

NATIONAL COMPANY LAW
TRIBUNAL NEW DELHI BENCH
(COURT- III)

C.P.(CAA)
79/ND/2020
IN
CA(CAA) 80/ND/2020

IN THE MATTER OF SCHEME OF AMALGAMATION :

AMONGST

OSWAL EXPORTS PRIVATE LIMITED

... Applicant No.1 / Transferor Company

AND

S K A HOLDINGS LIMITED

... Applicant No.2 / Transferor Company

AND

MEMPHIS INVESTMENT & TGD. PRIVATE LIMITED

... Applicant No.3/ Transferor Company

AND

RIVER FINANCE LTD.

... Applicant No.4/ Transferor Company

AND

NAGINA INVESTMENTS & FINANCE LTD.

... Applicant No.5/ Transferor Company

WITH

ALLIANCE TECHNO PROJECTS LTD.

... Applicant No.6/ Transferee Company

ORDER DELIVERED ON: 29.03.2023

Section: 230 to 232 of the Companies Act, 2013

CORAM:

SH. BACHU VENKAT BALARAM DAS

HONBLE MEMBER (JUDICIAL)

SH. ATUL CHATURVEDI

HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Applicant : Mr. Saurabh Kalia , Sr. Advocate, Mr. Sarvik Singhai, Advocate

For Income Tax : Mr. Zoheb Hossain

For RD : Ms. Shankari Mishra

FOR OL : Ms. Hemlata Rawat

ORDER

PER: ATUL CHATURVEDI, MEMBER (T)

1. This Petition is preferred jointly by the Transferor Companies and Transferee Company under Section 230 to 232 of Companies Act, 2013 read with the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 for the purpose of the approval of the Scheme of Amalgamation (hereinafter referred to as '**Scheme**' for brevity), as contemplated between the Companies, its Shareholders and Creditors. The copy of the Scheme has been placed on record. The details of the Companies proposed to be amalgamated, as placed on record, are given in the following paragraphs.

2. Oswal Exports Private Limited (hereinafter referred to as "Transferor Company- 1") having CINU52110DL1981PTC012597 was incorporated under the provisions of the C.P.(CAA)79/ND/2020
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Companies Act, 2013 having its registered office at 1206, Surya Kiran Building 19 Kasturba Gandhi Marg, New Delhi – 110001.

3. S K A Holdings Private Limited (hereinafter referred to as “Transferor Company – 2”) having CIN U65993DL1981PLC012592 was incorporated under the provisions of the Companies Act, 2013 having its registered office at 1206, Surya Kiran Building 19 Kasturba Gandhi Marg, New Delhi – 110001.

4. Memphis Investment and Trading Company Private Limited (herein after referred to as “Transferor Company-3”) having CIN U67120DL1984PTC352679 was incorporated under the provisions of the Companies Act, 2013 having its registered office at 407, New Delhi House, 27 Barakhamba Road New Delhi – 110001.

5. River Finance Limited (herein after referred to as “Transferor Company-4”) having CIN U65910DL1982PLC01373 was incorporated under the provisions of the Companies Act, 2013 having its registered office at 1206, Surya Kiran Building 19 Kasturba Gandhi Marg, New Delhi – 110001.

6. Nagina Investments and Financial Limited (herein after referred to as “Transferor Company – 5”) having CIN U 65993DL1975PLC008010 was incorporated under the provisions of the Companies Act, 2013 having its registered office at 1206, Surya Kiran Building 19 Kasturba Gandhi Marg, New Delhi – 110001.

7. Alloance Techno Projects Limited (herein after referred to as “ Transferee Company”) having CIN U2610DL1985PLC021427 with its registered office at 1206, Surya Kiran Building 19 Kasturba Gandhi Marg, New Delhi – 110001.

8. The present Petition has been filed by Transferor Companies and Transferee Company Jointly. Since the Registered offices of all the Petitioner Companies are situated in Delhi, the jurisdiction lies with this Bench.

9. From the records, it is seen that the First Motion petition was filed by the Applicant Companies for seeking directions for dispensing with the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company. This Tribunal, in the First Motion Application bearing No. CA (CAA) No. 80 (ND) 2020, vide Order dated 29.09.2020 dispensed with the meeting of Equity shareholders, Secured Creditor and Unsecured Company of all the Applicant companies.

10. Subsequent to the order of dispensation of meetings in relation to the Transferor Companies, the Second Motion petition was moved by the Petitioner Companies in connection with the Scheme of Amalgamation for issuance of notices to the Central Government, Registrar of Companies NCT of Delhi & Haryana, Regional Director (Northern Region) MCA, Income Tax Authorities, Official Liquidator, Reserve Bank of India and other sectoral regulators who shall be affected by the proposed Scheme and to such other Objectors, if any, and also for publication of notice in respect of the said Scheme. The said petition was admitted and directions were issued, by this Tribunal requiring the Petitioner Companies to serve notices to the Central Government, Registrar of Companies NCT of Delhi & Haryana, Regional Director (Northern Region) MCA, Income Tax Authorities, Official Liquidator and other sectoral regulators likely to be affected by the said proposed Scheme and also to carry out necessary publication in English and Hindi newspapers with respect to the said Scheme.

11. It is submitted by the Petitioners that in compliance of the above stated directions, the Petitioners duly filed an Affidavit of Service by confirming that the aforesaid Notices of the present Company Petition were published in Business Standard

(English) and (Hindi) newspapers Delhi edition. It is further submitted that the Petitioner Companies also served the Notices of the present company Petition to all the statutory authorities.

12. The Income Tax Department vide it's report dated 30.12.2020 submitted to this Tribunal stating therein that they have no objection with respect to the present Scheme of arrangement.

13. The Regional Director vide his report dated 13.09.2021 has not objected to the proposed scheme but has made certain observations. The petitioner companies had filed reply dated 13.03.2023 in response to the observations made by the Regional Director, wherein the petitioner companies provided the required clarification with respect to the observations made by the Regional Director. The details are given below:

Observations of Regional Director	Reply of the Petitioner Companies
<p>1. Post-merger, authorised capital of the transferee company would be Rs. 5,95,12,000/- whereas upon sanction of the proposed scheme, the sum of authorised capital of the transferor and the transferee company would be Rs. 59,51,20,000/- divided into 5,95,12,000 instead of Rs. 5,95,12,000/- as mentioned in the scheme.</p>	<p>i. It is hereby submitted that Authorized Capital of the Transferor and Transferee Companies was further modified and would be Rs. 5,95,12,000/- divided into 595120 equity shares of Rs.10 each along with 1650 preference Shares of Rs.100 each and 2750 11% Non-Cumulative Redeemable Preference Shares of Rs.100 each as mentioned in the Scheme and Application. It is stated that the same was just a typo error and was corrected accordingly. (page 5, para 6 of the reply affidavit) and (part 9.3 of the scheme)</p>

<p>2. The paid up share capital of transferor company No. 1 was increased from Rs. 5.00 lacs to Rs. 905.00 lacs in 206-2007, However, the return of allotment of such increase in paid up share capital has not Been filed by the company on MCA-21 portal.</p>	<p>It is humbly submitted that the record which has been sought is almost 16 years old. The said form 2 being 16 years old is not available with the Company and thus the Company is not in the position to provide the same. It is pursuant to note that the said increase was made in accordance with law & the same was duly shown in the records of the Company including the annual return & balance sheet of 2006-2007. The same otherwise are already on record of the ROC which can be verified by the office of the Ld. Regional Director (NR) for such record. Furthermore, The same also in anyway does not affect the scheme as the same is of year 2006-2007 & no such issue has ever been raised on the same by the office of ROC &RD (NR) as well. (page 6, para 7 of the reply affidavit)</p>
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14. The Official Liquidator vide it's report dated 10.02.2021 submitted to this Tribunal stating therein that they have no objection with respect to the present Scheme of arrangement.

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15. In view of the foregoing facts and discussion and upon considering the approval accorded by the Members and Creditors of all the Companies to the proposed Scheme and also in the view of the fact that no sustainable objections have been raised by the Office of the Regional Director, Income Tax Department or any other interested party, there does not appear to be any impediment in granting sanction to the Scheme proposed for amalgamation.

16. Accordingly, in sequel to the above facts and circumstances, sanction is hereby granted to the Scheme of Amalgamation proposed by the Applicant Company under Section 230 to 232 of the Companies Act, 2013.

17. The sanctioned Scheme of Amalgamation shall be binding on the Transferor Companies and Transferee Company and their Shareholders and Creditors. The Petitioner Companies shall remain bound to comply with the statutory requirements in accordance with law.

18. Notwithstanding the above, if at any stage any deficiency is found or violation committed qua any enactment, statutory rule or regulation is found to be committed, the sanction granted by this Tribunal to the Scheme will not come in the way of action to be taken, albeit, in accordance with law, against the concerned persons, Directors and Officials of the Applicant Company.

19. While approving the Scheme as above, it is clarified that this Order should not be construed as an order in any way granting exemption from payment of Stamp Duty, Taxes or other statutory dues, 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 will be made. Further the approval of the Scheme would in no manner affect the tax treatment of the transactions under the Income Tax Act, 1961 or serve as any exemption or defense for the Applicant Companies against tax treatment in accordance with the provisions of Income Tax Act, 1961.

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

(i) Upon the sanction becoming effective from the appointed date of amalgamation and arrangement i.e., 1st April, 2019, the Transferor Companies shall stand dissolved without undergoing the process of winding up.

(ii) All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Companies are entitled to including under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives and concessions;

(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 Companies, 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.

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 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.

The Company Petition bearing (CAA) 79 (ND)/2020 is allowed in the above terms.

SD/-
ATUL CHATURVEDI
(MEMBER T)

SD/-
BACHU VENKAT BALARAM DAS
(MEMBER J)