

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II**

**Company Petition (CAA) No. 7/ (KB)/2024
Connected with
Company Application (CAA) No.164/(KB)/2023**

**In the Matter of the Companies Act, 2013 - Section 230(6) read with
Section 232(3)**

And

In the Matter of :

A Scheme Of Amalgamation (Final Motion)

Shree Enterprises (Coal Sales) Private Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U51109WB1995PTC071948 and its registered office at 32 Ezra Street, Room No -854, Kolkata 700001 in the State of West Bengal.

..... Petitioner Company No. 1/ Transferee Company

And

In the Matter of :

Tulshian Estates Private Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U70101WB2004PTC098988 and its registered office at 32, Ezra Street, Room No- 854, Kolkata 700001 in the State of West Bengal.

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

And

In the Matter of :

- 1). Shree Enterprises (Coal Sales) Private Limited
- 2). Tulshian Estates Private Limited

..... **Petitioner**

Date of pronouncing the order: 5/7/2024

Coram:

Smt. Bidisha Banerjee : Member (Judicial)

Shri. D. Arvind : Member (Technical)

Authorised Representative on Record for the Petitioner(s):

Mr Shashi Agarwal, FCA – Practising Chartered Accountant

Ms Meenakshi Manot, Advocate

Mr Alok Tandon, Joint Director (MCA)

ORDER

Per: D. Arvind, Member (Technical)

1. The instant petition has been filed under Section 232(3) and other applicable provisions of the Companies Act, 2013 (“**Act**”) for sanction of the Scheme of Amalgamation whereby and whereunder the Tulshian Estates Private Limited, being the Petitioner No. 2 abovenamed (“**Transferor Company**” or “**Tulshian**”) is proposed to be amalgamated with Shree Enterprises (Coal Sales) Private Limited, being the Petitioner No. 1 abovenamed (“**Transferee Company**” or “**Shree**”) from the Appointed Date, viz 1st Day of April, 2022 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“**Scheme**”). (**Page No. 36-52 of Petition**).

2. The Petition has now come up for a final hearing. Authorised Representative for the Petitioners submits as follows:-

- (a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on 03/02/2023 respectively. **(Page No. 34-35 of Petition)**
- (b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-
- Reducing the multiplicities of legal and regulatory compliances
 - Reducing time and efforts for coordination of financials at group level
 - Elimination of duplicative communication and coordination efforts
 - Rationalisation of administrative and compliance costs and multiple record-keeping, thus resulting in cost savings;
 - Concentrated effort and focus by the senior management to grow the business by eliminating duplicative communication and burdensome coordination efforts across multiple entities.
- (c) The Statutory Auditors of respective Petitioner Companies have by their certificates dated 26/05/2023 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013. **(Page No. 190-191 of Petition)**
- (d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).
- (e) The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report thereon of Pranab Kumar Chakrabarty, Registered Valuer. **(Page No. 194-203 of Petition)**

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- (f) The shares of all Petitioner Companies are not listed in any Stock exchange.
- (g) By an order dated 20/12/2023 in Company Application (CAA) No. 164/(KB)/2023, this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) :- **(Page No:- 144-148 of Petition)**

Meetings dispensed: Meetings of the Equity Shareholders, of the Petitioner No. 1, 2, was dispensed with under Section 230(1) read with Section 232(1) of the Act.

- (h) Consequently, the Petitioners presented the instant petition for sanction of the Scheme. By an order dated 23/01/2024 the instant petition was admitted by this Tribunal and initially fixed for hearing on 29/02/2024 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 23/01/2024 an affidavit of compliance duly affirmed on 16/02/2024 in this regard has also been filed and the Petitioners have duly served such notices by hand delivery upon the Statutory / Sectoral Authorities:-

Sl No	Description of Statutory / Sectoral Authorities including mode	Date	Page of Affidavit of Service affirmed on 16/02/2024
1	The Regional Director, Eastern Region, Ministry of Corporate Affairs	05/02/2024	7

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2	The Registrar of Companies, West Bengal	05/02/202 4	8
3	The Official Liquidator, High Court, Calcutta	05/02/202 4	9
4	The DCIT/ACIT, Circle 5(1)	05/02/202 4	10
5	Income Tax Assessing Officer , Ward: 3(1)	05/02/202 4	11
6	The Chief Commissioner of Income Tax-1	05/02/202 4	12
7	The Chief Commissioner of Income Tax-2	05/02/202 4	13
8	Business Standard	16/02/202 4	5
9	Aajkal	16/02/202 4	6

- (i) Further, in compliance with the said order dated 23/01/2024 notice was also sent by speed post and the Petitioners have also duly served such notices on the Statutory / Sectoral Authorities:

Sl No	Description of Statutory / Sectoral Authorities including mode	Date	Page of Affidavit of Service sent through speed post affirmed on 16/02/2024
1	The Regional Director, Eastern Region, Ministry of Corporate Affairs	on 06/02/2024 delivered on 07/02/2024	14-15
2	The Registrar of Companies,	on	16-17

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	West Bengal	06/02/2024 delivered on 07/02/2024	
3	The Official Liquidator, High Court, Calcutta	on 06/02/2024 delivered on 07/02/2024	18-19
4	The DCIT/ACIT, Circle 5(1)	on 06/02/2024 delivered on 07/02/2024	20-21
5	Income Tax Assessing Officer , Ward: 3(1)	on 06/02/2024 delivered on 07/02/2024	22-23
6	The Chief Commissioner of Income Tax-1	on 06/02/2024 delivered on 07/02/2024	24-25
7	The Chief Commissioner of Income Tax-2	on 06/02/2024 delivered on 07/02/2024	26-27

- (j) Further, in compliance with the said order dated 23/01/2024 notice was also sent by email and the Petitioners have also duly served such notices on the Statutory / Sectorial Authorities:-

Sl No	Description of Statutory / Sectoral Authorities including mode	Date	Page of Affidavit of Service sent through email affirmed on
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			16/02/2024
1	The Regional Director, Eastern Region, Ministry of Corporate Affairs	05/02/2024	29-30
2	The Registrar of Companies, West Bengal	05/02/2024	31-32
3	The Official Liquidator, High Court, Calcutta	05/02/2024	33-34
4	The DCIT/ACIT, Circle 5(1)	05/02/2024	35-36
5	Income Tax Assessing Officer , Ward: 3(1)	05/02/2024	37-38
6	The Chief Commissioner of Income Tax-1	05/02/2024	39-40
7	The Chief Commissioner of Income Tax-2	05/02/2024	41-42
8	Certificate in Compliance of Section 65B of Evidence Act	05/02/2024	28

(k) Further, in terms of the order dated 23/01/2024, notice of Petition was published in newspapers Business Standard (English Edition) on 16/02/2024 and in Aajkaal (Bengali Edition) on 16/02/2024. **(Page No. 5 & 6 of Rejoinder dated 16/02/2024)**

(l) All statutory formalities requisite for obtaining the sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.

3. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata ("RD"), Official Liquidator, High Court, Calcutta have filed their representations before this Tribunal.

4. The Official Liquidator has filed his report dated 04/04/2024 and concluded interalia as under:-

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 Company do not appear to have been conducted in a manner prejudicial to the interest of its members or to the public interest as per the provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is applicable.

5. The RD has filed his reply affidavit dated 10/05/2024 ("**RD affidavit**") which has been dealt with by the Petitioners. The observations of the RD and responses of the Petitioner(s) are summarized as under:-

*(a) **Paragraph No. 2 (a) of RD affidavit:** (a) That it is submitted that on examination of report of the Registrar of Companies, West Bengal, it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. Further, all the petitioner companies are updated in filing their Financial Statements and Annual Returns for the financial year ended 31/03/2023.*

Paragraph No. 5(a) of Rejoinder: (a) With reference to paragraph 2(a) of the said reply, since the statements made in the said paragraphs are general hence no comments are required to the said statements.

*(b) **Paragraph No. 2 (b) of RD affidavit:** (b) However, it is submitted that in Form MGT-7 filed by the Transferor Company, Tulshian Estates Private Limited vide SRN F81199473 dated 17/11/2023 in respect of Annual Return for the year ended*

31/03/2023, a wrong list of shareholders and directors of another Company was attached, thereby rendering the said Annual Return filed as defective and non-complied in terms of the provision of section 92 of the Companies Act, 2013. Hon'ble Tribunal may direct the Petitioner Company to take necessary steps to rectify the said defect and file Form MGT-7 afresh with correct list of shareholders of the Company before the merger takes place.

Paragraph No. 5(b) of Rejoinder: (b). With reference to paragraph 2(b) of the said reply, I say that immediately upon receipt of affidavit of Ld Regional Director, Tulshian Estates Private Limited has filed revised MGT-7A for the year ended 31/03/2023 and accordingly the said error now has been rectified. Copy of Challan of filing MGT- 7A alongwith copy of MGT- 7A filed are annexed hereto and marked with **letter "A"**.

(c) Paragraph No. 2 (c) of RD affidavit: (c) *The Appointed Date stated in the Scheme is 1st April 2022. In terms of the Circular no. 09/2019 dated 21.08.2019 of the Ministry of Corporate Affairs, "where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, 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" It is not ascertainable from the documents provided by the Applicant whether the application for the scheme was filed before Hon'ble Tribunal within a year from the said Appointed Date. If the application for the scheme was filed with Hon'ble Tribunal after more than one year from the appointed date, Hon'ble Tribunal may kindly direct the Applicant to bring out the justification for the Appointed Date being more than*

one year before the date of filing of the Application for the scheme, in accordance with the said Circular.

Paragraph No. 5(c) of Rejoinder: (c). With reference to paragraph 2(c) of the said reply, I say that appointed date is April 1, 2022 and it is stated in the Scheme in Part- A clause No. 2.2 of the Scheme interalia as follow “It is stated the Scheme of Amalgamation is not against the public interest, even if the appointed date precedes the date of filing of application before appropriate authority for sanctioning of the Scheme by more than one year”. Further the Board of Director of the Petitioner Companies have approved the Scheme on or around 3rd March, 2023 and thereafter immediately on receipt of all necessary documents and consent from the shareholders and creditors company application was filed on 21/07/2023 when the accounts of the Petitioner Company was not audited.

(d) Paragraph No. 2 (d) of RD affidavit: (d) The Petitioner Companies should be directed to provide list/details of Assets, if any, to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the proposed Scheme.

Paragraph No. 5(d) of Rejoinder: (d). With reference to paragraph 2(d) of the said reply, I say that as appointed date is April 1, 2022, hence assets and liabilities as on 31/3/2022 will be transferred. However, List of assets and liabilities to be transferred is annexed hereto and marked with **letter “B”**.

(e) Paragraph No. 2 (e) of RD affidavit: (e) That the Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.

Paragraph No. 5(e) of Rejoinder: (e). With reference to paragraph 2(e) of the said reply, I say that the petitioners' companies

undertake to comply with the provisions of section 232(3)(i) of the Companies Act 2013. I further say that Part-B of Clause 9 of the Scheme relating to authorised capital is in accordance with Section 232(3)(i) of the Companies Act 2013.

(f) Paragraph No. 2 (f) of RD affidavit: (f) That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

Paragraph No. 5(f) of Rejoinder: (f) With reference to para 2 (f), it is stated that the petitioners' companies undertake to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Company to it.

(g) Paragraph No. 2 (g) of RD affidavit: (g) The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

Paragraph No. 5(g) of Rejoinder: (g) With reference to para 2(g), it is stated that the Scheme enclosed in the Company Application and Company Petition are one and the same and there is no discrepancy and no change.

(h) Paragraph No. 2 (h) of RD affidavit: (h) It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 11/01/2024 for their views/observation in the matter. However, no such views/observation in the matter from the Income Tax Department has been received yet. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.

Paragraph No. 5(h) of Rejoinder: (h). With reference to para 2(h), it is stated that the petitioner companies have also sent the notice of the Scheme two times in there different modes to the respective income tax assessing officer and have received communication/observation and separate affidavit has been filed clarifying/ explaining the said. Further, Petitioner Companies undertakes that even after the sanction of the scheme, the Transferee Company will be liable for all liabilities of the Transferor Company. I further say that proceeding if any initiated by the Income Tax Department against the Transferor Company can be initiated after sanction of Scheme against the Transferee Company.

(i). It is further submitted that the petitioner companies undertake that if there are any deficiencies found, or violations committed relating to any enactment, statutory rules or regulations, the sanction granted by the Hon'ble Tribunal to the scheme will not come in the way of action being taken in accordance with law (including recovery of income tax demand in accordance with applicable provisions of Income Tax Act.

6. After hearing submissions made by the Ld Authorised Representative appearing for the Petitioners, it is ordered that in case of any default including any Provisions of Income Tax Act in this respect of the Transferor Company the Income Tax department , the ROC, West Bengal, Reserve Bank of India and all other Statutory Department shall be at liberty to initiate appropriate proceedings against the Transferee Company, which after the sanction of the scheme by this Tribunal is in any case responsible for the liabilities/non-compliance of the Transferor Company also. Further, the Appointed Date will be 1st Day of April, 2023 instead of 1st Day of April, 2022 and accordingly the Appointed Date in the Scheme of Amalgamation will be 1st Day of April, 2023.

7. Further, heard submissions made by the Ld Authorized Representative appearing for the Petitioner, Joint Director for and on behalf of RD, who appeared and were heard. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders: -

- (a) the Scheme of Amalgamation mentioned in paragraph 1 of the petition, being Annexure "A" hereto, be and is hereby sanctioned by this Tribunal to be binding with effect from 1st April, 2023 ("Appointed Date") on Transferor Company and Transferee Company, their respective shareholders and creditors and all concerned;
- (b) all the property, rights and powers of the Transferor Company, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without further act or deed, to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme;
- (c) all the debts, liabilities, duties and obligations of the Transferor Company be transferred from the said Appointed Date, without further act or deed to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company;
- (d) the employees of the Transferor Company shall be engaged by the Transferee Company, as provided in the Scheme;

- (e) all proceedings and/or suits and/or appeals now pending by or against the Transferor Company be continued by or against the Transferee Company, as provided in the Scheme;
- (f) The Transferee Company do without further application issue and allot to the shareholders of the Transferor Company, the shares in the Transferee Company to which they are entitled in terms of the Scheme;
- (g) leave is granted to the Petitioner(s) to file the Schedule of assets and liabilities of the Transferor Company in the form as prescribed in the Schedule to Form No.CAA7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of receiving a copy of this order;
- (h) That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
- (i) The Transferor Company and the Transferee Company shall each within thirty days of the date of the receipt of this order, cause a certified copy thereof to be delivered to the Registrar of Companies for registration and on such certified copies being so delivered, the Transferor Company shall be dissolved with effect from the date or last of the dates of filing of the certified copies of the order, as aforesaid (Effective Date) and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said companies shall be consolidated accordingly.

8. The Petitioners shall supply legible print out of the scheme and schedule of assets and liabilities in acceptable form to the department and the department will append such printout, upon verification to the certified copy of the order.

9. **Company Petition (CAA) No. 7/KB/2024** is **disposed of** accordingly.

10. Urgent certified copy of this order, if applied be supplied to the parties, subject to compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order dated 5.7.2024

NKS(LRA)