

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

C.A.(CAA)/103(KB)2024

An application under Section 230(1) read with Section 232(1) of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions of the law

IN THE MATTER OF:

A Scheme of Amalgamation of (First Motion):

GANPATI TRACON PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and being a Company within the meaning of Companies Act, 2013, having Corporate Identification Number (CIN: U51909WB2008PTC123034) and having its Registered Office at 107/1A, Tollygung Road, Kolkata 700026 in the State of West Bengal.

..TRANSFEROR COMPANY NO 1/ APPLICANT No.1

And

ESS DEE DISTRIBUTORS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having Corporate Identification Number (CIN: U51109WB1993PTC057858) and being a Company within the meaning of Companies Act, 2013, having its Registered Office at 19 Sukeas Lane 1st Floor, Kolkata 700001 in the State of West Bengal.

...TRANSFEROR COMPANY NO 2/ APPLICANT NO 2

And

MAYUKH PROJECTS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having Corporate Identification Number (CIN: U17111WB1996PTC081359) and being a Company within the meaning of Companies Act, 2013, having its Registered Office at 19 Sukeas Lane 1st Floor, Kolkata 700001 in the State of West Bengal.

.....TRANSFEROR COMPANY NO 3/ APPLICANT NO

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And

SYMPHONY MERCANTILE PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having Corporate Identification Number (CIN : U51109WB1996PTC076626) and being a Company within the meaning of Companies Act, 2013, having its Registered Office at 19 Sukeas Lane 1st Floor, Kolkata 700001 in the State of West Bengal .

....**TRANSFEROR COMPANY NO 4/ APPLICANT NO 4**

And

NATIONAL PLASTO MOULDING PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having Corporate Identification Number (CIN: U25209AS2006PTC008263) and being a Company within the meaning of Companies Act, 2013, having its Registered Office at E.P.I.P. Complex, Amingaon, Kamrup, Guwahati, 781031 in the State of Assam.

....**TRANSFeree COMPANY/ APPLICANT NO 5**

IN THE MATTER OF:

1. GANPATI TRACON PRIVATE LIMITED
2. ESS DEE DISTRIBUTORS PRIVATE LIMITED
3. MAYUKH PROJECTS PRIVATE LIMITED
4. SYMPHONY MERCANTILE PRIVATE LIMITED
5. **NATIONAL PLASTO MOULDING PRIVATE LIMITED**

..... **Applicants**

Date of pronouncing the order: 4/07/2024

Coram:

Smt. Bidisha Banerjee : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

Appearances (via video conferencing/physically)

Ms. Arti Vyas, PCS : For Petitioner

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The instant application has been filed in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 (“Act”) for dispensation of meetings of shareholders and creditors in connection with the Scheme of Amalgamation of Ganpati Tracon Private Limited, Ess Dee Distributors Private Limited, Mayukh Projects Private Limited, Symphony Mercantile Private Limited (**Transferor Companies**) with National Plasto Moulding Private Limited, being the (**Transferee Company**). The Scheme is annexed with the Application and marked as “**Annexure L**” from page number “**262 to 289**” in Volume 2.

Sl. No.	Name of the Company	Company as per the Scheme	Party Status	Relevant Annexure, Page Number and Volume of the Company Application
Appointed Date: 1st April, 2023				
1	Ganpati Tracon Private Limited	Transferor Company No. 1	Applicant No. 1	Scheme of Amalgamation is annexed to the Volume 2 of the Company Application being Annexure L from page 262 to 289
2	Ess Dee Distributors Private Limited	Transferor Company No. 2	Applicant No. 2	
3	Mayukh Projects Private Limited	Transferor Company No. 3	Applicant No. 3	
4	Symphony Mercantile Private Limited	Transferor Company No. 4	Applicant No. 4	
5	National Plasto Moulding Private Limited	Transferee Company	Applicant No. 5	

2. The circumstances which justify and necessitate the said Scheme of Amalgamation are, inter-alia, as follow:
 - a. The Transferor Companies and the Transferee company are having more or less similar objects.

- b. 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
 - c. The said scheme will contribute in furthering and fulfilling the objects of all the companies concerned in the growth and development of their business;
 - d. 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.
 - e. 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;
 - f. The said scheme will strengthen and consolidate the position of the Transferee company to participants more vigorously and profitably in a competitive market;
 - g. The said scheme will enable all the companies concerned to pull their resources and to expand their activities;
 - h. 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.
 - i. The said scheme will have beneficial result for the companies concerned, their share-holders, employees and all concerned.
3. The Board of Directors of the Applicant Companies have, at their respective Board meetings, held on **26th February 2024** and **27th February 2024** by a resolution passed unanimously, and approved the Scheme of Amalgamation. The said resolutions are annexed with the Application and referred in “**Annexure- K**” from page number “**257 to 261**” in Volume 2.

Sl. No.	Company	Date of Board Meeting	Resolution Annexed
1	Applicant No. 1	26.02.2024	Annexure-K at page 257
2	Applicant No. 2	26.02.2024	Annexure-K at page 258
3	Applicant No. 3	26.02.2024	Annexure-K at page 259
4	Applicant No. 4	26.02.2024	Annexure-K at page 260
5	Applicant No. 5	27.02.2024	Annexure-K at page 261

4. It is Submitted that the Applicant Companies are under the same management. Save as aforesaid none of the directors of the Applicant Companies have any material interest in the said Scheme of Amalgamation except as shareholders in general the extent of which will appear from the Register of the Director's Shareholdings maintained by the Applicant Companies respectively.
5. The assets of the Applicant Companies are sufficient to meet all their liabilities and the Scheme of Amalgamation will not adversely affect the rights of any of the creditors of the Applicant Companies in any manner whatsoever.
6. The Applicant Companies have made due provisions for payment of all the liabilities as and when the same will fall due.
7. The report determining the number and exchange ratio of shares which, shall be issued and allotted to the equity shareholders of the Transferor Companies by the Transferee Company for implementing the terms of the Scheme has been prepared by an independent Registered Valuer in practice and such recommendation has been accepted by the Board of Directors the Applicant Companies. The said report is annexed with the Application and marked as "**Annexure M**" from page number "**290 to 307**" in Volume 2.
8. There are 4 (Four) equity shareholders in the Transferor Company No. 1, 10 (Ten) equity shareholders in the Transferor Company No. 2, 6 (Six) equity shareholders in the Transferor Company No. 3 and 12 (Twelve) equity shareholders in the Transferor Company No. 4 as on 25.02.2024.

9. The list of equity shareholders of the Transferor Companies as on 25.02.2024 along with the certificate by the Statutory Auditor verifying the correctness of the same as on that date is annexed with the Application and marked as “**Annexure O**” from page number “**310 to 313**” in Volume 2.
10. Each and every shareholder of the Transferor Companies have considered the Scheme of Amalgamation and have given their consent in writing agreeing to the Scheme of Amalgamation and also to waive the holding of the meeting of the shareholders of the concerned Transferor Companies. The copies of the consent affidavits of all the equity shareholders of the Transferor Companies are annexed with the application and collectively marked as “**Annexure-P**” at Page No. “**315 to 395**” in Volume 3.
11. There are 10 (Ten) equity shareholders in the Transferee Company as on **25.02.2024**.
12. The list of equity shareholders of the Transferee Company as on **25.02.2024** along with the certificate by the Chartered Accountant verifying the correctness of the same as on that date is annexed with the Application and marked as “**Annexure O**” on page number “**314**” in Volume 2.
13. Each and every shareholder of the Transferee Company have considered the Scheme of Amalgamation and have given their consent in writing agreeing to the Scheme of Amalgamation and also to waive the holding of the meeting of the shareholders of the Transferee Company. The copies of the consent affidavit of all the equity shareholders of the Transferee Company are annexed with the application and collectively marked as “**Annexure-P**” from page number “**396 to 419**” in Volume 3.
14. There are no proceedings pending under Section 235 to 251 of the Companies Act, 1956 and Section 217, 219, 221, 224 and 225 of the Companies Act, 2013 against any of the Applicant Companies.
15. It is submitted by Learned Authorised Representative appearing for the Applicants that none of the Applicant Companies involved in the Scheme are NBFC Companies.
16. There are Nil Secured and 1 (one) Unsecured Creditor in the Transferor Company No. 1, Nil Secured and 6 (Six) Unsecured Creditor in the Transferor Company No. 2, Nil Secured and Nil Unsecured Creditor in the Transferor Company No. 3 and Nil Secured and 2 (Two) Unsecured Creditors in the Transferor Company No. 4 as on

25.02.2024.

17. The Statutory Auditors of the Transferor Companies have given certificate certifying the Secured Creditors and Unsecured Creditors in the Transferor Companies as on 25.02.2024. The copy of such certificate are annexed with the Application and marked as “**Annexure Q**” from page number “**420 to 425**” and “**Annexure R**” from page number “**428 to 429**” in Volume 3.
18. The unsecured creditors of the Transferor Companies No. 1, 2 and 4 have considered the Scheme of Amalgamation and has given his consent in writing agreeing to the Scheme of Amalgamation and consenting to waive the holding of the meeting of the creditors of the concerned Transferor Companies No. 1, 2 and 4. The copies of the consents by way of affidavits are annexed with the Application and marked as “**Annexure S**” from page number “**430 to 450**” of Volume 3.
19. There are Nil Secured and 2 (Two) Unsecured Creditors in the Transferee Company as on **25.02.2024**.
20. The Chartered Accountant has given a certificate certifying the list of secured and unsecured creditors of the Transferee Company as on **25.02.2024**. The list of secured and unsecured creditors drawn as on the dates mentioned above along with the copy of such certificate, are annexed with the Application and marked as “**Annexure Q**” on page number “**426 to 427**” in Volume 3.
21. Each and every creditors of the Transferee Company have considered the Scheme of Amalgamation and has given his consent in writing agreeing to the Scheme of Amalgamation and also consenting to waive the holding of the meeting of the creditors of the concerned Transferee Company. The copy of the consent affidavit of the unsecured creditor of the Transferee Company is annexed with the application and marked as “**Annexure-S**” from page number “**451 to 456**” in Volume 3.
22. **The list of Shareholders and Creditors are as follows:**

SL. No.	Name of the Applicant Companies	Equity Shareholders (As on 25.02.2024)	Secured Creditors (As on 25.02.2024)	Un-Secured Creditors (As on 25.02.2024)
1	Ganpati Tracon Private Limited	4 Consent: 100%	NIL	1 Consent: 100%

2	Ess Dee Distributors Private Limited	10	NIL	6
		Consent: 100%		Consent: 100%
3	Mayukh Projects Private Limited	6	NIL	NIL
		Consent: 100%		
4	Symphony Mercantile Private Limited	12	NIL	2
		Consent: 100%		Consent: 100%
5	National Plasto Moulding Private Limited	10	NIL	2
		Consent: 100%		Consent: 100%

23. Copy of Permanent Account Number (PAN)/Income Tax Return Acknowledgement of the Applicant Company No. 1 is annexed with the application and marked as “**Annexure A**” in page number “**26**” in Volume 1, Applicant Company No. 2 is annexed with the application and marked as “**Annexure C**” in page number “**64**” in Volume 1, Applicant Company No. 3 is annexed with the application and marked as “**Annexure E**” in page number “**111**” in Volume 1 Applicant Company No. 4 is annexed with the application and marked as “**Annexure G**” in page number “**167**” in Volume 2 and Applicant Company No. 5 is annexed with the application and marked as “**Annexure I**” in page number “**213**” in Volume 2.
24. The Certificate issued by the Statutory Auditor of the Transferee Company with respect to the accounting treatment proposed, in the Scheme of Amalgamation, is in conformity with the prescribed Accounting Standards under Section 133 of the Companies Act, 2013 is annexed with the Application and marked as “**Annexure N**” from page number “**308 to 309**” in Volume 2.
25. Heard the learned Authorized Representative for the applicants, perused the records, documents and annexed the Application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants, the following orders are passed:-
- a) In view of the fact that all the equity shareholders of the Applicant Companies duly consented in writing by way of affidavits, to the proposed Scheme of Amalgamation, hence the requirements of convening and holding of separate meetings of the shareholders of the Applicant Companies to ascertain the wishes of the equity shareholders of all the Applicant Companies for the Scheme of Amalgamation, are dispensed with;

- b) All the unsecured creditors of the Transferor and Transferee Companies has given its consent in writing by way of an affidavit agreeing to the Scheme of Amalgamation and also consenting to waive holding of separate meetings of the secured and unsecured creditors of the concerned Transferee company and hence meeting of Creditors of the Ganpati Tracon Private Limited, Ess Dee Distributors Private Limited and Symphony Mercantile Private Limited (Transferor Companies) and National Plasto Moulding Private Limited (Transferee Company), has been waived and dispensed by the Hon'ble Tribunal.
- c) Let the notice be served by the Applicant Companies, as per the requirements of sub-section (5) of Section 230 of The Companies Act, 2013, along with the copy of the Application and all other documents including the copy of the Scheme of Amalgamation and the statement disclosing necessary details to the following authorities:
- Central Government, through the Regional Director, Eastern Region.
 - Ministry of Corporate Affairs, Registrar of Companies, Kolkata and Registrar of Companies, Guwahati;
 - The concerned Income-Tax Assessing Officer along with the Chief Commissioner of Income-Tax with PAN Numbers of the Applicant Companies;
 - The Official Liquidator, having jurisdiction over the Applicant Companies Official Liquidator; High Court Calcutta.
 - Such other relevant sectoral regulators/authorities like GST, as applicable; which are likely to be affected by the proposed scheme.

These notices shall be sent by hand delivery through Special Messenger, by Registered AD/Speed post with tracking report & also by email within ten days from the date of receiving of this order for filing their representation, if any, on the Application within 30 days from the date of the notice.

- d) The Applicants shall file affidavit not less than 7 days before the date of hearing of Second Motion Petition;

- e) The notice **which shall be sent pursuant to Section 230(5) of the Companies Act 2013**, shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the Applicants and/or their Advocates, in advance **and** If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation;
- f) Objections, if any, to the scheme contemplated by the authorities to whom notice has been given, may be filed within the time stipulated, failing which it will be considered by this Tribunal that there is no objection to the approval of the Scheme of Amalgamation on the part of the authorities, subject to other conditions being applicable under The Companies Act, 2013 and relevant rules made thereunder;
26. The application being Company Application **CA(CAA) No. 103/KB/2024** is, accordingly, **disposed of**.
27. Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on 4th of July, 2024

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