

**THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

**CA (CAA) No. 02/ALD/2024
(First Motion)**

Under Section 230 and 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 and other Applicable Provisions.

IN THE MATTER OF SCHEME OF AMALGAMATION OF:

DAYAL SOFTWARES PRIVATE LIMITED

Having its Registered Office at:

B-1455 Indira Nagar, Lucknow,

Uttar Pradesh-226016 IN

PAN: AADCD2435N.

CIN: U72300UP2009PTC037690

...Transferor Company/Applicant No. 1

And

DAYAL INDUSTRIES PRIVATE LIMITED

Having its Registered Office at

Km. 18, Lucknow- Barabanki Road,

Mohammadpur Chowki Barabanki,

Barabanki, Uttar Pradesh-225406 IN

PAN: AABCD2004M

CIN: U74899UP1998PTC116701

... Transferee Company/ Applicant No. 2

Order delivered on 17th May, 2024

CA (CAA) No. 02/ALD/2024

(First Motion)

IN THE NATIONAL COMPANY LAW TRIBUNAL
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Coram:

Mr. Praveen Gupta : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances: -

Sh. Saurabh Srivastava with : *For the Applicant Companies*
Sh. Ashok Kumar Verma, PCS(s)

ORDER

1. This is a joint First Motion Application filed by Applicant Companies namely; **Dayal Softwares Private Limited** (for short hereinafter referred to as Transferor Company/Applicant No.1) and **Dayal Industries Private Limited** (for short here in after referred to as Transferee Company/Applicant No.2) under Section 230-232 of the Companies Act, 2013 (the Act) and other applicable provisions of the Act read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Amalgamation for the amalgamation between the Applicant Companies. The said Scheme is attached as **Annexure A-4** of the Application.
2. The Applicant Companies have prayed for dispensing with the requirement for convening the meetings of the Equity

Shareholders, Secured and Unsecured Creditors of the Transferor Company/ Applicant No.1 and Transferee Company/Applicant No.2.

3. The Transferor Company/ Applicant No.1 is primarily engaged in the business of Information and Communication Technology based solution and computer Hardware, Software and Electronic products and services in India and outside India and the business as assemblers, importers, exporter designers, dealers, traders, buyers and sellers, stockiest, suppliers sale organizers and distributors, wholesale and retail dealers, franchise in cloth, fabric, garments, apparels, knitwear's sportswear's in finished or semi-finished forms threads, cloth tapes, dyes or in natural shades, weaving, stitching, fitters and other products of thread and cloth either of synthetic or cotton or a combination thereof. The main objects of the Transferor Company are set-out in the Memorandum of Association of the Company which is set out as **Annexure- A-1/1** of the Application.
4. The Transferee Company/Applicant No.2 has the primarily business of manufacturers and producers, importers and

exporters, buyers and sellers, stockiest, suppliers, sales organizers and distributors, users, wholesale and retail dealers, franchise in all kind of cattle feed, balanced cattle feed including poultry and livestock feed and veterinary medicines and vaccines and the business as assemblers, importers, exporter designers, dealers, traders, buyers and sellers, stockiest, suppliers sale organizers and distributors, wholesale and retail dealers, franchise in cloth, fabric, garments, apparels, knitwear's sportswear's in finished or semi-finished forms threads, cloth tapes, dyes or in natural shades, weaving, stitching, fitters and other products of thread and cloth either of synthetic or cotton or a combination thereof. The main objects of the Transferee Company are set-out in the Memorandum of Association of the Company which is set out as **Annexure- A-2/1** of the Application.

5. It is submitted that the Registered Offices of the Applicant Companies are situated in the State of Uttar Pradesh and therefore, both the Applicant Companies are under the territorial jurisdiction of this Bench.

6. The rationale for the Scheme of Amalgamation of Transferor Company/Applicant No.1 with the Transferee Company/Applicant Company No.2 is to consolidate the Transferor Company with the Transferee Company and scale down the number of companies so as to create a large unified entity to achieve optimal and efficient utilization of resources, avoid overlap of compliance related costs and enhance operational and management efficiencies. Both the Transferor Company and the Transferee Company have been promoted by the same promoters and belong to the same group. The merger of the Transferor Company with the Transferee Company pursuant to this Scheme would have, inter-alia, the following benefits:

- i. The proposed amalgamation of the Transferor Company with the Transferee Company would result in business synergy, consolidation of Group Companies and pooling of their resources into a single entity. Greater integration and greater financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholder

value and will improve the competitive position of the combined entity.

- ii.** The proposed Scheme of Amalgamation would result in greater efficiency in cash management of the amalgamated entity and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholder value.
- iii.** The proposed Scheme of Amalgamation would result in improved organizational capability and leadership, arising from the pooling of human resources who have the diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry.
- iv.** The proposed Scheme of Amalgamation would result to greater access by the amalgamated companies to different market segments in the conduct of its business.
- v.** The proposed Scheme of Amalgamation would result in cost savings which are expected to flow from more

focused operational efforts, rationalization, standardization and simplification of business processes, the elimination of duplication and rationalization of administrative expenses.

- vi.** The proposed Scheme of Amalgamation would result in pooling of physical, financial and human resources of these Companies for the most beneficial utilization of these resources in the combined entity. Post Scheme, the Transferor Company will enjoy large net worth and financial resources which will be utilized to enhance the business.
- vii.** The proposed Scheme of Amalgamation would result in achieving economies of scale.

7. It is stated that the Board of Directors of the Transferor Company/Applicant No.1 and Applicant Transferee Company/Applicant No.2 in their meetings held on 27th November, 2023 have considered and unanimously approved the Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The copies of the Board Resolutions of the Transferor Company/Applicant No.1 and Transferee Company/Applicant No.2, are attached

as **Annexure-1/5 and Annexure-2/5** respectively of the application.

8. The Appointed Date of the Scheme is 1st April, 2023 or such other date as this Tribunal either of its own or at the request of the respective Company may fix as mentioned in **Part-I Clause (1.2)** of the Scheme of Amalgamation which is attached as **Annexure-4** of the Application.
9. It is stated that the Transferor Company/Applicant No.1 have filed the Audited Financial Statements as on 31st March, 2023 and the Provisional Financial Statement as on 30th November, 2023, which are attached as **Annexure-1/2 and Annexure-1/3** respectively of the application.
10. It is stated that the Applicant Transferee Company/Applicant No. 2 have filed the Audited Financial Statements as on 31st March, 2023 and the Provisional Financial Statement as on 30th November, 2023, which are attached as **Annexure-2/2 and Annexure-2/3** of the application.
11. It is submitted that no corporate debt restructuring is envisaged in the proposed Scheme of Amalgamation.

12. It is further submitted that in pursuance of the proviso to Section 230 (7) and Section 232 (3) of the Act, the Applicant Companies have filed the certificates dated 30th December, 2023 issued by the Statutory Auditors of the Applicant Companies certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same are attached as **Annexure-5** of the application.

13. It is further submitted by the Counsel for the Applicant Companies that the Valuation Report/Share Exchange Ratio Report dated 10th November, 2023 submitted by M/s Tattvam Valuers LLP, Registered Valuer, (IBBI Reg. No. IBBI/RV-E/02/2021/156, Report VRN: IOVRVF/TATV/2023-2024/2715)) is attached as **Annexure-3**. As per the said Report, the Transferee Company/Applicant No.2 shall in consideration of the transfer and vesting of the assets and liabilities of the Transferor Company in the Transferee Company, the Transferee Company without any further application or deed shall –

- o **68 (Sixty-Eight) Equity Shares of Dayal Industries Private Limited (Transferee Company) will be issued**

**against for 100 (One Hundred) equity Shares held
by the shareholder of Dayal Softwares Private
Limited (Transferor Company).**

14. It is submitted by the learned authorized representative that the Scheme (Annexure-4) also takes care of the interests of the staff/workers and employees of the Applicant Companies, by virtue of Part-II Clause 7 of the Scheme.
15. The Authorized Signatories of the Applicant Companies have deposed by way of affidavits that the Applicant Companies are not regulated by any sectoral regulators. The aforesaid affidavits of the Authorized Signatories dated 05.02.2024, are filed on 12.03.2024 furnishing Additional information in support of Application.
16. It is deposed by the Authorized Signatories of the Applicant Companies that there are no inspection, inquiry, investigations or legal proceedings pending against the Applicant Companies under Section 210 to 227 of the Companies Act, 2013 and Section 235 to 251 of the Companies Act, 1956 and other applicable provisions of the Companies Act, 1956/2013.

17. The Applicant Companies have furnished the following documents: -

- i. Proposed Scheme of Amalgamation (**Annexure-4** of the application).
- ii. Certificate of Incorporation along with Memorandum and Articles of Association of the Applicant Companies (**Annexure-1/1 and Annexure-2/1** respectively of the application).
- iii. List of Equity Shareholders of the Transferor Company/Applicant No.1 as on **30th November, 2023** (**Annexure-1 / 6** of the application).
- iv. List of Equity Shareholders of the Transferee Company/Applicant No.2 as on **30th November, 2023** (**Annexure-2/6** of the application).
- v. List of Creditors of the Transferor Company/Applicant No. 1 as on **30th November, 2023** duly certified by M/s Alok Agarwal & Co, Chartered Accountants, Statutory Auditors of the Company (**Annexure-1/7 & 1/8**) of the application).
- vi. Auditors Certificate to certify that there are Nil Secured Creditor and unsecured creditors of the Transferor Company annexed at **Page No.145-146** for Secured Creditor and **Page No.148-149** for Unsecured Creditor as (**Annexure-1/7 & 1 /8**) of the application).

- vii. List of Creditors of the Transferee Company/Applicant No.2 as **30th November, 2023** duly certified M/s Alok Agarwal & Co, Chartered Accountants, and Statutory Auditors of the Company (**Annexure-2/7 & 2/8**) of the application).
- viii. Auditors Certificate to certify that there are Secured Creditor and Unsecured Creditors in the Transferee Company/Applicant No. 2 annexed at **Page No. 260-261** for Secured Creditor and **Page No. 268-269** for Unsecured Creditor as (**Annexure-2/7 & 2/8**) respectively of the application).
- ix. Certificates of the Statutory Auditors of the Applicant Companies to the effect that the Accounting treatment proposed in the Scheme is in conformity with Section 133 of the Companies Act, 2013 (**Annexure-A-5 and Annexure-A-5**) respectively of the application).
- x. Provisional Financial Statement as on 30th November, 2023 of the Transferor Company/Applicant No.1 (**Annexure-1/3**) of the application).
- xi. Audited Financial Statements of the Transferee Company/Applicant No.2 for the period ended 31st March, 2023 (**Annexure-2/2**) of the application).
- xii. Provisional Financial Statement as on 30th November, 2023 of the Transferee Company/Applicant No.1 (**Annexure-2/3**) of the application).
- xiii. Affidavit with regard to the Sectoral Regulator of the Applicant Companies filed with the affidavit **dated**

05.02.2024 furnishing Additional information in support of Application.

- xiv. Report on Valuation of Shares and Share Exchange Ratio of the Registered Valuer for Securities and Financial dated 10th November, 2023 (**Annexure-3** of the application).
- xv. Report on Valuation of Shares and Share Exchange Ratio of the Registered Valuer for Securities and Financial dated 10th November, 2023 (**Annexure-3** of the application).
- xvi. Affidavits stating that there are no legal proceedings against the Applicant Companies filed with the affidavit **dated 05.02.2024** furnishing Additional information in support of Application.

18. The Applicant Companies have furnished the details of the Equity Shareholders, Secured Creditors and Unsecured Creditors as follows:

Name of the Applicant Companies	Shareholders along with their consent on affidavit		Creditors along with their consents on affidavit			
	Equity Shareholders	Consents submitted on affidavit	Secured Creditors	Consents submitted on affidavit	Unsecured Creditors	Consents submitted on affidavit
Transferor Company/ Applicant No.1	4(Four)	Affidavit received from all Equity Shareholders constituting 100% of the paid up share	NIL	NIL	NIL	NIL

		capital. Dispensation of the Meeting requested.				
Transferee Company/ Applicant No. 2	5(Five)	Affidavit received from all Equity Shareholders constituting 100% of the paid up share capital. Dispensation of the Meeting requested.	1 (One)	Affidavit received from the Secured Creditors constituting 100% of the total Value of Debt. Dispensation of the Meeting requested	563 (Five hundred sixty three)	Affidavit received from 11 (Eleven) Unsecured Creditors constituting 90.24% of the total Value of Debt. Dispensation of the Meeting requested.

I. In relation to Transferor Company/Applicant No. 1:

The meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors is dispensed owing to consent Affidavits filed by the all Equity Shareholders and no affidavit from creditors as there was no Secured and Unsecured Creditors of Transferor Company. The copy of said Affidavits is attached with the application; **(Annexure- 1/6, Annexure- 1/7 and Annexure- 1/8).**

II. In relation to Transferee Company/ Applicant No. 2:

The meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors is dispensed owing to consent Affidavits filed by the all Equity Shareholders and 100% of

the Secured and 90.24% of the total Value of Unsecured Creditors of Transferee Company. The copy of said Affidavits is attached with the application; **(Annexure- 2/6, Annexure- 2/7 and Annexure- 2/8).**

19. A perusal of the last order dated 02.05.2024 *vide* para nos.2 to 5, it was observed as under: -

- “2. It is pointed out by the Ld. Authorized Representative for the Applicant Companies that the consents with respect to the shareholders of the Transferor Company and that of the Transferee Company, apart from the consent with respect to the unsecured creditors of the Transferee Company, has also been obtained.*
- 3. While going through the consents with respect to the unsecured creditors under the category of trade payables, one of the consents is stated to have been given by the partnership firm, for which the consents have been given by one of the partners only.*
- 4. Ld. Authorized Representative for the Applicant Companies clarifies that the consent is on behalf of one of the partners, and he would be submitting the no objection from other partners/ partnership deed to the effect that the consent given by the partner, would have an independent right to give consent in terms of the partnership deed.*
- 5. Subject to the furnishing of the details as mentioned hereinabove, within a period of three days, the matter is heard Order reserved.”*

20. In compliance of the said order dated 02.05.2024, Ld. Authorized Representative for the Applicant Company has filed a consent affidavit from the all partners of the partnership firm of Unsecured Creditors of Transferee

Company/ Applicant Company no.2, *vide* diary no.989 dated 07.05.2024.

21. In view of the above, the first Motion Application stands allowed by giving liberty to the Applicant Companies to file Second motion Petition with a prayer that the Applicant Companies shall make specific prayer for sending notices to the (a) Central Government through Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, (b) concerned Registrar of Companies (c) official Liquidator and (d) Income Tax Authorities by disclosing the PAN numbers of all the Applicant Companies in the title of the Second Motion Petition. The applicant companies shall also file separate affidavit stating that the Sectoral Regulators governing the respective companies while filling second motion petition.
22. The Company Petition for confirmation of the scheme is to be filed within the time period prescribed under the provisions of the act and corresponding rules made thereunder.
23. That appropriate prayer would also be made in the second motion petition for publication in newspaper.

24. The application bearing Company Application CA (CAA) No.02/ALD/2024 is disposed off accordingly.
25. Certified Copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

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(Ashish Verma)
Member (Technical)

Date: 17th May, 2024

Pravin Dubey
(PS)
Aditi (LRA)

-Sd-

(Praveen Gupta)
Member (Judicial)