

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
COURT V, MUMBAI BENCH**

CP/131/(MB)/2022

Connected with

CA(CAA)/83/(MB)/2022

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 and 232 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 of ABNCO VIE WIN ENT PRIVATE LIMITED, the Transferor Company; ENRICH RD INFRAPROJECTS PRIVATE LIMITED, the Transferee Company.

ABNCO VIE WIN ENT PRIVATE LIMITED, a company)
incorporated under the Companies Act, 1956 having its)
registered office at Shop No. 15, Ground, Dheeraj)
Regency Chs Ltd, Off W.E. Highway, Near Annex Mall,)
Borivali East, Mumbai 400066.)..... Company 1/
Transferor Company.

ENRICH RD INFRAPROJECTS PRIVATE LIMITED, a)
company incorporated under the Companies Act, 1956)
having it registered office at To B-212 Western Edge II,)
Off W.E Highway, CCI Compound, Behind Metro Mall,)
Borivali (E) Mumbai 400066.)..... Company 2/

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Transferee Company.

Order Dated : 17.05.2024

Coram:

Hon'ble Ms. Madhu Sinha
Member (Technical)

Hon'ble Ms. Reeta Kohli
Member (Judicial)

Appearances (through physical mode):

For the Petitioner(s): CS. Priyanka Jain Practicing Company Secretary.

ORDER

1. The Petitioners seeks the sanction of the Tribunal under Sections 230 to 232 and other relevant provisions of the Companies Act, 2013 (the Act) and the Rules framed there under for the **Scheme of Amalgamation** of ABNCO VIE WIN ENT PRIVATE LIMITED (**Petitioner Company / Transferor Company**) is proposed to get amalgamated into ENRICH RD INFRAPROJECTS PRIVATE LIMITED (**Petitioner Company / Transferee Company**) and their respective Shareholders.
2. The Bench is convened by hybrid mode. Heard the Learned Authorised Representative 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.
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 22nd March, 2022 which are annexed to the Joint Company Scheme Petition.

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4. The Authorized Representative for the Petitioners further submits that the transferor company are engaged in the business of Execution and engineering and Civil Projects, dredging and chartering activities. The Transferee Company is presently pursuing activities of providing Civil Construction & Infrastructures, Railway Projects, Elevator, Escalators & Car parking solutions & services, Merchant Trading, Financial Engineering and Consultancy and overhead electric work.
5. The Authorised Representative appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order dated 04th April, 2022 passed in the Company Scheme Application No. CA (CAA) 83 of 2022 of the Hon'ble National Company Law Tribunal, Mumbai Bench.
6. The Authorized Representative appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the Tribunal, and they have filed necessary affidavits of compliance before the Tribunal.
7. As per the present Company Petition, **the rationale of the proposed Scheme** is described in the present Company Petition stating that the Companies believe that such restructuring would have following benefits:
 - a) The Transferor Company is engaged in the business of dredging and chartering of marine vessel/ equipment and having valuable business credentials and experience in that field. Pursuant to the

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strategic review and business importance of dredging and chartering activities in India, the Transferee Company has decided to undertake amalgamation of its business with Transferor Company. And;

- b) Consolidation of the business of the Company's resulting in expansion of the consolidated business and creation of greater value for shareholders and all other stakeholder. And;
 - c) Benefit of operational synergies to the combined entity, reflecting stronger financial position, which can be put to the best advantage of the stakeholders.
8. The Regional Director has filed his Report dated 11th July, 2023 stating therein that it appears that the Scheme is not prejudicial to the interest of shareholders and public. In response to the stated observations made by Regional Director and the representations of the Petitioner Companies have been furnished by filing reply affidavit, which read as under:

| Reference of RD Report | RD Observation | Representation |
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| General Observation | | |
| point no. 2(a) | That on examination of the report of the Registrar of Companies, Mumbai dated 07.09.2022 for Petitioner Companies (Annexed as Annexure | the Petitioner Company has already filed financial statements up to 31st March, 2022 and affidavit of services has been filed before this Hon. Tribunal. |

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| | <p>A-1) that the Petitioner Companies falls within the jurisdiction of ROC, Mumbai. It is submitted that no representation regarding the proposed scheme of Arrangement has been received in the matter of Petitioner Company. Further, the Petitioner Companies has filed Financial Statements up to 31.03.2021 (Petitioner Companies shall undertake to file Financial Statements up to 31.03.2022 with concern ROC).</p> | |
| point no. 2(a)(i) | <p>That the ROC Mumbai in his report dated 07.09.2022 has also stated that No Inquiry, Inspection, Investigations, Prosecutions, Technical Scrutiny, Complaints under CA, 2013 have</p> | |

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| | been pending against the Petitioner Companies. | |
| point no. 2(a)(ii)(1) | Form GNL-1 not filed by any of the Petitioner Companies. | the E-form GNL-1 has been filed by the Transferor Company as on 21st August, 2023 and by Transferee Company as on 22nd August, 2023. |
| point no. 2(a)(ii)(2) | There are some charges pending against Transferor Company on MCA21 Portal with status of "open". | All debts, liabilities, duties and obligations of the Transferor Company, shall, pursuant to the order of Appropriate Authority made under Sections 230 or 233 of the Act, without any further act or deed, be transferred or deemed to be transferred to and vested in and assumed by Transferee Company so as to become the debts, liabilities, duties and obligations of Transferee Company. Therefore, the charges that are opened on MCA Portal shall be transferred to and vested in by the Transferee Company. |
| point no. 2(a)(ii)(3) and 2(b) | As per provisions of section 232(3)(i) of CA, 2013 where the transferor company is dissolved, the | the Petitioner Company undertake to comply with the section 232(3)(i) of the Companies Act, 2013. The Transferee Company has the |

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| | <p>fee, if any, paid by the transferor company on its authorized capital shall be set off against any fees payable by the transferee company on its authorized capital shall be set off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation. Therefore, remaining fee, if any after setting off the fees already paid by the transferor company on its authorized capital, must be paid by the transferee company on the increased authorized capital subsequent to amalgamation.</p> <p>Transferee company should undertake to comply with the provisions of section 232(3)(i) of the Companies</p> | <p>sufficient Authorised Share Capital to allot shares to the shareholders of Transferor Companies.</p> |
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| | Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transfer of companies. | |
| Point no. 2(a)(ii)(4) | Interest of the Creditors should be protected. | the Petitioner Company undertakes that the interest of the Creditors is protected. |
| Point no. 2(b) | Transferee company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transfer of companies. | the Petitioner Company undertake to comply with the provision of section 232(3)(i) of the companies Act, 2013 through appropriate affirmation in respect of fee payable by transferee company for increase of share Capital on account of merger of transfer of Company. |
| Point no. 2(c) | In compliance of Accounting Standard-14 or IND-AS 103, as may be | the Petitioner Company undertake to pass such accounting entries, in compliance of AS-14 (IND AS-103), |

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| | applicable, the resultant company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc. | which are necessary in connection with the scheme to comply with other applicable accounting standards including AS-5 or IND AS-8 etc. |
| Point no. 2(d) | The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to 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. | the scheme enclosed to the Application and Company Petition are one and same and there is no discrepancy, or no change is made. |
| Point no. 2(e) | The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to | the petitioner Company undertake to serve notices to concerned authorities which are likely to be affected by the amalgamation or arrangement. |

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| | <p>concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such 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 concerned.</p> | |
| <p>Point no. 2(f)</p> | <p>As per Definition of the Scheme, "Appointed Date" means the 1st day of April, 2021 or such other date as may be directed by any Appropriate Authority being the date with effect from which this scheme</p> | <p>the Petitioner Company has complied with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p> |

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| | <p>shall be deemed to be effective;</p> <p>"Effective Date" shall mean the date on which the last of the orders, sanctions, approvals, consents, conditions, matters or filling referred to in clause 16 of this scheme is complied with or obtained or waived as the case maybe. Any reference in this scheme to the "date of coming into effect of this scheme" or "effectiveness of the Scheme" or "scheme taking effect" shall mean the Effective Date;</p> <p>Appointed date is antedated, hence Companies shall undertake to amend the same.</p> | |
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| | It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs. | |
| Point no. 2(g) | Petitioner Companies shall undertake to comply with the directions of Income tax department, if any. | the Petitioner Company undertake to comply with the directions of Income Tax Department, if any. |
| Point no. 2(h) | Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any. | the Petitioner Company undertake to comply with the directions of concerned sectoral Regulatory, if any. |
| Specific Observations | | |
| Point no. 2(i) | It is observed from financial statements as on 31.03.2021 of Petitioner Companies has issued shares at Security | the Transferor Company had made allotment of 16000 Equity Shares to Twinstar Industries Ltd., 2000 Equity shares to Eastern Synthetics Pvt. Ltd. and 14,000 Equity shares |

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| Premium and collected total premium as follows:- | | | to Creative World Telefilms Ltds of Rs. 250/- each (Rs. 10/- face value + Rs. 240/- shares premium) as on 26th March, 2010 whereas the company has filed Form-2 as on 08th April, 2010 and Transferee Company had made allotment of 80,000 Equity Shares to M/s. Tobu Toys Ltd and 20,000 Equity Shares to M/s. Haresh Multitrading Pvt. Ltd. of Rs. 200/- each (Rs. 10/- face value + Rs. 190/- shares premium) whereas the company has filed Form-2 as on 21st December, 2010. Further, the Petitioner Company has also complied section 68 of Income Tax Act, 1961, for issue of shares at fair value. |
| S | Name of the Company | Total Amount of Securities Premium Collected | |
| 1 | ABNCO VIE WIN ENT PRIVATE LIMITED | Rs. 76,80,000/- | |
| 2 | ENRICH RD INFRAPR OJECTS PRIVATE LIMITED | Rs. 2,57,05,000/- | |
| but Form 2 or PAS 3 is not appearing in MCA-21 Portal. Therefore, the company may clarify the status of filling of return of allotment. | | | |

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| | Further, the Petitioner Companies shall also satisfy the Hon'ble Bench about assessment of share capital u/s. 68 of the Income Tax Act, 1961, for issue of shares at fair value in order to compliance of the scheme on the merit. | | | | | | | | | |
|-----------------------------|---|---|--|------------------|---------|-----------------------------|---------------------------|--------|--|--|
| Point no. 2(j) | As per shareholding pattern as on 31.03.2021 submitted by the Petitioner company, details of shareholding is as follows:- | the petitioner Company has complied with the provisions of Section 90 of the Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment Rules, 2019. The Transferor company has filed E form BEN-2 as on 15th September, 2023 and Transferee Company has filed E form BEN-2 as on 16th September, 2023. | | | | | | | | |
| | <table border="1"> <thead> <tr> <th>Petitioner Company</th> <th>Name of Shareholder</th> <th>% of shares held</th> <th>Remarks</th> </tr> </thead> <tbody> <tr> <td>ABN CO VIE WIN ENT PRIV ATE</td> <td>MANA LI REAL CON PRIVA TE</td> <td>89.32%</td> <td>No Form BEN-2 has been filed by any of</td> </tr> </tbody> </table> | Petitioner Company | Name of Shareholder | % of shares held | Remarks | ABN CO VIE WIN ENT PRIV ATE | MANA LI REAL CON PRIVA TE | 89.32% | No Form BEN-2 has been filed by any of | |
| Petitioner Company | Name of Shareholder | % of shares held | Remarks | | | | | | | |
| ABN CO VIE WIN ENT PRIV ATE | MANA LI REAL CON PRIVA TE | 89.32% | No Form BEN-2 has been filed by any of | | | | | | | |

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| LIMIT ED | LIMIT ED | | the Petitio ner Compa nies as per record s availab le at MCA21 Portal |
| ENRI CH RD INFR APRO JECT S PRIV ATE LIMIT ED | MANA LI REAL CON PRIVA TE LIMIT ED | 49 .1 5 % | |
| <p>No Form BEN-2 has been filed by any of the Petitioner Company as per records available at MCA21 Portal, hence Petitioner Companies shall undertake to comply with the provisions of section 90 of Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment Rules, 2019, thereunder and to file Form BEN- 2 for declaring name of the significant</p> | | | |

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| | beneficial owner with concerned ROC. | |
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9. Thus, the Petitioner Companies have explained the observations made by Regional Director in relevant paragraph (9(a) to (9)(n) of the above stated reply affidavit. In view of the clarification and undertakings given by the Petitioner Companies the above stated observations of the Regional Director stand satisfied. Moreover, the Petitioner Companies have given undertaking to comply with the requirement under the Companies Act, 2013 and rules made thereunder. Hence, the same is accepted.
10. The Official Liquidator has filed his report dated 1st June, 2022 inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner not prejudicial to the interest of the Shareholders of the Transferor Companies and that the Transferor Companies may be ordered to be dissolved by this Tribunal.
11. The Representative of the Regional Director has submitted that the explanations and clarifications given by the Petitioner Companies are found satisfactory and that they have no objection to the Scheme.
12. From the material on record, the proposed Scheme appears to be fair and reasonable and does not affect adversely the interest of its shareholders, creditors nor is against the public interest at large. It does not appear to be violative of any statutory provisions. Hence, the proposed Company Scheme can be approved and sanctioned by this court.

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13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 131 of 2022 is made absolute in terms of prayer clauses of the Petition. Consequently, the present Scheme of Amalgamation of ABNCO VIE WIN ENT PRIVATE LIMITED (**Petitioner Company / Transferor Company**) is proposed to get amalgamated into ENRICH RD INFRAPROJECTS PRIVATE LIMITED (**Petitioner Company / Transferee Company**) and their respective Shareholders are hereby sanctioned and approved.
14. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme, duly certified by the Deputy/Assistant Registrar of this Tribunal, with the Registrar of Companies concerned, electronically in E-form INC-28 within 30 days from the date of receipt of the Order.
15. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy/Assistant Registrar of this Tribunal, within 60 working days from the date of receipt of the Order, with the Superintendent of Stamps concerned, for the purpose of adjudication of stamp duty payable.
16. All concerned shall act on a copy of this Order along with Scheme duly authenticated by the Deputy/Assistant Registrar of this Tribunal.
17. The Scheme, with the Appointed Date fixed as 1st April, 2022 of the CP (CAA) No. 83/MB/2022 is hereby sanctioned.

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18. Any person interested shall be at liberty to apply to the Tribunal in above matter for any direction that may be necessary.

19. Ordered Accordingly, CP/131/(MB)/2022 **allowed** and **disposed of**.

SD/-

Madhu Sinha

(Technical Member)

/Abhay/

SD/-

Reeta Kohli,

(Judicial Member)