

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU
(Through web-based video conferencing platform)

C.A. (CAA) No.17/BB/2024
U/ss.230 & 232 of the Companies Act, 2013
And other applicable provisions of the
Companies Act, 2013 R/w Companies (CAA) Rules, 2016

IN THE MATTER OF SCHEME:

M/S. MICROMATIC MACHINE TOOLS PRIVATE LIMITED

R/o. at Plot No. 240-241, 11th Main,
3rd Phase, Peenya Industrial Area,
Bengaluru – 560 058

- Applicant Company No.1/
Transferor Company

M/S. ACE DESIGNERS LIMITED

R/o. at Plot No.7 & 8,
II Phase, Peenya Industrial Area,
Bengaluru – 560 058

- Applicant Company No.2/
Transferee Company

Order delivered on: 10th July, 2024

CORAM: 1. Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Applicant Companies : Shri Ajai P. Johnson

ORDER

Per: Bench

1. The present first motion Application has been filed on 30.04.2024 by the Applicant Companies, **M/s. Micromatic Machine Tools Private Limited** (described in short as “Applicant Company No.1/Transferor Company”) and **M/s. ACE Designers Limited** (described in short as “Applicant Company No.2/Transferee Company”), under Sections 230 & 232 of the Companies Act, 2013 (hereinafter referred to as the Act) and other applicable provisions of the Companies Act, 2013, R/w. Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 *inter alia*, seeking for dispensation of the meeting of the Equity Shareholders of the Applicant Companies; convening

of the meeting of Secured Creditors of the Applicant Company No.2 and Unsecured Creditors of the Applicant Companies. Since there are no Secured Creditors in the Applicant Company No.1. As there are no Secured Creditors in Applicant Company No.1 there is no scope for conducting the meeting of Secured Creditors of Applicant Company No.1. The Scheme of Amalgamation is placed on record at Annexure – F of the Application.

2. The Applicant Company No.1/Transferor Company, namely, **Micromatic Machine Tools Private Limited**, is a Private Limited Company was incorporated on 17.11.1987 under the provisions of Companies Act, 1956 vide CIN: U74899KA1987PTC105765 and having its registered office at Plot No. 240-241, 11th Main, 3rd Phase, Peenya Industrial Area, Bengaluru. The copy of the Articles of Association and Memorandum of Association is found attached as Annexure-A to the Application. As per the Memorandum of Association, the main objects of the Company, *inter alia*, are to acquire agencies or representations for and to distribute and market or otherwise deal in all types of machines, machine tools, electronics and electrical equipment's etc.
3. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Applicant Company No.1 as on 31.12.2023 is as under:

Authorised Capital	Amount (Rs)
9,00,000 Equity Shares of Rs.10/- each	90,00,000
Issued, Subscribed and Paid-up Capital	
6,76,400 Equity Shares of Rs.10/-each fully paid-up	67,64,000

It is submitted that there is no change in the Share Capital of the Applicant Company No.1 as on the date of filing of this Application with this Tribunal.

4. The Applicant Company No.2/Transferee Company was incorporated on 25.09.1986 under the provisions of the Companies Act, 1956 with Registrar of Companies, Karnataka with the name "Anupam Machine Tools Private Limited". The Company was converted into a Limited Company and name of the Company was changed to "Messrs. Anupam Machine Tools Limited" on

01.11.1996. The name of the Company was again changed to the current name “Ace Designers Limited” and a fresh Certificate of Incorporation was issued on 27.12.2001 bearing CIN: U29199KA1986PLC007816 and having its registered office at No. Plot No.7 & 8, II Phase, Peenya Industrial Area, Bengaluru. The copy of the Articles of Association and Memorandum of Association is found attached as Annexure-C to the Application. As per the Memorandum of Association, the main objects of the Company, *inter alia*, are to carry on the business of *design, manufacture, fabricate, produce, process, develop, make, recondition, alter, repair, improve, convert, substitute, buy, sell, import, export, let on hire or otherwise deal in all kinds of plant and machinery/machine tools, workshop machinery, measuring instruments, precision tools and their components, spare parts, stores, accessories and fittings of all kinds and descriptions required for all such plant and machinery and machine tools, workshop machinery and of all engineering products etc.*

5. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Applicant Company No.2 as on 31.12.2023 is as under:

Authorized Capital	Amount (Rs.)
21,00,000 Equity Shares of Rs. 100/- each	21,00,00,000
50,000 Preference Shares of Rs,100/-each	50,00,000
Issued, Subscribed and Paid-up Capital	Amount (Rs.)
18,44,640 Equity Shares of Rs.100/- each, fully paid up	18,44,64,000

It is submitted that there has been no change in the share capital of Applicant Company No.2/Transferee Company as on the date of filing of this Application with this Tribunal.

6. The Board of Directors of the Transferor Company and Transferee Company at their respective meetings held on 28.03.2024 and 17.02.2024 approved the Scheme of Amalgamation. Certified true copy of resolution passed in the Board meeting of the Applicant Companies are annexed to the Application as Annexure-E Series. The Appointed Date fixed under the Scheme is April 1, 2024.
7. The instant Application has been filed seeking for the following reliefs:

- i. *“Dispense with the meeting of the Equity Shareholders of the Applicant Company Nos.1 & 2 under section 230 of the Companies Act, 2013, for the purpose of considering, if thought fit, approving with or without modification(s) the Scheme of Amalgamation of Micromatic Machine Tools Limited (Transferor Company) with Ace Designers Limited (Transferee Company) and their respective shareholders;*
 - ii. *Since there are No (NIL), Secured Creditors in Applicant Company No.1, there is no scope to conduct the meeting;*
 - iii. *Direct to convene the meeting of the Secured Creditors of the Applicant Company No.2 under Section 230 of the Companies Act, 2013, for the purpose of considering, if thought fit, approving with or without modification(s) the scheme of Amalgamation of Micromatic Machine Tools Private Limited (Transferor Company) with Ace Designers Limited (Transferee Company) and their respective shareholders;*
 - iv. *Direct to convene the meeting of the Unsecured Creditors of the Applicant Company No.1 & 2 under Section 230 of the Companies Act, 2013, for the purpose of considering, if thought fit, approving with or without modification(s) the Scheme of Amalgamation of Micromatic Machine Tools Private Limited (Transferor Company) with Ace Designers Limited (Transferee Company) and their respective Shareholders;*
 - v. *Pass such further and other orders as may be deemed necessary.”*
8. The learned Counsel for the Transferor Company/Applicant Company No.1 has submitted that as per the Certificate dated 27.03.2023 of Prashanth, Chartered Accountant, there are 10 (Ten) Equity Shareholders in the Transferor Company as on 31.12.2023. The details are given below:

Sl. No.	Name of the Shareholder	No. of Shares	Percentage of holding
1	Shrinivas Govindrao Shirgurkar	40,006	5.91%
2	Benedict Machado	40,006	5.91%
3	Ramadas Puttige & Jayashree Ramadas	34,000	5.03%
4	Philomena Machado	40,006	5.91%
5	Bharathi Shrinivas Shirgurkar	40,006	5.91%
6	Ace Designers Limited	2,23,376	33.02%
7	Neelam Dhand	1,69,600	25.07%
8	Narendra Kumar Dhand	10,700	1.58%
9	Ajit Ramachandra Kunte	39,350	5.82%
10	Deepak Hanumant Joglekar	39,350	5.82%
	Total	6,76,400	100.00%

All the Equity Shareholders of the Transferor Company have given their consent by way of affidavits to the Scheme. The consent affidavits are at Annexure-K Series of the Application.

9. As per the Certificate dated 27.03.2023 of Prashanth, Chartered Accountant, there are no Secured Creditors in the Transferor Company as on 31.12.2023. Since, there are no Secured Creditors in the Transferor Company there is nothing to convene their meeting. Further, they have issued another Certificate dated 27.03.2023 which shows that there are 270 (Two Hundred and Seventy) Unsecured Creditors in the Transferor Company as on 31.12.2023 and seeks to convene the meeting of Unsecured Creditors of the Transferor Company for the propose Scheme.
10. It is submitted that as per the Certificate dated 26.03.2024 of Prashanth, Chartered Accountant, there are 12 (Twelve) Equity Shareholders in the Transferee Company as on 31.12.2023. The details are given below:

Sl. No.	Name of Shareholder	No. of Shares	% of holding
1.	Benedict Machado	4,94,208	26.79%
2.	Philomena Machado	1,55,736	8.44%
3.	Shrinivas Govindarao Shirgurkar	5,21,208	28.26%
4.	Bharathi Shrinivas Shirgurkar	1,28,736	6.98%
5.	Ramadas Puttige	1,93,536	10.49%
6.	Jayashree Ramadas	69,120	3.75%
7.	Micromatic Machine Tools Private Limited	2,07,360	11.24%
8.	Chandra.V	20,736	1.12%
9.	Madhavi Chandrasekhara Bharathi	13,500	0.73%
10.	Manisha Gurudas Kannur	13,500	0.73%
11.	Preeti Maria Machado	13,500	0.73%
12.	Rajeev Peter Machado	13,500	0.73%
Total		18,44,640	100%

Out of above, 11 (Eleven) Equity Shareholders constituting 99.27% have given their consent for no objections for the proposed scheme by way of affidavits. List of the Shareholders and their consent affidavits are attached as Annexure-L1 to the Application.

11. The learned Counsel for the Transferee Company has submitted that as per the Certificate dated 26.03.2024 of Prashanth, Chartered Accountant, there

are 8 (Eight) Secured Creditors in the Transferee Company as on 31.12.2023 and seeks to convene the meeting of Secured Creditors of the Transferee Company for the propose Scheme.

12. As per the Certificate dated 26.03.2024 of Prashanth, Chartered Accountant, there are 1027 (One Thousand and Twenty-Seven) Unsecured Creditors in the Transferee Company as on 31.12.2023 and seeks to convene the meeting of Unsecured Creditors of the Transferee Company for the propose Scheme.

13. It is submitted that the rationale for Scheme of Amalgamation of the Transferor Company with the Transferee Company is, *inter alia*, as follows:

“(II). Rationale for the Scheme:

1. *Simplification of group structure by eliminating multiple companies in similar business thus enabling focus on core competencies and unlocking of value.*
2. *Greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholder value.*
3. *Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, productivity improvements, improved procurement, usage of common resource pool like human resource, administration, finance, accounts, legal, technology and other related functions, leading to elimination of duplication and rationalization of administrative expenses.*
4. *The Scheme will help ACE Designers (defined hereinafter) in sharpening its competitiveness and developing its core competencies, in the long term, through cost savings and benefit of economies of scale”.*

14. The learned Counsel for the Applicant Companies submitted that there are no investigations or other proceedings pending against the Applicant Companies or its Directors under Companies Act, 2013 and Companies Act, 1956, or under any other statutes. The Copies of the same are placed at Annexures-G (Series) to the Application.

15. The learned Counsel for the Applicant Companies has filed Affidavit dated 24.04.2024 stating that the Companies are not regulated by any Sectorial

Regulators. Copies of the same are placed at Annexures-J (Series) to the Application.

16. It is further submitted that the Scheme does not affect the rights and interest of the Creditors of the Applicant Companies. It is also stated that the Scheme of Amalgamation does not contemplate for any arrangement with the Creditors of the Applicant Companies and Corporate Debt Restructuring. The Scheme provides for Capital Reduction. The Transferor Company holds 2,07,360 Equity Shares of Rs.100/- each in Transferee Company. Pursuant to the sanction of the Scheme and as per Clause 7 of the Scheme of Amalgamation the Equity Shares held by Transferor Company in Transferee Company shall be cancelled and reduced. Copies of the same are placed at Annexures-H (Series) to the Application.

17. It is stated that as per Clause 6 of the Scheme of Amalgamation and upon this Scheme becoming effective and in consideration for the amalgamation of Applicant Companies, the Transferee Company shall, without any further application, act, instrument or deed, issue and allot equity shares at face value, credited as fully paid-up, to the extent indicated below, to the members of Transferor Company, holding fully paid-up equity shares and whose names appear in the Register of Members as on the Effective Date or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of Transferor Company in the following proportions:

“64 fully paid-up Equity Shares of Rs.100/- each of Ace Designers for every 100 Equity Shares of Rs.10 each held in MMT (“New Equity Shares”)”.

A copy of the Valuation Report/Share Exchange Report obtained from a Registered Valuer is attached as Annexure-R to the Application.

18. It is seen that the Statutory Auditors of the Applicant Companies i.e., M/s. Deloitte Haskins & Sells, vide Certificate dated 24.04.2024, have *inter alia* certified that the accounting treatment as specified in paragraph 12 of the Scheme is in compliance with the applicable Accounting Standards specified under Section 133 of the Companies Act, 2013, read with the rules made

there under and Other Generally Accepted Accounting Principles in India. Copies of the said Certificates are attached as Annexure-S (Series) to the Application.

19. Moreover, the Applicant Companies have filed Audited Financial Statements for the year ending as on 31.03.2023 as Annexures-B & D to the Application and Unaudited Financial Statements as on 31.12.2023 as Annexure-B1 & D1 to the Application.
20. The Appointed Date Fixed under the Scheme is 01.04.2024.
21. In Clause 8 of the Scheme, it is stated the all employees of the Transferor Company in service on the Effective Date shall be deemed to have become staff, workmen and employees of ACE Designers with effect from the later of Appointed Date or the actual date of joining, without any break or interruption in their service and on the basis of continuity of service, and the terms and conditions of their employment with ACE Designers (i.e. cost to Company basis, in monetary terms) shall not be less favourable than those applicable to them with reference to their employment with MMT on the Effective Date.
22. Heard the learned Counsel appearing for the Applicant Companies and have perused the records and the supporting documents/papers filed along with the "Scheme" contemplated between the Applicant Companies.
23. In view of the aforesaid discussion, the following directions are issued:
 - a) Convening and holding of the meetings of the Equity Shareholders of the Applicant Companies are hereby dispensed, in view of the consents affidavit given by the Shareholders of the Applicant Companies;
 - b) Since there are no Secured Creditors in the Applicant Company No.1, there is nothing to convene their meeting;
 - c) Meeting of the Secured Creditors of the Transferee Company is to be convened on **05.09.2024 at 10.30 A.M.** through Video Conferencing or Other Audio Visual Means (OAVM) as per the guidelines issued by MCA or physically at the registered office of the Company, subject to the notice

of the meeting being issued through post or electronic mode. The quorum of the meeting of the Secured Creditors, shall be 40% in total value either personally present or by proxy.

- d) The meeting of the Unsecured Creditors of the Transferor Company is directed to be convened on **05.09.2024 at 11.00 A.M.** through Video Conferencing or Other Audio Visual Means (OAVM) as per the guidelines issued by MCA or physically at the registered office of the Transferor Company, subject to the notice of the meeting being issued through post or electronic mode. The quorum of the meeting of the Unsecured Creditors shall be 40% in total value either personally present or through proxy.
- e) The meeting of the Unsecured Creditors of the Transferee Company is directed to be convened on **05.09.2024 at 12.00 Noon** through Video Conferencing or Other Audio Visual Means (OAVM) as per the guidelines issued by MCA or physically at the registered office of the Transferee Company, subject to the notice of the meeting being issued through post or electronic mode. The quorum of the meeting of the Unsecured Creditors, shall be 40% in total value either personally present or through proxy.

Shri Uday Shankar R.M., Advocate having address at Fortune Chambers, 8 Lalbagh Road, Richmond Circle (Opp. Udipi Uphaar), Bengaluru – 560 027, Email ID: uday@udayshankarassociates.com Mobile No. 98450 14747 is appointed as the Chairperson for the above meetings in respect of Applicant Companies to be called under this order.

Shri Sarvotham.P, PCS having address at No.30, Akshobhya, 4th Main, D.B.Sandra, Vidyanarayapura, Bengaluru, Email ID: cssarvotham@gmail.com , Mobile No.99167 10757 is appointed as the Scrutinizer for the above meeting in respect of the Applicant Companies to be called under this order.

The total remuneration for Chairperson shall be **Rs.1,25,000/-** for the above three meetings in respect of Applicant Companies; and for

Scrutiniser shall be **Rs.75,000/-** for the above three meetings in respect of Applicant Companies.

- f) In case the required quorum as noted above for the meetings of the Secured Creditors of the Transferee Company and Unsecured Creditors of the Applicant Companies are not present at the commencement of the meetings, the respective meetings shall be adjourned by 30 minutes, and thereafter, the persons present and voting shall be deemed to constitute the quorum. For the purpose of completing the quorum, the valid proxies and Authorized Representatives shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed through email or otherwise at the respective registered office of the Applicant Companies. The Chairperson along with Scrutinizer shall ensure that the proxy register is properly maintained.
- g) It is further directed that along with the notice, Applicant Companies shall also send, statement explaining the effect of the Scheme on the Creditors, key managerial personnel, promoters and non-promoter members etc., along with effect of the Arrangement on any material interests of the Directors of the Company as provided under sub-section 3 of the Section 230 of the Act;
- h) That the Applicant Companies shall publish with a gap of at least 30 clear days before the aforesaid meeting, indicating the day, date and time of the meeting to be conducted through video conference/physical mode as aforesaid, to be published in the "*The Hindu*" and "*Udayavani*" both in English and Kannada Edition. It is to be stated in the advertisement that the copies of "Scheme", the Explanatory Statement required to be published pursuant to Section 230 to 232 of the Act and the form of proxy shall be provided free of charge at the registered office of the Applicant Companies. The Applicant Companies shall also publish the notice on its website, if any;
- i) The Authorized Representative of the Applicant Companies shall furnish affidavit of service of notice of meeting and publication of advertisement

and compliance of all directions contained herein at least ten (10) days before the date of proposed meetings;

- j) Voting shall be allowed on the "Scheme" in person or by proxy or through electronic means as may be applicable to the Applicant Companies under the Act and the Rules framed there under;
- k) The Chairperson shall be responsible to report the result of the meeting to the Tribunal in Form No. CAA 4, as per Rule 14 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016 within 07 (seven) days of the conclusion of the meeting. He would be fully assisted by the Authorized Representative/Company Secretary of the Applicant Companies and the Scrutinizer, who will assist the Chairperson/Alternate Chairperson in preparing and finalizing the reports.
- l) The Applicant Companies shall individually and in compliance of sub-section (5) of section 230 and Rule 8 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016 send notices in Form No. CAA 3 along with a copy of the Scheme, the Explanatory Statement and the disclosures mentioned in Rule 6 of the Rules" to (i) the Central Government through the office of the Regional Director (South East Region); (ii) Concerned Registrar of Companies; (iii) Reserve Bank of India; (iv) Official Liquidator; (v) Principal Chief Commissioner of Income Tax, Karnataka & Goa, being the Nodal Officer (vi) the Jurisdictional Deputy/Assistant Commissioner/Assessing Authority and other Sectoral Regulators/Authorities, if any, stating that representations, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representation shall simultaneously be sent to the concerned company, failing which it shall be presumed that they have no objection to the proposed Scheme;
- m) All the aforesaid directions are to be compiled with strictly in accordance with the applicable laws including forms and formats contained in the "Rules" as well as the provisions of the Companies Act, 2013, by the Applicant Companies.

24. With the aforesaid directions, this First Motion Application bearing **C.A. (CAA)No.17/BB/2024 stands allowed**, giving liberty to the Applicant Companies to file Second Motion Petition with the direction that the Applicant Companies shall make specific prayer for sending notice to the (i) the Central Government through the office of the Regional Director (South East Region); (ii) Concerned Registrar of Companies; (iii) Official Liquidator; (iv) Reserve Bank of India; (v) Principal Chief Commissioner of Income Tax, Karnataka & Goa, being the Nodal Officer and (vi) the Jurisdictional Deputy/Assistant Commissioner/Assessing Authority by disclosing the PAN numbers of the Applicant Companies in the title of the Second Motion Petition.

-Sd-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd-
(T. KRISHNAVALLI)
MEMBER (JUDICIAL)