

THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

C.P.(CAA)74/MB/2024
c/w
C.A.(CAA)235/MB/2023

In the matter of
The Companies Act, 2013 (18 of 2013);
And
In the matter of
Sections 232 r/w Section 230
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

Flowers Valley Rivate Limited

CIN – U01120MH1998PTC366920

...Petitioner Company 1/
Transferor Company

Subhkam Ventures (I) Private Limited

CIN – U67120MH1995PTC093556

...Petitioner Company 2/
Transferee Company

Order delivered on 26.07.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances (through)

For the Applicants

: Mr. Rahul Oak, Advocate

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

ORDER

1. Heard the 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 sanction of the Tribunal is sought under Sections 232 r/w Section 230 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Amalgamation of **Flowers Valley Private Limited** (Transferor Company) with **Subhkam Ventures (I) Private Limited** (Transferee Company) and their respective Shareholders and creditors ('Scheme').
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 05th September, 2023.
4. The Petitions have been filed in consonance with the Order dated 14th February, 2024, passed by this Tribunal in the connected Company Scheme Application bearing CA(CAA)235/MB/C-I/2023 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. The Transferor Company was incorporated with the objective of carrying on business of planters, growers floriculture in all their respective forms and to grow, produce, process, refine, buy, sell or otherwise deal in cashew, silver oak, mangium, Shivan, all kinds of vegetables & all kinds of flowers and to carry on the business of managing and maintaining agricultural farms/horticultural farms/forestry for individuals or another entities, acquiring and developing land for agriculture/floriculture/horticulture/forestry purpose, to cultivate and grow various trees, plants, flowers, vegetables, fruits, dry fruits etc.
6. The Transferee Company is presently carrying on business of an investment company and managing public issues of shares and securities in all its branches and to sale, purchase, exchange, subscribe, acquire, undertake and hold all types shares, securities, stocks and bonds, including equity shares, preference shares, cumulative convertible preference shares, fully convertible debentures, partly convertible debentures, debentures stocks, warrants, premium notes and other similar instruments whether issued in India or in foreign country.
7. 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:
 - (a) The Scheme would enable the integration of synergies and operational efficiencies with respect to consolidation of operations. The Scheme would result in enhanced scale of operations, focused growth, reduce

administrative costs and garner greater visibility in the market.

- (b) The amalgamation will lead to the formation of a larger and stronger entity having greater capacity for conducting its operations more efficiently and competitively with a wider and larger capital and asset base.
 - (c) Consolidation of the Merger Entities will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Merger Entities.
 - (d) The Scheme is proposed to the advantage of the Transferor Company and the Transferee Company and will have beneficial results for the said companies, their shareholders and all concerned.
8. The Regional Director has filed his Report dated 12.06.2024 making certain observations and the Petitioner Companies have undertaken/made following submission that :
- i. The Transferee Company undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 with respect to payment of differential fees on the increased Authorized Share Capital and would pay the differential fees, if any.
 - ii. The interest of creditors shall be protected.
 - iii. The Petitioner Companies shall pass such Accounting Standard-14 or IND-AS 103, as may be applicable, the Transferee Company will pass such accounting entries which are necessary in connection with the scheme to comply with

- other applicable Accounting Standards such as AS-5 or IND AS-8, etc.
- iv. The Scheme enclosed to the Company Application and the Company Petition are one and same and there is no discrepancy, or no change is made;
- v. The Scheme by this Tribunal will not deter such Authorities to deal with any of the issues arising after giving effect to the scheme and the decision of such Authorities will be binding on the Petitioner Companies in the course of applicable law;
- vi. The Petitioner Companies shall comply with the requirements as to Appointed Date and Effective Date, as clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs;
- vii. The Petitioner Company 1/Transferee Company shall comply with the applicable provisions of the Income Tax Act and rules thereunder, more specifically the provisions of Section 2(1B) of the Income Tax Act, 1961.
- viii. 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 from the Office of Regional Director (WR), Mumbai, appeared on the date of hearing and submitted that the 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 report dated 11.06.2024 and made certain observations, to which the petitioner company has filed following reply;

i. The Transferee Company shall comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 in respect of fees payable, if any by the Transferee Company for increase of authorized share capital on account of amalgamation.

ii. The Petitioner Companies hereby clarifies that Transferor Company is not in the business of carrying out non-banking financial activity and the funds invested are its own funds which Company has received pursuant to the sale of its major portion of land , which was used by it for cultivation of flowers, i.e. for the purpose of carrying on its business. Further the purpose of this amalgamation is to fold the business activities of Second Petitioner Company with its holding company i.e. Transferee Company which is a duly registered Non-banking financial company with Reserve Bank of India. Hence, provisions of Section 45-IA of Reserve Bank of India Act do not apply to Second Petitioner Company on consequent to this amalgamation.

11. We have heard the submissions made by the Petitioner Companies in response to the Report of the Official Liquidator. The submissions

- given by the Petitioner Companies are satisfactory and taken on record.
12. The Income Tax Department have filed their response/report dated 03.04.2024, in response to the report, the Petitioner Companies undertook that:
- i. The Petitioner Companies do not have any objection if pending proceedings against M/s Flowers Valley Private Limited (Transferor Company) are continued against Subhkam Ventures (I) Private Limited (Transferee Company). The Income Tax Department is free to proceed against the Transferee Company for all its proceedings;
 - ii. Petitioner Companies submits that that there are no investigation proceedings pending against it.
13. We have heard the submissions made by the Petitioner Companies in response to the Report of the Income Tax Department. The submissions given by the Petitioner Companies are satisfactory and taken on record.
14. 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 Petition bearing CP(CAA)74/MB/2024 filed by the Petitioner Companies are made absolute in terms of prayer clauses of the said Company Scheme Petition.
15. The Transferor Company be dissolved without winding up.

16. 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 Income Tax Act, it shall be open to the Income tax authorities to take necessary action as possible under the Income Tax Law.
17. 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.
18. 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.
19. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.
20. The Appointed Date is 1st April, 2023.
21. Ordered Accordingly. Pronounced in open court today.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)