

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

COMPANY PETITION (CAA) NO. 80 OF 2023
CONNECTED WITH
COMPANY APPLICATION NO. (CAA) 54 (ND)/2022

IN THE MATTER OF:

Section 230-232 of the Companies Act, 2013 read along with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

IN THE MATTER OF:

PRIYANKA INFRAHOMES PRIVATE LIMITED

...PETITIONER COMPANY NO. 1/TRANSFeree COMPANY

AND

BHOOTNATH BUSINESS LIMITED

...NON-APPLICANT/TRANSFEROR COMPANY NO. 1

AND

INFLUX INFRAPROJECTS PRIVATE LIMITED

...NON-APPLICANT/TRANSFEROR COMPANY NO. 2

AND

KANAKMAY TRADELINK LIMITED

...NON-APPLICANT/TRANSFEROR COMPANY NO. 3

AND

SANMATI TRADEX PRIVATE LIMITED

...PETITIONER COMPANY NO. 2/TRANSFEROR COMPANY NO. 4

AND

SANWARASETH MERCANTILE LIMITED

...NON-APPLICANT/TRANSFEROR COMPANY NO. 5

AND

SHIVAANGAN MERCHANDISE PRIVATE LIMITED

...NON-APPLICANT/TRANSFEROR COMPANY NO. 6

***(Hereinafter collectively referred to Petitioner Company no. 1 and
Petitioner Company no. 2 as Petitioner Companies)***

Order Pronounced on: 23.07.2024

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER
(JUDICIAL)**

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

PRESENT:

For the Applicant :

For the RD : Adv. Shankari Mishra, Adv. Aakash Sharma

For the OL : Adv. Kartikeya Asthana

For the IT Department : Ruchir Bhatia Sr SC with Pratyaksh Gupta and
Akahat Mann JSC's

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. This petition has been jointly filed by the petitioner companies herein namely M/s Sanmati Tradex Private Limited (hereinafter referred to as Transferor Company No. 4), and M/s Priyanka Infrahomes Private Limited (hereinafter referred to as Transferee Company), jointly under sections 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation (hereinafter referred to as the "SCHEME") proposed between the applicants.
2. The Transferee Company/Petitioner Company No. 1 i.e., M/s Priyanka Infrahomes Private Limited is a private limited company which was incorporated on 18.08.2005, under the provisions of the Companies

Act, 1956 bearing CIN: U22219DL2005PTC139773, having its registered office at 28/36, Old Rajinder Nagar, New Delhi-110060. The Authorized Share Capital of the Transferee Company/Applicant Company No. 1 is Rs. 50,00,000/- divided into 5,00,000 Equity shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital of Transferee Company is Rs. 44,73,750/- divided into 4,47,375 Equity Shares of Rs. 10/- each.

3. The Transferor Company No. 4/Petitioner Company No. 2 i.e., M/s Sanmati Tradex Private Limited is a private limited company which was incorporated on 22.02.2010, under the provisions of the Companies Act, 1956 bearing CIN: U51909DL2010PTC199396, having its registered office at 28/36, Old Rajinder Nagar, New Delhi-110060. The Authorized Share Capital of the Transferor Company No. 4/Applicant Company No. 2 is Rs. 50,00,000/- divided into 5,00,000 Equity shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital of Transferor Company No. 4/Petitioner Company No. 2 is Rs. 10,41,000/- divided into 1,04,100 Equity Shares of Rs. 10/- each.
4. The Scheme of Amalgamation also involves M/s Bhootnath Business Limited, M/s Influx Infraprojects Private Limited, M/s Kanakmay Tradelink Limited, M/s Sanmati Tradex Private Limited, M/s Sanwaraseth Mercantile Limited, M/s Shivaangan Merchandise Private Limited all of whose Registered Offices are situated in Kolkata falling within jurisdiction of the National Company Law Tribunal, Kolkata Bench and are non-applicant companies before this Bench.

5. The proposed scheme of amalgamation of the Petitioner Companies i.e., Transferor Companies with and into the Transferee Company would have the following benefits: -
- i. Apart from pursuing its main objects, the Transferee Company and all of the Transferor Companies have made deployment of its funds in various investible instruments. The business of the Transferor Companies and the Transferee Company can be combined/adjusted and carried forward conveniently with combined strength.
 - ii. The amalgamation will enable the Transferee Company to consolidate its line of business by restructuring and re-organizing its business activities and Capital Structure.
 - iii. The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the Transferee Company.
 - iv. The amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources.
 - v. The business of the Transferor Companies can be conveniently and advantageously combined together and in general with the business of the Transferee Company concerned and will be carried on more economically and profitably under the said scheme.

- vi. The said scheme of amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business of the company concerned. The said scheme will also enable the undertakings and business of the said applicant company to obtain greater facilities possessed and enjoyed by one large company compared with a number of small companies for raising capital, securing and conducting trade on favourable terms and other benefits.
 - vii. The said scheme will contribute in furthering and fulfilling the objects of the company concerned and, in the growth, and development of these businesses.
 - viii. The said scheme will strengthen and consolidate the position of the amalgamated company to increase its profitability.
 - ix. The said scheme will enable the undertakings concerned to pool their resources and to expand their activities;
 - x. The said scheme will enable the companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages.
 - xi. The said scheme will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.
6. The appointed date as specified in the Scheme is 1st April 2021 or such other date as may be approved by the Tribunal.

7. From the record, it is seen that the First Motion joint applications was filed before this Tribunal vide CA(CAA)54(ND)OF2022. Vide order dated 19.10.2023, the meeting of Equity Shareholders of Petitioner Company No. 1 and 2 was dispensed with, as the consent affidavits had been placed on record. There are no Secured Creditors and Unsecured Creditors of the Petitioner Company No. 1 and 2. Therefore, the requirement of convening the meetings of creditors did not rise.
8. In the present second motion petition, vide order dated 29.08.2023, the Tribunal directed the Petitioner Companies to issue notices to the (i) Regional Director, Northern Region of Ministry of Corporate Affairs, (ii) Registrar of Companies NCT of Delhi and Haryana, (iii) Income Tax Department, (iv) Official Liquidator, and (iv) any such other sectoral regulatory authorities. In addition further directed to publish notice in the newspapers namely in “Business Standard” (English and Hindi, Delhi Edition). In compliance of order dated 29.08.2023, an affidavit of service dated 10.01.2024 has been filed by the Petitioner Companies affirming that notices were served on the Regional Director (Northern Region), Official Liquidator, Registrar of Companies, NCT of Delhi and Haryana, and Income Tax Department. Further affirming and disclosing that the petitioners have effected publication in “Business Standard” (English and Hindi, Delhi Edition) dated on 06.01.2024.
9. Pursuant to the notice issued, the Regional Director and Official Liquidator have filed their response/reply in the matter.

10. The Regional Director (RD) in its report affidavit dated 19.03.2024 has made certain observations regarding the proposed scheme of Amalgamation among the Petitioner Companies. In response to the same, the Petitioner Companies had filed reply dated 06.05.2024 wherein the Petitioner Companies gave clarification to the observations made by the Regional Director. The details of the same are given below:

Observation	Observation by the Regional Director vide affidavit dated 19.03.2024	Reply by the Petitioner Companies dated 06.05.2024
1.	As per MCA General Circular no. 9/2019 date 21.08.2019, if the appointed date is significantly ante-dated beyond a Year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest. In this case, the appointed date is 01.04.2021. However, the justification of the same is not clearly brought out.	The company application with appointed date 01.04.2021 was e-filed on 25.01.2022 with the Kolkata Bench under e filing No 1908134/00321/2022. The Company Application was filed well within 1 (one) year from the Appointed Date i.e., 01-04-2021. The Kolkata Bench of the Tribunal also sanctioned the Scheme filed before it with Appointed Date 01-04-2021. Accordingly, the Appointed Date i.e., 01-04-2021 as mentioned in the Scheme be confirmed to be binding on all concerned.
2.	As per the financial statements of the Transferor Company for F.Y. 2022-2023, it is seen that the company has 'nil' revenue from its operations for the last two years. Hence, the company appears to be	The Deponent duly authorized hereby submits that the Petitioner Transferee Company had income under the head Other Income. The said income has been disclosed in the manner as said in Schedule III to the Companies Act, 2013.

	dormant u/s 455 of the Companies Act, 2013.	Further the Company has assets which is apparent from its Balance Sheet. It Total Asset as on 31-03-2023 is Rs 14,11,03,438/-. Hence the Company cannot be declared a dormant company under Section 455 of the Companies Act, 2013.
3.	It is stated that the Petitioner Transferor Company and Transferee Company has body corporate shareholdings of more than 10%. However, form BEN-2 has not been filed in this regard.	The Petitioner Transferor Company and the Petitioner Transferee Company have filed e form BEN-2. Copy of challan evidencing filing of the same is annexed marked- ANNEXURE - B.
4.	As per the financial statements of the Transferee Company F.Y. 2022-23, the company has interest income and appears to be NBFC. Hence, the company may be asked to comply the RBI regulations in this regard.	The Deponent duly authorized hereby submits that the Petitioner Transferee Company is into real estate activities. The inventories as appearing in the Balance Sheet as on 31-03-2023 Rs 8,18,56,500/ is in respect of building acquired by the Company. Further the Company has also made a Capital Advance of Rs 97,20,000/ for acquisition of property in Bangalore. The sum total aggregates to Rs 9,15,75,500/ -. In order to be classified as NBFC the Financial Assets should be more than 50% of its Total Assets. Total Assets as on 31-03-2023 Rs 14,11,03,438/- Real Estate assets Rs 9,15,75,500/- which is 64.90% of the Total Asset. Hence the Company can in no way be classified as NBFC Company.

5.	As per the financial statements of the Petitioner Transferor Company for F.Y 2022-23 has granted short-term loans and advances of Rs. 1,90,00,000 to the Transferee Company. As a result of this merger the aforesaid transactions shall be nullified. Further, the Transferee Company may be asked to ensure compliance of section 185, 186 of the Companies Act, 2013.	<p>As regards applicability of Section 186: The Deponent duly authorized hereby confirms that the Loan amount granted by the Petitioner Transferor Company namely - Sanmati Tradex Private Limited to the Petitioner Transferee Company namely - Priyanka Infrahomes Private Limited is well within the limits as laid down under Section 186 of the Companies Act, 2013.</p> <table border="1" data-bbox="959 792 1385 1240"> <tr> <td>Share Capital (A)</td> <td>Rs 10,41,000/-</td> </tr> <tr> <td>Reserves (B)</td> <td>Rs4,80,54,790/-</td> </tr> <tr> <td>TOTAL = C = (A) + (B)</td> <td>Rs 4,90,95,790/-</td> </tr> <tr> <td>Loan Given</td> <td>Rs. 1,90,00,000/-</td> </tr> <tr> <td>Admissible higher of</td> <td></td> </tr> <tr> <td>60% of C</td> <td>Rs. 2,94,57,474/-</td> </tr> <tr> <td>100% of B</td> <td>Rs. 4,80,54,790/-</td> </tr> </table> <p>Hence the loan given is within the limits admissible.</p> <p>As regards applicability of Section 185: The Deponent duly authorized hereby confirms that the said loan given by the Petitioner Transferor Company namely - Sanmati Tradex Private Limited to the Petitioner Transferee Company namely - Priyanka Infrahomes Private Limited does not fall under Section 185 of the Companies Act, 2013. That the Deponent further submits that the</p>	Share Capital (A)	Rs 10,41,000/-	Reserves (B)	Rs4,80,54,790/-	TOTAL = C = (A) + (B)	Rs 4,90,95,790/-	Loan Given	Rs. 1,90,00,000/-	Admissible higher of		60% of C	Rs. 2,94,57,474/-	100% of B	Rs. 4,80,54,790/-
Share Capital (A)	Rs 10,41,000/-															
Reserves (B)	Rs4,80,54,790/-															
TOTAL = C = (A) + (B)	Rs 4,90,95,790/-															
Loan Given	Rs. 1,90,00,000/-															
Admissible higher of																
60% of C	Rs. 2,94,57,474/-															
100% of B	Rs. 4,80,54,790/-															

		Appointed Date is 01 st April, 2021. Further the Kolkata Bench of the said Tribunal already passed orders on 06-12-2022 sanctioning the Scheme. The Transferee Company will be vested with all Assets and Liabilities of the Transferor Companies on and from the Appointed Date. The said transactions were carried out after the passing of orders by the Kolkata Bench.
6.	The Transferee company may kindly be directed to comply with the provision of section 232(3)(i) of the Companies Act, 2013 in regard to fee payable on its revised authorized share capital, if applicable.	The Deponent duly authorised hereby confirms that the Transferee Company undertakes that it shall comply with the provisions of Sec 232(3)(i) of the Companies Act, 2013 in regard to adjustment of fees upon clubbing of Authorized Share Capital of the Transferor Company with the Authorized Share Capital of the Transferee Company in post-amalgamation and shall file a detailed statement thereof with the Registrar of Companies at the time of filing of INC - 28.
7.	The shares of the Transferee Company are held by Transferor Company no. 1 and Transferor Company no. 5.	The Averments made are matter of records, hence the Deponent has no reply in this regard. The said fact has been disclosed under Share Capital in the Scheme being SL.NO (G).

11. Thus, the observations made by the RD and the Reply filed by the petitioner company. We are satisfied with the response given by the petitioner company w.r.t observation made by the RD.

12. The Official Liquidator has filed its report dated 22.03.2024, wherein no specific objection has been raised against the approval of the Scheme. It is submitted in the report that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest. Further during the course of hearing, the Official Liquidator vide order dated 02.07.2024 stated that they have no objection in allowing the application.
13. Despite notice served to the Income Tax Department, no comments were received from the Income Tax Department. As per the provisions of Section 230(5) of the Companies Act, 2013, on the expiry of 30 days from the date of the notice, it may be presumed that the Income Tax Department does not have any comments on the proposed scheme of amalgamation.
14. The Petitioner Companies have annexed an affidavit dated 09.11.2023 in terms of Section 230(2) of the Companies Act, 2013.
15. Certificates of Statutory auditor of the petitioner companies, have 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 market trends. Therefore, their decisions are not supposed to be interfered with by the Tribunal for the reason that it is not proper on the part of the judicial function of the Tribunal to examine and evaluate 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 do not ordinarily go into the merits of the corporate decisions of companies as approved by their respective shareholders and creditors.
17. It has also been affirmed in the petition that the Scheme is in the interest of all the Transferor Companies and Transferee Company including their shareholders, creditors, employees and all concerned. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Transferor Companies and Transferee Company 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 always remain bound to comply with the statutory requirements in accordance with 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 the Transferor Company and the Transferee Company, that: -

- i. Upon the sanction becoming effective from the appointed date i.e., 01.04.2021 as provided under the Scheme, the Transferor Company shall stand dissolved without undergoing the process of winding up.
- ii. All contracts of the Transferor Company, 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;

- iii. All the employees of the Transferor Company 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 favorable than those on which they are engaged by the Transferor Company, 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;
- iv. All liabilities of the Transferor Company, 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.
- v. All proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company.

- vi. Any person interested or affected shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
20. Further, the Transferor Company and Transferee Company 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 Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company on the file kept by him in relation to the Transferee Companies and the files relating to all the Transferor Company and Transferee Company 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 allowed on the above terms.
23. Let copy of the order be served to the parties.

Sd/-
DR. SANJEEV RANJAN
MEMBER (TECHNICAL)

Sd/-
MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)