

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

C.P. (CAA) No. 130/ KB /2023
Connected with
C.A. (CAA) No. 95/ KB /2023

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

In the matter of:

Scheme of Amalgamation (Second Motion):

MATARA TRADECOM PRIVATE LIMITED, (CIN: U51909WB2010PTC143019) a company incorporated under the Companies Act, 1956 and a Company within the meaning of the Companies Act, 2013 and having its registered office at 18, Rabindra Sarani 3rd Floor Room No – 345, Kolkata - 700001 within the jurisdiction of West Bengal.

..... Applicant No. 1/ Transferor Company

-With-

ABN TRACOM (INDIA) PRIVATE LIMITED, (CIN: U51109WB2007PTC115631) a company incorporated under the Companies Act, 1956 and a Company within the meaning of the Companies Act, 2013 and having its registered office at 18, Rabindra Sarani, Kolkata - 700001 within the jurisdiction of West Bengal.

..... Applicant No. 2/Transferee Company

In the matter of:

- 1) Matara Tradecom Private Limited
- 2) ABN Tracom (India) Private Limited

..... Applicants

Date of Pronouncing the Order:10-07-2024

Coram:

Bidisha Banerjee : Member (Judicial)
Balraj Joshi : Member (Technical)

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Counsel on Record for the Petitioner(s):

Mr. Gopal Kumar Khetan, PCA

For RD, (ER), MCA:

Mr. Alok Tandon, JD

Per: Balraj Joshi: Member (Technical)

- 1) The instant petition has been filed under Section 230 read with Section 232 of the Companies Act, 2013 (“Act”) for sanction of the Scheme of Amalgamation of **Matara Tradecom Private Limited** ("Transferor Company" or “Applicant No. 1”), with **ABN Tracom (India) Private Limited**, ("Transferee Company" or “Applicant No. 2”) whereby and where under the Transferor Company is proposed to be amalgamated with the Transferee Company from the Appointed Date, viz **1st day of April, 2023** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”).
- 2) The Petition has now come up for final hearing. The Ld. Authorized Representative for the Petitioners submit as follows:
 - (a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on 01st March, 2023.
 - (b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are inter alia as follows:-
 - i. Both the Transferor Company and the Transferee Company are engaged in similar kind of businesses.
 - ii. The Scheme of Amalgamation has been proposed to consolidate the group structure and provide advantages of synergies in business activities.
 - iii. The business of the Transferor Company and the Transferee Company can be combined and carried forward conveniently with the combined strength of all the Petitioner Companies.

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- iv. The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the Transferee Company.
- v. The amalgamation will result in usual economies of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources and the business of the companies can be conveniently and advantageously combined together and in general business of the Companies concerned will be carried on more economically and profitably under the said Scheme of Amalgamation.
- vi. The said Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business of the Companies concerned. The aforesaid Scheme of Amalgamation will also enable the undertakings and business of the said Petitioner Companies to obtain greater facilities possessed and enjoyed by one large company compared with a number of small companies for raising capital, securing and conducting trade on favourable terms and other benefits.
- vii. The said Scheme of Amalgamation will contribute in furthering and fulfilling the objects of the companies concerned and in the growth and development of these businesses.
- viii. The said Scheme of Amalgamation will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability.
- ix. The said Scheme of Amalgamation will enable the undertakings concerned to pool their resources and to expand their activities.
- x. The said Scheme of Amalgamation will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages.

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- xi. The said Scheme of Amalgamation will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.
- (c) The Statutory Auditors of the Transferor Company and the Transferee Company have by their certificates dated 18th March, 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 Ms. Nikita, Registered Valuer.
- (f) The shares of none of the Applicant Companies are **not listed on any stock exchanges.**
- (g) By an order dated 26th June, 2023 in Company Application C.A.(CAA) No. 95/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:
- i. Meeting dispensed:
- Meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of all the Applicant Companies are dispensed under sub-section (1) of Section 230 read with sub-section (1) of Section 232 of the Act.
- ii. Meeting to be held:
- No meeting is required to be held.
- (h) Consequently, the Petitioners presented the instant petition for sanction of the Scheme. By an order dated 09th October, 2023, the instant petition was admitted by this Tribunal and fixed for hearing on 20th November, 2023 upon issuance of

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notices to the Statutory/Sectoral Authorities and advertisement of the date of hearing. In compliance with the said order, the Petitioner(s) have duly served such notices on the following authorities:

<u>Sl. No.</u>	<u>Name of the Statutory Authority</u>	<u>Mode of Service</u>	
		<u>Hand Delivery</u>	<u>E-mail</u>
1.	The Regional Director, Eastern Region, Kolkata.	01-11-2023	31-10-2023
2.	The Registrar of Companies, West Bengal.	01-11-2023	31-10-2023
3.	The Official Liquidator, High Court, Calcutta.	01-11-2023	31-10-2023
4.	The Income Tax Officer having jurisdiction over Ward 10(2)	01-11-2023	31-10-2023
5.	The Chief Commissioner of Income Tax, Kolkata – 02	01-11-2023	31-10-2023

The Petitioners have also published advertisements in two newspapers viz. newspapers “**The Statesman**” in English Language and “**Dainik Statesman**” in Bengali Language on 01st November, 2023. An affidavit of service in this regard has also been filed by them on 13th November, 2023.

- (i) 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.
- 3) Pursuant to the said advertisements and notices, the Regional Director, Ministry of Corporate Affairs, Kolkata and the Official Liquidator, High Court, Kolkata have filed their representations before this Tribunal.

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- 4) The Official Liquidator has filed a Report dated November 10, 2023 wherein it has been stated that on the basis of the information submitted by the Petitioner Companies, the Official Liquidator is of the view that *the affairs of the Transferor Company does not appear to have been conducted in a manner prejudicial to the interests of its members or to public interest as per the provisions of the Companies Act, 2013. Further, the Official Liquidator stated that the Tribunal may be pleased to pass such further order or orders as may be deem fit and proper in the matter.*
- 5) The Regional Director, Eastern Region, Ministry of Corporate Affairs (MCA), Kolkata vide his affidavit filed on 28th March, 2024 has reported certain observations in respect whereof the Petitioner Companies have filed their rejoinder dated 04th April, 2024. The said observations and the reply thereof are given underneath:

Query stated at Para 2(a) of the Regional Director's Report:

Upon examination of the 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 Financial Statement and Annual Return for the financial year ended 31/03/2023.

Reply to Para No. 2(a) of the Regional Director's Report:

It is hereby submitted that the observations pointed out by the Regional Director in Para 2(a) of his affidavit is a general fact and the Petitioners have nothing to comment on it.

Query stated at Para 2(b) of the Regional Director's Report:

The Appointed Date stated in the Scheme is 1st April 2022. All the Petitioner Companies have already filed financial statements for the year ended 31/03/2023. Further, 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

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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 the scheme according to the Circular.

Reply to Para No. 2(b) of the Regional Director's Report:

It is submitted that the Appointed Date as mentioned in the Scheme of Amalgamation i.e., 1st April, 2022, is within the terms of the General Circular No. 09/2019 dated 21st August, 2019 of the Ministry of Corporate Affairs as the Company Application was filed before the Hon'ble National Company Law Tribunal, Kolkata Bench on 25th March, 2023, i.e., within a year of the Appointed Date.

Furthermore, the Petitioners affirm and undertake to accept 1st April, 2023 as the Appointed Date, if thought fit, by the Hon'ble Tribunal for approval of the Scheme of Amalgamation.

Query stated at Para 2(c) of the Regional Director's Report:

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.

Reply to Para No. 2(c) of the Regional Director's Report:

The list/ details of Assets to be transferred from the Transferor Company to the Transferee Company upon sanctioning of the proposed Scheme of Amalgamation is enclosed herewith and marked as "ANNEXURE - A" to the rejoinder.

Query stated at Para 2(d) of the Regional Director's Report:

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

Reply to Para No. 2(d) of the Regional Director's Report:

The Petitioner Companies undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013.

Query stated at Para 2(e) of the Regional Director's Report:

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.

Reply to Para No. 2(e) of the Regional Director's Report:

The Transferee Company shall, if applicable, pay the relevant stamp duty on transfer of the immovable properties from the Transferor Company to it.

Query stated at Para 2(f) of the Regional Director's Report:

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.

Reply to Para 2(f) of the Regional Director's Report:

The Petitioners state that the Scheme enclosed with the Company Application and Company Petition are one and the same and that there is no discrepancy nor any change is made.

Query stated at Para 2(g) of the Regional Director's Report:

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 08/08/2023 for their views/observation in the matter. However, the report from the authority is still awaited.

Reply to Para 2(g) of the Regional Director's Report:

It is hereby submitted that the observation pointed out by the Regional Director in Para 2(g) of his affidavit is a general fact and the Petitioners have nothing to comment on it.

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- 6) Heard submissions made by the Ld. Authorized Representative appearing for the Petitioners, Authorized Person from the office of the Regional Director, MCA. Mr. Alok Tandon Joint Director appearing for RD submits that the office of the RD has no objection if the scheme is sanctioned. This statement was taken on record on the date of hearing, 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 be and is hereby sanctioned by this Tribunal to be binding with effect from **01st April, 2023** (“**Appointed Date**”) on **Matara Tradecom Private Limited** ("Transferor Company" or “Applicant No. 1”), with **ABN Tracom (India) Private Limited**, ("Transferee Company" or “Applicant No. 2”) and their respective shareholders and creditors 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 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, duties, and obligations of the Transferor Company 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 Company 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 Company be continued by or against the Transferee Company, as provided in the Scheme, for which the required records in respect of Transferor

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companies shall also be preserved by the Transferee Company as per the provisions of Section 239 of the Companies Act 2013.

- (f) The Transferee Company do without further application issue and allot to the shareholders of the Transferor Company, the shares in the Transferee Company to which they are entitled in terms of the Scheme.
 - (g) 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.
 - (h) The Transferor Company 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 Company shall be dissolved without winding up.
 - (i) Any person/authority aggrieved shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
- 7) The Petitioner(s) shall supply a legible printout of the Scheme and schedule of assets in acceptable form to the Registry and the Registry will append such printout, after verification, to the certified copy of the order.
- 8) Company Petition (CAA) No. 130/KB/2023 connected with Company Application (CAA) No. 95/KB/2023 is disposed of accordingly.
- 9) Certified copy of this order, if applied, be supplied to the parties, subject to compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

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Signed on this 10th Day of July, 2024

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