

IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI, COURT-III

COMPANY PETITION NO. (CAA) - 56(ND)/2023
CONNECTED WITH
COMPANY APPLICATION NO. CA(CAA) - 34(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

M/s. KOLMEKS INDIA PRIVATE LIMITED

.... Transferor Company

WITH

M/s. KOLMEKS (GUJARAT) MANUFACTURING PRIVATE LIMITED

.... Transferee Company

AND

THEIR RESPECTIVE CREDITORS AND SHAREHOLDERS

Order Delivered on 03.05.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant: Mr. Yashraj Guglani, Adv., Mr. Manish Gupta, Mr.
Saurabh Agrawal, Mr. Sachin Khurana, CS

For the RD: Ms. Shankari Mishra, Ms. Jyoti Khurana, Adv.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Second Motion Petition has been filed jointly by the M/s. Kolmeks India Private Limited, (Transferor Company) and M/s. Kolmeks (Gujarat) Manufacturing Private Limited (Transferee Company) under Sections 230-232 of the Companies Act, 2013 (Act) read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (Rules) for the Sanction of the proposed Scheme of Amalgamation between the Transferor Company and Transferee Company and their respective shareholders and creditors (Scheme).

The Registered Office of the Transferor Company and Transferee Company is presently situated at New Delhi and therefore, it is under the jurisdiction of the Hon'ble National Company Law Tribunal, New Delhi.

2. The Transferor Company namely M/s. Kolmeks India Private Limited, bearing CIN: U28112DL2016FTC309549 was incorporated on 22.12.2016 under the provisions of the Companies Act, 2013 as a Private Company Limited with the Registrar of Companies, NCT of Delhi and Haryana. The registered office address of Transferor Company is situated at 303, 3rd Floor, Rohini Complex, Shakarpur, East Delhi, Delhi-110092. The Authorized Share Capital of the Company is Rs. 8,50,00,000/- divided into 85,00,000 Equity Shares of Rs. 10 each and Issued, Subscribed and Fully Paid-up Share Capital of the Company is Rs. 8,36,97,920/- divided into 83,69,792 Equity Shares of Rs. 10 each.

3. The Transferee Company namely M/s. Kolmeks (Gujarat) Manufacturing Private Limited, bearing CIN: U28990DL2017PTC319243 was incorporated on 15.06.2017 under the provisions of the Companies Act, 2013 as a Private Company with the Registrar of Companies, NCT of Delhi and Haryana. The registered office address of Transferee Company is situated at 303, 3rd Floor,

Rohini Complex, Shakarpur, East Delhi, Delhi-110092. The Authorized Share Capital of the Company is Rs. 2,50,00,000/- divided into 25,00,000 Equity Shares of Rs. 10 each and Issued, Subscribed and Fully Paid-up Share Capital of the Company is Rs. 2,41,49,400/- divided into 24,14,940 Equity Shares of Rs. 10 each.

4. It is stated that the Transferee Company viz., M/s. Kolmek (Gujarat) Manufacturing Private Limited has moved the necessary second motion Petition being **CP(CAA)-56(ND)/2023** connected with the first motion Application being **CA(CAA)-34(ND)/2023**, before the National Company Law Tribunal, New Delhi.
5. The Board of Directors of the Transferor Company and of the Transferee Company in their respective Board Meetings dated 17.01.2023 considered and unanimously approved the proposed Scheme of Amalgamation.
6. The amalgamation of the Transferor Company with the Transferee Company would inter alia have the following benefits:
 - a) *The proposed amalgamation of the Transferor Company into the Transferee Company would inter-alia result in the alignment of businesses of the Transferor Company and the Transferee Company as both the Companies are in the same line of business thereby resulting in rationalization and standardization of the business processes, economies of scale, reduction in overheads, administrative, managerial and other expenditure, organizational efficiency, and optimal utilization of resources which would be beneficial for all members and other stakeholders.*
 - b) *It will provide significant impetus to the growth in the form of enhanced scale of operations leading to optimum utilization of various recourses and infrastructure with reduction in overheads, administrative costs, managerial and other expenditure, provide holistic services, appropriate*

channelization of synergies, direct operational efficiencies, increased asset base and will consolidate revenue and profitability.

c) The amalgamation will also create a simplified corporate structure focused on capitalizing the strategic investment opportunities and providing a concentrated management focus for development of the business of the Company.

d) Accordingly, the proposed Scheme would be in the interest of both the Transferor and Transferee Company and their respective Shareholders, Creditors and other Stakeholders and will not be prejudicial to the interest of any concerned Stakeholder or general public at large.

7. This Adjudicating Authority by its order dated 12.07.2023 dispensed with the requirement of holding the meeting of equity shareholders meeting of all the Companies involved in the present scheme of amalgamation.

8. The Second Motion petition was moved by the Petitioner Companies in connection with the Scheme of Amalgamation for issuance of notices. This Tribunal vide order dated 28.08.2023 directed to issue notice to the Statutory Authorities who shall be affected by the proposed Scheme and to such other Objector(s), if any, and also directed that the notice be published in two newspapers i.e., "Business Standard" both in Hindi and English Edition.

9. It is submitted by the Petitioners that in compliance of the above-stated directions, the Petitioners duly filed an Affidavit of Service dated 08.09.2022 by confirming that the aforesaid Notices of the present Company Petition were published on 26.09.2023 in Business Standard (English, Delhi Edition) and Business Standard (Hindi, Delhi Edition). It is further submitted that the Petitioner Companies also served the Notices of the present Company Petition to all the statutory authorities as per the directions given by this Tribunal vide order dated 28.08.2023.

- 10.** It is noticed that despite notice was served, no comments were received from the Income Tax Department with respect to any of the Petitioner Companies.
- 11.** The Regional Director along with the Registrar of Companies vide it's report dated 29.11.2023 has made certain observations. The petitioner companies have filed reply on 11.01.2024 in response to the observations made by the Regional Director.
- 12.** The Official Liquidator, Mr. Vineet Rai vide it's report dated 06.11.2023 has submitted that the affairs of the aforesaid 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 the provisions of the Companies Act,2013.
- 13.** The Petitioners Companies have submitted that the provisions relating to the accounting treatment for the proposed arrangement, as contained in the Scheme of Amalgamation, are in conformity with the applicable provisions of the Companies Act, 2013 under Section 133 of the Companies Act, 2013), and Generally Accepted Accounting Principles in India. The Statutory Auditors of the Transferor Companies and the Transferee Company have confirmed the same vide Certificate dated 03.11.2021 filed by M/s. Sanjay Bajoria & Associates, Chartered Accountants.
- 14.** No investigation proceedings have been instituted and are pending in relation to either of the Petitioner Companies under Sections 235 to 251 of the Act or under Sections 206 to 229 (Chapter XIV) of the Act. To the knowledge of each of the Petitioner Companies, no winding-up petition (including under Section 433 read with Section 434 of the Companies Act, 1956) and/or insolvency proceedings have been filed/instituted and are pending against either of the Petitioner Companies. None of the directors of the Petitioner Companies have

any material interest in the Scheme except to the extent of their directorships and shareholding in the Petitioner Companies.

15. It is submitted by the Petitioner Companies that this Joint Second Motion Petition is made bona fide and in the interest of justice and no one will be prejudiced if orders are made/or directions are given as prayed for.

16. Analysis and Finding

- i.** After considering the reports, we are of the considered view that the Scheme is not prejudicial to the interest of the equity shareholders and creditors of the Transferor Companies and the Transferee Company and the Scheme will be beneficial to the Transferor Companies, Transferee Company and their respective shareholders and creditors.
- ii.** The shareholders of the petitioner company are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by this 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 approved by shareholders and creditors.
- iii.** It has also been affirmed in the petition that the Scheme is in the interest of both the Transferor Companies, Transferee Company, their respective shareholders, creditors, employees and all concerned.

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.

17. Consequently, the sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.

- 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, the 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.
- iv.** In compliance with the requirement of Section 230 (1) of the Act, the transferee company shall until the full implementation of the Scheme of Amalgamation filed stated in Form CAA 8 along with the required fee as prescribed in the Companies (Registration offices and fees) Rules 2014 within 210 days from the end of each financial year.
- v.** The appointed date for the proposed scheme of amalgamation is 01.04.2022 or such other date as directed by this Tribunal. Having considered the time already elapsed and the fact that Accounts must have already been drawn for intervening period, we prescribe 01.04.2024 as the 'Appointed Date'.
- vi.** 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.

18. This Tribunal does further order: -

- i.** That the Transferor Companies shall stand dissolved without following the process of winding-up; and
- ii.** That all properties, rights and powers of the Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly, the same shall pursuant to Section 230-232 of the Companies Act, 2013 be transferred to and vested in the Transferee Company for all intents, purposes and interest of the Transferor Companies subject nevertheless to all changes now affecting the same; and
- iii.** That all the liabilities, (if any) and powers, engagements, obligations and duties of the Transferor Companies shall pursuant to Section 232(3) of the Companies Act,2013 without further act or deed be transferred to the Transferee Company and accordingly the same become the liabilities and duties of the Transferee Company; and
- iv.** That all proceedings now pending by or against the Transferor Company shall be continued by or against the Transferee Company; and
- v.** That all the employees of 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 service and upon terms and condition not less favorable than those subsisting in the concerned Transferor Companies on the said date; and
- vi.** That the Petitioner Companies, shall within thirty days of the date of the receipt of this order cause 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 deemed to be transferred; and
- vii.** That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

19. Accordingly, the Scheme stands **sanctioned** and **CP(CAA)/56 (ND)/2023** stands **disposed of** in the above terms.

Let copy of the order be served to the parties.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)