

THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH

**C.A(C.A.A.) /32/MB/2024**

*In the matter of*  
*The Companies Act, 2013 (18 of 2013)*  
*and*  
*Section 232 r/w Section 230 of*  
*The Companies Act, 2013 and other*  
*applicable provisions of the Companies Act,*  
*2013*  
*read with the Companies (Compromises,*  
*Arrangements and Amalgamations) Rules,*  
*2016;*

*In the matter of*  
*Composite Scheme of Amalgamation*  
*of*

**Universal Cartons Solutions Private Limited**

CIN: U74950GA1995PTC001913

...Applicant Company 1/  
**Transferor Company 1**

**Suraksha Packers Private Limited**

CIN: U05190GA1994PTC016300

...Applicant Company 2/  
**Transferor Company 2**

**Borkar Packaging Private Limited**

CIN: U74950GA1994PTC001667

...Applicant Company 3/  
**Transferee Company**

***Order delivered on 10.05.2024***

***Coram:***

**Shri Prabhat Kumar**

Hon'ble Member (Technical)

**Justice V.G. Bisht (Retd.)**

Hon'ble Member (Judicial)

***Appearances (through)***

For the Applicant Company : Mr. Hemant Sethi a/w Ms.  
Devanshi Sethi, Advocates

**ORDER**

1. Heard learned Counsel for the Applicant Companies.
2. The present Scheme is a scheme of of Amalgamation (Merger by Absorption) amongst **Universal Cartons Solutions Private Limited** (“Transferor Company 1”), **Suraksha Packers Private Limited** (“Transferor Company 2”) and **Borkar Packaging Private Limited** (“Transferee Company”) and their respective Shareholders under the provisions of Sections 232 r/w Section 230 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 and Rules framed thereunder.
3. The Scheme was approved by the respective Board of Directors of the Applicant Companies in their meetings held on 28<sup>th</sup> December, 2023. The Appointed Date fixed under the Scheme is 1<sup>st</sup> April, 2024.
4. The First Applicant Company and the Third Applicant Company is engaged in the business of printing of cartons, labels, aluminum foils and other packaging materials by way of art printing, colour printing, copper plate printing, etching, lino-type lithography, offset, gravure, role form and automatic printing. The Second Applicant Company is also incorporated to carry on the business of manufacturers, processors, designers, buyers, sellers, exporters, importers and/or otherwise dealers in cardboard packing, corrugated packing, pillow packing, plastic packing, polytene packing, gunny bags, containers, bottles, hollow wares made of paper, cloth, jute, leather, plastic or

man-made fibre including low density polythene, polypropylene and PVC chemical.

5. The rationale for the Scheme: -

“Transferee Company and Transferor Company 1 are engaged in the business of manufacturing mono cartons. Transferor Company 2 is engaged in the business of manufacturing corrugated boxes. Thus, the Transferor Company 1, Transferor Company 2 and Transferee Company are engaged in similar lines of business and complement each other. Further, Transferor Company 1 and Transferor Company 2 are wholly owned subsidiaries of Transferee Company.

With an intent to expand the business and achieve larger product portfolio, economies of scale, efficiency, optimisation of logistic and distribution network and other related economies by consolidating the business operations being managed by different management teams, the Board of Directors of all the Companies propose to consolidate the business of Transferor Company 1, Transferor Company 2, and Transferee Company. The proposed Scheme would inter alia have the following benefits:

1. Enable the consolidation of the manufacturing business of mono cartons and corrugated boxes will facilitate focused growth, operational efficiency, integration synergies and better supervision of the business.
2. Enhance business potential and increased capability to offer a wider portfolio of products with a diversified resource base and deeper client relationships.
3. Improve organizational capability and leadership, arising from the pooling of human capital who have the diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry.

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4. Enable greater access to different market segments in conduct of its business and addition of new products in the portfolio would improve the competitive position of the combined entity.
  5. Result in financial resources being efficiently merged and pooled leading to more effective and centralized management of funds, greater economies of scale, stronger base for future growth and reduction of administrative overheads.
  6. Further, the synergies arising out of the consolidation of business will lead to enhancement of net worth of the combined business and enhancement in earnings and cash flow would optimize the value of the Transferee Company and enhance the shareholder's value.
  7. Moreover, the Scheme is expected to increase the long-term value for all the shareholders of the Transferor Company 1, Transferor Company 2, and Transferee Company.
6. The Share Capital of the Transferor Company 1 as on 30<sup>th</sup> September 2023 is as under:

<b>Particulars</b>	<b>Amount in (Rs.)</b>
<b>Authorised Capital</b>	
2,00,000 Equity Shares of Rs.100/- each.	2,00,00,000
<b>Total</b>	<b>2,00,00,000</b>
<b>Issued and Subscribed and Paid-up</b>	
2,00,000 Equity Shares of Rs. 100/- each fully paid-up.	2,00,00,000
<b>TOTAL</b>	<b>2,00,00,000</b>

7. The Transferee Company holds the entire paid-up share capital of the Transferor Company 1. There has been no change in the issued,

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subscribed and paid-up share capital of the Transferor Company 1 subsequent to 30th September , 2023.

8. The Share Capital of the Transferor Company 2 as on 30<sup>th</sup> September 2023 is as under:

<b>Particulars</b>	<b>Amount in (Rs.)</b>
<b>Authorised Capital</b>	
30,00,000 Equity Shares of Rs. 10/- each	3,00,00,000
<b>Total</b>	<b>3,00,00,000</b>
<b>Issued and Subscribed and Paid-up</b>	
19,30,326 Equity Shares of Rs. 10/- each	1,93,03,260
<b>TOTAL</b>	<b>1,93,03,260</b>

The Transferee Company holds the entire paid-up share capital of the Transferor Company 2. There has been no change in the issued, subscribed and paid-up share capital of the Transferor Company 2 subsequent to 30<sup>th</sup> September, 2023 till the date of Board Meeting.

9. The Share Capital of the Transferee Company as on 30<sup>th</sup> September 2023 is as under:

<b>Particulars</b>	<b>Amount in (Rs.)</b>
<b>Authorised Capital</b>	
1, 15,00,000 Equity Shares of Rs. 10/- each	11,50,00,000
1,00,00,000 Redeemable Preference Shares of Rs. 10/- each	10,00,00,000
<b>Total</b>	<b>21,50,00,000</b>

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<b>Issued and Subscribed and Paid-up</b>	
1,12,46,200 Equity Shares of Rs. 10/- each	11,24,62,000
1,00,00,000 Redeemable Preference Shares of Rs. 10/- each	10,00,00,000
<b>TOTAL</b>	<b>21,24,62,000</b>

There has been no change in the issued, subscribed and paid-up share capital of the Transferee Company subsequent to 30<sup>th</sup> September, 2023 till the date of Board Meeting.

10. That there are 2 (Two) Equity Shareholders (including one nominee shareholder of the Transferee Company) in the Applicant Company 1 as at 30<sup>th</sup> November 2023 holding 2,00,000 equity shareholders. Both the Equity Shareholders have given their consent by way of affidavit stating that they have no objection for approval of the scheme. In view of the consent affidavits given by both the equity shareholders, the question of convening of meeting does not arise, accordingly, dispensed with.
11. That there are 2 (Two) Equity Shareholders (including one nominee shareholder of the Transferee Company) in the Applicant Company 2 as at 30<sup>th</sup> November 2023 holding 19,30,325 equity shares of Rs. 10 each. Both the Equity Shareholders have given their consent by way of affidavit stating that they have no objection for approval of the scheme. In view of the consent affidavits given by both the equity shareholders, the question of convening of meeting does not arise, accordingly, dispensed with.
12. That there are 25 (Twenty-five) Equity Shareholders in the Applicant Company 3 as at 30<sup>th</sup> November 2023 holding 19,30,325 equity shares of Rs. 10 each. The 97.46% of the Equity Shareholders have given their consent by way of affidavit stating that they have no

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objection for approval of the scheme. In view of the consent affidavits given by the majority shareholders, the question of convening of meeting does not arise, accordingly, dispensed with. However, this Bench directs the Transferee Company to issue notice through speed post/Regd. Post to the remaining equity shareholders who have not given their consent for approval of the scheme to file their objections/representations, if any within a period of 30 days. It is made clear that if no representation is received by this Tribunal, it will be presume that, the shareholders have no objection for approval of the scheme.

13. That there is 1 (One) Preference Shareholder as at 30<sup>th</sup> November 2023 in the Transferee Company holding 1,00,00,000 preference shares of Rs. 10 each and it has given their consent affidavit to the Scheme which have been filed with the Joint Company Scheme Application.
14. As on 30<sup>th</sup> November 2023 there are 2 (Two) Secured Creditors i.e. Saraswat Co-operative Bank Limited and Aditya Birla Finance Limited in the First Applicant Company amounting to INR 28,91,32,802.42 (Rupees Twenty Eight Crore Ninety One Lakh Thirty Two Thousand Eight Hundred and Two Point Four Two Paise only). Both the secured creditors have given their consent affidavit by way of consent affidavits dated 12.01.2024 for dispensation of the meeting and approval of the scheme. In view of consent affidavit filed by the secured creditors, the question of convening meeting does not arise.
15. As on 30<sup>th</sup> November 2023 there are 3 (Three) Secured Creditors i.e. Saraswat Co-operative Bank Limited, Aditya Birla Finance Limited and SVC Coperative Bank Limited in the Second Applicant Company amounting to INR 40,18,33,112.27 (Rupees Forty Crore Eighteen Lakh Thirty-Three Thousand One Hundred and Twelve

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Point Two Seven only). All the secured creditors have given their consent affidavit by way of consent affidavits dated 12.01.2024 for dispensation of the meeting and approval of the scheme. In view of consent affidavit filed by the secured creditors, the question of convening meeting does not arise.

16. As on 30<sup>th</sup> November 2023 there are 3 (Three) Secured Creditors i.e. Saraswat Co-operative Bank Limited, Aditya Birla Finance Limited and SVC Coperative Bank Limited in the Third Applicant Company amounting to INR 1,49,01,59,615.68 (Rupees One Hundred and Forty Nine Crore One Lakh Fifty Nine Thousand Six Hundred and Fifteen Point Six Eight only). All the secured creditors have given their consent affidavit by way of consent affidavits dated 12.01.2024 for dispensation of the meeting and approval of the scheme. In view of consent affidavit filed by the secured creditors, the question of convening meeting does not arise.

17. As regards the Unsecured Creditors of the First Applicant Company are concerned, as on 30<sup>th</sup> November 2024 there are 114 (One Hundred and Fourteen) Unsecured Creditors aggregating to an amount of Rs. 1,80,46,012.66/- (Rupees One Crore Eighty Lakhs Forty Six Thousand and Twelve Point Six Six Paise only) in the First Applicant Company. The Counsel for the Applicant Companies submitted that as far as the rights of Unsecured Creditors of the First Applicant Company are concerned, they will not be affected by the proposed Scheme of Amalgamation since post Scheme, the assets of the Amalgamated Company will be sufficient to discharge the liabilities and further, it also does not involve any compromise or arrangement with any Unsecured Creditors of Amalgamating Company 1. In view the fact that there is no arrangement with the Unsecured Creditors, the meeting of the Unsecured Creditors of the First Applicant Company to seek their approval to the Scheme is



dispensed with. The First Applicant Company is directed to issue individual notices to all their Unsecured Creditors by registered post or speed post, hand delivery and through e-mail (to unsecured creditors, at their last known address, with a direction that they may submit their representations, if any, to the Tribunal within thirty days from the date of receipt of the said notice and copy of such representations shall simultaneously be served upon the First Applicant Company. The Notice shall state that *"If no representation / response is received by the Tribunal from Secured / Unsecured Creditor(s), within a period of thirty days from the date of receipt of such notice, it will be presumed that Unsecured Creditor(s) has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016."*

18. As regards the Unsecured Creditors of the Second Applicant Company are concerned, as on 30<sup>th</sup> November 2024 there are 194 (One Hundred and Ninety Four) Unsecured Creditors aggregating to an amount of Rs. 1,52,53,502.71/- (Rupees One Crore Fifty Two Lakh Fifty Three Thousand Five Hundred and Two Point Seven One Paise only) in the Second Applicant Company. The Counsel for the Applicant Companies submitted that as far as the rights of Unsecured Creditors of the Second Applicant Company are concerned, they will not be affected by the proposed Scheme of Amalgamation since post Scheme, the assets of the Amalgamated Company will be sufficient to discharge the liabilities and further, it also does not involve any compromise or arrangement with any Unsecured Creditors of Amalgamating Company 2. In view the fact that there is no arrangement with the Unsecured Creditors, the meeting of the Unsecured Creditors of the Second Applicant Company to seek their approval to the Scheme is dispensed with. The Second Applicant Company is directed to issue individual notices to all their Unsecured Creditors by registered post or speed post, hand delivery and through

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e-mail to the unsecured creditors at their last known address, with a direction that they may submit their representations, if any, to the Tribunal within thirty days from the date of receipt of the said notice and copy of such representations shall simultaneously be served upon the Second Applicant Company. The Notice shall state that *"If no representation / response is received by the Tribunal from Secured / Unsecured Creditor(s), within a period of thirty days from the date of receipt of such notice, it will be presumed that Unsecured Creditor(s) has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016."*

19. As regards the Unsecured Creditors of the Third Applicant Company are concerned, as on 30<sup>th</sup> November 2024 there are 945 (Nine Hundred and Forty-Five) Unsecured Creditors aggregating to an amount of Rs. 34,96,52,163.68/- (Rupees Thirty Four Crore Ninety Six Lakh Fifty Two Thousand One Hundred and Sixty Three Point Six Eight only) in the Third Applicant Company. The Counsel for the Applicant Companies submitted that as far as the rights of Unsecured Creditors of the Third Applicant Company are concerned, they will not be affected by the proposed Scheme of Amalgamation since post Scheme, the assets of the Amalgamated Company will be sufficient to discharge the liabilities and further, it also does not involve any compromise or arrangement with any Unsecured Creditors of Amalgamated Company. In view the fact that there is no arrangement with the Unsecured Creditors, the meeting of the Unsecured Creditors of the Third Applicant Company to seek their approval to the Scheme is dispensed with. The Third Applicant Company is directed to issue individual notices to all their Unsecured Creditors by registered post or speed post, hand delivery and through e-mail to the unsecured creditors at their last known address, with a direction that they may submit their representations, if any, to the

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Tribunal within thirty days from the date of receipt of the said notice and copy of such representations shall simultaneously be served upon the Second Applicant Company. The Notice shall state that *"If no representation / response is received by the Tribunal from Secured / Unsecured Creditor(s), within a period of thirty days from the date of receipt of such notice, it will be presumed that Unsecured Creditor(s) has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016."*

20. The Applicant Companies shall serve the Notice in terms of Section 230 (5) of the Companies Act, 2013, upon -

- a. The Central Government, through Regional Director, Everest, 5<sup>th</sup> Floor, 100 Marine Drive, Mumbai-400002;
- b. The Registrar of Companies,
- c. Jurisdictional Proper Officer in the GST Department exercising jurisdiction over the Applicant Companies;
- d. Jurisdictional Income Tax Authorities; within whose jurisdiction; the Applicant Company's assessment are made; and the Nodal Authority in the Income Tax Department
- e. The Office of Official Liquidator, Hon'ble High Court of Bombay;
- f. Any other sectoral regulator as may be directed by this Hon'ble Tribunal.

21. The Notice shall be served through by Registered Post-AD, Speed Post and email along with copy of Scheme and state that *"If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme"*. It is clarified that notice service through courier shall be taken on record

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only in cases where it is supported with Proof of Delivery having acknowledgement of the noticee.

22. The Applicant Companies will submit –

- i. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any.
- ii. List of pending IBC cases, if any, along with all other litigation;
- iii. pending against the Applicant Companies having material impact on the proposed Scheme.
- iv. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any.

23. The Applicant Companies to file an affidavit of service within 10 working days after serving to notice to all the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)