

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH – V
COMPANY PETITION NO. (CAA) – 31 (ND)/2023
CONNECTED WITH
COMPANY APPLICATION NO. 117 (ND)/2022**

Under Section 230-232 and other applicable provisions of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016)

IN THE MATTER OF:

KHATUSHYAM PRIVATE LIMITED

...PETITIONER NO.1/TRANSFEROR COMPANY

AND

5 STAR REAL ESTATE PRIVATE LIMITED

...PETITIONER NO.2/ TRANSFEREE COMPANY

Order Delivered On: 18.07.2024

CORAM:

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant : Mr. Lalit Mohan, Mr. Videh Vaish, Ms. Megha Jain,
Mr. Sumbul Ara, Ms. Geetanjali Singh, Ms. Pragya
Gupta, Advs

For the Respondent :

For the RD : Ms. Shankari Mishra, Mr. Aakash Sharma, Advs

For the OL : Mr. Kartikeya Asthana, Adv.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The present Joint Petition is filed by the Petitioner Companies herein M/s KHATUSHYAM PRIVATE LIMITED (Transferor Company/Petitioner No.1) and M/s 5 STAR REAL ESTATE PRIVATE LIMITED (Transferee Company/Petitioner No.2) under Section 230-232 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 Sanction of the proposed Scheme of Amalgamation of the Transferor Company with 5 STAR REAL ESTATE PRIVATE LIMITED (Transferee Company/Petitioner No. 2). The copy of the Scheme of Amalgamation (hereinafter referred as the "Scheme"), has been placed on record.
2. The Transferor Company No. 1/Petitioner No. 1 i.e. M/s Khatushyam Private Limited is a private limited company incorporated on 04.08.2016 under the provisions of the Companies Act, 2013 vide CIN: U70100DL2016PTC304018, having its registered office situated at 503, PP Towers, Netaji Subhash Place, Pitampura, Delhi-110034, Delhi, India. Thus, the registered office of the Transferor Company No.1 is under the jurisdiction of this Tribunal. The authorized share capital of the Transferor Company No. 1 is Rs. 1,00,000/- divided into 10,000 Equity Shares of Rs. 10/- each. The present issued, subscribed and paid-up share capital of the Company is Rs. 1,00,000/- divided into 10,000 Equity Shares of Rs. 10/- each.
3. The Transferee Company/ Petitioner Company No. 2 i.e. M/s 5 Star Real Estate Private Limited is a private limited company incorporated on 28.02.2014 under

the provisions of the Companies Act, 1956 vide CIN: U70102DL2014PTC265568, having its registered office at 503, PP Towers, Netaji Subhash Place, Pitam Pura, Delhi-110034. Thus, the registered office of the Transferee Company is under the jurisdiction of this Tribunal. The Authorized Share Capital of the Transferee Company is Rs. 1,00,000/- divided into 10,000 Equity shares of Rs. 10/- each. The present issued, subscribed and paid-up share capital of the Company is Rs. 1,00,000/- divided into 10,000 Equity Shares of Rs.10/- each.

4. The Petitioner Companies have submitted that the proposed scheme of amalgamation of the Transferor Company and Transferee Company would have the following benefits: -
 - i. Achieving business and Administrative synergies.
 - ii. Cost savings due to reduction in overhead and other expenses, consolidation and simplification of the group structure and simplification of business processes.
 - iii. Improved organizational capability arising from pooling of financial resources.
 - iv. Avoiding duplication of costs of administration, distribution, selling and marketing and reduction in legal and reduction in legal and regulatory compliances.
5. The appointed date as fixed for the proposed scheme of Amalgamation is 1st April, 2022 or such other date which this Tribunal directs or deems fit in the circumstances of the case and the time taken in completion of formalities.
6. From the records, it is seen that the First Motion joint application was filed before this Tribunal vide CA(CAA)117/ND/2022. Vide order dated 17.04.2023, the meeting of the Equity Shareholders of the Transferor Company and Transferee

Company and Unsecured Creditors of the Transferee Company was dispensed with. The Transferor Company had nil Secured Creditors and nil Unsecured Creditors. The Transferee Company had nil Secured Creditor.

7. The Tribunal directed the petitioner companies to issue individual notices to the (i) Regional Director, Northern Region of Ministry of Corporate Affairs, (ii) Income Tax Department, (iii) Registrar of Companies NCT of Delhi and Haryana, and (iv) Official Liquidator
8. The Petitioner Companies were also directed to carry out publication in the newspapers. It is seen from the records that the petitioners have filed an Affidavit affirming compliance and disclosing that the applicants have effected publication in “Business Standard” (English, Delhi edition) edition as well as “Business Standard” (Hindi, Delhi edition), both dated on 20.05.2023. In addition to the public notice, notices were served on the Regional Director (Northern Region), Official Liquidator, the Income Tax Department and Registrar of Companies, NCT of Delhi and Haryana and to the other relevant sectoral regulators.
9. Pursuant to the notice issued to the Regional Director and Official Liquidator, they have filed their response/reply in the matter.
10. The Regional Director (RD) in its letter dated 07.08.2023 has made certain observations with regard to the proposed scheme of Amalgamation among the Petitioner Companies. The Petitioner Companies had filed reply dated 08.08.2023 in response to the observations made by the Regional Director, under wherein the Petitioner Companies gave clarification and undertaking to address the observations made by the Regional Director. The details of the same are summarised below:

Observation of the Regional Director vide letter dated 07.08.2023	Reply of the Petitioner Companies vide Affidavit dated 08.08.2023																				
<p>1. As per audited financial statements of the Transferee Company for the F.Y. 2021-22, it is seen that the company has shown short term loans and advances. Hence, the company may be asked to clarify the nature, disclosure of the said loans granted, as well as compliance of provisions of the section 185 and 186 of the Companies Act, 2013.</p> <p>2. With respect to Transferee Company, auditor has stated “Emphasis of Matter” in its report for the year ended 31.03.2022 which is as under: -</p> <ul style="list-style-type: none"> Note Number 21 of the Financial Statements indicated that the net worth has been eroded due to losses. The net worth of the company is in negative of Rs. 1,907,520/- and the liabilities exceeds the assets as on March 31, 2022. These conditions indicate the existence of a material uncertainty that may cast significant doubt about the Company’s ability to continue as a going concern. However, the financial statements of the Company have been prepared on a going concern basis for the reasons stated in the said Note. <p>3. It is mentioned in Clause No. 02 of the scheme, that the scheme shall be effective from the last dates on which certified copy of order of Hon’ble NCLT under Section 230-232 of the Act, are filed the office of the respective Registrar of Companies. However, as per Section the scheme shall be effective from the appointed date. Hence, the company may ask to ensure the compliance of the provisions of the Section 232(6) of the Companies Act, 2013.</p>	<p>1. Loans and Advances</p> <p>The nature of Short Term Loan and advances as shown in the Financial Statements of the Company as on March 31, 2022 are given below:</p> <table border="1" data-bbox="821 481 1492 750"> <thead> <tr> <th>Sl. No.</th> <th>Nature of Loans and Advances</th> <th>Amount</th> <th>Remarks</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Security Deposit</td> <td>260,000</td> <td>Electricity</td> </tr> <tr> <td>2.</td> <td>Loans And Advances (given to Corporate Finvest India Private Limited-a Company in which Directors are interested)</td> <td>18,447,652</td> <td>Special Resolution passed by the Transferee Company under section 185 and 186 of the Companies Act, 2013</td> </tr> <tr> <td>3.</td> <td>Advance Tax and TDS Receivable</td> <td>2,628,999</td> <td></td> </tr> <tr> <td colspan="2">TOTAL</td> <td>21,336,651</td> <td></td> </tr> </tbody> </table> <p>A copy of form MGT-14 filed by the Company with payment of fee challan is attached to this letter. Please note that as of date the balance of the loan given to the Corporate Finvest is Nil.</p> <p>2. Net Worth of the Company</p> <p>The net worth of the Transferee Company is negative as on March 31,2022. However, the Company has invested in the properties and continuously earns regular rental income from those properties and very soon it will have a positive net worth.</p> <p>3. Effective Date of Scheme</p> <p>As per Part-1, Para- 1.1 (b) the appointed date is April 1, 2022, or such date as may be decided by the Hon’ble National Company Law Tribunal or any other authority. We undertake that the scheme shall be effective from the appointed date as per provisions of Section 232(6) of the Companies Act, 2013.</p>	Sl. No.	Nature of Loans and Advances	Amount	Remarks	1.	Security Deposit	260,000	Electricity	2.	Loans And Advances (given to Corporate Finvest India Private Limited-a Company in which Directors are interested)	18,447,652	Special Resolution passed by the Transferee Company under section 185 and 186 of the Companies Act, 2013	3.	Advance Tax and TDS Receivable	2,628,999		TOTAL		21,336,651	
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<p>4. As per the audited financial statements of the Transferor Company for the F.Y. ended 31.03.2022, it is seen that the company has nil revenue from its operation since last two years. Hence, the company appears to be a dormant u/s 455 of the Companies Act, 2013.</p> <p>5. The Transferee Company may kindly be directed to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 regarding fee payable of its revised Authorized Share Capital.</p>	<p>4. Dormant Company</p> <p>The Transferor Company was incorporated as Khatushyam Jankalyan Foundation, a Section 8 company. But, no special status of privileges or exemptions, were received from any authority such as the Income Tax Department, Charity Commissioner or any organization or Department of Central Government, State Government, Municipal Body or any recognized authority. So, no benefits or grants or contributions or funds could be received by the Company. Therefore, the Company was converted into a private limited company in 2021. But, no business activity could be materialized for 2021-2022 and therefore, it was decided to merge the same with the Transferee Company instead of applying to dormant Company.</p> <p>5. Payment of Fee on Revised Capital</p> <p>We undertake that the Transferee Company shall comply provision of Section 232 (3) (i) of the Companies Act, 2013 and pay a fee on the revised share capital.</p>
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11. Thus, though initially, the Regional Director (RD) in its report dated 07.08.2023 had made certain observations with regard to the proposed scheme of amalgamation among the petitioner companies, however, on perusal of reply of the Petitioner Companies in response to the observations made by the Regional Director, and on perusal of additional affidavit dated 01.09.2023, we are satisfied with the reply filed by the petitioner companies and we find no impediment in approving the present scheme of amalgamation.

12. The Official Liquidator has filed its report dated 01.06.2023, wherein no specific objection has been raised against the approval of the Scheme. It is submitted in

the report that the affairs of the Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

13. In Income Tax Department's report dated 30.05.2023 with respect to the Transferor Company, no specific objection was raised with respect to the proposed Scheme of Amalgamation between the petitioner companies. Further, in Income Tax Department's report dated 17.05.2023 with respect to the Transferee Company, no specific objection was raised with respect to the proposed Scheme of Amalgamation between the petitioner companies.
14. Considering the reply of the Petitioner Companies and further, the undertaking of the Petitioner Companies with respect to the observations and clarifications, we find no impediment in approving the present scheme of amalgamation.
15. 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.
16. Certificates of Statutory auditor of the petitioner companies, has 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. Moreover, the Petitioner companies have given undertaking to strictly comply with relevant Accounting Standards.

17. The shareholders of the petitioner companies are the best judges of their interest, being 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. It is well settled that the Tribunal evaluating the Scheme, of which sanction is sought under Section 230-232 of the Companies Act of 2013, will not ordinarily interfere with the corporate decisions of companies as approved by shareholders and creditors.

18. It has also been affirmed in the petition that the Scheme is in the interest of all the Petitioner Companies 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.

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

- (i) The Petitioners shall however remain bound to comply with the statutory requirements in accordance with the law.
- (ii) 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.
- (iii) While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from

payment of stamp duty, taxes or any other charges if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

20. This tribunal further directs with respect to the Transferor Company and the Transferee company, that:

- (i) The scheme mentions that Appointed Date as fixed for the proposed scheme of amalgamation is 01.04.2022 or such other date as prescribed by this Tribunal. In the facts and circumstances of the case and the time taken in completion of the formalities and having considered the facts and circumstances of this case, we prescribe 01.04.2024 as the appointed date for the proposed scheme.
- (ii) Upon the sanction becoming effective from the appointed date i.e. 01.04.2024 as prescribed by this Tribunal for the scheme, the Transferor Company shall stand dissolved without undergoing the winding up process.
- (iii) All contracts of the Transferor Company, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favor of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto;
- (iv) All the employees of the Transferor Company shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less

favorable than those on which they are engaged by the Transferor Company, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;

(v) All liabilities of the Transferor Company, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Companies Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company, as if it had incurred such liabilities.

(vi) All proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company.

(vii) Any person interested or affected shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

21. Further, the Petitioner Companies shall within thirty days of the date of the receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company on the file kept by him in relation to the Transferee Company and the files relating to all the Petitioner Companies shall be consolidated accordingly.

22. In compliance with the requirement of Section 232 (7) of the Act, the transferee company shall until the full implementation of the Scheme of Amalgamation shall

file a statement every year in the Form CAA 8 along with the required fees with the Registrar of Companies as prescribed in the Companies (Registration offices and fees) Rules 2014 within 210 days from the end of each financial year.

23. The petition stands disposed of in the above terms.

Let copy of the order be served to the parties.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)