

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH,
AT NEW DELHI

COMPANY PETITION NO. (CAA)-47 (PB) 2019

Connected with

Company Application No. (CAA) **39/PB/2019**

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

In the matter of

SCHEME OF AMALGAMATION

Saanvi Infratech Private Limited

Transferor Company No. 1

AND

SMP Tradelinks Private Limited

Transferor Company No. 2

WITH

Fortitude Stainless Private Limited

Transferee Company

Judgement delivered on: 07.08.2019

CORAM:

DR. DEEPTI MUKESH, HON'BLE MEMBER (J)

MR. SK. MOHAPATRA, HON'BLE MEMBER(T)

For Petitioners: Mr. Rajeev K Goel, Advocate

For the RD: Ms. Sonam Sharma, CP

For the OL: Mr. Amish Tandon, Mr. Akshya Joshi, Advocates

For the ITD: Mr. Ajit Sharma, Mr. Ashutosh Senger, Advocates

ORDER

DR. DEEPTI MUKESH, MEMBER (J)

1. This Joint petition has been filed by the Petitioner Companies under Sections 230 and 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 Scheme of Amalgamation of Transferor Companies with Transferee Company.
2. A perusal of the petition discloses that initially the First Motion joint application seeking direction for dispensing the meeting of the Equity Shareholders, Unsecured Creditors and since there were no Secured Creditors in case of all petitioner companies, the necessity of convening a meeting did not arise and was filed before this Tribunal vide CA(CAA)-39(PB)/2019 and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, directions were issued by this Tribunal, wherein the



meetings of the Equity Shareholders and Unsecured Creditors of all the Petitioner Companies were dispensed with.

3. Thereafter 2nd motion petition was filed on 22.03.2019 vide CAA - 47 (PB)/2019 within prescribed time limit and vide admission order dated 28.03.2019 the Petitioners were directed to carry out publication in the newspaper 'Business Standard' (English, Delhi Edition) and Business Standard in Vernacular (Hindi, Delhi Edition). In addition to the public notices, notices were directed to be served on to the Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies, NCT of Delhi and Haryana, Ministry of Corporate Affairs, the Income Tax Department, Official Liquidator and to the other relevant sectoral regulators.
4. It is seen from the records that all the Petitioners have filed an affidavit dated 17.05.2019 affirming compliance of the order passed by the tribunal dated 28.03.2019. A perusal of the affidavit disclose that the Petitioners have

affected the newspaper publication as directed in one issue of the 'Business Standard' (English, Delhi Edition) and Business Standard in (Hindi, Delhi Edition) both on 10.04.2019 in relation to the date of hearing of the petition. Further, the Petitioners have also affirmed that the copy of petition have been duly served upon the Registrar of Companies, Regional Director, Northern Region and Income Tax Department, Official Liquidator in compliance of the order and in proof of the same acknowledgment from the respective offices have also been placed on record.

5. The Regional Director filed its representation dated 10.05.2019 and has observed that no complaint/objection from any shareholder, creditor or other stakeholders of the petitioner companies with regard to the proposed amalgamation has been received. Further, no prosecution has been filed and no inspection or investigation has been conducted in respect of the petitioner companies.

6. The Official Liquidator has filed its report on 08.05.2019

wherein no specific objection has been raised against the approval of the scheme and has not received any complaint against the proposed scheme from any person/party interested in the scheme in any manner and that the affairs of the transferor companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

7. The Income Tax Department has filed its report dated 02.07.2019 with respect to all the Petitioner Companies. It has been stated that there are no pending proceedings against all the petitioner companies under Income Tax Act and further the Income Tax Department has no objection to the proposed amalgamation. The counsel for the petitioners has further stated that no objection from any third party or public at large have been received against the Scheme of Amalgamation.
8. In the joint petition it has been affirmed that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under the provisions of the Companies Act, 1956 are

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pending against the Petitioner Companies.

9. 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.
10. In view of the above and upon considering the approval accorded by the members and creditors of all the petitioner companies to the proposed scheme, as well as no objections filed by the regional director, northern region, Income Tax Department and the official liquidator, and an affidavit of undertaking filed by the transferee company, there appears to be no impediment in sanctioning the present scheme. Consequently, sanction is hereby granted to the scheme under section 230 & 232 of the Companies Act, 2013. The petitioner however remain bound to comply with the statutory requirements in accordance with law.



11. 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, albeit, in accordance with law, against any of the concerned person, director and officials of the petitioners.

12. 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, GST, 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.

13. THIS TRIBUNAL DO FURTHER ORDER(S):

- a) That both the transferor companies shall stand dissolved without following the process of winding up; and
- b) That all the property, rights and powers of both the transferor companies, be transferred without

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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 vests in the transferee company.

- c) That all the liabilities and duties of both the transferor companies, 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
- d) That all proceeding now pending by or against both the transferor company, be continued by or against the transferee company; and
- e) That all the employees of both the transferor companies 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 services and



upon terms and conditions not less favorable than those subsisting in the respective transferor companies on the said date.

- f) The Transferee Company will issue 537 equity shares of Rs 10 each, credited as fully paid up, for every 10,000 equity shares of Rs 10 each held in the Transferor Company No. 1 and the transferee company will issue 11 equity shares of Rs 10 each, credited as fully paid up, for every 200 equity shares of Rs 10 each held in the Transferor Company No.2.
- g) 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 Company for registration and on such certified copy being so delivered all the transferor companies shall stand dissolved and the Registrar of Company shall place all documents relating to all 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

- h) That any person interested shall be at liberty to apply to the tribunal in the above matter for any directions that may be necessary.

The petition stands disposed of in the above terms.

Sd/-

MR. SK. MOHAPATRA
MEMBER (T)

Sd/-

DR. DEEPTI MUKESH
MEMBER (J)