

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

**C.P (CAA) No. 21/KB/2024
CONNECTED WITH
CA (CAA) No. 214/KB/2023**

**An application under Sections 230 to 232 and other applicable provisions
of the Companies Act, 2013;**

In the Matter of:

In the Scheme of Amalgamation (Second Motion)

GOENKA-LEASING & FINANCE PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U65710WB1948PTC017190 and its registered 1, Alipore Avenue, Kolkata - 700027 in the State of West Bengal.

**... Transferor Company No. 1/Petitioner No.1
AND**

SHANKAR ESTATES PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U70101WB1966PTC026797 and having its registered office at 1A, Alipore Avenue, Kolkata -700027 in the State of West Bengal.

...Transferor

Company No. 2/Petitioner No.2

AND

KANU HOLDINGS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U67120WB1992PTC055456 and its registered office at 1A, Alipore Avenue, Kolkata -700027 in the State of West Bengal.

**... Transferee Company/Petitioner No.3
AND**

In the Matter of :

1. Goenka-Leasing & Finance Private Limited
2. Shankar Estates Private Limited
3. Kanu Holdings Private Limited

Petitioner(s)

Date of pronouncing the order: 18/7/2024

Coram:

Shri Bidisha Banerjee : **Hon'ble Member (Judicial)**
Shri D. Arvind : **Hon'ble Member(Technical)**

Appearances (via Hybrid Mode):

Ms. Arti Vyas, PCS : Petitioner

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The instant petition has been filed under section 230(6) read with section 232(3) of the Companies Act, 2013 ("Act") for sanction and confirmation of the Scheme of Amalgamation of

Goenka-Leasing & Finance Private Limited	Transferor Company No.1/ Petitioner No.1
Shankar Estates Private Limited	Transferor Company No.2/ Petitioner No.2

with, Kanu Holdings Private Limited - Transferee Company /Petitioner No. 3 from the **Appointed Date, 1st April, 2023** in the manner and on the terms and conditions stated in the said **Scheme of Amalgamation** ("Scheme"). A copy of the said Scheme is annexed to the Company Petition marked **-Annexure - A** in VOL I at Page No 20 to 45.

2. It is submitted by Ld. Authorised Representative appearing for the Petitioner(s) that Petitioner Company No. 3 involved in the Scheme is an NBFC Company.
3. It is submitted by Ld. Authorised Representative appearing for the Petitioner(s) that the list of equity shareholders duly certified

by the statutory auditors of the Petitioner Companies as on 31.08.2023 are all collectively annexed to the Company Petition marked –**Annexure – K** in VOL II at page No 229 to 231.

4. It is submitted by Ld. Authorised Representative appearing for the Petitioner(s) that Petitioner Companies had Nil Unsecured Creditors on 31.08.2023 duly certified by the statutory auditors of the Petitioner Companies are all collectively annexed to the Company Petition marked – **Annexure – M** in VOL II at page No 259 to 261.
5. It is submitted by Ld. Authorised Representative for the Petitioner(s) that the Valuation Report dated 06.10.2023 recommending the Swap Ratio has been prepared by Omnifin Valuation Services (OPC) P Ltd, IBBI Registered Valuer. A copy of the said Report is annexed to the Company Application marked – **Annexure – I** in VOL II at Page No 211-226
6. It is submitted by Ld. Authorised Representative appearing for the Petitioner(s) that the Statutory Auditors of the Petitioner Companies have by their certificate dated 20th September 2023 have confirmed that the accounting treatment mentioned in the Scheme is in conformity with Accounting Standard prescribed under Section 133 of the Companies Act ,2013 and Rules made there under. Copy of the said certificates are all annexed to the Company Petition being – **Annexure – J** in VOL II at Page No 227-228.
7. It is submitted by Ld. Authorised Representative appearing for the Petitioner(s) that the Board of Directors of the Petitioner Companies have at their respective meeting held on 09.10.2023 have passed resolution adopting the proposed Scheme of Amalgamation. A copy of the Board Resolution is annexed to the Company Application marked – **Annexure – H** in VOL II at Page No 208-210.
8. It is submitted by Ld. Authorised Representative appearing for the Petitioner(s) that, the Petitioner(s) have the following classes of shareholders and creditors:-

PARTICULAR	Equity Shareholder	Preference Shareholder	Secured Creditor	Unsecured

S	s	s	s	creditors
TRANSFEROR COMPANY NO 1/PETITIONER NO 1	4	NIL	NIL	NIL
TRANSFEROR COMPANY NO 2/PETITIONER NO 2	4	NIL	NIL	NIL
TRANSFEREE COMPANY/PETITIONER NO 3	4	NIL	NIL	NIL

9. It is submitted by Ld. Authorised Representative appearing for the Petitioner(s) that by an order dated 04.01.2024 in Company Application (CAA) No. 214/KB/2023, this Tribunal made the following directions with regard to meeting(s) of shareholders and creditors under Section 230(1) of the Act:-

(i) Meeting(s) dispensed:

Equity Shareholders

Meeting of the Equity Shareholders of the Petitioner Companies for considering the Scheme are dispensed with in view of consent by all Equity Shareholders of Petitioner Companies having respectively given their consent to the Scheme by way of affidavits.

(ii) Meeting directed to be held: NIL

10. It is submitted by Ld. Authorised Representative appearing for the Petitioner(s) that, there are no proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).

11. It is submitted by Ld. Authorised Representative appearing for the Petitioner(s) that, the Petition has now come up for final hearing. Ld. The Authorised Representative for the Petitioner(s) submits as follows:-

(a) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-

i) The Transferor Companies and the Transferee company are having more or less similar objects.

ii) The business of the Transferor Companies and the Transferee company can be conveniently and advantageously combined together and in general business of the company concerned will be carried over economically and profitably under the said scheme

iii) The said scheme will contribute in furthering and fulfilling the objects of all the companies concerned in the growth and development of their business;

iv) Greater financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholders value, and improve the economic and competitive position of the combined entity.

v) In the current scenario and due to amendment of the Companies Act the compliances have been made very tough and expensive and for such reason the applicant companies have decided to amalgamate the Transferor Companies into the Transferee Company without affecting any public interest and without affecting any revenue;

- vi) The said scheme will strengthen and consolidate the position of the Transferee company to participants more vigorously and profitably in a competitive market;
- vii) The said scheme will enable all the companies concerned to pull their resources and to expand their activities;
- viii) To enable better and efficient management, control and running of the businesses to attain operational efficiencies, cost competitiveness, create synergies and capitalize on the growth opportunities to the fullest extent.
- ix) The said scheme will have beneficial result for the companies concerned, their share-holders, employees and all concerned.

12. Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 9th February 2024 the instant petition was admitted by this Tribunal and fixed for hearing on 12th July 2024 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 9th February 2024 the Petitioner(s) have duly served such notices on the Regulatory Authorities viz:

NAME OF THE REGULATORY AUTHORITY	DATE OF SERVICE	AFFIDAVIT OF SERVICE	
		ANNEXURE NO	PAGE NO
THROUGH SPECIAL MESSENGER (BY HAND DELIVERY)			

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

**C.P (CAA) No. 21/KB/2024
CONNECTED WITH
CA (CAA) No. 214/KB/2023**

Regional Director, Eastern Region, Kolkata	29.02.2024	Annexure-A	6
Registrar of Companies, Kolkata	29.02.2024	Annexure-A	9
The Reserve Bank of India, Kolkata	29.02.2024	Annexure-A	12
Official Liquidator, Kolkata	28.02.2024	Annexure-A	15
Chief Commissioner of Income Tax, Kolkata	29.02.2024	Annexure-A	18
Income Tax Officer Ward 12(1)	29.02.2024	Annexure-A	21
Income Tax Officer Ward 10(2)	29.02.2024	Annexure-A	24
Income Tax Officer Ward 12(1)	29.02.2024	Annexure-A	27
BY ELECTRONIC MAIL			
Regional Director, Eastern Region, Kolkata	01.03.2024	Annexure-A	7
Registrar of Companies, Kolkata	01.03.2024	Annexure-A	10
The Reserve Bank of India, Kolkata	01.03.2024	Annexure-A	13
Official Liquidator, Kolkata	01.03.2024	Annexure-A	16
Chief Commissioner of Income Tax, Kolkata	01.03.2024	Annexure-A	19
Income Tax Officer Ward 12(1)	01.03.2024	Annexure-A	22
Income Tax Officer Ward 10(2)	01.03.2024	Annexure-A	25
Income Tax Officer Ward 12(1)	01.03.2024	Annexure-A	28
PAPER PUBLICATION OF NOTICE			
Business Standard - In English	28.02.2024	Annexure-B	30
Aaj Kaal - In Bengali Translation	28.02.2024	Annexure-B	31

An affidavit duly affirmed has also been filed with the Registry.

13. All statutory formalities requisite for obtaining 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.
14. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (“RD”), Official Liquidator, High Court have filed their representations before this Tribunal.
15. The Official Liquidator has filed his report dated 15th April 2024 and concluded as under:-

“Para 8

That the Official Liquidator has not received any complaint against the Proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner till the date of filing of this Report.

Para 10

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.”

16. The Regional Director, Eastern Region, Ministry of Corporate Affairs (MCA), Kolkata vide his affidavit filed on 13th day of March, 2024 which has been dealt with by the Petitioner(s) by their Rejoinder affidavit dated 28.03.2024 (“Rejoinder”). The observations of the RD and responses of the Petitioner(s) are summarized as under:-

Reply of Point no 2(b) of your Affidavit- Sir, please note that the Petitioner Company has sought RBI NOC vide their 1st e-mail dated 07.12.2023 in which the petitioner company has duly attached a copy of Board Resolution along with proposed Scheme of Amalgamation, the said email reads as under:

“Dear sir,

This is to inform you that M.s Kanu Holdings Private Limited (RBI Registration No. B-05.03382) is planning to enter into a

Scheme of Amalgamation (u/s 230-232) between M/s. Goenka-Leasing & Finance Private Limited, M/s. Shankar Estates Private Limited with M/s Kanu Holdings Private Limited.

A copy of the draft Scheme of Amalgamation and Board Resolution has been attached, you are requested to provide your No Objection for the same.”

Again as per order dated 04.01.2024 of the Hon’ble NCLT, Kolkata Bench, Kolkata we have sent the copy of order, CAA-3 and petition to the RBI, Kolkata for their representation if any in connection with the proposed Scheme of Amalgamation of Goenka-Leasing & Finance Private Limited, Shankar Estates Private Limited (Transferor Companies) with Kanu Holdings Private Limited (Transferee Company) on 10.01.2024. In the letter we have requested their office that representations, if any, in connection with the proposed Scheme of Amalgamation may be made within 30 days from the date of receipt of this notice, the 30 days has expired on 09.02.2024 and we have not received any response from their end.

Again as per the Order of Hon’ble NCLT, Kolkata Bench, Kolkata dated 09.02.2024 in respect of CA no 214/KB/2023 connected with CP no 21/KB/2024 we have also duly sent the 2nd Notice to the RBI along with copy of CAA 3 and a copy of Petition under Sub-Section (5) of Section 230 of the Companies Act, 2013 on 28.02.2024 for representations, if any. **Again** we have sent the reminder mail on 18.03.2024 for their representation if any. A copy

of E-mails and acknowledgments are attached herewith and marked as **“Annexure A”**

The RBI vide their email dated 19.03.2024 has sent an e-mail stating their objection to the Scheme.

Query : With reference to the captioned subject, we seek to register our objection to the captioned scheme of amalgamation since Kanu Holdings Private Limited, a registered NBFC, has not obtained No Objection Certificate(NOC) from the Bank before approaching Hon'ble NCLT, Kolkata for amalgamation. Moreover, supervisory concerns are currently present with the captioned entity.

Ans: *As per RBI Circular DNBS (PD) CC.No.376/03.10.001/2013-14 dated May 26, 2014, prior written permission of the Reserve Bank of India shall be required for any merger/amalgamation of an NBFC with another entity or any merger/amalgamation of an entity with an NBFC that would give the acquirer / another entity control of the NBFC has been replaced by Master Directions Reserve Bank of India (Non-Banking Financial Company-Scale Based Regulation), Directions, 2023 wherein the requirement of obtaining prior approval of RBI has been taken away for merger/amalgamation.*

Master Directions Reserve Bank of India (Non-Banking Financial Company-Scale Based Regulation), Direction 2013 dated October 19,

2023 states that prior approval of RBI is required in the following cases:

- a. any takeover or acquisition of control of an NBFC, which may or may not result in change of management*
- b. any change in the shareholding of an NBFC, including progressive increases over time, which would result in acquisition transfer of shareholding of 26 per cent or more of the paid up equity capital of the NBFC. Prior approval would, however, not be required in case of any Shareholding going beyond 26 percent due to buyback of shares/ reduction in capital where it has approval of a competent Court. The same is however required to be reported to the Reserve Bank not later than one month from its occurrence.*
- c. any change in the management of the NBFC which would result in change in more than 30 per cent of the directors, excluding independent directors. Provided that, Prior approval would not be required for those directors who get re-elected on retirement by rotation.*

Thus, prior approval is not required for Merger/Amalgamation based on revised Master Directions Reserve Bank of India (Non-Banking Financial Company-Scale Based Regulation),

Directions 2023 dated October 19, 2023 and the requirement for obtaining the NOC before approaching the NCLT for merger as per the RBI Circular DNBS (PD) CC.No.376/03.10.001/2013-14 dated May 26, 2014 was already withdrawn.

In terms of the above circular prior approval is not mandatory, as the prior approval does not necessarily mean an approval of RBI before the filing of Scheme with the Tribunal. We had issued the first notice to RBI on 07th December 2023 and again on 10.01.2024 as per the directions of the Hon'ble Tribunal in 1st Motion order in response to which no response has been filed by RBI.

Again as per the Order of Hon'ble NCLT, Kolkata Bench, Kolkata dated 09.02.2024 in respect of CA no 214/KB/2023 connected with CP no 21/KB/2024 we have also duly sent the 2nd Notice to the RBI along with copy of CAA 3 and a copy of Petition under Sub-Section (5) of Section 230 of the Companies Act, 2013 on 28.02.2024 for representations, if any. We have also sent the reminder mail on 18.03.2024 for their representation if any.

Notwithstanding the above, Transferee Company shall Continue to be in existence post approval of the Scheme of Amalgamation, we undertake to comply with any additional requirement, if any.

In support of our contention that Scheme of arrangements involving NBFCs have been sanctioned by various benches of NCLTs, including jurisdiction Bench at Kolkata and whose decision is binding where the RBI approval was not obtained or pursuant to

issue of notice by NCLT, on the basis of report submitted by RBI before NCLT. The judgements cited below:

- I. *Century Vision Private Limited CP (CAA) 75/KB/2022 by NCLT Kolkata Bench II vide order dated 28.10.2022 (Copy of Order is enclosed)*
- II. *Sobisco Foods Private Limited CP (CAA) 95/KB/2022 by NCLT Kolkata Bench II vide order dated 25.01.2023 (Copy of Order is enclosed)*
- III. *ASM (India) Investments Private Limited CP (CAA) No. 36/Chd/Hry/2022(Copy of Order is enclosed)*

From the above explanation it is clear that the Company is not required to take prior approval before filing the Scheme of Amalgamation with your office, hence we would request to kindly consider the same and request to convey your NOC to the Hon'ble NCLT on or before the date of hearing fixed on 16th April 2024.

In case if you require any further clarification/explanation, do write to us to avoid further delay in the approval of the scheme of amalgamation by the Hon'ble NCLT. A copy of our reply which was sent to the RBI is attached in the Rejoinder and marked as **"Annexure B"**.

The Petitioner Company No 3 had further requested to RBI, Kolkata to provide their representation if any vide letter dated 22.03.2024,

27.03.2024 & 29.04.2024 and sent various e- mails dated 18.03.2024, 22.03.2024 10.04.2024, 23.04.2024 and 28.04.2024 but till date there was no communication from RBI.

As per the order dated 17.05.2024 and corrigendum order dated 19.06.2024, Registry had also issued the Notice to RBI, Kolkata for their representation if any to which also there was no communication from RBI .

Reply of Point no 2(c) of your Affidavit- Sir, as requested the list of assets to be transferred from the transferor companies to the transferee company are attached in the Rejoinder and marked as **“Annexure C”**.

Reply of Point no 2(d) of your Affidavit- a copy of undertaking to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation is attached in the Rejoinder and marked as **“Annexure D”**.

Reply of Point no 2(e) of your Affidavit- Sir, the transferee company will pay the requisite amount of Stamp Duty as per the Provision of Indian Stamp Act, 1899, a copy of undertaking is attached in the Rejoinder and marked as **“Annexure E”**.

Reply of Point no 2(f) of your Affidavit- A copy of an Affidavit stating that the scheme enclosed in the Company Application and Company Petition are one and there is no discrepancy or no change is made is enclosed in the Rejoinder and marked as **“Annexure F”**.

Reply of Point no 2(g) of your Affidavit- Sir, we had served the Scheme of Amalgamation to the Income Tax Department vide our email and letters dated 10.01.2024 and 01.03.2024 and clearly mentioned the next date of hearing 14.03.2024, we had not received any representation within 30 days from the date of receipt of the notice, therefore it shall be presumed that such authorities have no representation to make on the said Scheme of

Amalgamation, a copy of the acknowledgments are enclosed in the Rejoinder and marked as “**Annexure G**”.

17. Heard submissions made by the Authorised Representative appearing for the Petitioner, and Authorized Person from Regional Director, MCA. 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 01.04.2023 (“**Appointed Date**”) on **Goenka-Leasing & Finance Private Limited and Shankar Estates Private Limited** ("Transferor Companies") and **Kanu Holdings Private Limited** ("Transferee Company"), their respective shareholders and creditors and all concerned;
- (b) all the property, rights and powers of the Transferor Companies, 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 Companies 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 Companies 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 Companies 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 Companies be continued by or against the Transferee Company, as provided in the Scheme;

- (f) Section 230(5) provides a time limit of 30 days for making representations by sectoral authorities, failing which it shall be presumed that they have no representation to make. However any non- compliance by the company as raised by the statutory authorities, if remains unattended, the same shall be attended to by the transferee company for which the necessary records shall be preserved by the Transferee company till the culmination of such proceedings.
 - (g) The Transferee Company do without further application issue and allot to the shareholders of the Transferor Companies, the shares in the Transferee Company to which they are entitled in terms of the Scheme;
 - (h) leave is granted to the Petitioner(s) to file the Schedule of Assets of the Transferor Companies 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;
 - (i) The Transferor Companies 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 Companies shall be dissolved without winding up.
 - (j) That any person/authority aggrieved shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
18. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets in acceptable form to the department and the department will append such printout, upon verification to the certified copy of the order.
19. **Company Petition (CAA) No. 21/KB/2024** connected with **CA (CAA) No. 214/KB/2023** is disposed of accordingly

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

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order dated 18/7/2024

NKS(LRA)