

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT- V**

C.P.(CAA)/213(MB)/2022

Connected with

C.A.(CAA)/211(MB)/2022

*[Under Section 230-232 read with Section 234
of the Companies Act, 2013 and other
applicable provisions of the Companies Act,
2013 read with the Companies (Compromises,
Arrangements and Amalgamations) Rules,
2016]*

ROHAN EXPORT PRIVATE LIMITED

U13209MH2010PTC198614

... Petitioner Company

No. 1/First Transferee Company

REROMI EXPORTS PRIVATE LIMITED

U36910MH2020PTC352284

... Petitioner Company

No. 2/Second Transferee Company

Order Dated: 28.06.2024

Coram:

Shri K. R. Saji Kumar

Hon'ble Member (Judicial)

Ms. Madhu Sinha

Hon'ble Member (Technical)

Appearances (via videoconferencing)

For the Petitioners : Mr Ahmed M Chunawala, i/b Rajesh
Shah & Co, Advocates

ORDER

1. The sanction of the Tribunal is sought under Sections 230 to 232 read with Section 234 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 ROHAN INTERNATIONAL MAURITIUS LIMITED, the First Transferor Company and ROHAN EXPORT PRIVATE LIMITED, the First Transferee Company/ Second Transferor Company with REROMI EXPORTS PRIVATE LIMITED, the Second Transferee Company.
2. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 1 August 2022 which are annexed to the Company Scheme Petition.
3. The Learned Advocate appearing for the Petitioner Companies states that the Company Scheme Petition have been filed in consonance with

the Order passed in the Company Scheme Application No. 211 of 2022 of the Tribunal.

4. The Petitioner Companies have approved the said Revised Scheme of Arrangement by passing the Board Resolutions dated 14 March 2023 which are annexed to the respective Company Scheme Petitions.
5. The Learned Advocate appearing on behalf of the Petitioners states that the Company Revision Application containing revision in the Appointed Date of the Scheme from 1 April 2022 to 1 April 2023 have been filed in consonance with the Order passed in the Company Revised Application No. 172 of 2023 of the Tribunal.
6. The Learned Advocate appearing on behalf of the Petitioner Companies further states that 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.
7. The Applicant Companies have filed CA 169/2024 for change of Appointed Date to 1st April, 2024 along with requisite approvals and documents.
8. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies are engaged in the business of trading of cut and polished diamonds.

9. The rationale and benefits for the Scheme of Amalgamation of the Petitioner Companies is:

RATIONALE FOR THE PROPOSED SCHEME

Rationale for the Scheme:

- Ensuring a streamlined group structure by reducing the number of legal entities in the group structure;
- Eliminating duplicative communication and coordination efforts across multiple entities and countries;
- Rationalizing costs by eliminating multiple record keeping and administrative functions; and
- Reducing time and efforts for consolidation of financials at the group level.

10. The Regional Director has filed his Report dated 20 February 2023 praying that this Tribunal may dispose the case as it deem fit, considering the submissions made in paragraph 2 (a) to (k) of the Report. In response to the observation made by the Regional Director, the Petitioner Companies have also given necessary undertakings/ clarification vide their rejoinder affidavit dated 22 February 2023. The observations made by the Regional Director and the clarifications/ undertakings given by the Petitioner Companies are summarized in the table below:

Para	Observation by the Regional Director	Undertaking of the Petitioner Company/ Rejoinder
2(a)	That on examination of the report of the Registrar of Companies, Mumbai dated 13.12.2022 for Petitioner Companies (Annexed as	As regards Para 2(a)(i), the Petitioner Companies submit that: i. There is no inquiry, investigations, inspections,

<p>Annexure A-1) that the Petitioner Companies falls within the jurisdiction of ROC, Mumbai. It is submitted that no representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Companies. Further, the Petitioner Companies has filed Financial Statements up to 31.03.2021 but as per MCA21 Portal record the Petitioner Companies has filed Financial Statements up to 31.03.2022. The ROC has further submitted that in his report dated 13.12.2022 which are as under:-</p> <p>i. That the ROC Mumbai in his report dated 13.12.2022 has stated that No Inquiry, Investigations, Inspections, Prosecutions, Technical Scrutiny, and complaints are pending against the Petitioner Companies.</p> <p>ii. No CIN/ Registration number of the company is mentioned anywhere in the scheme.</p>	<p>prosecutions, technical scrutiny, and complaints pending against the Petitioner Companies.</p> <p>ii. The Corporate Identification Number ('CIN') of the First Petitioner Company is U13209MH2010PTC198614, and CIN of Second Petitioner Company is U36910MH2020PTC352284. The same has been mentioned in the Company Scheme Application and Company Scheme Petition.</p> <p>iii. The financial statements of the Petitioner Companies as on 31 March 2022 were not audited as on the date of filing of the Company Scheme Application with the Hon'ble NCLT i.e., on 23 August 2022 and hence, provisional financials statements as on 31 March 2022 were annexed along with the Company Scheme Application. However, audited financial statements as on 31 March 2022</p>
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	<p>iii. The Petitioner Companies has not filed Financial statement as on 31.03.2022 but as per MCA21 Portal record the Petitioner Companies has filed Financial Statements up to 31.03.2022.</p> <p>iv. As per section 234 of the Companies Act, 2013 sub section (2) "Subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or vice versa and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up</p>	<p>were filed along with Company Scheme Petition. Further, the Petitioner Companies have filed the Audited Financial Statements in requisite e-Forms with the Registrar of Companies.</p> <p>iv. The merger of Transferor Company I or RIML with the Transferee Company I or REPL would qualify as Inbound Merger and would be freely permitted under the deemed approval route, since it complies with the conditions prescribed under the Cross Border Merger Regulations. Further, the certificate issued by REPL regarding the same has been attached to Company Scheme Application and Company Scheme Petition filed with the Hon'ble National Company Law Tribunal. The Petitioner Companies further undertakes to comply with directions of the</p>
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	<p>for the purpose" that "any transaction on account of a cross border merger undertaken in accordance with these Regulations shall be deemed to have prior approval of the Reserve bank as required under Rule 25A of the Companies (Compromise, Arrangement and Amalgamations) Rules, 2016." However, the company has not submitted RBI approval of the scheme but declaration certificate by Directors for FEMA compliance is attached. Hence, the Petitioner Companies shall undertake to submit detail reply against observations mentioned above.</p>	<p>appropriate authorities in this regard.</p>
2(b)	<p>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</p>	<p>The Petitioner Companies submit that the setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be in accordance with provisions of section 232(3)(i) of the Companies Act, 2013.</p>

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	capital on account of merger of transferor companies.	
2(c)	In compliance of Accounting Standard-14 or IND-AS 103, as may be 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.	The Petitioner Companies submit that 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.
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 Petitioner Companies submit 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.
2(e)	The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to 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	The Petitioner Companies submit that the Petitioner Companies have served notice to the concerned authorities which are likely to be affected by the Amalgamation or arrangement, as per provisions of Section 230(5) of the Companies Act 2013. The Petitioner Companies

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	<p>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>undertakes that approval of the Scheme by this Hon'ble Tribunal may not deter such appropriate authorities to deal with any issues that may arise, as a result of the Scheme, subject to appropriate remedies available to the Petitioner Companies under the relevant laws.</p>
2(f)	<p>As per Definition of the Scheme, 'Appointed Date' means the 1st day of April, 2022 or such other date as the Courts may direct;</p> <p>'Effective Date' means later of the dates on which the certified copy of the Order of the National Company Law Tribunal at Mumbai is filed with the Registrar of Companies, Mumbai, Maharashtra or the order of the Supreme Court of Mauritius is filed with the Registrar of Companies, Mauritius. Any references in this Scheme to "upon this Scheme becoming effective" or "upon coming into effect of this Scheme" or "upon the Scheme coming into effect" shall be</p>	<p>The Petitioner Companies submit that the Appointed Date is 1st April 2022 in accordance with the Scheme. The Petitioner Companies further submits that the Petitioner Companies will comply with the requirements as to Appointed Date and Effective Date, as clarified vide circular no. F. No.7/12120191C1-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p> <p><i>On 28.06.2024, in consonance with the clarification sought by the Learned Counsel for the Applicant Companies, the Appointed Date is changed to 1st April, 2024 by this Tribunal.</i></p>

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	<p>construed to be a reference to the Effective Date;</p> <p>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.</p>	
2(g)	<p>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if so required.</p>	<p>The Petitioner Companies submit that the Petitioner Companies will comply with the directions of the concerned sectoral Regulatory, if so required.</p>
2(h)	<p>Petitioner Companies shall undertake to comply with the directions of Income tax department, if any.</p>	<p>The Petitioner Companies submit that the Petitioner Companies will comply with the directions of Income tax department, if any.</p>
2(i)	<p>'Rohan International Mauritius Limited' or 'RIML' or 'Transferor Company 1' is a company incorporated under the provisions of Mauritius Companies Act, 2001 and having its registered office at 42, Hotel Street, 3rd Floor, G FIN Tower, Cyber City, Ebene, Mauritius; hence prior approval of the Reserve bank as required under</p>	<p>The Petitioner Companies submit that the merger of Transferor Company 1 or RIML with Transferee Company 1 or REPL would qualify as Inbound Merger and would be freely permitted under the deemed approval route, since it complies with the conditions prescribed under the Cross Border Merger Regulations. Further, the</p>

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	<p>compliance of section 234 (2) of the Companies Act, 2013 r/w. Rule 25A of the Companies (Compromise, Arrangement and Amalgamations) Rules, 2016 also obtain the approval for this scheme of amalgamation from Mauritius Government under compliance of Section 4 of Part II of the Fourteenth Schedule of the Mauritius Act with the laws of Mauritius.</p>	<p>certificate issued by REPL regarding the same has been attached to Company Scheme Application and Company Scheme Petition filed with the Hon'ble National Company Law Tribunal. Further, the Petitioner Companies undertake to comply with all the RBI Guidelines / FEMA Regulations, if any applicable. Furthermore, the Petitioner Companies undertakes that applicable laws of Mauritius in relation to the merger of Transferor Company with Petitioner Company shall be complied with. Further, the Transferor Company 1 shall obtain necessary approvals in accordance with the laws of Mauritius.</p>
2(j)	<p>As per clause 27 of the scheme, Upon the Scheme becoming effective, with effect from the Appointed Date, the name of 'Reromi Exports Private Limited' shall be changed to 'Rohan Export Private Limited' or such other name as may be approved by the Ministry</p>	<p>The Petitioner Companies submit that the Petitioner Companies will comply with the applicable provisions of Companies Act, 2013 r/w. applicable Rules for change of name of 'Reromi Exports Private Limited' to 'Rohan Export Private Limited' or such other name as may</p>

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<p>of Corporate Affairs, subject to Reromi Exports Private Limited filing all necessary forms and applications with the Ministry of Corporate Affairs in this regard. In this regards, Petitioner Companies shall undertake to comply with the applicable provisions of Companies Act, 2013 r/w. applicable Rules for change of name of the Petitioner Company.</p>	<p>be approved by the Ministry of Corporate Affairs. Further, Reromi Exports Private Limited will file all necessary forms and applications with the Ministry of Corporate Affairs in this regard.</p>
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11. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 above. 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. The Official Liquidator has filed his report on 7 June 2023 in the Company Scheme Petition No. 213 of 2022, inter alia, stating therein that the affairs of the First Transferor Company have been conducted in a proper manner not prejudicial to the interest of the shareholders of the First Transferor Company.
13. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

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14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 213 of 2022 is made absolute in terms of clauses 24 to 27 of the said Company Scheme Petition.
15. The First Transferee Company/Second Transferor Company be dissolved without winding up.
16. Petitioner Companies 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.
17. 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.
18. All authorities concerned to act on a copy of this Order along with the Scheme of Amalgamation duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.
19. As regards the Appointed Date, we have heard the learned Counsel for the Applicant Companies and sought clarifications from him.

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20. The Appointed Date is 1st April, 2024.

21. Ordered Accordingly. Pronounced in open court today.

SD/-

Madhu Sinha
Member (Technical)

//VLM//

SD/-

K. R. Saji Kumar
Member (Judicial)