

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

(CAA) - 69(PB)/2020

CONNECTED WITH

CA (CAA)- 31 (PB)/ 2020

In the matter of:

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with the Companies, (Compromises, Arrangements and Amalgamations) Rules, 2016

AND

IN THE MATTER OF COMPOSITE SCHEME OF ARRANGEMENT

BETWEEN

MAPLE GARMENTS PRIVATE LIMITED

... Transferor Company / Petitioner Company 1

R.S. INFRAPROJECTS PRIVATE LIMITED

... Transferee Company / Petitioner Company 2

Order Pronounced On: 19.05.2021

CORAM:

SH. B. S. V. PRAKASH KUMAR

HON'BLE ACTG. PRESIDENT

SH. HEMANT KUMAR SARANGI

HON'BLE MEMBER (TECHNICAL)

For the Petitioners: Mr. Kartikeya Goel, Advocate

For the RD & OL : Ms.Shankari Mishra, Advocate

For the I.T. Dept.: Mr. Kunal Sharma, Ms. Zehra Khan, Standing

Counsels and Ms. Shreya Choudhary,

Adv.

(CAA)- 69 (PB)/ 2020

ORDER

PER- HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

1. Under consideration is Company Petition (CAA)- 69(PB)/2020 filed under Sections 230 to 232 of the Companies Act, 2013 ("**The Act**") read with the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016. The purpose of the Company Petition is to obtain sanction of the Composite Scheme of Amalgamation (in short, "**The Scheme**") of M/s. Maple Garments Private Limited (hereinafter referred to as Petitioner-1/ Transferor Company-1) with M/s. R.S. Infraprojects Private Limited (Petitioner-2/ Transferee Company).
2. Maple Garments Private Limited (hereinafter referred to as the "Transferor Company No. 1"), having CIN: U18101DL2005PTC136493 is a company incorporated under the provisions of the Companies Act, 1956 in the year 2005, having its registered office at H-70, Lane W-10, Sainik Farms, New Delhi-110062.
3. M/s. R.S. Infraprojects Private Limited (hereinafter referred to as the "Transferee Company") is a company having CIN: U28112DL2005PTC140621 incorporated under the provisions of the Companies Act, 1956 in the year 2005, having its registered office at H-70, Lane W-10, Sainik Farms, New Delhi-110062.

4. The Transferor Company is a wholly Owned Subsidiary of the Transferee Company
5. The board of directors of both the petitioner companies, in their respective board resolutions, both dated 18.09.2019, respectively, have approved the Scheme.
6. The rationale for the proposed Scheme as stated therein is;
 - a. *“ The Transferor Company is a wholly Owned Subsidiary of the Transferee Company. The proposed Scheme of Amalgamation would result in consolidation of the Wholly Owned Subsidiary with its Parent/ Holding Company.”*
 - b. *“Both the Transferor and Transferee Companies are under same management and it would be advantageous to combine the activities and operations in a single company and building strong capability to effectively meet future challenges in competitive business environment.”*
 - c. *“The proposed would result in business synergy, pooling of physical, financial and human resource of these Companies for the most beneficial utilization of these factors in the combined entity.”*
 - d. *“The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of financial, human and other resource and enhancement of overall business efficiency. The proposed Scheme will enable these companies to combine their managerial and*

operating strength, to build a wider capital and financial base and to promote and secure overall growth.”

- e. “The amalgamation will result in significant reduction in multiplicity of legal and regulatory compliances which at present is required to be made separately by the Transferee Company as well as by the Transferor Company.”*
- f. “The proposed amalgamation would enhance the shareholders value of the Transferor and the Transferee Companies.”*
- g. “The proposed Scheme of Amalgamation will have beneficial impact on the Transferor and the Transferee Companies, their shareholders, employees and other stakeholders and all concerned.”*

7. This Tribunal, vide its order dated 10.07.2020 read with order dated 17.08.2020 in CA(CAA)-31(PB)/2020, dispensed with the requirement of holding the meeting of the shareholders and unsecured creditors of the Transferor Company. Further, it was directed to convene separate meetings of shareholders, Secured Creditors and Unsecured Creditors of the Transferee Company.
8. This Tribunal had further directed the Petitioner Companies to issue notices to the statutory authorities and the notices were accordingly issued. The Petitioner Companies have complied with all directions passed in the above order of this Tribunal.

9. The Regional Director, Northern Region has filed a report/representation dated 04.03.2021 (“**Report**”), along with the report of the Registrar of Companies, Delhi; The Regional Director has made the following observations in the report/representation:

“Refer to Clause 10 of the Scheme, the Transferee Company shall comply with the provision of Section 232 (3) (i) of the Companies Act, 2013 and pay the difference fee on consolidated authorized share capital of Transferor Companies on their respective authorized share capital.”

“As per financial statement as at 31.03.2020, the Transferee Company has advance loan of Rs. 7,97,73,187/- to the Transferor Company. The Transferor Company has used the said fund for purchasing a land of Rs. 7,36,62,553/- which is in contravention of section 185 (3) of the Act as the loan given by any holding company its subsidiary company should be utilized by the subsidiary company for its principal business activities.”

10. The Applicant has filed a reply affidavit in response to the observations given by the Regional Director, Northern Region and Registrar of Companies, Delhi, in its report. The applicant in its affidavit states as follows:

“6. That the Learned Registrar of Companies, New Delhi, in Para 32 of his Report, has submitted that the Petitioner Transferee Company may be directed to comply with the requirements of section 232(3)(i) of the Companies Act, 2013, with respect to the payment of the balance fee on the increase in its authorised share capital pursuant to the Scheme of Amalgamation. The Learned Regional Director, New Delhi, in Para 11(a) of his Report, has drawn the attention of this Hon’ble Tribunal to the aforesaid submission made by the ROC.”

“7. That with regard to the aforesaid observation of the Learned ROC/ Learned RD, we wish to clarify and confirm that Para 10.c of the Scheme of Amalgamation clearly provides that in terms of the provisions of section 232(3)(i) of the Companies Act, 2013, the Transferee Company will pay the balance fee and other charges, if any, on the increase in its authorised share capital pursuant to the Scheme of Amalgamation.”

“8. That the Learned Registrar of Companies, New Delhi, in Para 32 of his Report, has further submitted that a loan of Rs. 7,97,73,187/- given by the Transferee company to the Transferor company has been used by the Transferor company for purchasing a land of Rs. 7,36,62,553, which is in contravention of section 185(3) of the Companies Act, 2013 since a loan given by any holding company to its subsidiary company should be utilized by the subsidiary

Company for its principal company should be utilized by the subsidiary Company for its principal business activities. The Learned Regional Director, New Delhi, in Para 11(b) of his Report, has drawn the attention of this Hon’ble Tribunal to the aforesaid submission made by the ROC.”

11. The Official Liquidator has filed a report/representation dated 22.01.2021 (“**Report**”), in its report the Official Liquidator has made certain observations in the report/representation:

“15. That the official Liquidator on the basis of information submitted by the Petitioner Companies is of the view 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 as per the provisions of the Companies Act, 1956/ the Companies Act, 2013 whichever is applicable.”

12. The Income Tax department in its separate reports filed with this Tribunal have stated that:

- a. For Transferor Company there is NIL tax demand pending for recovery from the applicant company.
- b. For the Transferee Company following are the details of outstanding demand;

Sr. No	Assessment Year	Tax Payable	Tax Paid	Demand Payable
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1.	2007-08	12033071	11783750	16,273 u/s 143(3)
2.	2007-08			9,35,480 u/s 220(2)
3.	2008-09	18279765	6070920	6,19,570 u/s 220(2)
4.	2009-10	15559493	15559495	17746482 u/s 143(1)(a)
5.	2009-10			3,85,333 u/s 115 WE
6.	2011-12	2258215	2258216	1201090 u/s 143(1)(a)
7.	2012-13	13622833	13622832	2,02,35,990 u/s 143(3)
8.	2012-13			98,03,960 u/s 147
9.	2014-15	23747021	23747023	2,90,130 u/s 154
10.	2019-20	185771330	185771353	62,750 u/s 143(1)(a)

“Thus, it is humbly submitted that the proposal of the scheme of arrangement may be accepted only after protecting the rights of the Revenue to examine the tax implication of all the companies with regard to the scheme of amalgamation, at the time of their respective assessment/ re-assessment proceedings.”

13. In response to the above observations of the Income Tax Department, the Applicant has filed an affidavit and states as follows:

Sr. No.	Assessment Year	Tax Payable	Remark
1.	2007-08	16,273	Rectification Application being filed by the Transferee Company ¹ .
2.	2007-08	9,35,480	Rectification Application being filed by the Transferee Company ¹ .
3.	2008-09	6,19,570	Rectification Application being filed by the Transferee Company ¹ .
4.	2009-10	1,77,46,582	Demand wrongly raised by the Income Tax Department ² .
5.	2009-10	3,85,333	Demand wrongly raised by the Income Tax Department ² .
6.	2011-12	12,01,090	Demand wrongly raised by the Income Tax Department ² .
7.	2012-13	2,02,35,990	Appeal filed against the demand raised by the Income Tax Department ³ .
8.	2012-13	98,03,960	Appeal filed against the demand raised by the Income Tax Department ³ .
9.	2014-15	2,90,130	Appeal filed against the demand raised by the Income Tax Department ³ .
10.	2019-20	62,750	Rectification Application being filed by the Transferee Company ¹ .

“¹ For Assessment Years 2007-08, 2008-09 & 2019-20, the Income Tax Department seems to have erroneously raised the said demands. The company is in the process of filing the requisite Rectification Applications for all the aforesaid demands with the Income Tax Department.”

“² For Assessment Years 2009-10, 2011-12 & 2014-15, the Income Tax Department has erroneously shown the said demands. The Company has already filed Rectification Applications for all the aforesaid demands with the Income Tax Department.”

“³ The Company has filed an Appeal before the CIT (Appeals) against the aforesaid Income Tax demands for the assessment year 2012-13. The Learned CIT (Appeals) is yet to pass an order in the aforesaid Appeal. The Transferee Company undertakes to make the payment, if any, as per the final outcome of the aforesaid appeal.”

“7. We confirm and undertake that the Transferee Company will make the payment of demand on finalization of the on-going appeal, in terms of the applicable provisions of Law. The Transferee Company is not a subject matter of dissolution and hence the sanction of the Scheme of Amalgamation will not adversely affect any pending proceedings in the Transferee Company.”

“8. That we further undertake and confirm that any liability which may arise in future against the Petitioner Transferor Company, will be paid by the Transferee Company in accordance with the applicable provisions of Law. The scheme will not adversely affect the right of recovery of the Income Tax Department, or any enquiry, investigation, scrutiny or other proceedings being carried out by Income Tax Department against any of the Petitioner Companies. The Income Tax Department is entitled to recover any tax demand or any other dues of the Transferor Company from the Transferee Company.”

“9. That it may kindly be noted that the Income Tax Department has not raised any objection to the sanctioning of the Scheme of Amalgamation.”

14. The Certificates from the Chartered Accountants confirming the aforesaid status of the Income Tax Dues/Demands in the Petitioner Transferor and Transferee Companies have been enclosed along with the affidavit by the applicant, marked as “Annexure 2”.
15. Certificates of the respective statutory auditors of the Petitioner Companies have been placed on record to the effect that the accounting treatment provided for in the Scheme is in conformity with applicable accounting standards notified under Section 133 of the Act.

16. In view of the foregoing, there appears to be no impediment in sanctioning the Scheme which appears to be fair and reasonable and not contrary to public policy or violative of any provisions of law. All the statutory requirements of Sections 230-232 of the Act appear to have been complied with. Taking into consideration the above facts, the Company Petition is allowed and the Scheme annexed with the Petition is hereby sanctioned.
17. 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. Further, the Petitioner Companies shall be bound to comply with the statutory requirements in accordance with law.
18. The Petitioner Companies shall be at liberty to apply to this Tribunal for any directions that may be necessary in the above matter.

Accordingly, the **Scheme stands sanctioned** and (CAA)-69(PB)/2020 stands disposed off.

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

Sd/-

(B. S. V. PRAKASH KUMAR)

ACTG. PRESIDENT

Sd/-

(HEMANT KUMAR SARANGI)

MEMBER (TECHNICAL)

19.05.2021