

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH,
AT NEW DELHI**

COMPANY PETITION NO. CA (CAA)- 113 (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
of

Swachh Industries Limited

.....Transferor Company

WITH

Goodluck India Limited

.....Transferee Company

Judgment delivered on: 21.08.2019

CORAM:

CHIEF JUSTICE (Rtd.) M.M. KUMAR, Hon'ble President

S. K. MOHAPATRA, Hon'ble Member (T)

For Applicants: Mr. Rajeev K. Goel, Advocate

O R D E R

S.K. Mohapatra, Member

1. This joint application has been filed by the Applicant Companies under 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 seeking appropriate directions for convening/ dispensing with the respective meetings of shareholders, secured creditors and unsecured creditors of the applicant companies, in connection with the proposed Scheme of Amalgamation as contemplated between both the applicant companies. The said Scheme of Amalgamation (hereinafter referred to as the “Scheme”) has been placed on record along with the application.
2. It is represented that the registered offices of both the applicant companies are situated in New Delhi and therefore the subject matter of this application falls within the Jurisdiction of this Bench.

3. M/s Swachh Industries Limited (transferor company) was incorporated on 10.03.2017 under the provisions of the Companies Act, 2013. The present Authorized Share Capital of the Transferor Company is Rs. 16,50,00,000 divided into 1,65,00,000 Equity Shares of Rs. 10/- each. The present Issued, Subscribed and paid-up Share Capital of the Company is Rs. 1,00,00,000/- divided into 10,00,000 Equity Shares of Rs. 10/- each. The registered office of the Transferor Company is situated at 509, Arunachal Building, Barakhamba Road, Connaught Place, New Delhi-110001.

4. It is submitted that the transferor company has Seven Equity Shareholders and all the equity shareholders of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. It is further represented that the transferor company has no secured creditor and three unsecured creditors. The certificates of chartered accountant in respect of creditors of the demerged company have also been placed on record. As the company has no secured creditor, the requirement of convening of secured creditors meeting does

not arise. All the three unsecured creditors have given their consent affidavits in favour of the scheme. In relation to the shareholders and unsecured creditors, the transferor company seeks dispensation from convening and holding of their respective meetings on the ground that all the equity shareholders and all the unsecured creditors of the company have given consent affidavits in favour of the Scheme.

5. M/s Goodluck India Limited (Transferee Company) was incorporated on 06.11.1986 under provisions of the Companies Act, 1956. The present Authorized Share Capital of the Transferee Company is Rs. 12,75,00,000/- divided into 6,37,50,000 Equity Shares of Rs. 2/- each. The present Issued, Subscribed and paid-up Share Capital of the Company is Rs. 4,60,12,500/- divided into 2,30,06,250 Equity Shares of Rs. 2/- each. The registered office of the Company is situated at 509, Arunachal Building, Barakhamba Road, Connaught Place, New Delhi-110001.

6. It is submitted that the transferee company has 11,773 Equity Shareholders. It is further represented that the applicant company has 10 secured creditors and 1551 unsecured creditors. Certificate of chartered accountant in

respect of status of the creditors in the company has been placed on record. In respect of shareholders, secured creditors and unsecured creditors, prayers have been made for issuance of directions for convening their respective meetings to obtain approval in favour of the Scheme of Amalgamation.

- 7.** We have perused the application and the connected documents / papers filed herewith including the Scheme of Amalgamation.
- 8.** It is seen that the board of directors of both the applicant companies vide board meeting, held on 31.07.2019 have unanimously approved the proposed Scheme of Amalgamation. Copy of such resolution passed thereat have been placed on record by the applicant company.
- 9.** The applicant companies have filed their respective Memorandum of Associations and Articles of Associations. The applicants have also filed their respective latest audited financial statements for the year ending 31.03.2019.
- 10.** It is submitted that the proposed merger is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013, and the same if sanctioned by this

Tribunal the appointed date as provided in the Scheme shall be April 1st, 2019.

- 11.** The applicant companies have submitted that no investigation proceedings have been instituted or pending under Sections 210-226 of the Companies Act, 2013 or under Sections 235-251 of the Companies Act, 1956 against any of the Applicant Companies.
- 12.** Further, it has been stated in the application that the Scheme will be beneficial to both the applicant companies and its shareholders, employees, creditors and other stake holders.
- 13.** The certificates of respective statutory auditors of both the applicant companies have been placed on record confirming that the accounting treatment in the scheme is in conformity with the Accounting Standard notified by the Central Government under Section 2(2) and Section 133 of the Companies Act, 2013.
- 14.** Taking into consideration the application filed jointly by the Applicant Companies the following directions are issued: -

A. In relation to the Transferor Company: -

- (i) *The meeting of Equity Shareholders is dispensed with as there are only seven equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*
- (ii) *The meeting of secured creditors is also dispensed with because there is no secured creditor in the company and therefore, the requirement of convening meeting of secured creditors does not arise.*
- (iii) *The meeting of unsecured creditors is dispensed with as there are only three unsecured creditors and all of their consent affidavits in favour of the Scheme have been placed on record.*

B. In relation to the Transferee Company: -

- a. *The meeting of the equity shareholders of the transferee company is directed to be held at J.P. Hotels & Resorts, 6B, Patparganj, I.P.*

*Extension, N.H. 24, Behind CNG Petrol Pump,
Delhi-110092, on 02.11.2019 at 10:00 A.M.
The quorum of the meeting shall be 200 in
number or 90% in value.*

b. The meeting of the secured creditors of the transferee company is directed to be held at J.P. Hotels & Resorts, 6B, Patparganj, I.P. Extension, N.H. 24, Behind CNG Petrol Pump, Delhi-110092, on 02.11.2019 at 12:30 P.M. The quorum of the meeting shall be 7 in number or 90% in value.

c. The meeting of unsecured creditors of the transferee company is directed to be held at J.P. Hotels & Resorts, 6B, Patparganj, I.P. Extension, N.H. 24, Behind CNG Petrol Pump, Delhi-110092, on 02.11.2019 at 2:30 P.M. The quorum of the meeting shall be 100 in number or 90% in value.

C. Ms. Deepa Krishan, (former Member NCLT) (Mobile No. 9818369200) is appointed as the Chairperson and Mr. Prabhu Singh, Advocate (Mobile No. 7023355595)

is appointed as the Alternate Chairperson and Ms. Reema Chopra, Company Secretary (Mobile No. 8447233830) is appointed as Scrutinizer for the aforesaid meetings in terms of direction issued herein.

D. In case the quorum as noted above for the aforesaid meetings are not present at the respective meetings, then the meeting shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the respective registered office of the applicant company at least 48 hours before the meetings. The Chairperson and Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained.

E. The fee of the Chairperson for the aforesaid meetings shall be Rs. 1,50,000/-, the fee of the Alternate Chairperson shall be Rs. 1,25,000/- and the fee of the

Scrutinizer shall be Rs. 1,25,000/- in addition to meeting their incidental expenses.

F. The Chairperson will file its reports in respect of all the meetings within a week from the date of holding of the above meetings.

G. That the transferee company shall publish advertisement with a gap of at least 30 days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in Delhi editions of 'Business Standard' English edition and "Business Standard" Hindi edition stating that the copies of the Scheme, the explanatory statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the respective registered office of the Applicant Companies.

H. Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be applicable for the respective meetings of equity shareholders and creditors of the Transferee Company in terms of the

provisions of the Companies Act, 2013 and Rules framed there under.

- I.** The company shall send notice to the Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, the Income Tax Authorities, Registrar of Companies National Capital Territory of Delhi and Haryana, Official Liquidator, SEBI, BSE, NSE along with copy of relevant documents and disclosures as required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.
- J.** The Transferee Company shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every shareholders and creditors of the Applicant Company entitled to attend the meetings as mentioned above.
- K.** The authorized representative of the Transferee Company shall furnish an affidavit of service of notice of the meetings and publication of advertisement and

compliance of all directions contained herein at least a week before the proposed meetings.

- L.** All the aforesaid directions are to be complied with by the transferee company strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as in terms of the provisions of the Companies Act, 2013.

The application stands allowed in the aforesaid terms.

Let the copy of the order be served to the parties.


21.08.2019
(M.M. KUMAR)

PRESIDENT


(S. K. MOHAPATRA)

MEMBER (T)