

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH – V
COMPANY PETITION (CAA) NO. – 51/(ND)/2023
WITH
COMPANY APPLICATION NO. CA (CAA) 40/(ND)/2023**

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 SCHEME OF AMALGAMATION OF:

ARL TRADING PRIVATE LIMITED

Having registered office at:

Flat No. 412, Naurang House, 21, K. G. Marg,
New Delhi-110001

...Transferor Company

AND

BASUDHA CONBUILD PRIVATE LIMITED

Having registered office at:

B-68B, IInd Floor, Nahney Park,
B Block, Matiala, West Delhi, New Delhi-110059

...Transferee Company

Order Delivered On: 03.07.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Manoj Kumar Garg, Mr. Sachin Kaushik, Advs.
For the Respondent :
For the IT Department :
For the RD : Ms. Shankari Mishra, Adv
For the OL : Mr. Kartikeya Asthana, Adv.

ORDER

PER: DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

1. The present Joint Petition is filed by the Petitioner Companies herein **M/s ARL Trading Private Limited** (Transferor Company) and **M/s Basudha Conbuild Private Limited** (Transferee Company) 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 between M/s ARL Trading Private Limited (Transferor Company) and M/s Basudha Conbuild Private Limited (Transferee Company). The copy of the Scheme of Arrangement (hereinafter referred as the "Scheme"), has been placed on record.
2. The Transferor Company i.e., **M/s ARL Trading Private Limited** is an unlisted private limited company incorporated on 22.12.2005 under the provisions of the Companies Act, 1956 with the Registrar of Companies, NCT of Delhi & Haryana vide CIN: U67120DL2005PTC143941 initially under the name and style of "**Aamod Securities Private Limited**" which was later changed to "**ARL Trading Private Limited**". The registered office of the Company is situated at Flat No. 412, Naurang House, 21, K. G. Marg, New Delhi-110001. Thus, the registered office of the Petitioner Company No.1 is under the jurisdiction of this Tribunal. The authorized share capital of the Transferor Petitioner is Rs. 19,26,00,000/- divided into 1,74,20,000 Equity Shares of Rs. 10/- each and 18,40,000 Preference Shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the Transferor Company is Rs. 17,41,62,660/- divided into 1,74,16,226 Equity Shares of Rs. 10/- each.
3. The Transferee Company i.e., **M/s Basudha Conbuild Private Limited** is a Private Limited Company incorporated on 03.05.2011 under the provisions of the Companies Act, 1956 vide CIN:

U45204DL2011PTC218444 initially under the name and style of **“Samant Conbuild Private Limited”** which was later changed to **“Basudha Conbuild Private Limited”**. The registered office of the Company is situated at B-68B, IInd Floor, Nahney Park, B Block, Matiala, West Delhi, New Delhi-110059. 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. 9,00,000/- divided into 80,000 Equity Shares of Rs. 10/- each and 10,000 Preference Shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the Transferee Company is Rs. 7,95,560/- divided into 74,151 Equity Shares of Rs. 10/- each and 5,405 Preference Shares of Rs. 10/- each.

4. The Petitioner Companies have submitted that the proposed scheme of arrangement of Amalgamation of the Petitioner Companies would have the following benefits: -

- (i) Amalgamating Transferor Company and the Transferee Company will give the consolidated company better finances, facilitate adequate resource mobilization to sustain growth;
- (ii) Strengthening and consolidating the position of the Transferee Company and enabling it post-merger to participate more vigorously and profitably in an increasingly competitive and liberalized market;
- (iii) Enabling better leverage of facilities, infrastructure and human resources and for better administration;
- (iv) Augmenting and strengthening core businesses of the Transferee Company and resulting in enhancement of the shareholders' value of Transferee Company;
- (v) Enabling the amalgamated entity to raise funds from the financial institutions on better terms. The synergy of the amalgamation will improve operational efficiency, integrated management functioning and will enhance the share value for the benefit of shareholders of the existing entities;

- (vi) The merger of Transferor Company into Transferee Company will result in reduction of overheads, administrative, managerial and other expenditure, and bring about operational rationalization, organizational efficiency and optimal utilization of various resources;
 - (vii) The merger will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by Transferor Company and the Transferee Company, and also avoid duplication of administrative functions and eliminate multiple record-keeping;
 - (viii) The said Scheme is beneficial to the Petitioner Companies, their shareholders, creditors, employees and all concerned and will enable these companies to achieve and fulfil their objectives more efficiently and economically; and
 - (ix) The value of the shares of the combined entity shall enhance the shareholders' value by becoming a part of a stronger operating entity, rationalization of inter-company transactions etc.
5. The appointed date as fixed for the proposed scheme of Amalgamation is 1st April, 2022 or such other date as may be directed by this Tribunal.
 6. From the records, it is seen that the First Motion joint application was filed before this Tribunal vide CA(CAA)40/ND/2023 and Vide order dated 26.07.2023, this tribunal has dispensed with the requirement of convening and holding meetings of the shareholders, secured and unsecured creditors of the Petitioner Companies
 7. The Tribunal had directed the petitioner companies vide order dated 08.08.2023 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 by the Tribunal to carry out publication in the newspapers. It is seen from the records that the

Petitioners have filed an Affidavit affirming compliance of the same and disclosing that the applicants have affected publication in 'Financial Express' (English, Delhi edition) as well as 'Jansatta' (Hindi, Delhi edition), both dated on 18.08.2023. In addition to the public notice, notices were served on the Regional Director (Northern Region), Official Liquidator, the Income Tax Department, Registrar of Companies, NCT of Delhi and Haryana and to the other relevant sectoral regulators. Affidavit of service was filed by the Petitioner Companies are placed on record.

9. Pursuant to the notice issued to the Regional Director, Official Liquidator and Income Tax Department, they have filed their response/reply in the matter.
10. It is seen from the Regional Director (RD's) report dated 08.12.2023, the RD had raised certain observations with regard to the proposed scheme of Amalgamation and in response to the same, the Petitioner Companies had filed reply dated 22.05.2024 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 as per Clause 31 of the ROC Report dated 14.11.2023	Reply of the Petitioner Companies dated 22.05.2024
It is mentioned in the clause no. 02 that the scheme shall be operative from the appointed date. However, as per section 232(6) the scheme shall be effective from the appointed date. Hence, the same may be clarify from the company.	"...it is submitted that the scheme is effective from the appointed date."
In case of Transferor Company and Transferee Company, it is	"...it is submitted that the Applicant Company has filed e-form BEN-2 with the ROC Delhi."

<p>seen that the more than 10% of the share are held by the body corporate. However, the Companies have not filed the e-form BEN-2 with the RoC Delhi. Hence, the same may be clarified from the Companies.</p>	<p>Copy of the e-form BEN-2 along with ROC receipt of filing of BEN 2 with the ROC, Delhi on MCA Portal is placed on record.</p>
<p>As per note no. 2.6 of the audited financial statements of the Transferor Company for the F.Y.2021-22, it is seen that the company has given long term loans and advances of Rs. 237000.00/-. Hence, the company may be asked to ensure the compliances of the provision of the section 185 and 186 of the Companies Act, 2013.</p>	<p>“...it is submitted that the proposed Scheme is not in contravention of Section 185 and 186 of the Companies Act 2013 and the due compliances under such provisions are being done by the Applicant Transferor Company as the Company has given Loans & Advances to their employees not to the Directors. The details of the employees to whom Loan was given in financial years of 2021-22 are to Taniya Bir for 50,000/- & to Rajni Anand for Rs. 1,87,000/-. So, Section 185 & 186 of the Companies Act, 2013 are not applicable to Transferor Company.”</p> <p>Copy of the Ledger Account for Taniya Bir for 50,000/- & to Rajni Anand for Rs. 1,87,000/- are placed on record</p>
<p>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>“...it is submitted that the proposed scheme is not in contravention of Section 232(3)(i) of the Companies Act, 2013, as the said provision clearly provides that "where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set-off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation", hence, it is certain that the Transferee Company is not required to pay any Stamp</p>

	<p>Duty and any Fees on the increased Authorized Capital consequent to Merger of Transferor Companies' Authorized Capital with the Transferee Company's existing Authorized Capital.</p> <p>...further stated that if any fee is need to be paid to the concerned Authorities for the increased Authorized Capital, then that fee will be paid by the deponent or the Transferee Company.”</p>
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11. We have heard Ld. Counsel for the Petitioner Companies as well as the Ld. Counsel for RD. The Regional Director (RD) in its report dated 08.12.2023 had made certain observations with regard to the proposed scheme of Arrangement among the petitioner companies. After consideration of the reply of the Petitioner Companies, filed in response to the observation made by the Regional Director, the observations made by the Regional Director stand clarified and the same has been recorded in order dated 05.05.2024 that *“Ld. Counsel on behalf of the RD submitted that in view of the undertaking given by the Petitioner they are satisfied with their response and they have no objection if the scheme is approved.”*
12. The Official Liquidator has filed its report dated 05.02.2024, wherein no specific objection has been raised against the approval of the Scheme. It has been submitted by the Official Liquidator in the report 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 in terms of Companies Act, 2013.
13. On October 16, 2023, the office of the Income Tax Officer, Ward-4(1), New Delhi issued a No Objection Certificate (NOC) for Basudha Conbuild Pvt. Ltd., the Transferee Company. Subsequently, on October 25, 2023, the office of the Income Tax Officer, Ward-1(1), New Delhi issued a No Objection Certificate for ARL Trading Pvt. Ltd., the Transferee Company.

14. Petitioner placed on record the affidavit affirming 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.
15. 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.
16. The shareholders of the petitioner companies are the best judges of their interest, being fully conversant with the market trends. Therefore, this Tribunal is not supposed to go into the commercial decisions taken by the companies. 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.
17. In view of the foregoing, upon considering the reply of the Petitioner Companies, the undertaking of the Petitioner Companies with respect to the observations and clarifications and 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.
18. 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 sanction, 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.

19. This Tribunal further directs with respect to all the Petitioner Companies, that:

- (i) The Appointed Date has been proposed to be fixed for the proposed Scheme of amalgamation is 01.04.2022 or such other date as may be directed by this Tribunal. In view of the facts that accounts are to be drawn and audited annually and the time taken in disposal of the instant application, this Tribunal deems it fit to fix the Appointed Date as 01.04.2024 for the proposed scheme of Arrangement of Amalgamation of Petitioner Companies.
- (ii) Upon the sanction becoming effective from the appointed date i.e., 01.04.2024 as prescribed by this Tribunal, the Transferor Companies shall stand dissolved without undergoing the process of winding up.
- (iii) All contracts of the Transferor Companies, 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 favour 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 Companies 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 favourable than those on which they are engaged by the Transferor Companies, 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 Companies, 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 Companies be continued by or against the Transferee Company.
- (vii) Any person interested or effected shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

20. 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 companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies 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.

21. 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.

22. 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)