

THE NATIONAL COMPANY LAW TRIBUNAL,  
COURT-1, MUMBAI BENCH

**CP(CAA) NO. 20 OF 2024**

**C/w**

**CA(CAA) NO. 283 OF 2023**

*In the matter of*

*The Companies Act, 2013 (18 of 2013);*

*AND*

*In the matter of Sections 232 r/w 230*

*read with section 66 and other applicable provisions*

*of the Companies Act, 2013 and Rules framed*

*thereunder as in force from time to time;*

*AND*

*In the matter of*

*Scheme of Amalgamation*

*Amongst*

**Goraji Marketing and Consultancy Private  
Limited**

CIN: U51909MH2004PTC147064

...Petitioner Company 1/  
**Transferor Company**

**Vedmutha Electricals (India) Private  
Limited**

CIN: U74999MH2007PTC378994

...Petitioner Company 2/  
**Transferor Company**

**Goldmedal Electricals Private Limited**

CIN: U31401MH2007PTC171667

...Petitioner Company 3/  
**Transferee Company**

*Order delivered on 17.05.2024*

*Coram:*

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice V.G. Bisht (Retd.)**  
Hon'ble Member (Judicial)

*Appearances (through)*

For the Petitioner(s) : Mr. Ashish Lalpuria a/w Mr.  
Kamal Lahoty, Practicing Company  
Secretary

For the RD : Mr. Bhagwati Prasad, Deputy  
Director, Office of Regional  
Director, Western Region, Mumbai

**ORDER**

1. Heard learned Authorized Representative for the Petitioner Companies, the representative of the Regional Director Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition, except otherwise stated.
2. The sanction of the Tribunal is sought under Sections 232 r/w Section 230 of the Companies Act, 2013 r/w Section 66 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, to the Scheme of Amalgamation of **Goraji Marketing And Consultancy Private Limited** (Transferor Company 1), **Vedmutha Electricals (India) Private Limited** (Transferor Company 2) with **Goldmedal Electricals Private Limited** (Transferee Company) and their respective shareholders.
3. The Board of Directors of Transferee Company have approved the said scheme at its Board Meeting held on 28<sup>th</sup> August, 2023 and the respective Board of Directors of Transferor Company 1 and Transferor Company

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2 have approved the Scheme at its respective Board Meetings held on 29<sup>th</sup> August, 2023 and have approached the Tribunal for sanction of the Scheme. The Appointed Date of the Scheme of Amalgamation is 1<sup>st</sup> day of October, 2023.

4. The Company Petition has been filed in consonance with the Order passed in the C.A.(CAA) No. 283 of 2023 of the Tribunal on 24.01.2024 and the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench.
5. That upon the coming into effect of this Scheme and in consideration of the transfer and vesting of the Transferor Company 1 and Transferor Company 2 in the Transferee Company, the shareholders of Transferor Companies would be allotted the shares of the Transferee Company in the below mentioned ratio:
  - a) 1 (one), 5% Non-Cumulative Redeemable Preference Shares having face value of Rs. 10/- (Rupees Ten Only) each of the Transferee Company will be issued to the equity shareholders of the Transferor Company 1 in lieu of 1 (one) equity share of face value of Rs. 10/- (Rupees Ten Only) each held by the equity shareholders in the Transferor Company 1.
  - b) 1 (one), 5% Non-Cumulative Redeemable Preference Shares having face value of Rs. 10/- (Rupees Ten Only) each of the Transferee Company will be issued to the equity shareholders of the Transferor Company 2 in lieu of 1 (one) equity share of face value of Rs. 10/- (Rupees Ten Only) each held by the equity shareholders in the Transferor Company 2.

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6. The Transferor Company 1 is engaged in the business activities of general marketing and trading, The Transferor Company 2 is engaged in the business of trading of electrical goods and appliances and the Transferee Company is engaged in the business of manufacturing and trading of electrical goods and appliances.
7. The amalgamation of the Transferor Companies with the Transferee Company shall be in the interest of all concerned stakeholders, including shareholders, creditors, employees, and general public, inter alia, for the following reasons:
- a) The Transferor Companies and the Transferee Company are owned, promoted, managed and controlled by the same family group.
  - b) The First Transferor Company has leased out its immovable properties to the Transferee Company for latter's business operation. The majority of the revenue generated by the First Transferor Company is derived from the lease rentals paid by the Transferee Company. The merger of First Transferor Company into Transferee Company will result in the immovable properties being held and owned by the Transferee Company.
  - c) The Second Transferor Company and Transferee Company are engaged in the similar business activities viz. selling of electrical goods and appliances and therefore, the amalgamation of both the Transferor Companies with the Transferee Company will result into achieving business and administrative synergies and reducing administrative costs and avoiding duplication of efforts.
  - d) Both the Transferor Companies collectively holds 57.65% paid up

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share capital in the Transferee Company and therefore with a view to maintain a simple corporate structure and eliminate duplicate corporate procedures, it is desirable to merge and amalgamate both the Transferor Companies with Transferee Company. The amalgamation of Transferor Companies into the Transferee Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations. This would enable streamlining the activities and consequently reducing managerial overlaps by reducing the number of companies under the same management and thus lead to reduction in administration efforts.

- e) It would be advantageous to merge the activities and operations of both the Transferor Companies into a single company for leveraging financial and operational resources and reflecting stronger financial position and for the benefit of lesser compliance issues as the companies are engaged in similar business thereby reduction in statutory compliance cost of all the Petitioner Companies.

8. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Report dated 21<sup>st</sup> March, 2024 making certain observations and the Petitioner Companies have submitted / undertaken that:

- a) The Petitioner Companies shall comply with AS-14 or IND AS-103 and such applicable accounting standards for Amalgamation and as per other applicable provisions of the Companies Act, 2013 while passing necessary entries in connection with the Scheme including AS-5 or IND AS-8 as applicable;
- b) The Petitioner Companies shall comply with the circular no. F.

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No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs. The Petitioner Companies clarify that the amalgamation as embodied in the Scheme shall take effect from the Appointed Date i.e. 1st October, 2023.

- c) The Transferee Company shall comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 with respect to payment of differential fees on the increased Authorised Share Capital and would pay the differential fees, if any.
- d) The Scheme enclosed to the Company Application and the Scheme enclosed to the Company Petition are one and the same and there is no discrepancy or deviation.
- e) The approval of the scheme by this Tribunal may not deter authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities shall be binding on the Petitioner Companies subject to right of appeal, if any.
- f) The Petitioners are not governed by any sectoral regulators. However, the Petitioners further undertakes to comply with any directions issued by any regulators, if any, in accordance with the law.
- g) It is submitted that the reduction of share capital is on account of cancellation of cross holding of equity shares held by Transferor Companies in the Transferee Company. Further, as per explanation to Section 230, the provisions of section 66 of the Companies Act, 2013 are not applicable in case an Order is passed by the Tribunal under section 230 of the Companies Act, 2013.
- h) The Transferee Company have already filed e-Form BEN-2 vide SRN R16051690 dated 25<sup>th</sup> November, 2019.

- i) It is submitted that there are no outstanding tax demands pending in respect of the years in which shares were issued at premium by Transferor Company 1 and Transferee Company. Further, Copies of the Intimation u/s 143(1) of the Income Tax Act, 1961 issued by the Income Tax Department for FY 2017-18 (AY 2018-19) in respect of Transferor Company 1 and for FY 2015-16 (AY 2016-17) and FY 2016-17 (AY 2017-18) in respect of Transferee Company are annexed as Annexure B-1, B-2 and B-3 respectively to the Rejoinder. It is submitted that the amount of securities premium collected by the Petitioner Companies for earlier years pertains to the financial years 2007-08, 2009-10, 2011-12, 2012-13 & 2013-14. It is further submitted that the assessments for these financial years have already been completed and the same are also time barred as per Section 149 of the Income Tax Act, 1961. Furthermore, the Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and accordingly in accordance with the provisions of Income Tax Act, it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.
- j) The Transferee Company have already amended its Articles of Association in compliance with the Companies Act, 2013 on 22nd July, 2023 and have also filed Form MGT-14 vide SRN AA4104722 on 16th August, 2023. Further, the Transferee Company has not altered the main object clause under Companies Act, 2013 and therefore is not required to amend its Memorandum of Association.
- k) It is further submitted that the letter issued by the Official Liquidator has been returned inadvertently by the postman.

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Further, it is a settled position in law that contentions and rights of the regulatory authorities shall remain unaffected after the sanctioning of the Scheme. Nevertheless, post sanction of the scheme, the transferor companies shall get amalgamated and therefore the question of maintaining registered office shall not arise.

- l) The interest of creditors at all times shall be protected.
  - m) The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company.
9. Mr. Bhagwati Prasad, Deputy Director for the Office of Regional Director (WR), Mumbai appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.
10. The Official Liquidator has filed his report dated 21<sup>st</sup> March, 2024 making certain observations and the Petitioner Companies have filed an Affidavit in Rejoinder have undertaken/made submissions which seems to be satisfactory.
11. The Principal Commissioner of Income Tax (Central) – 1, Mumbai has served a Company Application upon the Petitioner Companies with the following reliefs:
- a) *That this Tribunal be pleased to direct the Applicant Company No. 1, 2 and 3 to take into consideration the demand notices/claims raised by the*



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*Income Tax Department herein as a claim of the Income Tax Department which ought to be treated as a continuing demand/liability as against the amalgamated company.*

b) *That this Tribunal be pleased to pass necessary directions that the amalgamated company shall absorb the claim/demand raised herein above and the liabilities as against the Applicant Company No. 1, 2 and 3.*

12. In Response to the Company Application, the Petitioner Companies have filed an Affidavit dated 16<sup>th</sup> April, 2024 stating that the Income Tax liabilities of the Transferor Companies, if any shall become liability of the Transferee Company and in support of the same, the Petitioner Companies relies on **clause 6.5 and 6.6** of the Scheme which read as under:

**Clause 6.5:** *“It is further specifically clarified, admitted, assured and declared by the Transferee Company that on this Scheme becoming effective, it will take over, absorb and pay and discharge on due dates all the liabilities including liabilities for income tax, wealth tax, central sales tax, value-added tax, Goods and Services Tax, excise duty, customs duty, fringe benefit tax, dividend distribution tax, if any, of the Transferor Companies.”*

**Clause 6.6:** *“With effect from the Appointed Date, all debts, liabilities, dues, duties and obligations including all income tax, wealth tax, central sales tax, value added tax, Goods and Services Tax, excise duty, customs duty, fringe benefit tax, dividend distribution tax and other Government and Semi-Government and Statutory liabilities of both the Transferor Companies shall pursuant to the applicable provisions of the Act and without any further act or deed be also transferred or be deemed to be transferred to and vest in and be assumed by the Transferee Company so as to become as from the Appointed Date the debts, liabilities, duties and obligations of Transferee Company on the same terms and conditions as were applicable to the respective*

*Transferor Company.”*

13. In the said Affidavit dated 16<sup>th</sup> April, 2024, the Petitioner Companies have also undertaken that any demand notices/claims raised by the Income Tax Department against the Transferor Companies will be treated as a continuing demand/liability as against the amalgamated/Transferee Company.
14. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy considering that no objection has so far been received from any Authority or Creditors or Members or any other stakeholders.
15. Since the requisite statutory procedure has been fulfilled, the Company Petition is made absolute in terms of the prayer clause of the Petition.
16. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this Scheme and it shall be open to the Income Tax Authorities to take necessary action to deal with, in relation to tax or any other kind of obligations of Transferor Companies against the Transferee Company, as permissible under the Income Tax Laws.
17. The Transferor Companies be dissolved without winding up.
18. The Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, in e-Form INC-28 within 30 days from the date of receipt of this order, duly certified by the Deputy Registrar or the Assistant Registrar, as the case may be, of this Tribunal.

19. The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the Deputy Registrar or the Assistant Registrar, as the case may be, of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 working days from the date of receipt of the certified copy of this order.
20. All Authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai.
21. Ordered accordingly.

Sd/-  
**Prabhat Kumar**  
Member (Technical)

Sd/-  
**Justice V.G. Bisht**  
Member (Judicial)