met a person named Sh. Pankaj Saxena, Director of the company, who showed various records of the company. The relevant pictures of the visit are attached in the report at Annexure-II. The report is attached as Annexure I of the affidavit wherein the remarks are made as follow:-

- i. A team visited the registered office at 4:00 PM on 27.05.2024. The registered office was a shop, whose shutter was down and there was no display board on the shutter. The photograph is attached for ready reference as Annexure-A.*
- ii. Upon inquiry with the locals, a person, Shri. Ankit Bhadana informed that he had the key to the shop and he said that shop was closed due to some construction activity. He opened the shop's shutter in front of the team of RoC. The photograph is attached for ready reference as Annexure-B.*
- iii. Shri. Ankit Bhadana disclosed his credential on the condition that he shall not share his identity card.*
- iv. Upon opening the shutter of the shop, it was seen that there was a display board mentioning the names and CIN of 10 companies including name of SULPHUR SECURITIES PRIVATE LIMITED. However, the spelling of name of company was incorrect.*
- v. Upon entering the shop/registered office, it was observed that there was a pile dust and cobwebs all around and it appeared that it was not in use from a long period.*
- vi. As per record, AOC-5 had been filed by the company for maintaining the books of accounts at 3198/15, Gali no 1 Sangatrashan, Paharaganj, Central Delhi, Delhi - 110055.*

7.2 Income Tax Department

7.2.1 The Income Tax Department filed its report in respect of Transferee Company i.e. Sulphur Securities Private Limited by Diary Nos 00525/2 dated 05.09.2022 wherein demand of Rs. 481,09,43,020/- for AY 2012-13 under Section 147, Rs. 10,000/- for A.Y 2012-13 under Section 271(1)(b) and Rs. 5,000 for AY 2012-13 under Section 271F is pending. It is further stated that case of M/S Sulphur Securities P Ltd., has been re-opened under Section 147 for quantum of income which has escaped assessment is reported to be Rs. 5,48,43,360/-. As per report of DDIT (Inv.), Unit 1(1), New Delhi, the assessee company belonging to SK Jain Group, is a conduit paper company. The relevant extracts of the report are as follows:-

2. Information was received in this office under with regard to M/s Sulphur. Securities Pvt Ltd. As per the information received, following allegations were made:-

1. It is alleged that the assessee company, belonging to SK Jain Group, is nothing but a conduit paper company which had received Share capital & Premium worth Rs. 53249 lakhs.

II. The assessee company operated an account in IDBI Bank (A/c NO 0248102000005852) in FY 2011-12 and thereafter it had been closed.

III. Further it has been alleged that funds of over Rs 500 cr have been rotated/ routed in short period of one month in March 2012.

3. Action Taken/Findings

After obtaining prior approval of the JDIT (Inv.), Unit-1, vide order sheet dated 17.04.2018 for discreet and open enquiry. CBN PAN based enquiries were made on ITBA/ e-filing portal then it was found that AsSessee Company has not filed its ITR for FY .2012-13. Bank statements for A/c NO 0248102000005852 (A/c holder M/s Sulphur Securities Pvt. Ltd) were obtained.

On analysis of statement of above mentioned bank account it was found that during FY 2012-13 there were mainly two debit entries amounting Rs.3,20,000/- and Rs-. 1-,56-,985/- dated 18.04.2012 & 19.06.2012 respectively. To obtain the details of beneficiary/ies of

these two debit entries, summons u/s 131(1A) of Income Tax Act 1961 was issued to IDBI bank on 24.02.2020.

Through IDBI bank response it was found that Rs. 3,20,000/- were transferred to the another bank account of assessee company viz A/c NO 912020016108149, Axis Bank and Rs.1,56,985/- were transferred to another company being M/s Homburg Securities Pvt. Ltd (A/c NO 0201102000013590, IDBI bank).

4. **Analysation of the information gathered:**

To verify the genuineness of above mentioned two transactions summons dated 16.03.2020 were issued to M/s Sulphur Securities Pvt. Ltd and M/s Homburg Securities Pvt. Ltd. Both the companies were asked to provide details of all the transactions done between them during FY 2012-13, along with copy of audited financials for the same period. In response to issued summons no compliance was made by M/s Homburg Securities Pvt. Ltd. During investigation it was found that above mentioned both companies are registered at the same address i.e. 3198/15, 4th floor, gali no 1, sangatrashan, Paharganj, New Delhi. On physical verification it was found that there are no such companies at above mentioned address. However, it is learnt that this address has been used by other companies also belonging to SK Jain group. Further, bank statement for the account belonging to M/s Homburg Securities Pvt. Ltd was requisitioned from IDBI bank for FY 2012-13. It was found that there are debit entries of Rs. 4219822310/- and credit entries of Rs. 4226341324/-.

Later on 18.03.2020 one courier boy provided the submission of M/s Sulphur Securities Pvt.Ltd which is placed on record. On perusal of profit/loss account for FY 2012-13 it was found that assessee company had purchased shares amounting Rs. 5,48,43,

Further assessee company claimed that their company has purchased 15695 equity shares of Macor Packaging Limited @ Rs. 10/- per share from M/s Homburg Securities Pvt. Ltd. for amount of Rs. 1,56,985/- reflecting in their bank account.

The assessee company has not filed its ITR for FY 2012-13, so it is not possible to reconcile the transactions made between these two companies, also both the companies are registered on the same address. So it clearly shows that both companies are conduit paper companies..

On analysing the balance sheet of Sulphur Securities Pvt Ltd, it is further seen that the company has also purchased shares of M/s GPN Associates Pvt Ltd of an amount of Rs. 54,686,357/-. On perusal of the directorships and address of M/s GPN Associates pvt Ltd, it is seen that this company also shares the same set of addresses and directors as the other shell companies of SK Jain group. On analysing the balance sheet of M/s GPN Associates pvt Ltd, it is seen that two companies (M/s Bagh Kothi Investment & Finance pvt Ltd; M/s

Edoptica Retail India Ltd), have sold their shareholdings in M/s GPN Associates pvt ltd during FY 2012-13. Both these companies again share the traits of belonging to SK Jain group of paper companies.

It is also pertinent to mention that during the analysis of the trail of shareholdihg of above companies, belonging to S,KJain group, it was found that apparently entries were given to a company of a group doing actual large scale work. That company and transaction is being now analyzed and dealt with separately.

7.2.2. The Income Tax Department has filed report in respect of Transferor Company i.e. Hologram Holdings Pvt. Ltd. vide Diary No. 00525/4 dated 23.11.2022 wherein it has been stated that demand of Rs. 3,98,48,160/- is outstanding under Section 147 of the Income Tax Act,1961 for the A.Y 2012-13.

7.3 Official Liquidator

7.3.1 The Official Liquidator has filed his report vide Diary No.00525/6 dated 22.12.2022. The Official Liquidator in its report has noted the information on the incorporation of the Petitioner Companies, their capital structure, financial highlights, shareholding, etc. The Official Liquidator has also reproduced the extracts of Reports of the Statutory Auditors of the Petitioner Companies on the Financial Statements. It is stated that the Transferor Companies will wind up without going through the process of winding up.

7.3.2. Thus, no adverse observation can be inferred from the report of Official Liquidator.

8. It is submitted that vide order dated 06.06.2024 of this Tribunal the annual report of the Transferee Company for the financial year ending 31.03.2024 has been filed vide Dairy No. 00525/12 dated 10.06.2024.

9. The certificate of the Statutory Auditors with respect to the Scheme between Petitioner Companies to the effect that the accounting treatment proposed in the Scheme is in compliance with applicable Indian Accounting Standards (Ind AS) as specified in Section 133 of the Act, read with rules thereunder and other Generally Accepted Accounting Principles is attached as Annexures 8.

10. We have heard the learned counsel for petitioner companies and learned counsel for the Income Tax Department and have perused the record carefully.

11. It is pertinent to note that in the report dated 14.11.2022, the Income Tax Department has submitted that there is an outstanding demand of Rs. 3,98,48,160/- for AY 2012-13 against Transferor Company (Hologram Holdings (P) Ltd.) Further, in its Report dated 23.06.2022, the demand pending with respect to Swen Holding (P) Ltd. is submitted to be Rs. 3,98,62,650/- for AY 2012-13.

12. The report from the Income Tax department dated 22.08.2022 reads as under:

In this regard it is brought to your kind notice that following demands are outstanding against M/s Sulphur Securities P Ltd., PAN AAQCS9533M as per records

S.No	A.Y.	Demand Section	Date of Order	Demand outstanding
01	2012-13	147	27.12.2019	Rs. 481,09,43,020/-
02	2012-13	271(1)(b)	18.01.2022	Rs. 10,000/-
03	2012-13	271F	28.01.2022	Rs. 5,000/-

Further, the case of M/s Sulphur Securities P Ltd., has been re-opened u/s 147 of the I.T.Act, 1961 for quantum of income which has escaped assessment is reported to be Rs. 5,48,43,360/-.

As per report of DDIT (Inv.), Unit 1(1), New Delhi, the assessee company belonging to SK Jain Group, is a conduit paper company (copy enclosed).

13. The Income Tax Department has also enclosed a Letter dated 15.06.2020 from the Deputy Director of Income Tax (Inv.), Unit 1(1), New Delhi addressed to the Assessing Officer, the relevant part of which is extracted below:

Sub: Passing of information in the case of M/s Sulphur Securities Pvt Ltd (PAN: AAQCS9353M) -reg.

Kindly refer the above.

2. Information was received in this office under with regard to M/s Sulphur Securities Pvt Ltd. As per the information received, following allegations were made:-

- I. It is alleged that the assessee company, belonging to SK Jain Group, is nothing but a conduit paper company which had received Share capital & Premium worth Rs. 53249 lakhs.
- II. The assessee company operated an account in IDBI Bank (A/c NO 0248102000005852) in FY 2011-12 and thereafter it had been closed.
- III. Further it has been alleged that funds of over Rs 500 cr have been rotated/ routed in short period of one month in March 2012.

3. Action Taken/Findings

After obtaining prior approval of the JDIT (Inv.), Unit-1, vide order sheet dated 17.04.2018 for discreet and open enquiry. CBN PAN based enquiries were made on ITBA/ e-filing portal then it was found that Assessee Company has not filed its ITR for FY 2012-13. Bank statements for A/c NO 0248102000005852 (A/c holder M/s Sulphur Securities Pvt. Ltd) were obtained.

On analysis of statement of above mentioned bank account it was found that during FY 2012-13 there were mainly two debit entries amounting Rs.

3,20,000/- and Rs. 1,56,985/- dated 18.04.2012 & 19.06.2012 respectively. To obtain the details of beneficiary/ies of these two debit entries, summons u/s 131(1A) of Income Tax Act 1961 was issued to IDBI bank on 24.02.2020.

Through IDBI bank response it was found that Rs. 3,20,000/- were transferred to the another bank account of assessee company viz A/c NO 912020016108149, Axis Bank and Rs.1,56,985/- were transferred to another company being M/s Homburg Securities Pvt. Ltd (A/c NO 0201102000013590, IDBI bank).

4. Analysation of the information gathered:

To verify the genuineness of above mentioned two transactions summons dated 16.03.2020 were issued to M/s Sulphur Securities Pvt. Ltd and M/s Homburg Securities Pvt. Ltd. Both the companies were asked to provide details of all the transactions done between them during FY 2012-13, along with copy of audited financials for the same period. In response to issued summons no compliance was made by M/s Homburg Securities Pvt. Ltd. During investigation it was found that above mentioned both companies are registered at the same address i.e. 3198/15, 4th floor, gali no 1, sangatrashan, Paharganj, New Delhi. On physical verification it was found that there are no such companies at the above mentioned address. However, it is learnt that this address has been used by other companies also belonging to SK Jain group. Further, bank statement for the account belonging to M/s Homburg Securities Pvt. Ltd was requisitioned from IDBI bank for FY 2012-13. It was found that there are debit entries of Rs. 4219822310/- and credit entries of Rs. 4226341324/-.

Later on 18.03.2020 one courier boy provided the submission of M/s Sulphur Securities Pvt.Ltd which is placed on record. On perusal of profit/loss account for FY 2012-13 it was found that assessee company had purchased shares amounting Rs. 5,48,43,360/-.

Further assessee company claimed that their company has purchased 15695 equity shares of Macor Packaging Limited @ Rs. 10/- per share from M/s Homburg Securities Pvt. Ltd. for amount of Rs. 1,56,985/- reflecting in their bank account.

The assessee company has not filed its ITR for FY 2012-13, so it is not possible to reconcile the transactions made between these two companies, also both the companies are registered on the same address. So it clearly shows that both companies are conduit paper companies.

On analysing the balance sheet of Sulphur Securities Pvt Ltd, it is further seen that the company has also purchased shares of M/s GPN Associates Pvt Ltd of an amount of Rs. 54,686,357/-. On perusal of the directorships and address of M/s GPN Associates pvt ltd, it is seen that this company also shares the same set of addresses and directors as the other shell companies of SK Jain group. On analysing the balance sheet of M/s GPN Associates pvt Ltd, it is seen that two companies (M/s Bagh Kothi Investment & Finance pvt ltd; M/s Edoptica Retail India Ltd), have sold their shareholdings in M/s GPN Associates pvt Ltd during FY 2012-13. Both these companies again share the traits of belonging to SK Jain group of paper companies.

It is also pertinent to mention that during the analysis of the trail of shareholding of above companies, belonging to SK Jain group, it was found that apparently entries were given to a company of a group doing actual large-scale work. That company and transaction is being now analyzed and dealt with separately.

5. Recommendations

Keeping in-view of the above discussion, as the share transactions appear to be only entries, without any underlying genuine value, You are advised to consider for re-opening the scrutiny assessment by invoking the provision of section 147 of Income Tax Act, 1961 and verify genuineness of business activities and share transactions carried out by M/s Sulphur Securities pvt. Ltd. for the FY 2012-13.

It is to be mentioned that the information in respect of companies M/s Macor Packaging Limited, M/s Homburg Securities Pvt. Ltd., M/s GPN Associates pvt ltd, M/s Bagh Kothi Investment & Finance pvt ltd; M/s Edoptica Retail India Ltd for the FY 2012-13 has been separately sent to their jurisdictional AO.

Further, in case the territorial jurisdiction does not pertain to you the same may be transferred to the concerned jurisdictional Assessing Officer under intimation to this office.

This issues after getting prior approval of Pr. DIT(Inv.)-1, New Delhi.

14. Subsequently, the case was relisted on 17.08.2023 with the following observations:

"3. While perusing the records, it is found that income tax demand is pending for Rs. 481,09,43,020 in respect of the Transferee Company I.e. M/s Sulphur Securities Pvt. The Department has further alleged that the Transferee Company belongs to S.K. Jain Group and is a conduit paper company. It is also noted that no response is filed by the petitioner companies with respect to the allegations made by the Income Tax Department."

In compliance of the order dated 16.08.2023, the compliance affidavit was filed by the petitioner companies vide Dairy No. 525/9 dated 13.09.2023. Vide order dated 10.01.2024. Thereafter, vide order dated 08.02.2024, the Ld. counsel for the petitioner was directed to supply the copy of the affidavit dated 26.10.2023 to the Ld. counsel for the Income Tax Department and also to supply the evidence alleging that the transferee company of S.K. Jain Group. During the course of hearing on 21.02.2024, it was recorded that no additional evidence has been placed on record to substantiate that the Transferee Company belongs to the SK Jain Group and it is submitted on behalf of the Ld. Counsel for the Income Tax Department that whatever evidence is available with the Department is already on record. Thereafter, vide order dated 28.02.2024 it was recorded that Ld. Senior Standing Counsel for the Income Tax Department reiterated that the report filed by the Income

Tax Department is on the activities of the Transferee Company which indicates that enquiry is pending in the case of petitioner/transferee company along with the pendency of huge demands and pointed out that assessment proceedings have also been reopened under Section 147 of the Income Tax Act with respect of the transferee company which is a non-existing entity. Therefore, the Ld. Counsel for the Petitioner transferee company was directed to furnish evidence regarding business activities of the transferee company like GST Papers, Sales Tax, etc. along with the audited financial statements for the three financial years before filing of this application/ petition for approval of the amalgamation proposal.

15. Considering the allegation by the Income Tax Department that the Transferee Company is a shell company, this Tribunal by its order dated 04.04.2024, directed the RoC, Delhi and Haryana to conduct the physical verification of the Registered and Corporate Office of the Transferee Company in terms of Rule 25B of the Companies (Incorporation) Rules, 2014 and the provision of Section 12(9) of the Companies Act, 2013. The order was recorded as: *"we direct that notice be issued to the ROC, Delhi and Haryana with a direction to get the physical verification of the registered office of the company in terms of Rule 25B of the Companies (Incorporation) Rules 2014. Registered Office is stated to be at Shop No.1, Dashrath Market, Anangpur, Faridabad, Haryana-121003 and the Corporate Office is at 3198/15, Galli No.1, Sangatrashan, Paharganj, New Delhi-110055"*.

16. The RoC in compliance of the order filed its Report stating the following :

Report on spot/ physical verification in terms of Rule 25B of Companies (Incorporation) Rules, 2014,

Sl no	Particulars	Details
1.	Name and CIN of the company	SULPHUR SECURITIES PRIVATE LIMITED U67120HR2012PTC044988
2.	Latest address of the registered office of the company as per MCA 21 record	SHOP NO.1 AT DASHRATH MARKET ANANGPUR, Faridabad, FARIDABAD, Haryana, India, 121003
3.	Date of authorization letter issued by the Registrar of Companies	22.05.2024
4.	Name of the Registrar of Companies	RoC, NCT of DELHI & HARYANA
5.	Date and Time of Visit for physical verification of the registered office	27.05.2024 at 4:00 PM
6.	Location details along with the landmark	Shop No.1 at Dashrath Market Anangpur, Faridabad, Haryana, 121003
7.	Details of the person available, if any at the time of the visit name of a person, father's name, residential address and relationship with the company etc.	Sh. Ankit Bhadana S/o Dharmendra R/o Raja ka Mohalla, 89/1 Anangpur, Faridabad-121003 Key holder of the premises
8.	Remarks if any	i. A team visited the registered office at 4:00 PM on 27.05.2024. The registered office was a shop, whose shutter was down and there was no display board on the shutter. The photograph is attached for ready reference as Annexure-A . ii. Upon inquiry with the locals, a person, Shri. Ankit Bhadana Informed that he had the key to the shop and he said that shop was closed due to some construction activity. He opened the shop's shutter

		<p>in front of the team of RoC. The photograph is attached for ready reference as Annexure-B.</p> <p>iii. Shri. Ankit Bhadana disclosed his credential on the condition that he shall not share his identity card.</p> <p>iv. Upon opening the shutter of the shop, it was seen that there was a display board mentioning the names and CIN of 10 companies including name of SULPHUR SECURITIES PRIVATE LIMITED. However, the spelling of name of company was incorrect.</p> <p>v. Upon entering the shop/registered office, it was observed that there was a pile dust and cobwebs all around and it appeared that it was not in use from a long period.</p> <p>vi. As per record, AOC-5 had been filed by the company for maintaining the books of accounts at 3198/15, Gali no 1 Sangatrashan, Paharaganj, Central Delhi, Delhi -110055.</p>
9.	Documents Attached	i. Photographs of the registered office

Further, the Report reads as under: (Translated from Hindi)

"In terms of Office Order 2242 dated 22.05.2024, a personnel from ROC visited the Corporate Office of Hologram Holdings (P) Ltd. with Sulphur Securities (P) Ltd. and met the Director, Sh. Pankaj Saxena. The said personnel pursued verification of the office and certain records pertaining to the said company."

Therefore, the observations raised by the Income Tax Department the observations and the Registrar of Companies have been considered.

17. Before analysing the financial transactions of the Applicant Companies, we need to keep in mind the following facts emerging from the financial statements filed before us:

(i) The two Transferor Companies and the Transferee Company are a part of the Group of Companies having cross-holdings with each other and located at the same addresses.

(ii) All the companies in the present applications are into buying, selling, transfer of share, stocks, bonds, debentures etc. and claims to provide a complete range of financial services like investment planning, estate planning, tax planning, portfolio management consultancy and counselling services and to deal with the grievances of the investors. A majority of the transactions of these companies are inter se transactions resulting in no tangible assets being created. Entries are passed in the books which prima facie appear to be transactions on paper only.

18. **Analysis of the Financial Statements of the Transferee Company:**

By submission dated 07.06.2024, the Petitioners have filed inter alia, the Annual Report for the year ending 31.03.2024. The financial summary highlights of the Transferee Company for the year ended on 31.03.2024 is extracted below:

1. FINANCIAL SUMMARY HIGHLIGHTS

PARTICULARS	(₹ IN Lacs)	
	AS AT 31.03.2024	AS AT 31.03.2023
Net Total Income	11,809.28	0
Less: Operating and Administration expenses	551.72	0.11
Profit/(loss) Before Taxes	11257.56	(0.11)
Less: extra ordinary item	0	0
Profit/(loss) Before tax	11257.56	(0.11)
Less: Taxes (including Deferred Tax)	1.02	0
Profit/(loss) After Tax	11256.54	(0.11)

SULPHUR SECURITIES PRIVATE LIMITED

Regd Office: Shop No.1, Dashrath Market, Anangpur, Faridabad, Haryana- 121003

Corp. off: 3198/15, Gali No. 1, Sangatreshan, Paharganj, New Delhi- 110055

CIN : U67120HR3012PTC044968

BALANCE SHEET AS AT 31.03.2024

IN LACS

S.NO	PARTICULARS	NOTE NO.	FIGURE AT THE END OF THE YEAR 31.03.2024	FIGURE AT THE END OF THE YEAR 31.03.2023	FIGURE AT THE BEGINNING OF THE YEAR 01.04.2022
1	2	3	4	5	
A	ASSETS				
1	NON CURRENT ASSETS				
	(a) Investments	E	40,076.14	52,698.64	52,698.64
	(B) Loan Term Loan & Advances	F	24,860.99		
2	CURRENT ASSETS				
	(a) Financial Assets	G	2.59	0.02	0.01
	(b) Inventories	H	-	548.45	548.45
	(c) Other Current Assets	I	1.02		
	TOTAL ASSETS		64,940.74	53,247.11	53,247.10
B	EQUITY & LIABILITIES				
B.1	EQUITY				
	(a) Equity Share Capital	A	427.00	427.00	427.00
	(b) Other Equity	B & B.1	64,075.80	52,819.28	52,819.38
B.2	LIABILITIES				
1	NON CURRENT LIABILITIES				
2	CURRENT LIABILITIES				
	(a) Loan Liabilities	C	435.00	0.79	0.67
	(b) Financial Liabilities				
	(i) Other Current Liabilities	D	2.94	0.08	0.06
	TOTAL EQUITY & LIABILITIES		64,940.74	53,247.11	53,247.10

See accompanying notes to the financial statements

In Terms Of Our Report Of Even date Annexed
FOR AGGARWAL MEEESHU & ASSOCIATES

(Chartered Accountants)

FRN : 100000



CA. MEEESHU AGGARWAL

(Proprietor)

M.NO. 432174

UDIN:24422374BKIRG4754

FOR SULPHUR SECURITIES PRIVATE LIMITED

रामसुन्दर

RAM SUNDER
(DIRECTOR)
DIN: 06977834

Pankaj Saxena

PANKAJ SAXENA
(DIRECTOR)
DIN: 08162590

Place : New Delhi

Date:01.04.2024

SULPHUR SECURITIES PRIVATE LIMITED

SULPHUR SECURITIES PRIVATE LIMITED

Regd Office: Shop No.1, Dashrath Market, Anangpur, Faridabad, Haryana- 121003

Corp. off: 3198/15, Gali No. 1, Sangatrasnan, Paharganj, New Delhi- 110055

CIN : U67120HR2012PTC044988

STATEMENT OF PROFIT AND LOSS AS ON 31.03.2024

IN LACS

Particulars	Note No.	For the Period	For the Period
		31st March, 2024	31st March, 2023
		Amount (in Lacs)	Amount (in Lacs)
CONTINUING OPERATIONS			
1 Income			
Revenue from operation	PL-1	11,809.28	-
Total		11,809.28	-
2 Expenses			
Change in stock in trade	PL-2	548.45	-
Finance Cost		-	-
Other Expenses	PL-3	3.27	0.11
Total		551.72	(0.11)
3 Profit/ Loss Before Tax (1-2)		11,257.56	(0.11)
4 Tax Expenses			
Current Tax		1.02	-
Total Tax Expenses		1.02	-
5 Profit/ Loss After Tax (3-4)		11,257	(0.11)
Other Comprehensive Income			
Other Comprehensive Income to be reclassified to profit or loss to subsequent period		-	-
Other Comprehensive Income not to be reclassified to profit or loss to subsequent period		-	-
Total comprehensive Income for the year, net of tax attributable.		-	-
Earning Per Share [Nominal value Rs.10]			
- Basic		283.62	(0.00)
- Diluted		283.62	(0.00)
See accompanying significant accounting policies & notes to accounts forming part of financial statement.	1 to 12		

As per our report of even date attached

FOR AGGARWAL MEESHU & ASSOCIATES

(Chartered Accountants)



CA. MEESHU AGGARWAL

(Proprietor)

M.NO. 422374

FOR SULPHUR SECURITIES PRIVATE LIMITED

RAM SUNDER

(DIRECTOR)

DIN: 06977834

PANKAJ SAXENA

(DIRECTOR)

DIN: 08162590

19. As it is clear from the above table, the Transferee Company income jumps from NIL to Rs. 118.09 crores in 01 year and the tax on the same has been shown as Rs. 1.02 lakhs.



OTHER EQUITY-NOTES-B
FOR THE YEAR ENDED 31 MARCH 2024

(₹ IN Lac)

PARTICULAR	ATTRIBUTABLE TO THE EQUITY HOLDERS OF THE PARENTS					TOTAL
	EQUITY COMPONENT OF CONVERTIBLE PREFERENCE SHARE	SHARE PREMIUM	RETAINED EARNING	CASH FLOW HEDGE RESERVE	FVTOCI RESERVE	
As At 01st April 2023	-	52,824.00	(13.12)	-	-	52,810.88
Profit For The Period	-	-	17,274.92	-	-	17,274.92
Other Comprehensive Income	-	-	-	-	-	-
Total Comprehensive Income	-	52,824.00	17,261.80	-	-	70,085.80
Depreciation Transfer For Building	-	-	-	-	-	-
Discontinued Operations	-	-	-	-	-	-
Issue Of Share Capital	-	-	-	-	-	-
Exercise Of Share Options	-	-	-	-	-	-
Share Based Payments	-	-	-	-	-	-
Transaction Cost	-	-	-	-	-	-
Cash Dividends	-	-	-	-	-	-
Non Cash Distributions To Owner	-	-	-	-	-	-
Dividend Distribution Tax(Ddt)	-	-	-	-	-	-
Acquisition Of A Subsidiary	-	-	-	-	-	-
Acquisition Of Non Controlling Interest	-	-	-	-	-	-
At 31st March 2024	-	52,824.00	17,261.80	-	-	70,085.80

In Terms Of Our Report Of Even Date Annexed

FOR AGGARWAL MEESHU & ASSOCIATES
 (Chartered Accountants)
 FRN : 024811C

FOR SULPHUR SECURITIES PRIVATE LIMITED

20. Let us look at some of the other aspects of the Financial statements which are relevant for this discussion. The Company has claimed in its Schedule of Significant Accounting Policies and Notes on Account that during the FY 2023-24, the Company made a revenue from operations amounting to Rs. 11,809.28 lakhs as Long Term Capital Gain and earned a net profit (Before Tax) of Rs. 11,257.56 lakhs. The earnings per share having a nominal value of Rs. 10/- per share is stated to have gone up from NIL as on 31.03.2023 to Rs. 263.62 lakhs for the period ending on 31.03.2024. The non-current investments as on 31.03.2024 amounting to Rs. 40,076.14 lakhs are made mostly in the group companies, which are subsequently found sharing the same addresses. From the Profit & Loss

Account for the year ended 31.03.2024, the office expenses have gone up to Rs. 3.27 lakhs from a mere Rs.11,000/- for the immediate preceding year.

21. The aforementioned narrations lend credence to the observation of the Income Tax Department that these are merely accommodation entries among a clutch of companies being controlled by one individual. It is also noticed that the entire profit is claimed as Long Term Capital Gains from transactions in unlisted shares and the income attributable to share premium amounts to Rs. 528.24 crores in FY 2023-24. The fact that these companies are unknown and unlisted points and still the shares of the same are issued at huge premium points towards large scale manipulation. In short, the jump in the profits of the Transferee Company is not backed by either a credible source of investment or actual assets of the company. The extremely low expenses in P&L Account of only Rs. 3.27 lakhs against the revenue of Rs. 118.09 crores also prima facie indicates speculative income through share transactions on paper which does not require a large contingent of employees as would be warranted in the normal course of business.

22. The stated objective of the present merger, as mentioned in the Application, is to enable all the petitioner companies to consolidate their business operations and provide significant impetus to their growth since all these companies are engaged in the same line of business. Furthermore, it is stated that the merger will result in reduction of cost of overheads, and consolidate the managerial expertise of all the companies.

23. We observe that the stated objective of the proposed Scheme of Amalgamation of the Petitioner Companies to reduce the overhead costs of the

Petitioner Companies through the amalgamation, is not tenable as the costs are already minimal in the present case and much below the industry standards.

Secondly , the claim of the Applicant that the proposed amalgamation would lend synergy to the group is also misplaced as the group companies are already transacting mostly with each other and the transactions appear to be merely accommodation entries and not a part of any actual financial business.

24. Thus, the present proposal for amalgamation does not meet the objectives stated in the application itself. On the issue of the power of this tribunal to either approve or reject an Application for Amalgamation, a reference is made to the following extracts from the decision of the **Hon'ble NCLAT in the case of Wiki Kids Ltd. and Ors. vs. Regional Director, South East Region and Ors. (21.12.2017 - NCLAT) : MANU/NL/0228/:**

"The Tribunal below has enough expertise to look into the scheme of amalgamation and can also see whether it is not just and fair to all shareholders. It has a duty to act in public interest. In the matter of company, it needs to see if it is in the interest of all the shareholders and the company. In the light of this it is desirable not to look into the mathematical details but a broad look at the scheme of amalgamation. If it shows that there are wide variation in the valuation as can be achieved, it will be desirable that expertise available in the Tribunal has to look so that unfair advantage does not flow to one of the group of shareholders or the other. We are noting in this case that the net worth as reported by the Tribunal below is Rs. 22.32 lakhs and the valuation at Rs. 5.05 crores is having a considerable variation making it imperative to have a broad look into it. The look by the Tribunal into the issue may not be looking into too much mathematics of

the scheme and may be in the best interest and protection of the stakeholders. After noticing the same the Tribunal has come to the conclusion that the scheme of amalgamation is beneficial to the promoters only. The Tribunal has justified its discretion to reject the amalgamation. We do not find mitigating factors to differ with the same. In view of foregoing discussions and observations we do not find any cogent reason to interfere in the impugned order. The appeal is, therefore, rejected. No order as to costs."

25. Subsequently, coordinate Mumbai bench of NCLT in the matter of **Gabs Investments Pvt. Ltd. and Ajanta Pharma Ltd. (CSP No.995 and 996 of 2017 and CSA No.791 and 792 of 2017) decided on 30.08.2018**, followed the aforementioned decision, and observed as under:

"At this juncture we would like to rely upon the recent Judgment of the Hon'ble NCLAT in the matter of Wiki Kids Ltd. V/s. Aventel Ltd. decided on 21.12.2017 in Company Appeal (AT) No. 285 of 2017, wherein the Hon'ble NCLAT held that if the scheme is not in public interest, the same can be rejected by NCLT. Accordingly, relying upon the above Judgment of Hon'ble NCLAT, as discussed supra we hold that the proposed scheme is devised only for the benefit of the few common promoters/shareholders of both the petitioner companies and no larger public interest is being served (total number of shareholders of APL as on 31.03.2017 is 38,075), and also huge amount of tax loss would occur to the Government's exchequer."

26. Keeping in view the aforementioned facts and judicial decisions, this bench is of the considered opinion that the proposed amalgamation in the present case is aimed at legitimising, the paper transactions carried out by the three applicant

companies to artificially increase value of shares of the transferee company and thereby avoid payment of due taxes and to use this as a vehicle for money laundering. This scheme, being unfair, unreasonable and not being in public interest cannot be sanctioned by this bench.

27. Before parting with this order, we would like to observe that the report dated 27.05.2024 filed by the ROC, Delhi and Haryana is found to be incomplete in terms of the provisions of sub-section 9 of section 12 of Companies Act, 2013 read with the Rule 25B the Companies incorporation Rules 2014 , and further details as required under the said rule needed to be submitted .A copy of this order is therefore. directed to be sent to the Director General of Corporate affairs for his information.

28. As a sequel to the above observations, the Company Petition CP (CAA) No. 20/Chd/Hry/2022 is dismissed and disposed of accordingly.

29. The certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

July 23, 2024
TB