

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

Company Petition (CAA) No. 23/KB/2024

Connected with

Company Application (CAA) No. 200/KB/2023

In the Matter of:

(Scheme of Amalgamation: Second Motion)

INFINITY BNKE INFOCITY PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at Infinity Towers, Plot A3, Block GP, Sector V, Saltlake City, Kolkata - 700091, CIN U72200WB2006PTC110488 PAN AABCI6254N within the aforesaid jurisdiction

...Transferee Company/ Petitioner Company No. 1

And

GOPI VALLABH SOLUTIONS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at Infinity Towers.4th Floor Plot A3, Block-GP Sector-V Salt Lake City, P.S. Bidhannagar Kolkata - 700091, CIN U72900WB2000PTC091231 PAN AABCB3209N within the aforesaid jurisdiction.

...Transferor Company / Petitioner Company No. 2

Date of Pronouncement: 3/7/2024

Coram:

Smt. Bidisha Banerjee : Hon'ble Member (Judicial)

Shri D. Arvind : Hon'ble Member (Technical)

Appearances:

Mr. Kovid Mukherjee, FCS: For Petitioners

Company Petition (CAA) No. 23/KB/2024

Connected with

Company Application (CAA) No. 200/KB/2023

ORDER

As Per: Bidisha Banerjee, Member (Judicial)

1. The instant petition has been filed under Sections 230 to 232 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for sanction of the Scheme of Amalgamation of **Gopi Vallabh Solutions Private Limited** (*Transferor Company*), with **Infinity BNKE Infocity Private Limited** (*Transferee Company*). Transfer Date or Appointed Date being 01st April, 2023 pursuant to Section 230 to 232 of the Companies Act, 2013 and Rules made there under in the manner and on the terms and conditions stated in the said Scheme of Amalgamation.
2. The Petition has now come up for final hearing. Ld Authorised Representative for the Petitioners submits as follows:-
 - (a) The Scheme was approved by passing the Board Resolutions at the respective meetings of the Petitioner Companies held on 25th September, 2023.
 - (b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, interalia, as follows:-
 - i. The Transferor Company and the Transferee Company belong to common group and common management. The Transferor Company and the Transferee Company are wholly owned subsidiaries of Infinity Infotech Parks Limited (hereinafter referred as "IIPL") a public limited company, incorporated on December 13, 1991 under the Companies Act, 1956, with CIN U17122WB1991PLC053828 and having its registered office at Infinity Towers Plot A3, Block GP Sector-V Saltlake City Kolkata -

Company Petition (CAA) No. 23/KB/2024

Connected with

Company Application (CAA) No. 200/KB/2023

700091. The Transferee Company and Transferor Company are carrying on the business of real estate activities. In order to integrate the fields of activities of the companies and for improving overall business efficiency, to streamline administration of the Companies and in the overall interest of future growth and diversification of the business of the Companies the present Scheme is proposed to amalgamate the Transferor Company with the Transferee Company. The scheme will be complimentary to the companies for their mutual benefit and interest.
- ii. The proposed Scheme will result in economies of scale, reduction in overheads and other expenses, reduction in administrative and procedural work, elimination of duplication of work, better and more productive and effective utilization of the combined resources of all the companies and will enable the amalgamated company to effect internal economies and optimize productivity.
 - iii. The said Scheme will result in optimum growth and development of the business of the companies concerned and exploitation of the potential thereof. The said Scheme will enable the undertaking and business of all the companies to obtain greater facilities for raising capital, securing and conducting trade on favourable terms and other benefits.
 - iv. The said Scheme will enable the companies concerned to rationalise and streamline their management, business and finances and will pave way for better, more productive and economical control of the running of the operations.
 - v. The businesses of all the Companies will be carried on more economically and profitably under the Scheme.
 - vi. The said Scheme will contribute in furthering and fulfilling the objects of the companies concerned and, in the growth, expansion and development of their business.

Company Petition (CAA) No. 23/KB/2024

Connected with

Company Application (CAA) No. 200/KB/2023

- vii. The said Scheme will have beneficial results for the companies concerned, their shareholders, employees and all concerned.
- (c) The Statutory Auditors of the Transferee Company have by their certificate confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.
- (d) No proceedings are pending under Sections 206 to 213 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 Valuation Report prepared by a Registered Valuer.
- (f) By an order dated 22nd January, 2024 in Company Application (CAA) No. 200/KB/2023, this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230 (1) Section 232(1) of the Act: -

Meeting Dispensed:

i. Equity Shareholders:

Meeting of Equity Shareholders of the Petitioner Companies for considering the Scheme are dispensed with in view of shareholder representing 100% in value of shares of Petitioner Companies having respectively given their consent to the Scheme by way of affidavits.

ii. Unsecured Creditors:

Meeting of Unsecured Creditors of Petitioner No 1 for considering the Scheme are dispensed with in view of consent by Unsecured Creditors representing 90.16% in value of Unsecured Debt of Petitioner No 1 given their consent to the Scheme by way of affidavits.

Company Petition (CAA) No. 23/KB/2024

Connected with

Company Application (CAA) No. 200/KB/2023

Meeting of Unsecured Creditors of Petitioner No 2 for considering the Scheme are dispensed with in view of consent by Unsecured Creditors representing 94% in value of Unsecured Debt of Petitioner No 2 having respectively given their consent to the Scheme by way of affidavits.

iii. Secured Creditors:

Meeting of Secured Creditors of Petitioner No 1 for considering the Scheme are dispensed with in view of consent by secured Creditors representing 100% in value of secured Debt of Petitioner No 1 given their consent to the Scheme by way of affidavits.

No requirement of Meetings

Secured Creditors

No requirement of Meeting of Secured Creditors of Petitioner Company No. 2 – NIL Creditors duly verified by auditors' certificate.

Meetings to be held

No meetings are required to be held

- (g) Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 21st February, 2024 the instant petition was admitted by this Tribunal and fixed for hearing on 2nd April, 2024 upon issuance of notices to the Statutory/Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 21st February, 2024, the Petitioner(s) have duly served such notices on the Regulatory Authorities viz Central Government through Regional Director Eastern Region, Registrar of Companies, Official Liquidator, Income Tax Department having jurisdiction over the respective companies by hand at their respective addresses on 04.03.2024 and 05.03.2024 respectively and obtained the acknowledgement receipts for the same. The Petitioner(s) have also published such

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

Company Petition (CAA) No. 23/KB/2024

Connected with

Company Application (CAA) No. 200/KB/2023

advertisements once each in “Financial Express”, Kolkata in its issue dated 5th March, 2024 and in “Aajkal”, Kolkata in its issue dated 5th March, 2024. An affidavit of Compliance duly affirmed has also been filed.

- (h) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bonafide and is in the interest of all concerned.
- (i) Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (“RD”), Official Liquidator, High Court, Kolkata have filed their representations before this Tribunal.
- (j) The Official Liquidator has filed his report dated 20th March, 2024 and concluded as under:-

AtPara10

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 public interest as per the provisions of the Companies Act, 1956/ The Companies Act, 2013 whichever is applicable.

AtPara11

That in view of the submission made above the Hon’ble National Company Law Tribunal may like to pass such order/ orders as deemed fit and proper in the facts and circumstances of the case.

- (k) The RD has filed his affidavit dated 3rd May, 2024 (“RD affidavit”)

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

Company Petition (CAA) No. 23/KB/2024

Connected with

Company Application (CAA) No. 200/KB/2023

which has been dealt with by the Petitioner(s) by their Rejoinder affidavit dated 16th May, 2024 (“Rejoinder”). The observations of the RD and responses of the Petitioner(s) are summarized as under:-

Paragraph No. 2(b) of the RD Affidavit dated 3rd May, 2024

It is submitted that as per Annual Return of Transferor Company, Gopi Vallabh Solutions Private Limited filed in Form MGT-7 for the year ended 31/03/2022 vide SRN F48438584 dated 26/11/2022, the list of Shareholders as on 31/03/2022 are as follows:

S L No.	Name of the Shareholders	Number of Shares hold
1.	GACL Finance Private Limited	33,84,064
2.	Padmini Trust	11,59,614
3.	Pulkit Benefit Trust	12,37,661
	Total	57,81,339

Whereas as per Annual Return filed in Form MGT-7 for the year ended 31/03/2023 vide SRN F84155837, the list of shareholders as on 31/03/2023 are as follows:

S L No.	Name of the Shareholders	Number of Shares hold
1.	Y2K Datamatics Private Limited	57,81,338
2.	Sumit Maskara	1
	Total	57,81,339

Therefore, in the list of Shareholders of the Transferor Company as on 31/03/2023, new names are shown and accordingly during the financial year 2022-23, there ought to have been transfer of some shares. However, no transfer of Shares has been stated in Annual Return filed for the financial year ended 31/03/2023. Hon'ble Tribunal may direct the Petitioner Company to clarify and rectify the defect and

Company Petition (CAA) No. 23/KB/2024

Connected with

Company Application (CAA) No. 200/KB/2023

to take necessary steps to file the correct Annual Return with list of Shareholders in respect of the financial year ended 31/03/2023.

Paragraph No.3 of Rejoinder dated 16th May, 2024

With regard to paragraph 2(b) of the said affidavit we say that all the shares of the Transferor Company are in dematerialized form only and the shareholders have kept their shares in their respective Depository Account. In terms of the Depositories Act 1996, dematerialized shares are kept in fungible form and transfers take place electronically and instantaneously without the interference of the company. Therefore, all the transfer of shares were done by and between the shareholders / beneficial owners by way of transferring the shares from the respective depository account of seller to purchaser's depository account. Since there is no physical shares certificates in the Company, the Company is not required to follow the process of physical transfer of shares pursuant to section 56 of the Companies Act, 2013. In view of the shares having in the Dematerlised Form the transfer of beneficial ownership took place in Demat mode and accordingly the company has mentioned through note in the list of shareholders which was attached with the Annual return i.e MGT 7 for the year ended 31st March, 2023 that

“Shareholders holding shares in electronic form have transferred their holding through Depository during the period 1st April, 2022 to 31st March, 2023.However Physical transfer of shares has not taken place during the period 1st April, 2022 to 31st March, 2023”

Therefore, it is submitted that there is no defect in the filed Annual Return vide SRN F84155837. The Copy of Form MGT 7 along with the List of Shareholders and paid Challan is attached

Paragraph No. 2(c) of the RD Affidavit dated 3rd May, 2024

Company Petition (CAA) No. 23/KB/2024

Connected with

Company Application (CAA) No. 200/KB/2023

Further, in the list of shareholders of Transferor Company, Gopi Vallabh Solutions Private Limited attached with the Annual Return as at 31/03/2023, Y2K Datamatics Private Limited (5781338 Shares) and Sumit Maskara (1) are named as Shareholders in the Company.

However, as per list of Shareholders furnished with the reply/submission to this Directorate's query letter, Infinity Infotech Parks Limited along with seven individuals are named as Shareholders of the said Company holding total of 57,81,339 Shares. In view of this and since upon the coming into effect of this Scheme, the Shareholders of the Transferor Company will be eligible to get shares of the Transferee Company as per Exchange Ratio, the Petitioner Transferor Company should clarify this difference with valid documentary evidence in support thereof.

Paragraph No. 4 of Rejoinder dated 16th May, 2024

With regard to paragraph 2(c) of the said affidavit we say that the shares of the Transferor Company are in dematerialized form and the shareholding of the Company were managed by the Registrar and Transfer Agent, the Company has received BENPOS as on 25.08.2023 near to date of filing of application wherein the beneficial owners / shareholders on that date were Infinity Infotech Parks Limited alongwith its 6 (six) nominees as the 100 % holding company of Transferor Company in place of erstwhile beneficial owners / shareholders Y2K Datamatics Pvt Ltd and Sumit Maskara. Therefore, the Company has submitted the current shareholding along with the Petition as well as in reply of Regional Directors query letter. The Copy of Benpos of the Company as received from the Registrar & Transfer Agent as on 31.03.2023 and 25.08.2023 are attached herewith.

Paragraph No. 2(d) of the RD Affidavit dated 3rd May, 2024

Company Petition (CAA) No. 23/KB/2024

Connected with

Company Application (CAA) No. 200/KB/2023

The Petitioner Companies should be directed to provide list/details of Assets, if any, to be transferred from the Transferor Company to the Transferee Company upon sanctioning of the proposed Scheme.

Paragraph No. 5 of Rejoinder dated 16th May, 2024

With regard to paragraph 2(d) of the said affidavit we say that the schedule of assets of the transferor Company which will be forming part of the certified copy of order is attached herewith

Paragraph No. 2(e) of the RD Affidavit dated 3rd May, 2024

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. 6 of Rejoinder dated 16th May, 2024

With regard to paragraph 2(e) of the said affidavit we say 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(s) of the Transferor Company (ies) 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.

Paragraph No. 2(f) of the RD Affidavit dated 3rd May, 2024

That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Company to it.

Paragraph No.7 of Rejoinder dated 16th May, 2024

With regard to paragraph 2(f) of the said affidavit we say that the Transferee Company undertakes that it shall pay applicable stamp duty

Company Petition (CAA) No. 23/KB/2024

Connected with

Company Application (CAA) No. 200/KB/2023

on the transfer of the immovable properties from the Transferor Company to it.

Paragraph No 2(g) of the RD Affidavit dated 3rd May, 2024

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. 8 of Rejoinder dated 16th May, 2024

With regard to paragraph 2(g) of the said affidavit we say on behalf of both the petitioner Companies that the Scheme filed with the Company Application and Company Petition are same and there is no discrepancy or change is made in the scheme.

3. Heard submissions made by the Ld Authorised Representative appearing for the Petitioner, RD. 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 this Petition being **Annexure "A"** to the Petition is sanctioned by this Tribunal to be binding with effect from 1st day of April, 2023 on Gopi Vallabh Solutions Private Limited, Infinity BNKE Infocity Private Limited and their shareholders and all concerned;
 - b. All the properties, interests, rights and powers of the Gopi Vallabh Solutions Private Limited be transferred to and vest without further act or deed in the Infinity BNKE Infocity Private Limited, and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 be transferred to and vest in the Infinity BNKE Infocity Private Limited for all the estate and interest of the

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

Company Petition (CAA) No. 23/KB/2024

Connected with

Company Application (CAA) No. 200/KB/2023

Gopi Vallabh Solutions Private Limited but subject nevertheless to all charges now affecting the same.

- c. All the debts, liabilities, duties and obligations of the Gopi Vallabh Solutions Private Limited, be transferred without further act or deed to the Infinity BNKE Infocity Private Limited and accordingly the same shall, pursuant to Section 232 of the Companies Act, 2013 be transferred to and become the debts, liabilities, duties and obligations of the Infinity BNKE Infocity Private Limited;
- d. All legal proceedings and/or suits and/or appeals now pending by or against the Gopi Vallabh Solutions Private Limited be continued by or against the Infinity BNKE Infocity Private Limited;
- e. Leave be granted to the Gopi Vallabh Solutions Private Limited to file the Schedule of Assets as stated in paragraph 14 of the petition within three weeks from the date of the order to be made herein;
- f. The Transferor Companies Gopi Vallabh Solutions Private Limited and the Transferee Company Infinity BNKE Infocity Private Limited respectively do within 30 days after the date of the order to be made herein cause a certified copy thereof to be delivered to the Registrar of Companies, West Bengal for registration;
- g. On the basis of the report as filed by the Official Liquidator Gopi Vallabh Solutions Private Limited be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies, West Bengal by the Gopi Vallabh Solutions Private Limited and Infinity BNKE Infocity Private Limited;
- h. The Registrar of Companies, West Bengal upon receiving such certified copy of this order be directed to place all documents

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

Company Petition (CAA) No. 23/KB/2024

Connected with

Company Application (CAA) No. 200/KB/2023

relating to the Gopi Vallabh Solutions Private Limited and registered with them, on the file kept by them in relation to the Infinity BNKE Infocity Private Limited and the files relating to the Transferor Companies and the Transferee Company shall be consolidated accordingly;

i. Any person interested be at liberty to apply to this Tribunal in the above matter for any direction that may be necessary;

3.2 The Petitioner(s) shall supply legible print out of the scheme and schedule of assets in acceptable form to the Registry and the Registry will append such printout, upon verification to the certified copy of the order.

3.3 **Company Petition (CAA)No.23/KB/2024** is **disposed of** accordingly.

3.4 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 Signed on this 3rd day of July 2024

NKS(LRA)