

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - IV

CP(CAA)07/MB/2024 IN

CA(CAA)26 /MB/2023

In the matter of

the Companies Act, 2013 (18 of 2013);

And

In the matter of

Sections 230 to 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 Merger of

Nessa Hearing India Private Limited

(‘Transferor Company’)

With

GN Hearing India Private Limited

(‘Transferee Company’) and their

respective shareholders (‘Scheme’)

Nessa Hearing India Private Limited

[CIN: U74999MH2019PTC321754]

...First Petitioner company

The Transferor Company

GN Hearing India Private Limited

[CIN: U32309MH2005PTC155021]

...Second Petitioner Company
The Transferee Company

Order delivered on: **07.05.2024**

Coram:

Ms. Anu Jagmohan Singh

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

For the Petitioner(s):

Mr. Nithish Bangera, Practising
company Secretary.

For the RD office:

Mr. Tushar Wagh, Deputy Regional
Director of the RD West present.

(Hereinafter the First Petitioner Company and Second Petitioner Company, are collectively referred to as the "Petitioner Companies")

ORDER

1. We have heard the Learned Authorised Representative for the Petitioner Companies and the Regional Director, WR, MCA. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under sections 230 to 232 and

other applicable provisions of the Companies Act, 2013 (the Act) to the Scheme of Merger of Nessa Hearing India Private Limited ('Transferor Company') with GN Hearing India Private Limited ('Transferee Company') and their respective Shareholders.

3. The Scheme envisages Merger of **Nessa Hearing India Private Limited**, the Transferor Company; with **GN Hearing India Private Limited**, the Transferee Company.
4. The Petitioner Companies further submits that the Transferor Company are engaged in the business of trading, buying, selling, reselling, importing, exporting, transporting, storing, developing, promoting, retailing, wholesaling, marketing not only limited to digital marketing, supplying, assembling, servicing, customising, to act as distributor, trader, agent, representative, franchiser, consultant, collaborator, stockist, liasioner, consulting, advising for all types of hearing aids and devices and all the accessories relating to thereof in any way to individuals, companies, governments, local authorities, hospitals, dispensaries, association of persons, medical institutions, medical

centres, health centres, clinics, NGO's, Trusts, nursing homes, cottage hospitals, and other Business & Non-Business entities with the help of all means and resources and providing all other services, whether supplementary and complimentary, to the attainment of above businesses. And the Transferee Company is engaged in business of carrying on all or any of the trades or business of manufacturing of hearing aid kits, assembling, servicing, customizing, supplying, purchasing, importing and dealing in all types of hearing aids and allied products, including but not limited to product kits components, apparatus, accessories, circuits, amplifiers and such raw material as are associated with the aforesaid process.

5. The Board of Directors of Petitioner Companies have approved the scheme at their respective Board Meetings conducted on December 6, 2022 respectively. The appointed date of the scheme is April 1, 2022.
6. The Petitioner Companies further submitted the following rationale for the Scheme:
 - a. Both the Companies are under same Management and carrying

similar and/or complimentary business, it would be advantageous to combine the activities and operations in a single Company. The Merger would provide synergistic linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the merged Company.

- b. The proposed Scheme will contribute in furthering and fulfilling the objects of the companies concerned and enabling the optimum growth and development of their combined business.
 - c. It is considered desirable and expedient to reorganize and merge the business of both the companies so as to have a stronger asset base and skills to conduct the business in the emerging environment and to rationalize the costs of business.
7. The Company Petition is filed in consonance with Sections 230 to 232 of the Act along with the order dated May 2, 2023 passed in CA(CAA) No.26/MB/2023 of this Tribunal.
8. The Petitioner Companies submits that Upon this Scheme becoming

effective, in consideration of the transfer and vesting of all the assets and liabilities of the Transferor Company into the Transferee Company in accordance with this Scheme, the Transferee Company shall issue and allot to every member of Transferor Company, holding fully paid up equity shares in Transferor Company and whose names appear in the register of members of Transferor Company on the Effective Date or to such of their heirs, executors, administrators or the successors-in-title in the following manner :-

"The Transferee Company shall, issue and allot 1 (one) equity share of Rs. 10/- (Rupees Ten only), at par as fully paid up, of the share capital of the Transferee Company for 10,000 (Ten Thousand) Equity Shares of the Transferor Company."

9. The Petitioners submits that the appointed date for the Scheme of Amalgamation is April 1, 2022 and accordingly the Petitioner Companies would prepare Audited Balance Sheets as on April 1, 2022 in order to consolidated the accounts as per the Appointed date.

10. The Petitioners submits that both the Companies have neither given any

Bank / Performance Guarantee nor any Corporate Guarantee.

11. The Petitioners submits that there are no Contingent liabilities in the Transferor Company.

12. A brief snap shot of the financials of the Petitioner Companies as on March 31, 2022 is provided below:

Companies	Nessa Hearing India Private Limited	GN Hearing India Private Limited
	Transferor Company	Transferee Company
Share Capital	1,00,000	20,98,321
Reserves and Surplus	(3,96,77,000)	32,95,02,000
Networth	(3,86,77,000)	35,04,85,210
Revenue	2,75,61,000	83,42,65,000
No. of shareholders	2	2
Secured Creditors Value	NIL	NIL
Unsecured Creditors Value	20,29,000	45,90,98,000

13. The Petitioner Companies stated that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and have filed necessary affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all

statutory/regulatory requirements, if any, as required under the Act and the Rules made thereunder. The undertaking given by the Petitioner Companies is accepted.

14. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed its Report dated February 1, 2024 inter alia stating therein its observations on the Scheme as stated in para 2(a) to 2(k) to of the Report. In response to the observations made by the Regional Director, the Petitioner Companies filed an Affidavit and have given necessary clarifications and undertakings. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Sr. no. /Para no	RD Report / Observation	Response of the Petitioner Companies
Para 2(a)(i)	That the ROC Mumbai in its report. dated 19.10.2023 stated that No Inquiry, Inspection, Investigations, Prosecutions and Complaints under Companies Act, 2013 are pending against the Petitioner Companies.	I say that as far as the observation of the Regional Director stated in paragraph 2 (a) (i) of his report are concerned, Petitioner Company submit that the statement made therein are factually correct.

<p>Para 2(a)(ii) a.</p>	<p>Petitioner Companies has not filed Form GNL-1 till date.</p>	<p>I say that as far as the observation of the Regional Director stated in paragraph 2 (a) (ii) (a) of his report are concerned, the Petitioner companies have already filed GNL-1 with the Registrar of Companies. Hereto annexed and marked as Exhibit A are the copies of the Challan of GNL-1.</p>
<p>Para 2(a)(ii) b.</p>	<p>As per the provisions of Section 232(3)(i) of the Companies Act, 2013, where the transferor company is dissolved, the 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 subsequent to the amalgamation. Therefore, remaining fee, if any after setting-off the fees already paid by the transferee company on the increased authorized capital subsequent to the amalgamation</p>	<p>I say that as far as the observation of the Regional Director stated in paragraph 2 (a) (ii) (b) of his report are concerned, the Transferee Company undertakes to comply with all applicable provisions of section 232(3)(i) of the Companies Act, 2013.</p>
<p>Para 2(a)(ii) c.</p>	<p>Interest of the Creditors should be protected.</p>	<p>I say that as far as the observation of the Regional Director stated in paragraph 2 (a) (ii) (c) of his report are</p>

		concerned, Petitioner Company states that the interest of the creditor will be protected and all creditor will be paid in normal course of business.
Para 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 companies.	I say that as far as the observation of the Regional Director stated in paragraph 2 (b) of his report are concerned, the Transferee Company undertakes to comply with all applicable provisions of section 232(3)(i) of the Companies Act, 2013.
Para 2(c)	In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the transferee 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.	I say that as far as the observation of the Regional Director stated in paragraph 2 (c) of his report are concerned, the Transferee Company undertake that in addition to compliance of AS-14 or IND AS-103 the Transferee Company shall 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.

<p>Para 2(d)</p>	<p>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.</p>	<p>I say that as far as the observation of the Regional Director stated in paragraph 2 (d) of his report are concerned, the Transferee Company states 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.</p>
<p>Para 2(e)</p>	<p>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 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>I say that as far as the observation of the Regional Director stated in paragraph 2 (e) of his report are concerned, the Transferee Company states that the approval of the scheme by the Tribunal may not deter regulatory authorities to deal with any of the issues arising after giving effect to the scheme. The decision of regulatory authorities shall be binding on the petitioner companies concerned.</p>
<p>Para 2(f)</p>	<p>The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and</p>	<p>I say that as far as the observation of the Regional Director stated in paragraph 2 (f) of his report are concerned,</p>

	creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with 7 subsection (3) to (5) of Section 230 of the Act and the Minutes, thereof are duly placed before the Tribunal.	meetings of members and creditors are dispensed with. Consent of members is obtained and as directed by Hon'ble NCLT notices are duly sent to creditors.
Para 2(g)	<p>As per Definition of the Scheme, "The Appointed Date" means 1st April, 2022 or such other date as the National Company Law Tribunal may direct.</p> <p>"Effective Date" means the date on which the certified copies of the Order of National Company Law Tribunal - Mumbai ('NCLT), sanctioning the Scheme is filed with the Registrar of Companies, Mumbai, in terms of the Act.</p> <p>In this regard, it is submitted that Section 232(6) of the Companies Act, 2013 states that the Scheme under this Section shall clearly indicate an appointed date from which it shall be effective, and the scheme shall ne deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by Hon'ble Tribunal</p>	<p>I say that as far as the observation of the Regional Director stated in paragraph 2 (g) of his report are concerned, the Petitioner Companies states that Appointed Date for the proposed scheme is 1st day of April, 2022 and undertake to comply with the requirements as clarified vide circular no. F. NO. 7/12/2019/CL -1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>

	<p>taking into account of its inherent powers.</p> <p>The Petitioner Companies shall undertake to comply with the requirements as clarified vide circular no. F. No. 7/12/ 201 9/ CL-I date 21.08-2019 issued by the Ministry of Corporate Affairs.</p>									
Para 2(h)	<p>Petitioner Companies shall undertake to comply with the directions of Income tax department and GST Authorities, if any</p>	<p>I say that as far as the observation of the Regional Director stated in paragraph 2 (h) of his report are concerned, Petitioner Companies undertake to comply with the direction of Income Tax Department and the GST Authorities, if any.</p>								
Para 2(i)	<p>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if so required.</p>	<p>I say that as far as the observation of the Regional Director stated in paragraph 2 (i) of his report are concerned, Petitioner Companies undertake to comply with the direction of concerned sectoral Regulatory, if any.</p>								
Para 2(j)	<p>It is observed from Financial Statements as on 31.03.2022 of Petitioner Companies, details of shareholding are as follows:</p> <table border="1" data-bbox="363 1877 922 1928"> <thead> <tr> <th>Sr.</th> <th>Petitioner</th> <th>Name of</th> <th>% o</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Sr.	Petitioner	Name of	% o					<p>I say that as far as the observation of the Regional Director stated in paragraph 2 (l) of his report are concerned, Petitioner Companies</p>
Sr.	Petitioner	Name of	% o							

no.	Company	Shareholder	shares held	submit	and clarify that no
1.	NESSA HEARING INDIA PRIVATE LIMITED	NESSA HEARING PTE LIMITED	99.99%	Petitioner	individual Shareholder of the
2.	GN HEARING INDIA PRIVATE LIMITED	GN HEARING A/S, DENMARK	99.99%	the	Petitioner Companies, either alone or together with others, under the definition of Significant Beneficial Owner (SBO) under Section 90(1) of the Companies Act, 2013 and the files made thereunder and consequently, the requirement of filing e-form BEN-2 does not arise. With respect to the NESSA HEARING INDIA PRIVATE LIMITED, NESSA HEARING PTE LIMITED hold 99.99% shares in the Company and there are no majority shares held by any individuals or any body corporate in NESSA HEARING PTE LIMITED.
<p>No form BEN-2 has been filed by the petitioner companies per records available at MCA-21Portal</p>				<p>With respect to the GN HEARING INDIA PRIVATE LIMITED, the GN HEARING A/S, DENMARK holds 99.99% shares of the Company and there are no majority shares held by any individuals or any body corporate in GN HEARING A/S, DENMARK. Therefore, there is no</p>	

		requirement of the Petitioner Companies to file BEN- 2.
Para 2(k)	The Petitioner Companies shares held by foreign companies; hence Hon'ble NCLT may kindly direct the Petitioner Companies to-comply with the Regulations of RBI/FEMA/FERA.	I say that as far as the observation of the Regional Director stated in paragraph 2 (k) of his report are concerned, Petitioner Companies undertake to comply with the regulations of RBI/FEMA/FERA.

15. The Learned Authorised representative further submits that all the Secured Creditors of the Transferor Companies and unsecured Creditors of the Transferee Company have given their consent to the Scheme.

16. The Official Liquidator has filed his report on November 28, 2023 inter alia stating therein made some observations in paragraphs 5 and 6 of the said report. In response to the observations made by the liquidator, the Petitioner Companies filed an Affidavit and have given necessary clarifications and undertakings. The observations made by the liquidator and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Sr.no. /Para no	Liquidator Report / Observation	Response of the Petitioner Companies
Para 5	With reference to clause 15.1 of the Scheme it is stated that such clauses override the provisions of Companies Act, 2013 namely section 232(3)(i) which interalia provides that, 'if a Company is dissolved the fee paid by such Company on its Authorised Capital shall be set off against any fee payable by the transferee Company on its Authorised Company'. Accordingly, clause No. 15.1 may be modified.	We undertake to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 and undertake to pay any differential stamp duty
Para 6	As per the Financial Statements as at 31.03.2022 the company has negative net worth. Even when the company's net worth is negative, the Financial Statements has been prepared on going concern basis. There	I say that as far as the observation of the Official Liquidator stated in paragraph 6 of his report is concerned, Petitioner Company submits that the Nessa Hearing India Private Limited is a fellow subsidiary Company of GN

	<p>may be breach of fundamental principle of accounting. Hon'ble tribunal may require the company to explain in this respect.</p>	<p>Hearing India Private Limited. Further the Nessa Hearing India Private Limited was funded by the GN Hearing India Private Limited for its working capital requirements and accordingly, despite of Company's negative net worth the Financial Statements of the Nessa Hearing India Private Limited has been prepared on going concern basis. Therefore, there is no breach of fundamental principle of accounting and it is a generally accepted method of accounting.</p>
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17. Mr. Tushar Wagh, Deputy Regional Director Authorized Representative of the Regional Director, MCA (WR), Mumbai, present at the time of the hearing has submitted that the explanation and clarifications given by the Petitioner/ Transferor Company are found satisfactory and stated that the Regional Director has no objections for approving the scheme by the

Tribunal.

18. From the material on record, the Scheme appears to be fair, reasonable and is not in violation to any provisions of law nor is contrary to public interest/policy.

19. Since all the requisite statutory compliances have been fulfilled, CP (CAA) No.7/MB-IV/2024 is made absolute in terms of prayer of the Company Petition.

20. The Scheme, with the Appointed Date fixed as April 1, 2022, is hereby sanctioned. The present Petition is **allowed**. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Unsecured Creditors/Trade Creditors and Employees.

21. The Registrar of this Tribunal shall issue the certified copy of this Order along with the Scheme forthwith. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme with the Registrar of Companies concerned, electronically in E-form INC-28 within 30 days from the date of receipt of the Order from the Registry.

22. The Petitioner Companies shall lodge a copy of this Order and the Scheme duly authenticated by the Registrar of this Tribunal with the Superintendent of Stamps concerned, within 60 working days from the date of the receipt of the Order, for the purpose of adjudication of stamp duty, if any, payable.
23. The Petitioner Companies shall comply with all the undertakings given by them.
24. The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.
25. All concerned shall act on a copy of this Order along with the Scheme duly authenticated by the Registrar of this Tribunal.
26. Any person interested in the above matter shall be at liberty to apply to the Tribunal for any directions that may be necessary.
27. Ordered accordingly. Thus, the Company Scheme Petition with CP(CAA)07/MB/2024 IN CA(CAA)26/MB/2023 shall stand to be **disposed off**.

Sd/-

Anu Jagmohan Singh

Member (Technical)

Suresh/07.05.2024

Sd/-

Kishore Vemulapalli

Member (Judicial)