

THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH

C.P.(CAA)/37/MB-I/2024  
In  
C.A(CAA)/214/MB-I/2023

*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*  
*Scheme of Amalgamation of*

**Esmeralda Advisors Private Limited**

CIN - U65990MH1983PTC031629 ...Petitioner Company 1/  
**Transferor Company**

**Delmar Trading Company Private Limited**

CIN - U51900MH1996PTC098655 ... Petitioner Company 2/  
**Transferor Company**

**Highclass Trading Private Limited**

CIN - U51900MH1997PTC105312 ... Petitioner Company 3/  
**Transferor Company**

**Virsun Investments Private Limited**

CIN - U65920MH1983PTC031612 ... Petitioner Company 4/  
**Transferee Company**

*(“Collectively referred as Applicant Companies”)*

*Order delivered on 16.05.2024*

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*Coram:*

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

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

*Appearances (through)*

For the Applicant(s) : Mr. Ahmed Chunawala i/b  
Rajesh Shah & Co.

For the Regional Director : Mr. Bhagwati Prasad, Deputy  
Director

**ORDER**

1. Heard learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the said Scheme.
2. The present Scheme is a Scheme of Amalgamation of **Esmeralda Advisors Private Limited**, (First Transferor Company) and **Delmar Trading Company Private Limited**, (the Second Transferor Company) and **Highclass Trading Private Limited**, (the Third Transferor Company) with **Virsun Investments Private Limited**, (the Transferee Company) under sections 232 r/w Section 230 of the Companies Act, 2013 ('Scheme').
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 10<sup>th</sup> July,

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2023 which are annexed to the respective Company Scheme Petitions. The Appointed Date fixed under the Scheme is April 1, 2023.

4. The Petitioners states that the Petitions have been filed in consonance with the Order passed in the Company Scheme Application No. 214 of 2023 by this Tribunal on 03.01.2024 and 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. The Petitioner Company No. 1 is presently carrying on business of the trade or business or advisory services in any commodity/ product and that the Petitioner Company No. 2 is presently carrying on the business of merchants, traders, dealers, sellers, importers, exporters and that the Petitioner Company No. 3 is presently carrying on the business as dealers, merchants, exporters, niners, commission agents, guarantee brokers, stockiest, mercantile agents in building materials, chemicals cements and that the Petitioner Company No. 4 is presently carrying on the business financing industrial enterprises and investment company.
6. The rationale for the Scheme of Amalgamation of the Petitioner Companies is in the interest of the stakeholders of these companies and shall result in the following benefits:

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- (a) The amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base.
  - (b) It would be advantageous to combine the activities and operations of all companies into a single Company for synergistic linkages and the benefit of combined financial resources.
  - (c) The Amalgamation of the Transferor Companies with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources.
  - (d) The Scheme of amalgamation will help in reduction of other entities in the same group, which are engaged in similar business.
7. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Report dated 22<sup>nd</sup> April 2024 making certain observations and the Petitioner Companies have submitted / undertaken that:
- a. The Petitioner Companies submits that the setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be accordance with provisions of section 232(3)(i) of the Companies Act, 2013. ;
  - b. The interest of creditors will be protected;

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- c. The Transferee Company undertakes that in addition to compliance of AS-14 for accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 as applicable;
  - d. The Scheme enclosed to Company Application and Company Petition, are one and same and there is no discrepancy / any change / changes are made;
  - e. The Petitioner will comply with the requirements as to Appointed Date and clarified vide circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs;
  - f. The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company.
8. Mr. Bhagwati Prasad, Additional 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.

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9. The Official Liquidator has filed his Report dated 6<sup>th</sup> March, 2024 inter-alia making the following observations in paragraphs 5 & 6 which is reproduced hereunder:
- a. the Petitioner Companies submits that the Petitioner Company undertakes to pay the necessary stamp duty as per provisions of Section 232(3)(i) of the Companies Act, 2013.
  - b. The Petitioner Companies submits that Transferor Company No. 1 and 2 is not in the business of accepting loans and deposits except in the ordinary course of business from the group companies, which are in the nature of inter-corporate deposits, and the asset size is less than INR 100 crs. Accordingly, Transferor Company No. 1 and 2 may be considered as Core Investment Company

As per para 6 of the “Master Directions – Core Investment Company (Reserve Bank) Directions 2016”, as amended from time to time, is as follows:

“CICs (a) with an asset size of less than ₹100 crore, irrespective of whether accessing public funds or not and (b) with an asset size of ₹100 crore and above and not accessing public funds are not required to register with the Bank under Section 45IA of the RBI Act, 1934 in terms of notification No. DNBS.PD.221/CGM (US) 2011 dated January 5, 2011, and will be termed as ‘Unregistered CICs’.....”

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Further, as per para 6 of the “Master Direction - Exemptions from the provisions of RBI Act, 1934”, as amended from time to time, unregistered Core Investment Companies are not required to be registered under section 45-IA of the RBI Act, 1934.

Relevant extract of the said the “Master Direction - Exemptions from the provisions of RBI Act, 1934” is as follows:

“6. Exemption from section 45-IA of the RBI Act, 1934 to the following:

Unregistered Core Investment Companies i.e., a non-banking financial company in the nature of a Core Investment Company as stated at para 6 of the Core Investment Companies (Reserve Bank) Directions, 2016.”

Considering the above, the Transferor Company No. 1 & 2 is an unregistered Core Investment Company and consequently provisions of Section 45-IA of RBI Act, are not applicable.

10. The submissions made by the Petitioner Companies to the observations made by the Official Liquidator in its report are considered by the Bench and are taken on record.
11. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 295 of 2023 is

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made absolute in terms of clauses 52 (a) to (c) of the said Company Scheme Petition

12. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme ultimately results in tax avoidance under the provisions of the Income Tax Act, it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.
13. The First, Second and Third Petitioner Company be dissolved without winding up.
14. Petitioners are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy within 30 days from the date of receipt of the Order from the Registry.
15. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.



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16. 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.
17. The Appointed Date is 1<sup>st</sup> April, 2023.
18. Ordered Accordingly.

**Sd/-**

**Prabhat Kumar**  
Member (Technical)

**Sd/-**

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