

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT NO. II
Company Petition (CAA) No. 35/KB/2024
Connected with
Company Application (CAA) No. 162/KB/2023**

A petition under Section 230 read with Section 232 of the Companies Act 2013; read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, and other applicable provisions of law.

IN THE MATTER OF:

A Scheme of Amalgamation of (Final Motion):

DELTA GOODS 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. U51109WB2005PTC105000** and its registered office at 183, Bangur Avenue Block - B, 3rd Floor, Kolkata-700055, West Bengal, India.

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

And

SUBHAM OILS & RESINS 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. U15326WB2008PTC126971** and its registered office at 183, Bangur Avenue Block 'B', Kolkata-700055, West Bengal, India.

.... Transferee Company/ Petitioner Company No. 2

And

IN THE MATTER OF:

- 1. DELTA GOODS PRIVATE LIMITED**
- 2. SUBHAM OILS & RESINS PRIVATE LIMITED**

Date of pronouncing the order: 15/7/2024

CORAM:

Smt. Bidisha Banerjee : Member (Judicial)

Shri D. Arvind : Member (Technical)

Appearances:

Ms. Neha Somani, Practising Company Secretary - For the Petitioners

Mr. Alok Tandon - Joint Director, Office of the Regional Director (Eastern Region), MCA

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Court is congregated through hybrid mode.
2. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (“**Act**”) sanctioning the **SCHEME OF AMALGAMATION** of **Delta Goods Private Limited**, being the Petitioner No.1 abovenamed (“**Transferor Company**” or “**Petitioner No.1**” or “**DGPL**”) with **Subham Oils & Resins Private Limited**, being the Petitioner No. 2 abovenamed (“**Transferee Company**” or “**Petitioner No. 2**” or “**SORPL**”) whereby and whereunder the Transferor Company is proposed to be amalgamated with the Transferee Company from the **Appointed Date**, that is **1st April, 2022** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“**Scheme**”).

Details of the Petitioner Companies are as follows:

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT NO. II

Company Petition (CAA) No. 35/KB/2024

Connected with

Company Application (CAA) No. 162/KB/2023

SL NO.	NAME OF THE COMPANY	COMPANY AS PER THE SCHEME	PARTY TYPE	RELEVANT ANNEXURE, PAGE NO. AND VOLUME OF THE COMPANY PETITION
Appointed Date: 1st April, 2022				
I.	DELTA GOODS PRIVATE LIMITED	Transferor Company	Petitioner No. 1	Scheme of Amalgamation is annexed to the Company Petition being Annexure-A in Volume I at Page No. 40-73.
II.	SUBHAM OILS & RESINS PRIVATE LIMITED	Transferee Company	Petitioner No. 2	

3. The Petition has now come up for final hearing. The Ld. Authorized Representative for the Petitioners submits as follows: -

(a) The Scheme was approved by the respective Board of Directors of all the Petitioner Companies at their meetings held on 1st December, 2022 respectively. A copy of the Board Resolution is annexed to the Company Petition as **Annexure-E in Volume II at Page No. 224-229.**

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

1. The Transferor Company and the Transferee Company are carrying on business activities under the same management group. Therefore, it would be beneficial for the Transferor Company to merge with the Transferee Company.

2. The amalgamation of the Companies will lead to better administrative control and will be convenient for the management to operate as well.
3. The amalgamation will result in prevention of cost duplication and the resultant operations would be substantially cost-efficient. Consequently, the Transferee Company will offer a strong financial structure and facilitate resource mobilization and achieve better cash flows. The synergies created by the amalgamation would increase the operational efficiency and integrate business functions.
4. Such consolidation of business into one economic entity shall enable the Transferee Company to effectively manage the funds and also result in several benefits by way of reduction of number of legal entities, reducing the multiplicity of legal and regulatory compliances, rationalizing costs, it is intended that the Transferor Company be amalgamated with Transferee Company.
5. The amalgamation will provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage assets, capabilities, experience and infrastructure of the companies. The amalgamation will also reduce the managerial overlaps involved in operating different entities, ease and increase operational and management efficiency, integrate business functions.
6. Greater efficiency in cash management of the Transferee Company and unfettered access to cash flow generated by the combined businesses which can be deployed more efficiently to fund organic and inorganic growth opportunities to maximize shareholder value.
7. The banks, creditors will not be adversely affected by the proposed amalgamation.

- (c) The Statutory Auditor of the Petitioner No.2 i.e. Transferee Company has by their certificate dated 17th July, 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.
- (d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioners.
- (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 Mr. Anil Kumar Gupta, Registered Valuer, Registration No. IBBI/RV/06/2019/11155. A copy of the Valuation Report is annexed to the Company Petition as **Annexure L in Volume III at Page No. 467-482**.
- (f) The shares of the Petitioner Companies are not listed on any stock exchange.
- (g) By an order dated 20th December, 2023 in Company Application (CAA) No. 162/KB/ 2023, this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act:
- a. Meetings Dispensed: *Meetings of the Equity Shareholders of all the Petitioner Companies, Unsecured Creditors of the Petitioner Company No. 1 and Secured Creditors of the Petitioner Company No. 2 are dispensed with under Section 230 (1) read with Section 232 (1) of the Act.*
- b. Meeting to be held: *Meetings of Unsecured Creditors of the Petitioner Company No. 2, being the Transferee Company was directed to be convened and held physically at ASO-301, Astra Towers, Action Area IIC, New Town, Kolkata-700161, West Bengal, India, on 24.01.2024 at 11:30 A.M. for the purpose of considering, and, if thought fit, approving the said Scheme, with or without modifications.*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT NO. II**

Company Petition (CAA) No. 35/KB/2024

Connected with

Company Application (CAA) No. 162/KB/2023

(h) Consequently, the Petitioners presented the instant petition for sanction of the Scheme. By an order dated 22.02.2024, the instant petition was admitted by this Tribunal and fixed for hearing on 03.04.2024 upon issuance of notices to the Statutory Authorities and advertisement of date of hearing. In compliance with the said order dated 22.02.2024 the Petitioners have duly served such notices on the Central Government through Regional Director, Eastern Region; Registrar of Companies, West Bengal; Official Liquidator and Income Tax Department by hand delivery on 4th March, 2024 and 05th March, 2024. The notices along with documents were also sent through email to the Authorities on 06th March, 2024 and 07th March, 2024 and have also published such advertisement in the “**Business Standard**” and “**Aajkaal**” in their issue dated 06th March, 2024. An **affidavit of compliance** in this regard has also been filed by them on 11.03.2024.

SL NO.	REGULATORY AUTHORITIES	DATE OF SERVICE	RELEVANT ANNEXURE OF THE AFFIDAVIT OF SERVICE	RELEVANT PAGE NO. OF THE AFFIDAVIT OF SERVICE
BY HAND DELIVERY (THROUGH SPECIAL MESSENGER)				
1.	Regional Director (ER) MCA Kolkata	04.03.2024	A	4
2.	Registrar of Companies	04.03.2024	A	6
3.	Official Liquidator	05.03.2024	A	8
4.	Income Tax Authority	05.03.2024	A	10
THROUGH E-MAIL				

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT NO. II**

Company Petition (CAA) No. 35/KB/2024

Connected with

Company Application (CAA) No. 162/KB/2023

1.	Regional Director (ER) MCA Kolkata	06.03.2024	A	5
2.	Registrar of Companies	07.03.2024	A	7
3.	Official Liquidator	06.03.2024	A	9
4.	Income Tax Authority	07.03.2024	A	11
NEWSPAPER PUBLICATION				
1.	Business Standard	06.03.2024	B	12
2.	Aajkaal	06.03.2024	B	13

- (i) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners Companies. The Scheme has been made bona fide and is in the interest of all concerned.
4. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (“**RD**”), have filed their representations before this Tribunal.
5. The Official Liquidator has filed his report dated 04th April, 2024 and concluded as under:

10. That the Official Liquidator on the basis of information submitted by the Transferor Company 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 erstwhile Companies Act, 1956/the Companies Act, 2013, whichever is applicable.

11. 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 circumstance of the case.

6. The RD has filed his reply affidavit dated 28th March, 2024 (“**RD affidavit**”) which has been dealt with by the Petitioners by their Rejoinder affidavit dated 1st April, 2024 (“**Rejoinder**”). The observations of the RD and responses of the Petitioners are summarized as under: -

Paragraph 2(a) of RD Affidavit:

That it is submitted that on the 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 have filed their Financial Statements and Annual Returns for the financial year 31/03/2023.

Para 3(a) of Rejoinder:

With reference to paragraph 2(a) of the said affidavit, it is submitted that the same is a matter of record and may be considered as such by the Hon'ble Tribunal. The Petitioner Companies have already filed complete set of Financial Statement and Annual Return for the year ended 31st March, 2023.

Para 2(b) of RD Affidavit:

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.

Para 3(b) of Rejoinder:

With reference to paragraph 2(b) of the said affidavit, it is submitted that the Board of Directors of the applicant companies at their meeting held on 01st December, 2022 approved the Scheme of Amalgamation. The valuation report was signed on 01st December, 2022 considering the 01st April, 2022 as the appointed date based on the latest available financial statement for the financial year ended on 31st March, 2022. The Scheme of Amalgamation was e-filed on the NCLT portal on 25th July, 2023. There was a delay in receipt of consents from the secured creditors of Transferee Company; therefore filing of the application got delayed. I reiterate that the decision of merger was taken in the financial year 22-23, considering the latest available audited financial statements as on 31st March 2022. The Valuation report was signed on 01st December, 2022 considering 1st April 2022 as the Appointed Date. Thus, the appointed date i.e., 1st April, 2022 is not ante dated, and is justified for reasons stated above.

Para 2(c) of RD Affidavit:

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.

Para 3(c) of Rejoinder:

With reference to paragraph 2(c), it is submitted that the Schedule of Assets shall be provided by the Company after the pronouncement of the order by the Hon'ble National Company Law Tribunal.

Para 2(d) of RD Affidavit:

That the Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.

Para 3(d) of Rejoinder:

With reference to paragraph 2(d) of the said affidavit, I undertake to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013.

Para 2(e) of RD Affidavit:

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.

Para 3(e) of Rejoinder:

With reference to paragraph 2(e) of the said affidavit, it is stated that the Transferee Company shall pay the applicable stamp duty, if applicable, on the transfer of immovable properties from the Transferor Company to it.

Para 2(f) of RD Affidavit:

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.

Para 3(f) of Rejoinder:

With reference to Paragraph 2(f) of the said affidavit, it is stated that the Scheme of Amalgamation filed with the Company Application (CAA) No. 162/ KB/ 2023 and the Scheme of Amalgamation filed with the Company Petition No. 35/ KB/ 2024 is one and same and there is no discrepancy.

Para 2(g) of RD Affidavit:

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 31/01/2024 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.

Para 3(g) of Rejoinder:

With reference to paragraph 2(g) of the said affidavit, it is submitted that the same is a matter of record and may be considered as such by the Hon'ble Tribunal.

7. Heard submissions made by the Ld. Authorised Representative appearing for the Petitioners. 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** being **Annexure "A"** is hereby sanctioned by this Tribunal from the Appointed Date being **1st April, 2022** and shall be binding on all the Equity Shareholders of the Petitioner Companies 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 any 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 and duties and obligations of the Transferor Company to be transferred from the said Appointed Date, without further act or deed, to Transferee Company and shall, 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) All the workmen and employees of the Transferor Company shall be engaged by the Transferee Company, as provided in the Scheme. All the obligations/ liabilities of the Transferor Company with regard to their workmen and employees shall be the responsibilities of the Transferee Company;
- e) All proceedings and/or suit and/ appeals now pending by or against the Transferor Company shall be continued by or against Transferee Company, as provided in the Scheme; and the sanctioning of the scheme by this Tribunal shall not come in the way of any proceedings pending/ contemplated against any of the petitioner companies, for which the relevant records shall be preserved by the Transferee company who is any way responsible

for attending to any such proceedings on behalf of the constituent companies.

- f) With effect from the Appointed Date and up to and including the Effective Date, all legal, arbitration, and tax assessment proceedings/appeals of whatsoever nature by or against the Transferor Company pending and/or arising on or after the Appointed Date shall be continued and/or enforced by or against the Transferee Company. Any compounding/penalties/liabilities/taxes required to be done on behalf of the Transferor Company for any violation of the Companies' Act, 2013 shall be the responsibility of the Transferee Company. The Transferee Company shall also preserve the necessary records in respect of any such pending proceedings, at least till the culmination of such proceedings.
- g) The Transferee Company shall issue and allot shares to the shareholders of the Transferor Company, the shares in the Transferee Company in accordance with the Scheme;
- h) Upon the Scheme being effective, the Transferor Company shall stand dissolved without winding up;
- i) Leave is granted to the petitioners to file the Schedule of Assets of the Transferor Company in the form as prescribed in the Schedule to Form No. CAA-7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date the order;
- j) The Petitioners do each within thirty days of the date of the receipt of this order, cause a certified copy to be delivered to the Registrar of Companies for registration.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT NO. II**

**Company Petition (CAA) No. 35/KB/2024
Connected with
Company Application (CAA) No. 162/KB/2023**

- k) After dissolution of the Transferor Company, the fee paid by the Transferor Company on its Authorized Share Capital to be set off against the fee payable by the Transferee Company on its authorized share capital subsequent to the amalgamation;
8. The Petitioners 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.
9. Hence, the **Company Petition (CAA) No. 35/KB/2024** connected with **Company Application (CAA) No. 162/KB/2023** is **disposed of** accordingly.
10. 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 15/7/2024

NKS(LRA)