

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

COMPANY PETITION (CAA) NO. 82 OF 2023
CONNECTED WITH
COMPANY APPLICATION (CAA) NO. 63 OF 2023

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

IN THE MATTER OF SCHEME OF AMALGAMATION

Amongst

Ravi Metal Products Private Limited

...Transferor Company No.1/Petitioner Company No. 1

And

Mayank Containers Private Limited

...Transferor Company No. 2/ Petitioner Company No. 2

And

Saksham Containers Private Limited

...Transferee Company/ Petitioner Company No. 3

And

Their respective Shareholders and Creditors

Order Delivered on: 07.05.2024

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE JUDICIAL MEMBER

DR. SANJEEV RANJAN, HON'BLE TECHINCAL MEMBER

PRESENT:

For the Applicant : Ms. Ashima Jain, Mr. Yash Jain,
Mr. Lokesh Dhyani, Advs.

For the RD : Ms. Jyoti Khurana, Mr. Akash Sharma, Advs.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. This is a second motion application jointly filed by the petitioner companies herein, M/s Ravi Metal Products Private Limited (hereinafter referred to as Transferor Company No. 1/Petitioner Company No. 1), M/s Mayank Containers Private Limited (hereinafter referred to as Transferor Company No. 2/ Petitioner Company No. 2) and M/s Saksham Containers Private Limited (hereinafter referred to as Transferee Company/ Petitioner Company No. 3) and their respective shareholders and creditors jointly under section 230-232 of Companies Act, 2013, read with Rule 3 and 18 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and National Company Law Tribunal Rules, 2016 (“NCLT Rules”) in relation to the Scheme of Amalgamation (hereinafter referred to as the “SCHEME”) proposed between the petitioner companies.
2. The Transferor Company No. 1/Petitioner Company No. 1 i.e., M/s Ravi Metal Products Private Limited is a private limited company was incorporated on March 13th 1995, under the provisions of the Companies Act, 1956 bearing CIN: U25202DL1995PTC066278, having its registered office at A-3/122, Paschim Vihar, New Delhi-110063. The Authorized Share Capital of the Transferor Company No. 1/Petitioner Company No. 1 is Rs. 25,00,000/- divided into 2,50,000 Equity shares of Rs.10/- each. The Issued, Subscribed and Paid-up Share Capital is Rs. 22,87,050 divided into 2,28,705 Equity Shares of Rs. 10/- each.
3. The Transferor Company No. 2/Petitioner Company No. 2 i.e., M/s Mayank Containers Private Limited is a private limited company was incorporated on 13.02.1995 under the provisions of the Companies Act, 1956 bearing CIN: U74899DL1995PTC065370, having its registered office at A-3/122, Paschim Vihar, New Delhi-110063. The Authorized Share Capital of the Transferor Company No. 2/Petitioner Company No. 2 is Rs. 1,25,00,000/- divided into 12,50,000 Equity shares of Rs. 10/- each. The

Issued, Subscribed and Paid-up Share Capital is Rs. 1,18,82,500 divided into 11,88,250 Equity Shares of Rs. 10/- each.

4. The Transferee Company/Petitioner Company No. 3 i.e., M/s Saksham Containers Private Limited is a private limited company was incorporated on 26.02.1997 under the provisions of the Companies Act, 1956 bearing CIN: U74950DL1997PTC085405, having its registered office at A-3/22, 1st Floor, Paschim Vihar, New Delhi-110063. The Authorized Share Capital of the Transferee Company/ Petitioner Company No. 3 is Rs. 2,00,00,000/- divided into 20,00,000 Equity shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital is Rs. 1,40,00,000 divided into 14,00,000 Equity Shares of Rs. 10/- each.
5. The Petitioner Companies submit that the proposed scheme of amalgamation of the Transferor Companies No. 1, 2 and Transferee Company would have the following benefits: -
 - i. The amalgamation would result in a significant reduction in multiplicity of legal and regulatory compliances, multiple record-keeping and cost saving by way of reduction of overheads, administrative, managerial and other expenditure;
 - ii. The amalgamation will lead to synergies of operations and will help the merged entity in reaps the economies of scale, improving organizational capability to enable the entity to compete in an increasingly competitive industry;
 - iii. Greater efficiency in management of the merged entity and deployment of funds for organic and inorganic growth opportunities, to maximize shareholder value.
6. The appointed date as specified in the Scheme is 1st April 2023 or such other date as may be approved by the Tribunal.
7. From the record, it is seen that the First Motion joint application seeking direction for dispensation/convening the meeting of Shareholders, Secured Creditors and Unsecured Creditors was filed before this bench

vide CA(CAA)63(ND)OF2023 and based on such application moved under Section 230-232 of the Companies Act, 2013, this Tribunal vide order dated 16.10.2023 (pronounced order) has passed the following directions:-

- i. The meeting of Unsecured Creditors of the Transferor Company No. 1 and 2 is dispensed with. Since there were nil secured creditors of the Transferor Company No. 1 and 2, therefore the convening the meeting did not rise.
 - ii. The meeting of Equity Shareholders of the Transferor Company No. 1 and 2 was directed to be convened.
 - iii. The meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferee Company was directed to be convened.
8. The Chairperson of the meeting of Equity Shareholders of the Transferor Company No. 1 had placed on record Chairperson's report dated 06.12.2023. As per their report, majority of person unanimously approved the scheme of amalgamation.
 9. The Chairperson of the meeting of Equity Shareholders of the Transferor Company No. 2 had placed on record Chairperson's report dated 05.12.2023. As per their report, majority of person unanimously approved the scheme of amalgamation.
 10. The Chairperson of the meeting of Equity Shareholders of the Transferee Company had placed on record Chairperson's report dated 05.12.2023. As per their report, majority of person unanimously approved the scheme of amalgamation.
 11. The Chairperson of the meeting of Secured Creditors of the Transferee Company had placed on record Chairperson's report dated 05.12.2023. As per their report, majority of person unanimously approved the scheme of amalgamation.
 12. The Chairperson of the meeting of Unsecured Creditors of the Transferee Company had placed on record Chairperson's report dated 05.12.2023.

As per their report, majority of person unanimously approved the scheme of amalgamation.

13. In the present second motion petition, vide order dated 19.12.2023 passed by this Tribunal, the Tribunal directed the Petitioners to issue notices to the (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; (b) Registrar of Companies, NCT of Delhi & Haryana; (c) the Commissioner of Income Tax, New Delhi; and (d) Official Liquidator. In addition, the petitioner companies were also directed to publish the notice in the newspapers i.e. 'Business Standard' 'English' & 'Hindi'.
14. In compliance of order dated 19.12.2023, the petitioner companies have filed an affidavit of service dated 12.01.2024 affirming and disclosing that notices were served on the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Income Tax Department, Official Liquidator and Registrar of Companies. The petitioners have effected publication in "Business Standard" (English and Hindi) both dated on 09.01.2024.
15. Pursuant to the notice issued, the Regional Director, Income Tax Department and the Official Liquidator have filed their response/reply in the matter.
16. The Regional Director (RD) in its report affidavit dated 05.03.2024 has made certain observations regarding the proposed scheme of Amalgamation among the Petitioners. In response to the same, the Petitioner Companies had filed reply vide letter dated 09.02.2024 wherein the Petitioners gave clarification to the observations made by the Regional Director, the details of the same are given below:

S.No.	Observation by the Regional Director in its report dated 05.03.2024	Reply by Petitioner Companies vide letter dated 09.02.2024
1.	As per audited financial statements of the Transferor Companies for the F.Y. 2022-23, it is seen that the companies have nil revenue from operation since last two years. Hence, companies	That the provisions relating to the requirement of obtaining the status - of dormant company are provided under the provisions of section 455 of the Companies Act, 2013 ("Act"). Relevant extracts of the same, are

<p>appear to be dormant under section 455 of the Companies Act, 2013.</p>	<p>reproduced hereunder for the sake of ready reference:</p> <p>"Section 455 Dormant Company</p> <p>(1) Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.</p> <p>Explanation.—For the purposes of this section,- (i) "inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statement and annual returns during the last two financial years; (ii) "significant accounting transaction" means any transaction other than- (a) payment of fees by a company to the Registrar; (b) payments made by it to fulfil the requirements of this Act or any other law; (c) allotment of shares to fulfil the requirements of this Act; and (d) payments for maintenance of its office and records." [Emphasis Supplied]</p> <p>"Rule 3: Application for obtaining status of Dormant Company For the purposes of sub-section (1) of section 455, a company may make an application in Form MSC-1 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value)"</p> <p>[Emphasis Supplied]</p> <p>"Rule 3: Application for obtaining status of Dormant Company: -</p>
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		<p>For the purposes of sub-section (1) of section 455, a company may make an application in Form MSC-1 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value)" [Emphasis Supplied]</p> <p>Upon perusal of the aforesaid provisions, it is amply clear that obtaining status of dormant company is purely discretionary in nature and not mandatory. This proposed amalgamation shall result in winding up of the Transferor Company as explained in the rationale of the scheme. Hence, obtaining such status and continuing business has never been intention of the Transferor Companies. Further, the proposed merger shall reduce the multiplicity of legal and regulatory compliances which results in reduction of expenditure and achieving economies of scale. Hence, the companies do not fall under the ambit of section 455 of the Companies Act, 2013.</p>
2.	As per audited financial statement of the Transferor Company no. 2 for the F.Y. 2022-23, it is seen that the company has given loans and advances to the related parties. Hence, the company may ask to ensure the compliances the provisions of the section 185 and 186 of the Companies Act, 2013.	That during the financial year 2019-20, the Transferor Company No. 2 had given a loan of Rs. 1,92,00,000/- to the Transferee Company which is a related party of the Transferor Company No.2. In this regard, the Transferor Company No.2 had obtained the approval of its shareholders under section 185 and 186 of the Act, by way of special resolution passed in their extraordinary general meeting held on April 18, 2019.
3.	As per audited financial statement of the Transferee Company for the F.Y. 2022-23, it is seen that the company has given loans and advances to the related parties. Hence, the company may be asked to ensure the	That the Transferee Company had not advanced any loan/ amount to any of its related parties. Therefore, the Transferee Company is not required to comply with the provisions of

	compliances the provisions of the section 185 and 186 of the Companies Act, 2013.	Section 185 and 186 of the Companies Act, 2013
4.	There is a significant cross holding of the equity shares among the Transferor and Transferee Company.	<p>That as per the terms of Clause 12 of the Scheme, upon the effectiveness of the Scheme all inter-company transactions between the Companies shall stand cancelled, the relevant extracts of the said clause are reproduced hereunder:</p> <p>"INTER COMPANY TRANSACTIONS</p> <p>12.1 Without. prejudice to the above provisions, upon the Scheme becoming effective and with effect from the Appointed Date, all inter-company transactions, inter-se between the Transferor Companies and the Transferee Company, including but not limited to: a) any loans, advances, payables, investments and other obligations (including any guarantees, fellers of credit, letters of com/or/ or any other instrument or arrangement which may give rise to a contingent liability in whatever form) which are due or outstanding or which may become due at any time in future; or b) any agreement/ memorandum of understanding, executed amongst the aforesaid Companies which are due or outstanding or which may become due at any time in future, shall stand cancelled as on the Effective Date and shall be of no effect and the Transferor Companies and the Transferee Company shall have no further obligation outstanding in that behalf" Further, as per clause 18 of the Scheme, upon the effectiveness of the Scheme the Transferee Company shall issue shares to the shareholders of the Transferor Companies (other than the shares already held by the Transferee Company).</p> <p>In view of the aforesaid, it can be inferred that the crossholdings among the Transferor Companies and the Transferee Company shall stand cancelled.</p>
5.	The Transferee company may kindly be directed to comply with the	That, in terms of the Clause 18 of the scheme, upon the effectiveness of the

	provisions of section 232 (3) (i) of the Companies Act, 2013 regarding fee payable of its revised Authorized Share Capital.	scheme the Transferee Company shall issue equity shares to the shareholders of the Transferor Company and in terms of Clause 19 of the Scheme, upon the effectiveness of the Scheme the authorized share capital of Transferor Company shall be clubbed into the authorized share capital of the Transferee Company, in this regard the Transferee Company hereby undertakes to Comply with the provisions of Section 232(3)(i) of the Companies Act, 2013.
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17. Thus, the Petitioner Companies vide letter dated 09.02.2024 duly replied to queries raised by the Regional Director and the Regional Director has not made any adverse remarks or observations.
18. The Official Liquidator in its report dated 30.01.2024 stated that 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 in terms of the provisions of the Companies Act, 2013.
19. The Income Tax Officer Ward 21(1) in its report dated 05.03.2024 with respect to Transferor Company No. 1/Petitioner Company No. 1 i.e., M/s Ravi Metal Products Pvt Ltd stated that reproduced hereunder: -



**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD 21(1), DELHI/**

Demand Analysis and Recoverability status report

PAN: AAACR4266J	Name: RAVI METAL PRODUCTS PVT LTD	Date of Report: 05/03/2024
Address: C R BUILDING, ITO, DELHI (UT), DELHI		

Summary of Demand

S. No.	AY	DIN	Demand Section	Date of Order	Demand Outstanding (In Rs.)	Amount Difficult to Recover (In Rs.)	Amount Collectible (In Rs.)
1	2001-02	2023200137004329104C	220(2)	24/01/2024	2,002		2,002
2	2002-03	2023200237004118160C	220(2)	16/01/2024	1,840		1,840
3	2003-04	2023200337004116372C	220(2)	16/01/2024	616		616
4	2004-05	2023200437004120884C	220(2)	16/01/2024	394		394
5	2005-06	2023200537004113595C	220(2)	16/01/2024	2,310		2,310
6	2006-07	2023200637004119630C	220(2)	16/01/2024	1,078		1,078
7	2007-08	2010200751075982220C	143(1)	17/09/2008	31,326		31,326
8	2019-20	2023201937003992920C	154	19/01/2024	16,70,480		16,70,480

Analysis of Demand

20. In response to the report dated 02.04.2024 of Income Tax Department in respect of the Transferor Company No. 1/Petitioner Company No. 1 i.e., M/s Ravi Metal Products Pvt Ltd., the Petitioner Company No. 1 in its reply affidavit dated 06.04.2024 affirming that the demand referred to in serial no. 1 to 7, above, had already been deposited by the Petitioner Company No. 1 on March 06, 2024. The copies of the challans depicting the payment of the said demands are attached herewith and marked as Annexure-B. Further, in respect of the demand raised under serial no. 8, the Petitioner Company No. 1 submitted that the actual demand amount of Rs. 16,00,000/- was paid by the Petitioner Company No. 1 on May 05, 2020, for Assessment Year 2019-2020, vide challan number ITNS 280. However, during the filing of the said challan the Petitioner Company No. 1, due to an inadvertent mistake, had selected AY 2020-21 instead of AY 2019-20, consequently, such demand along with the applicable interest is still showing on the portal of income tax authorities. In this respect, the Petitioner Company No. 1 had raised a grievance, regarding correction in challan, which was resolved by the concerned income tax authorities. The copies of the grievance and the letter issued by the concerned income tax authorities depicting that the query has been resolved along with payment proof are attached herewith and marked as Annexure- C.
21. The Income Tax Officer Ward 16(3) in its report dated 02.04.2024 with respect to Transferor Company No. 2/Petitioner Company No. 2 i.e., M/s Mayank Containers Pvt. Ltd., stated that this Department has no objection for merger of Mayank Containers Pvt Ltd with Saksham Containers Pvt Ltd.
22. The Deputy Commissioner of Income Tax Circle 22(2) in its report dated 02.04.2024 with respect to Transferee Company/Petitioner Company No. 3 stated as below: -

Saksham Containers Private Limited ("AABCS5769A")(Transferee Company)	
1. Whether there is any Income Tax demand pending against the company? If yes, the quantum thereof may kindly be communicated. In view of the above, it is requested that the concerned Assessing Officers for each of the above Companies prepare their respective para-wise comments or instructions with respect to the present Company Petition for restoration of the name of the company.	Total demand pending against the assessee is Rs.11,110/- in any Assessment Year as on date. "No Data Found" shows in the ITBA system. In the present case, in the proposed scheme of restoration of the name of the company.
2 The details of any proceeding under the Income Tax Act pending against the above Company, if any	As per the ITBA system of Circle- 22(2). New Delhi, no proceeding is pending against the company.
3. Whether the Income Tax Department	Department/Revenue reserves its right to



would have any objection to the said Scheme Arrangement for restoration of the name of the company the being approved by the Hon'ble NCLT? If yes, the detailed reasoning behind such objection may kindly be provided	<p>initiate and/or continue proceedings under the IT Act, 1961. The assessee company is transferee company.</p> <p>Department/Revenue reserves its right behind to recover any demand payable by the company, if it comes to the knowledge of the department.</p> <p>As in the present case, for amalgamation of various subject companies in the assessee Company, this office has no objection.</p>
4. Any other details or instructions which may have a bearing on the case in order to safeguard the interest of the Revenue	---

23. In response to the report dated 02.04.2024 of Deputy Commissioner of Income Tax Circle 22(2) in respect of Transferee Company/Petitioner Company No. 3, the Petitioner Company No. 3 in its reply affidavit dated 06.04.2024 affirming and submitted that this outstanding liability is in the normal course of business and shall be paid off as part of regular business proceedings. Needless to mention, the Petitioner Company No. 3/ Transferee Company shall continue to exist pursuant to the sanction of Scheme.

24. It is further submitted that in terms of clause 8 the Scheme, upon the effectiveness of the Scheme, all liabilities (including any liabilities

pertaining to taxes) of the Transferor Companies shall become liabilities of the Transferee Companies and the Transferee Company undertakes to honour the tax liabilities of Transferor Companies which may arise after the sanctioning the Scheme.

25. The Petitioner Companies have filed an affidavit in compliance of Section 230(2) of the Companies Act, 2013 which is annexed with the petition.
26. Certificate of Statutory auditor of the Petitioner Company no. 3/Transferee company, 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.
27. 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.
28. 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. In view of the foregoing, 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.

29. 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.

30. This Tribunal further directs with respect to both the Transferor Companies and the Transferee Company, that: -

- i. Upon the sanction becoming effective from the appointed date i.e., 01.04.2023 as provided under the scheme, the Transferor Companies shall stand dissolved without undergoing the process of winding up.
- ii. 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;

- iii. 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 favorable 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;
- iv. 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.
- v. All proceedings now pending by or against the Transferor Companies 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.

31. 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.

32. 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.
33. The petition stands allowed on the above terms.
34. Let copy of the order be served to the parties.

Sd/-

**DR. SANJEEV RANJAN
MEMBER (TECHNICAL)**

Sd/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**