

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

C.P.(CAA) NO 240 / KB / 2021  
CONNECTED WITH  
C.A.(CAA) NO 468 / KB / 2020

**In the matter of**

The Companies Act, 2013; An application under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013; Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

**And**

**In the Matter of**

SUBHAS IMPEX PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having Company Identification Number (CIN: U51109WB1995 PTC076241) and having its Registered Office at 5A, N.C. Dutta Street, 4<sup>th</sup> Floor, Kolkata-700001, in the State of West Bengal.

**\*\*\* TRANSFEREE COMPANY /PETITIONER NO 1**

**And**

**In the Matter of**

CROSSWORD DEALERS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having Company Identification Number (CIN: U51909WB2010 PTC140943) and having its Registered Office at 5A, N.C. Dutta Sarani, 4<sup>th</sup> Floor, Kolkata-700001, in the State of West Bengal.

**\*\*\*TRANSFEROR COMPANY NO 1 / PETITIONER NO 2**

**And**

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P.(CAA) NO 240 / KB / 2021

CONNECTED WITH

C.A.(CAA) NO 468 / KB / 2020

.....  
**In the Matter of**

RADHA BALLABH COMMOSALE PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having Company Identification Number (CIN : U52190WB2009PTC140530) and having its Registered Office at 5A, N.C. Dutta Sarani, 4th Floor, Kolkata-700001, in the State of West Bengal.

**\*\*\* TRANSFEROR COMPANY NO 2 / PETITIONER NO 3**

**And**

**In the matter of**

STARSHINE TOWERS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having Company Identification Number (CIN : U45203WB2007 PTC112899) and having its Registered Office 5A, N.C. Dutta Sarani 4th Floor, KOLKATA-700001, in the State of West Bengal.

**\*\*\* TRANSFEROR COMPANY NO 3 / PETITIONER NO 4**

**And**

**In the matter of**

1. SUBHAS IMPEX PRIVATE LIMITED;
2. CROSSWORD DEALERS PRIVATE LIMITED;
3. RADHA BALLABH COMMOSALE PRIVATE LIMITED;
4. STARSHINE TOWERS PRIVATE LIMITED;

.... .... .... **PETITIONER COMPANIES**

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P.(CAA) NO 240 / KB / 2021

CONNECTED WITH

C.A.(CAA) NO 468 / KB / 2020

**Date of Hearing: 07/06/2022**

**Order pronounced on: 18/07/2022**

**Coram:**

**Shri Rohit Kapoor** : **Member (Judicial)**  
**Shri Harish Chander Suri** : **Member (Technical)**

**Appearances:**

**For the Petitioners** : **1. Ms. Manju Bhuteria, Advocate**  
**2. Mr. N. Gurusurthy, FCA**  
**3. Mr. Madan Kumar Maroti, FCA**  
**4. Ms. Aisha Amin, Advocate**

**For the Regional Director**

**Appearances (via video conferencing )**

**:** **Mr. Harihara Sahoo, Joint Director /**  
**Mr Sanjay Sardar, Assistant Director from the**  
**office of the Regional Director**

**O R D E R**

**Per: Rohit Kapoor, Member (Judicial)**

1. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (“Act”) for sanction of the Scheme of Amalgamation of

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CROSSWORD DEALERS PRIVATE LIMITED being the Petitioner No.2 above named ("Transferor Company No 1 " or "Petitioner No.2 ") and RADHA BALLABH COMMOSALE PRIVATE LIMITED being the Petitioner No.3 above named ("Transferor Company No 2 " or "Petitioner No.3 ") and STARSHINE TOWERS PRIVATE LIMITED being the Petitioner No. 4 above named ("Transferor Company No 3 " or "Petitioner No.4 ") with SUBHAS IMPEX PRIVATE LIMITED being the Petitioner No.1 above named ("Transferee Company" or "Petitioner No.1") whereby and where under the Transferor Company are proposed to be amalgamated with the Transferee Company from the Appointed Date, 01st April, 2019 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. Counsel for the Applicants submits as follows:-

(a) The Scheme was approved by the Board of Directors of the Petitioner Companies at their meetings held on 10<sup>TH</sup> FEBRUARY,2020.

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

(a) The TRANSFEREE COMPANY is a Non-Banking Financial Company duly registered with the Reserve Bank of India and is presently engaged in investing and financing activities. Apart from pursuing its main object, both the TRANSFEROR COMPANIES have made deployment of their surplus funds in other investable instruments. The business of the TRANSFEROR COMPANIES and the TRANSFEREE COMPANY can be combined/adjusted and carried forward conveniently with combined strength;

- (b) The amalgamation will enable the TRANSFEREE COMPANY to consolidate its line of business by restructuring and re-organizing its business activities and Capital Structure;
- (c) The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the TRANSFEREE COMPANY;
- (d) The amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources;
- (e) The business of the Companies can be conveniently and advantageously combined together in general business of the Company concerned and will be carried on more economically and profitably under the said Scheme;
- (f) 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 company concerned. The said scheme will also enable the undertakings and business of the said applicant company 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 favorable terms and other benefits;
- (g) The said scheme will contribute in furthering and fulfilling the objects of the Company concerned and in the growth and development of these businesses;

- (h) The said scheme will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability;
- (i) The said scheme will enable the undertakings concerned to pool their resources and to expand their activities;
- (j) The said scheme will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages;
- (k) The said scheme will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.
- (c) The Statutory Auditors of the Petitioner Companies have by their certificate dated 12<sup>TH</sup> FEBRUARY,2020 have 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 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 Report dated 05<sup>TH</sup> FEBRUARY,2020 thereon of CA VIDHI CHANDAK , IBBI , Registered Valuer.
- (f) By an order dated 3rd November, 2021 in Company Application No. C.A (CAA) No.468/(KB)/2020 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**
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Meeting of Equity Shareholders of the Petitioner Companies, for considering the Scheme are dispensed with in view of all shareholders of Petitioner Companies having respectively given their consent to the Scheme by way of affidavits.

**b) No requirement of Meetings**

**Secured Creditors**

Secured Creditors of Petitioner Companies NIL Creditors verified by auditors certificate.

**Unsecured Creditors**

Unsecured Creditors of Petitioner Companies NIL Creditors verified by auditors certificate.

**c) Meetings to be held**

No meeting required to be held.

- (g) Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 16<sup>TH</sup> February, 2022 the instant petition was admitted by this Tribunal and fixed for hearing on 25<sup>th</sup> March,2022 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 16<sup>TH</sup> February, 2022 the Petitioner(s) have duly served such notices on the Regulatory Authorities viz Upon Income Tax Authorities on 22<sup>nd</sup> February,2022 and 25<sup>th</sup> February,2022 , Upon Registrar of Companies , Kolkata ,West Bengal and Regional Director, Eastern Region on 18<sup>th</sup> February,2022 ,Upon Official Liquidator , High Court Calcutta on 18<sup>th</sup> February,2022, Upon Reserve Bank of India on 18<sup>th</sup> February,2022. The Petitioner(s) have also published such advertisements once each in the Financial Express and Dainik Statesman in their respective issues dated 18<sup>th</sup> February,2022. An

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affidavit of Compliance duly affirmed on 11<sup>th</sup> March,2022 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 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 (“RD”), Official Liquidator, High Court have filed their representations before this Tribunal.
4. The Official Liquidator has filed his report dated 16/03/2022 and concluded as under:-

**At Para 8**

That the Official Liquidator has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner till the date of filing of this Report.

**At Para 10**

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 Companies 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.

5. The RD has filed his reply affidavit dated 26<sup>TH</sup> April,2022 (“RD affidavit”) which has been dealt with by the Petitioner(s) by their Rejoinder affidavit dated 26<sup>TH</sup> April,2022 (“Rejoinder”). The observations of the RD and responses of the Petitioner(s) are summarized as under:-



**Paragraph 2 (a) of RD Affidavit**

It is submitted that on examination of the report of the Registrar of Companies, West Bengal, it appears that no complaint and /or representation regarding the proposed Scheme of Amalgamation has been received against the Petitioner Companies, Further, as per available records, all the petitioner companies are updated in filing their Statutory Returns for the year ended 31.03.2021.

**Paragraph 2 (a) of the Rejoinder**

No adverse comments made by the Registrar of Companies, West Bengal in his report to the Regional Director. Further the Registrar of Companies, West Bengal has not received any Complaint and / or representation from any person on the proposed Scheme. Hence no comments are offered.

**Paragraph 2 (b) of RD Affidavit**

Appointed Date is 1<sup>st</sup> April 2019 which is much older and since all the Petitioner Companies have already filed subsequent Financial Statements up to the financial year ended 31-03-2021, this Appointed Date apparently lacks relevance to the Scheme, as it appears. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper, keeping in view the present circumstances.

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, 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 1st April 2019. 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 (late of filing of the application for the scheme, in the scheme according to the Circular.

**Paragraph 2 (b) of the Rejoinder**

The Board of Directors of the Petitioner Companies have at their meeting held on 10th February,2020 have passed resolution approving the Scheme of Amalgamation with Appointed Date 01st April,2019.

The Valuation Report recommending the Swap Ratio dated 05-02-2020 prepared by CA VIDHI CHANDAK, has considered the appointed date as 01st April,2019.

The Company Application was submitted on 13-03-2020 before the Covid 19 Lock down under serial no 31942. The Company Application was processed and the Company Application C.A(CAA) NO 468 / KB / 2020 was allotted. However subsequent to the filling the matter could not be listed as Covid – 19 lock down came into effect from 20th March,2020.

When normalcy returned e filing came into effect and the document filed earlier had to be resubmitted by e filing the same in NCLT portal.

The Petitioner Companies did not have any secured Creditors as would be evident from the 03-11-2021 passed in Company Application C.A(CAA) NO 468 / KB / 2020.

The Petitioner Companies did not have any Unsecured Creditors as would be evident from the 03-11-2021 passed in Company Application C.A(CAA) NO 468 / KB / 2020.

Further the Shareholders of the Company given their consent to the proposed Scheme with Appointed Date as 01st April,2019.

Further the Reserve Bank Of India have granted their No Objection to the Scheme with Appointed Date as 01st April,2019.

Hence based on the submission made above the Appointed Date 01-04-2019 be accepted as Appointed date.

**Paragraph 2 (c) of RD Affidavit**

It is submitted that the Petitioner Transferee Company namely M/s Subhas Impex Private Limited is registered with RBI as NBFC. However, the RBI by letter No. DNBS. RO.KO1.No.531 / 99.06.002 / 2020-21 dated 01.03.2021 addressed to the Board of Directors of M/s Subhas Impex Private Limited (Transferee Company) issued their "No Objection" to the proposed scheme of amalgamation. Further, the RBI also stated in the said letter that the said approval (No Objection) is valid for six months from the date of issue of that letter. (A copy of the said letter of RBI marked as Annexure-I is annexed here with for kind perusal)

**Paragraph 2 (c) of the Rejoinder**

The Reserve Bank of India have vide their letter DNBS. RO.KO1.No.531 / 99.06.002 / 2020-21 dated 01.03.2021 have conveyed their NO OBJECTION to the proposed Scheme of Amalgamation . The said letter issued by the Bank is annexed to the Observation made by the Regional Director as ANNEXURE - I

**Paragraph 2 (d) of RD Affidavit**

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

**Paragraph 2 (d) of the Rejoinder**

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 2 (e) of RD Affidavit**

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

**Paragraph 2 (e) of the Rejoinder**

The Transferee Company undertakes that it shall pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

**Paragraph 2 (f) of RD Affidavit**

The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit 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 2 (f) of the Rejoinder**

The Deponent duly authorized by the Petitioner Companies hereby affirms 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 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 31-12-2021 with a request to forward their comments / observations / objections, if any. However, the same is still awaited.

**Paragraph 2 (g) of the Rejoinder**

The Income Tax authorities have not made any observations on notice served by the office of the Regional Director.

Further the Petitioner Companies have also complied with the directions contained in the order passed by the this Tribunal and have effected service upon the Income Tax Department.

However Income Tax Department have not made any observation on the said notices delivered to their office.

Heard submissions made by the Ld Counsel 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”** sanctioned by this Tribunal to be binding with effect from 1st day of April, 2019 on CROSSWORD DEALERS PRIVATE LIMITED, RADHA BALLABH COMMOSALE PRIVATE LIMITED and STARSHINE

TOWERS PRIVATE LIMITED with SUBHAS IMPEX PRIVATE LIMITED and their shareholders and all concerned;

- b. All the properties, rights and interest of CROSSWORD DEALERS PRIVATE LIMITED, RADHA BALLABH COMMOSALE PRIVATE LIMITED and STARSHINE TOWERS PRIVATE LIMITED be transferred to and vested in without further act or deed in SUBHAS IMPEX PRIVATE LIMITED and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and vested in SUBHAS IMPEX PRIVATE LIMITED for all the estate and interest of CROSSWORD DEALERS PRIVATE LIMITED, RADHA BALLABH COMMOSALE PRIVATE LIMITED and STARSHINE TOWERS PRIVATE LIMITED but subject nevertheless to all charges, now affecting the same;
- c. All the liabilities and duties of CROSSWORD DEALERS PRIVATE LIMITED, RADHA BALLABH COMMOSALE PRIVATE LIMITED and STARSHINE TOWERS PRIVATE LIMITED be transferred without further act or deed to SUBHAS IMPEX PRIVATE LIMITED and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and become the liabilities and duties of SUBHAS IMPEX PRIVATE LIMITED;

- d. That all the proceedings and/or suit appeals now pending by or against CROSSWORD DEALERS PRIVATE LIMITED, RADHA BALLABH COMMOSALE PRIVATE LIMITED and STARSHINE TOWERS PRIVATE LIMITED shall be continued by or against SUBHAS IMPEX PRIVATE LIMITED;
- e. The Transferee Company to issue and allot shares to the shareholders of CROSSWORD DEALERS PRIVATE LIMITED, RADHA BALLABH COMMOSALE PRIVATE LIMITED and STARSHINE TOWERS PRIVATE LIMITED as envisaged in the said Scheme of Amalgamation and for that, if necessary, to increase the authorized share capital;
- f. The schedule of assets and liabilities in respect of CROSSWORD DEALERS PRIVATE LIMITED, RADHA BALLABH COMMOSALE PRIVATE LIMITED and STARSHINE TOWERS PRIVATE LIMITED be filed within a period of 60 days from the date of the order to be made herein;
- g. The Transferor Companies namely CROSSWORD DEALERS PRIVATE LIMITED, RADHA BALLABH COMMOSALE PRIVATE LIMITED and STARSHINE TOWERS PRIVATE LIMITED shall stand dissolved from the appointed date;
- h. SUBHAS IMPEX PRIVATE LIMITED, CROSSWORD DEALERS PRIVATE LIMITED, RADHA BALLABH COMMOSALE PRIVATE LIMITED and STARSHINE TOWERS PRIVATE LIMITED shall within

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C.P.(CAA) NO 240 / KB / 2021

CONNECTED WITH

C.A.(CAA) NO 468 / KB / 2020

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30 days after the date of obtaining the Certified Copy of the order to be made herein cause certified copies of this order to be delivered to the Registrar of Companies, West Bengal for registration respectively;

- i. Any person interested be at liberty to apply to this Tribunal in the above matter for any direction that may be necessary;
6. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets & liabilities in acceptable form to the department and the department will append such printout, upon verification to the certified copy of the order.
7. The Company Petition C.P.(CAA) No. 240/KB/2021 connected with Company Application C.A(CAA) NO 468/KB/2020 is **disposed** of accordingly.
8. Certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

**Harish Chander Suri**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

**Signed on this, the 18<sup>th</sup> day of June, 2022.**



IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

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C.P.(CAA) NO 240 / KB / 2021

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