

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

NEW DELHI BENCH-VI

CP.(CAA) NO. 14/ND/2023

IN

CA(CAA) No. 100/ND/2022

IN THE MATTER OF SECTION 230-232 OF THE COMPANIES ACT, 2013

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

IN THE MATTER OF SCHEME OF AMALGAMATION

M/S. MARC PAPERS PRIVATE LIMITED

CIN - U21000DL2008PTC175200

OFF AT: 134, MADHUBAN,

DELHI - 110092, INDIA

**PETITIONER COMPANY NO.1)/
(TRANSFEROR COMPANY)**

WITH

M/S RAKESH PAPERS PRIVATE LIMITED

CIN - U21014DL1997PTC091192

OFF AT: 83, CHAWARIBAZAR,

DELHI - 110006, INDIA

**PETITIONER COMPANY NO. 2/
(TRANSFeree COMPANY)**

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER, JUDICIAL

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER, TECHNICAL

Appearance:

For the Petitioner/Applicant

For the RD

For the OL

For the IT Department

Adv Sarthak Jain

Adv. Jyoti Khurana

Mr. Sunil Agarwal Sr. Standing
Counsel, Mr. Shivansh B Pandya
Jr Standing Counsel, Mr. Viplov
Acharya Jr Standing Counsel, Adv
Utkarsh Tiwari

ORDER

PER: RAHUL BHATNAGAR, MEMBER, (TECHNICAL)

Pronounced on 02.07.2024

1. This joint petition has been filed by the Petitioner Companies in accordance with Sections 230 to 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the present Scheme of Amalgamation of the Transferor Companies into the 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 (Transferee Company) i.e., M/s MARC PAPERS PRIVATE LIMITED (CIN U21000DL2008PTC175200) is a company incorporated under the provisions of the Companies Act, 1956 on 12th day of March, 2008. The aforesaid Company has its registered office at OFF AT: 134, MADHUBAN, DELHI - 110092, INDIA.

3. The Petitioner Company No. 2 (Transferor Compnay) i.e., M/s Rakesh Papers Private Limited (CIN U21014DL1997PTC091192) is a company incorporated under the provisions of the Companies Act, 1956 on the 1st

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day of December, 1997. The aforesaid Company has its registered office at 83 Chawri Bazar, Delhi – 110006.

4. The Scheme of Amalgamation of Transferor Company with Transferee Company was approved and recommended by the Board of Directors of Transferor Company at their meeting held on 06.07.2022, and further in another meeting held on 09.12.2022. Consequently, the aforesaid scheme of amalgamation was also approved by the Board of Directors of the Transferee Company at their board meetings held on 04.07.2022 and 09.12.2022. Copies of the corresponding resolutions dated 09.12.2022 have been annexed with the present application.
5. The Petitioner companies submitted that the amalgamation of Transferor Company with the Transferee Company would, inter alia, entail the following benefits -
 - i. The majority of equity shares of the Companies are held by common group of shareholders and the management is also done by common people. The Transferee Company would enable consolidation of Companies thereby leading to unlocking of values of the consolidated Transferee Company.
 - ii. The Companies are engaged into similar line of business and the proposed amalgamation once sanctioned will

thus expand the opportunities for the Transferee Company with the expansion of the business activity.

- iii. The Independent operations of Companies incur a significant cost and thus the proposed amalgamation would enable economies of scale by attaining critical mass and achieving cost saving of businesses and enhancement of shareholder value.
- iv. Reduction of overheads, administrative, managerial and other expenditure. Optimum and efficient utilization of capital, resources, assets and facilities. Consolidation of businesses and enhancement of shareholder value. Better management and focus on growth of the business. Much larger asset base enabling further growth and development of the Company.
- v. Consolidation will enable regulatory/procedural compliances being made by a single unified company, thus resulting in significant reduction in the multiplicity of legal and regulatory compliances and also avoid duplication of administrative functions and eliminate multiple record keeping.

6. Perusal of the petition discloses that the first motion application bearing CA (CAA) 100/ND/2022 was jointly filed by the Petitioner Companies. Based on the averments made in the said application this Tribunal vide order dated

05.12.2022 dispensed with the requirement of calling and convening the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferor and Transferee Companies.

7. This Tribunal by the virtue the order dated 05.12.2022 directed to issue notices to the (i) Regional Director, Ministry of Corporate Affairs (ii) Registrar of Companies, NCT of Delhi and Haryana, (iii) Official Liquidator, Lok Nayak Bhavan, Delhi (iv) concerned Income Tax Department.
8. Further, the petitioner companies were directed to carry out the publication of advertisement in Delhi editions of two newspapers one in English and one in Hindi and file proof of service along with affidavit of service within four weeks.
9. The Petitioner Companies in compliance to the order dated 10.04.2023 filed affidavit of service of notice to the statutory authorities and paper publication affirming service of notice and affirming that notice of hearing was duly advertised in Financial Express (English, Delhi Edition) and Jansatta (Hindi, Delhi Edition) on 28.04.2023.
10. Pursuant to the notices issued, Ld. Counsels on behalf of Regional Director, Ministry of Corporate Affairs, Income

Tax Department and Official Liquidator participated in the proceedings.

11. The RD has filed its report dated 26.10.2023, wherein certain observations were made to which petitioner company has filed its response. The major observations as well as reply of the Petitioner Companies are as under –

Serial No	Observations in the RD Report	Response of the Petitioner Companies
1.	As per annual return filed for year ended 31.03.2022 by the Transferor and Transferee Company, both companies are having HUF shareholders. However, no form MGT 6 has been filed by respective companies.	The Form MGT-6 is required to be filed in accordance with the provisions of section 89 of the Companies Act, 2013 wherein, a company makes a declaration to the Registrar of Companies regarding persons whose name is in the register of members as a shareholder but they do not hold any beneficial interest in such shares.

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		<p>In present case certain shares are held by RAKESH JAIN HUF in the both the Applicant Companies.</p> <p>It is humbly submitted that HUF is a separate legal entity and holds beneficial interests in the respective Applicant Companies through their respective shareholding and therefore, are not applicable and are not required to file the form: MGT-6.</p> <p>However, if this Hon'ble Tribunal directs so, the Applicant Companies undertake to file the necessary Form MGT 6, as and when directed to do so.</p>
2.	Transferee company may kindly be directed to comply with the provision	The Transferee Company hereby confirms and undertakes to comply

	<p>of section 232 (3)(i) of the Companies Act, 2013 in regard to fee payable on its revised authorised share capital.</p>	<p>with the provisions of Section 232(3)(i) of the Companies Act, 2013 and further state that applicable fees and charges, if any, with regard to payment of fee on increase in the authorized share capital of the Transferee Company subsequent to the sanction of scheme of Amalgamation, after deducting the aggregate fee already paid by Transferor Company on its pre-merger authorized share capital, shall be paid by the Transferee Company to the Registrar of Companies, NCT of Delhi as per the provisions of the Companies Act, 2013.</p>
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12. In view of the aforesaid response submitted by the petitioner companies to the objections raised by the RD, the petitioner companies are hereby directed to file form MGT – 6 within 14 days from the pronouncement of this order.

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13. The Official Liquidator has filed its report dated 16.06.2023, wherein no specific objection has been raised against the approval of the Scheme. It has been submitted in the report that the Official Liquidator has not received any complaint against the proposed Scheme from any shareholders, interested in the Scheme. Further the Counsel for the OL also appeared before this Tribunal and stated that they have no objection in the matter.

14. The Counsel for the Income Tax Department and OL appeared before this Tribunal on 30.11.2023. Vide order dated 30.11.2023, it was noted that –

“Ld. Counsel for the IT Department is present and submitted that they have forwarded their report to the Petitioner and they have no objection if the scheme is approved. Ld. Counsel for the OL is present and submitted that they have filed their report and they have no objection in approving the merger of the scheme.”

15. The Income Tax Department has filed its reports and raised no objections.

16. In this petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.

17. Certificates of respective Statutory Auditors of all 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.

18. The shareholders of the petitioner companies are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by the Tribunal for the reason that it is not a part of the judicial function to examine entrepreneurial activities and their commercial decisions.

19. The Hon'ble Supreme Court in ***Miheer H. Mafatlal vs Mafatlal Industries Ltd JT 1996 (8) 205*** while considering the scope of the jurisdiction of the Company Court in respect

of matters of sanction of the Scheme of Amalgamation as per the provisions of Section 391 read with Section 393 of the Companies Act, 1956, observed as under:

It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court certainly would not act as a court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority. Consequently, the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate.

In view of the law laid down by the Supreme Court, this Tribunal is not supposed to examine the merits/benefits of the commercial wisdom of the decision of the shareholders.

20. It has also been affirmed in the petition that the Scheme is in the interest of the Transferor company and the Transferee

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company, including their shareholders, creditors, employees and all concerned. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, there appears to be no impediment in sanctioning the present Scheme.

21. Consequently, **sanction is hereby granted** to the Scheme under Section 230 to 232 of the Companies Act, 2013 with the following conditions.

- I. *The Petitioners shall however remain bound to comply with the statutory requirements in accordance with the law.*
- II. *The Transferee company shall be responsible to pay the Income Tax dues of the Transferor Company, as per law.*
- III. *Notwithstanding the above, 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.*
- IV. *While approving the Scheme as above, it is further clarified 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.

V. *The Petitioner Companies have proposed 01.04.2022 as appointed date. However, this Tribunal confirms and approve 01.04.2023 as appointed date.*

22. This Tribunal hereby further order

- 1) *That the Transferor Company shall stand dissolved without following the process of winding-up; and*
- 2) *That all the property, rights and powers of the Transferor Company, be transferred without further act or deed, to the Transferee company and accordingly the same shall, pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee company; and*
- 3) *That all the liabilities and duties of the Transferor Company, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee company; and*
- 4) *That all proceedings now pending by or against the Transferor Company, be continued by or against the Transferee company; and*
- 5) *That all the employees of the Transferor Company in service, on the date immediately preceding the date on which the*

scheme takes effect, i.e. the effective date, shall become the employees of the transferee company on such date, without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the concerned Transferor Company on the said date; and

6) *That 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 registered with him 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; and*

7) *That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary*

23. The petition stands disposed of on the above terms. Let copy of the order be served to the parties.

-SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)

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