

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P.(CAA)/125(KB)2024
IN
C.A.(CAA)/62(KB)2024

**CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), SHRI D. ARVIND**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 22ND JULY 2024

IN THE MATTER OF	NUTSHELL COMMERCIAL PVT.LTD.
UNDER SECTION	SEC. 230-232 - SECOND MOTION

Appearance (via video conferencing/physically)

Ms. Manju Bhuteria, Adv.] For the Petitioner
Ms. Aisha Amin, Adv.]

ORDER

1. Learned Counsel for the Petitioner present.
2. The instant Company Petition has been filed in the second stage of the proceedings 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

Abharaj Consultants Private Limited	Transferor Company No 1 / Petitioner No.1
Abharaj Traders Private Limited	Transferor Company No 2/ Petitioner No.2
Anmol Distributors Private Limited	Transferor Company No 3 / Petitioner No.3
Neptune Niwas Private Limited	Transferor Company No 4 / Petitioner No.4
PSR Advisory Services Private Limited	Transferor Company No 5 / Petitioner No.5

With Nutshell Commercial Private Limited -Transferee Company / Petitioner No 6, from the **Appointed Date 01st April, 2023** as defined in the Scheme, 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 45 to 76.

3. It is submitted by Ld. counsel appearing for the Petitioner (s) that as per the Scheme the **Appointed Date 01st April,2023**.
4. It is submitted by Ld. Counsel appearing for the Petitioner (s) that the Transferee Company / Petitioner No 6 is a NBFC Company duly Registered with Reserve Bank of India is holding valid Certificate of Registration issued by the said Bank .
5. It is further submitted that the Transferor Company No 3 / Petitioner No 3 was a NBFC and its Certificate of Registration has been cancelled due to non-achievement of Net Owned Fund of Rs 2.00 Crore as on 31-03-2017. The Company has filed a writ against the said cancellation and the said writ is pending before the Hon'ble High Court, Calcutta. The said fact has been disclosed in the Scheme at Page No 46 in Vol I of the Company Petition.
6. It is submitted by Ld. counsel appearing for the Petitioner(s) that the list of equity shareholders of the Petitioner Companies as on 31ST January,2024 duly certified by the statutory auditor of the Company are all collectively annexed to the Company Petition marked – **Annexure – N** in VOL III at Page No 362 to 367.
7. It is submitted by Ld. counsel appearing for the Petitioner(s) that the NIL Secured Creditors of the Petitioner Companies as on 12TH March, 2024 duly certified by the statutory auditor of the Company are all collectively annexed to the Company Petition marked – **Annexure – O** in VOL III at Page No 368 to 373.
8. It is submitted by Ld. counsel appearing for the Petitioner(s) that the NIL Unsecured Creditors in respect of Petitioner No 1, Petitioner No 3 and Petitioner No 4 and list of Unsecured Companies in respect of Petitioner No 2, Petitioner No 5 and Petitioner No 6 as on 12TH March, 2024 duly certified by the statutory auditor of the Company are all collectively annexed to the Company Petition marked – **Annexure – O** in VOL III at Page No 368 to 373.
9. It is submitted by Ld. counsel appearing for the Petitioner (s) that the order dated 26-04-2024 passed by this Tribunal in Company Application CA (CAA) NO 62 / KB / 2024 is annexed to the Company Petition marked – **Annexure – P** in VOL III at Page No 374 to 382.
10. It is submitted by Ld. counsel appearing for the Petitioner (s) that the Valuation Report dated 10TH February, 2024 recommending the Swap Ratio has been prepared by CA Mukesh Banka, IBBI Registered Valuer. A copy of the said Report is annexed to the Company Petition marked – **Annexure – Q** n VOL III at Page No 383 to 403.

11. It is submitted by Ld. counsel appearing for the Petitioner (s) that the Board of Directors of the Petitioner Companies have at their respective meeting held on 26TH February, 2024 have passed resolution adopting the proposed Scheme of Amalgamation A copy of the Resolution passed by the Board of Directors of the Petitioner Companies are all collectively annexed to the Company Petition marked – **Annexure – R** in VOL III at Page No 404 to 409.
12. It is submitted by Ld. counsel appearing for the Petitioner (s) that the statutory auditors of the Petitioner Companies have all by their certificate dated 13-03-2024 confirmed that the Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013 and Rules made there under. A copy of the said Certificate issued by Statutory Auditor of the Petitioner Companies are all collectively annexed to the Company Petition marked – **Annexure – S** in VOL III at Page No 410 to 420.
13. It is submitted by Ld. Counsel appearing for the Petitioner (s) that, the Petitioner (s) have the following classes of shareholders and creditors:-

PARTICULARS	EQUITY SHARE HOLDERS 31-01-2024	PREFERENCE SHARE HOLDERS	SECURED CREDITORS 12-03-2024	UNSECURED CREDITORS 12-03-2024
TRANSFEROR COMPANY NO 1 / PETITIONER NO.1	9	NIL	NIL	NIL
TRANSFEROR COMPANY NO 2 / PETITIONER NO.2	10	NIL	NIL	1
TRANSFEROR COMPANY NO 3 / PETITIONER NO.3	3	NIL	NIL	NIL
TRANSFEROR COMPANY NO 4 / PETITIONER NO.4	2	NIL	NIL	NIL
TRANSFEROR COMPANY NO 5 / PETITIONER NO.5	11	NIL	NIL	1
TRANSFEREE COMPANY / PETITIONER NO.6	7	NIL	NIL	1

14. It is submitted by Ld. counsel appearing for the Petitioner(s) that, by an order dated 26TH April, 2024 passed in Company Application C.A (CAA) NO 62/KB/2024 this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) of the Act:-

a. Meetings dispensed:

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 without seeking modification(s).

Unsecured Creditors

Meeting of Unsecured Creditors of Petitioner No 2 for considering the Scheme are dispensed with in view of consent by Unsecured Creditors representing 100% in value of Unsecured Debt of Petitioner No 2 having respectively given their consent to the Scheme by way of affidavits without seeking modification(s).

Meeting of Unsecured Creditors of Petitioner No 5 for considering the Scheme are dispensed with in view of consent by Unsecured Creditors representing 100% in value of Unsecured Debt of Petitioner No 5 having respectively given their consent to the Scheme by way of affidavits without seeking modification(s).

Meeting of Unsecured Creditors of Petitioner No 6 for considering the Scheme are dispensed with in view of consent by Unsecured Creditors representing 100% in value of Unsecured Debt of Petitioner No 6 having respectively given their consent to the Scheme by way of affidavits without seeking modification(s).

b. No requirement of Meetings

Secured Creditors

No requirement of Meeting of Secured Creditors of Petitioner Companies – NIL Creditors duly verified by auditor’s certificate.

Unsecured Creditors

No requirement of Meeting of Unsecured Creditors of Petitioner No 1 , Petitioner No 3 and Petitioner No 5 – NIL Creditors duly verified by auditors certificate.

15. The Learned Counsel for the Petitioner(s) further submits that in compliance with Section 230(5) of the Companies Act, 2013 and the said order dated 26TH April,2024 passed in Company Application C.A(CAA) NO 62 /2024 notice along with all accompanying documents has already been served on the Statutory / Sectoral Authorities, as directed by the said order as below :

COMPANY PETITION – ANNEXURE T / VOLUME III

REGULATORY AUTHORITIES	DATE OF SERVICE	PAGE NO
THROUGH SPECIAL MESSENGER(HAND DELIVERY)		
Principal Commissioner of Income Tax – 1/ KOL	13-05-2024	437
Income Tax Officer – Ward 9(1) / KOL	13-05-2024	439
Income Tax Officer – Ward 4(3) / KOL	13-05-2024	441
Income Tax Officer – Ward 1(1) / KOL	13-05-2024	443
Income Tax Officer – Ward 9(1) / KOL	13-05-2024	444
Income Tax Officer – Ward 9(1) / KOL	13-05-2024	446
Deputy Commissioner of Income Tax – Circle 11(1)/ KOL	13-05-2024	449
Regional Director , Eastern Region	14-05-2024	451
Registrar of Companies , West Bengal	14-05-2024	453
Reserve Bank of India	13-05-2024	455
Official Liquidator , High Court Calcutta	14-05-2024	456
BY ELECTRONIC MAIL		
Principal Commissioner of Income Tax – 1 / KOL	17-06-2024	438
Income Tax Officer – Ward 9(1) / KOL	16-06-2024	440
Income Tax Officer – Ward 4(3) / KOL	16-06-2024	442
Income Tax Officer – Ward 9(1) / KOL	16-06-2024	445
Income Tax Officer – Ward 9(1) / KOL	16-06-2024	447
Income Tax Officer – Ward 9(1) / KOL	16-06-2024	448
Income Tax Officer – Ward 9(1) / KOL	16-06-2024	450
Regional Director , Eastern Region	16-06-2024	452
Registrar of Companies , West Bengal	14-06-2024	454

16. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Petitioner(s), we admit the instant petition and fix the next date of hearing on **6th September, 2024**.
17. At least 10 (ten) clear days before the said date fixed for hearing, the Petitioner(s) shall cause notice of hearing to be advertised in the **BUSINESS STANDARD** in English and Bengali translation thereof in **AAJKAL** in Kolkata Edition as per Rule 16(1) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (“CAA Rules”).
18. Another notice pursuant to Section 230(5) of the Companies Act, 2013 along with accompanying documents, including the copies of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013, as sent earlier, shall be served again on the aforesaid Statutory Authorities by sending the same to them **by hand delivery through special messenger or by speed post and also by email** within one week from the date of receiving this order. The notice shall specify the next date of hearing of the petition, as aforesaid, and state that representation, if any, and if not already filed, should be filed before this Tribunal no later than 7 (seven) days before the next date of hearing of the petition and a copy of such representation should be simultaneously sent to the Authorised Representative of the said Petitioner(s). If no

such representation is received by the Tribunal within such period, it shall be presumed that such Authorities have no representation to make on the said Scheme. Such notice shall be sent in Form No. CAA3 of the CAA Rules with necessary variations, incorporating the directions herein.

19. The Petitioner(s) to file an affidavit confirming compliance of the abovementioned directions of this Tribunal, 3 (Three) days before the next date of hearing.
20. The Petitioner(s) may also file their rejoinder affidavit(s) dealing with the objections/ observations, if any, of the Authorities, 2 (Two) days before the next date of hearing.
21. 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)