

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)**

**CP (CAA) No.4/Chd/HP/2021
(2nd Motion)**

**Under Sections 230 to 232 and
other applicable provisions of
the Companies Act, 2013**

IN THE MATTER OF SCHEME OF AMALGAMATION OF:

Satva Jewellery and Design Limited

registered office at
SCO 88-89, Sector-8C,
Madhya Marg, Chandigarh-160009
CIN : U36911CH2004PLC027767
PAN: AAICS6482P

... Transferor Company/Applicant Company No. 1

AND

KDDL Limited

with its registered office at
Plot No. 3, Sector III, Parwanoo,
Himachal Pradesh-173220
CIN : L33302HP1981PLC008123
PAN : AAACK1929M

...Transferee Company/ Applicant Company No.2

Judgment delivered on: 23.11.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing : -

For the Petitioner Companies : Mrs. Munisha Gandhi, Senior Advocate
Mr. Vaibhav Sharma, Advocate
Ms. Salina Chalana, Advocate

For the Income Tax Department : Mr. Yogesh Putney, Senior Standing Counsel
Mr. Harveet Singh Sehgal, Advocate
Mr. Yatin Chadha, Advocate

Per: Subrata Kumar Dash, Member (Technical)

JUDGMENT

This is a joint second motion application filed by Petitioner Companies namely; **Satva Jewellery and Design Limited** (Transferor Company/ Petitioner Company No. 1) and **KDDL Limited** (Transferee Company/ Petitioner Company No. 2) in relation to the Scheme of Amalgamation between the petitioner companies under Section 230-232 of Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules).

2. The Petitioner Companies have prayed for sanctioning of the Scheme of Amalgamation between the respective companies. The said Scheme is attached as Annexure A-1 of the petition.

3. The Petitioner Companies have filed first motion application bearing CA (CAA) No.25/Chd/HP/2020 before this Tribunal for seeking directions for convening/dispensing with the meetings of Equity Shareholders, Secured and Unsecured Creditors of the Applicant Companies. The first motion application was disposed of by order dated 10.11.2020, with directions to dispense with the meetings of Equity Shareholders, Secured and Unsecured Creditors of the Applicant Company No. 1 and to convene the meetings of equity shareholders, secured and unsecured creditors of Applicant Company No.2 for the reasons mentioned in the aforesaid orders.

4. In compliance of the direction issued by this Tribunal in an order dated 10.11.2020, the Chairperson, Alternate Chairperson and Scrutinizer have filed reports. As per reports dated 22.12.2020, the Scheme was unanimously approved

by all equity shareholders, secured and unsecured creditors present and voting at their respective meetings.

5. The main objects, date of incorporation, authorized and paid-up share capital, and the rationale of the Scheme had been discussed in detail in the order dated 10.11.2020.

6. In the second motion proceedings, certain directions were issued by this Tribunal by order dated 20.09.2021 and the same were complied by filing an affidavit of compliance by Diary No. 00016/01 dated 24.11.2021. The notice of hearing was published in "Financial Express" (English) on 11.11.2021 and "Jansatta" (Hindi) in Chandigarh and Himachal Pradesh Edition on 20.09.2021. The original copies of the newspapers are attached as Annexure-A-1 and A-2 of the aforesaid affidavit. It has also stated in the affidavit that copies of notices were served upon the (a) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs; (b) Registrar of Companies, Himachal Pradesh and Chandigarh; (c) the Official Liquidator (attached to Punjab and Haryana High Court); (d) BSE Limited (BSE), (e) National Stock Exchange (NSE), (f) Securities and Exchange Board of India (SEBI) and (g) Competition Commission of India (CCI) and (h) the jurisdictional Income Tax Department, by way of hand delivery/speed post. Postal receipts along with the tracking report, are attached as Annexure A-3 of the aforesaid affidavit.

7. It is deposed by the authorised signatories of the petitioner companies that till date, no objection to the Scheme has been received by the petitioner companies or the Advocate on behalf of the petitioner companies at any of the addresses as mentioned in the notice of hearing. The aforesaid affidavit is filed by Diary No. 00016/01 dated 24.11.2021.

8. The petitioner companies have also served notices to several authorities including the Bombay Stock Exchange Limited (B.S.E.), National Stock Exchange of India Limited (NSE) and Securities and Exchange Board of India (SEBI) and Copies of notices issued are attached as Annexure- A3 of Diary No. 00016/01 dated 24.11.2021. Under the direction of this Bench dated 27.06.2022 the petitioner companies have also sent a reminder Email to aforesaid authorities for furnishing their reports. However, there is no reply from the concerned authorities till now. Considering the lapse of time in the matter, it is presumed that there is no objection to the proposed Scheme of Amalgamation.

9. The reports received from other statutory Authorities in response to the abovementioned notices, are discussed in the following paragraphs.

9.1 **Registrar of Companies (RoC)/Regional Director (RD)**

The Registrar of Companies (ROC) has filed its report along with the report of the Regional Director (RD) by Diary No. 00016/7 dated 25.07.2022. The Regional Director in its report has observed that as per para 26 of the RoC report dated 21.12.2021, it is stated that:-

- As per section 232 (3)(i) of the Companies Act, 2013, the fee, if any, paid by the Transferor company on its authorized capital shall be set off against any fee payable by the transferee company on its authorized capital after the amalgamation.
- No affidavit regarding the compliance of provisions of sections 295, 297, 299 & 301 of the Companies Act, 1956 (corresponding Section 184, 185 and 189 of the Companies Act, 2013) has been furnished by petitioner companies.
- Form CAA-3 notice have not been attached by Transferee Company.
- The transferor company is wholly owned subsidiary of Transferee Company. Companies could file application for the merger under Section 233(1) of the Companies Act, 2013

9.1.2 It is also observed by Regional Director at Para 11 of the report that there are certain irregularities observed in Para 3.2.6 of the Scheme. In Para 3.2.6 of the Scheme, it mentions "Transferred Employees" however, the definition clause is silent about the meaning of transferred employees. The provision of section 232 (3)(g) of the Companies Act, 2013 stipulates the transfer of the employees of the Transferor Company to the Transferee Company i.e. the interest of all the employees of the Transferor Company to be protected by making them employee of the Transferee Company.

9.1.3 In response to the Report of RD/RoC, the Petitioner Companies have filed a response by Diary No. 00016/8 dated 25.08.2022 wherein the Petitioner Companies have undertaken to comply with the applicable provisions of Section 232 (3) (i) of Companies Act 2013. It is further clarified that at point 25 of the report of ROC, it is stated that "*Prima facie there is no violation under Section 295, 297, 299 & 301 of the Companies Act, 1956 (Section 184, 185 and 189 of the Companies Act, 2013)*". The petitioner companies have also deposed that the present affidavit may be considered as an undertaking confirming compliance with the provisions of Sections 295, 297, 299 & 301 of the Companies Act, 1956 and Sections 184, 185 & 189 of the Companies Act, 2013.

9.1.4 It is further clarified by petitioner companies that notices to ROC has been duly sent by companies on 01.10.2021 and same was delivered on 11.10.2021 and non-attachment of form CAA-3 with the notice is

merely a technical defect and as the reports have been filed by ROC, the aforesaid objection is rendered redundant.

9.1.5 It is further explained by the petitioner companies that the companies have filed an application under Section 233(2) of the Companies Act, 2013 before the Regional Director. However, since the Scheme was not approved by the requisite majority, as required under Section 233 (1)(b) of the Act, the petitioners approached this Tribunal which held by its order dated 15.10.2019 that further action be taken by both companies under Section 232 of the Act.

9.1.6 It is humbly submitted that the meaning of the 'Transferred Employees' is duly covered in clause 1.1.15 (viii) of the Scheme, which has escaped the notice of the Regional Director. Clause 1.1.15 of the Scheme defines 'Transferred Undertaking' which, inter alia, includes the following (as referred at Page 45 of the Second Motion Petition):“...

*(viii) all employees of the Transferor Company whether permanent or temporary, engaged in or in relation to the Transferor Company as on the Effective Date and whose services are transferred to the Transferee Company (“**Transferred Employees**”) and contributions, if any, made towards any provident fund, employees state insurance, gratuity fund, staff welfare scheme or any other special schemes, funds or benefits, existing for the benefit of such Transferred Employees ('Funds'), together with such of the investments made by these Funds, which are referable to such Transferred Employees'.*

9.1.7 Therefore, it is submitted that the Transferred Employees shall mean
All the employees of the Transferor Company, whether permanent or

temporary, are being, inter alia, transferred to the Transferee Company.

9.1.8 On a perusal of this response, we feel that the issues raised by the RD/RoC have been adequately addressed and no adverse observation against the petitioner companies with regard to the objections is called for.

9.2 Official Liquidator

The Official Liquidator has filed his report vide Diary No.00016/3 dated 02.05.2022. The Official Liquidator in its report has reproduced the information on the incorporation of the Petitioner Companies, their capital structure, financial highlights, shareholding, etc.

On a perusal of the report, it is seen that the Official Liquidator has made no adverse observation against the petitioner companies.

9.3 Income Tax Department

9.3.1 The Income Tax Department has filed its report vide Diary Nos. 00016/9 dated 07.09.2022 wherein, the details of pending tax demands in respect of transferee company are given as follows:-

A.Y.	Demand (u/s)	Demand Outstanding (Rs.)
2005-06	254	1,10,950
2006-07	143(3)	49,21,280
2012-13	143(1)(a)	25,35,640
2015-16	143(1) a	29,26,200
2017-18	143 (3)	1,67,980
2018-19	143 (1)(a)	39,38,160

2019-20	143 (1) a	2,90,720
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9.3.2 It is further submitted by the Income-tax Department that present scheme of amalgamation between the Transferor and Transferee Company is prejudicial to the interest of the Revenue. As per the scheme of amalgamation, all taxes, duties, cess, income tax benefits or exemptions including the right to claim the deduction, to carry forward losses and tax credits under any provision of the Income Tax Act etc., that are allocable, referable or related to the Transferor Company, including all credits under Income Tax Act, including MAT credit, book losses (if any), all or any refunds, interest due thereon, credits or claims relating thereto, shall be included in the Transferred Undertaking. The Transferor Company is a loss-making Company and losses of the Transferor Company after amalgamation will be adjusted against the income of the Transferee Company. The brought forward losses/ unabsorbed depreciation shall affect the revenue adversely.

9.3.3 In response to the reports filed by the Income Tax Department, the Petitioner Companies have filed an affidavit by Diary No. 00016/10 dated 15.09.2022, wherein it has been replied that the revenue is not affected if the Scheme of Amalgamation is sanctioned. A Scheme of Amalgamation involving a loss-making company is neither barred nor impermissible and both the Transferor and Transferee Companies belong to the same group and as per the Preamble of the Scheme, the Boards of both the companies have decided to amalgamate the

companies in order to achieve the objectives as stated in the scheme. Any tax benefit, which may be permitted under the law and which may accrue as a consequence of sanctioning of the Scheme, cannot be said to be against the interest of the revenue. It is further mentioned that in a recent matter of Scheme of Amalgamation between ***Panasonic India Private Limited and Panasonic Life Solutions India Private Limited*** [CP(CAA) No. 8/Chd/Hry/2021 dated **19.05.2022**] decided by this Tribunal, it is held that the conditions for carrying forward and set off of unabsorbed losses and depreciations of the amalgamating company in the hands of the amalgamated companies are laid down under Section 72A of the Income Tax Act read with Rule 9 (c) of the Rules as well as Section 79 of the Income Tax Act and no provision of the Scheme can override the said provisions of the Income Tax Act.

9.3.4 It is further clarified that the Transferee Company shall continue to exist and is not being wound up; the Transferee Company undertakes that it shall be legally bound to meet the outstanding demands, in accordance with the law, and subject to various legal remedies, it may have recourse to.

9.3.5 We have perused the Income Tax Reports and responses filed by the petitioners. In this context, we hold that the department is at liberty to take appropriate actions in the event of tax avoidance or any other violations by the petitioner companies even after the approval of the present proposal for amalgamation by this Bench. In the result, no

adverse conclusion needs to be made on account of the objections raised by the Income Tax Department.

9.4 **Competition Commission of India**

9.4.1 The Competition Commission of India filed its report by Diary No.905 dated 08.11.2022 and has stated that the aforesaid matter has not been filed with the Commission under the provisions of the Act and the Tribunal may seek an undertaking from the companies involved that approval of the Commission is not required for the said matter.

9.4.2 The authorised representative of the petitioner companies has stated by way of affidavits that approval of the Competition Commission of India is not required as the parties involved do not exceed the assets/turnover threshold specified in the Competition Act, 2002. The aforesaid affidavit has been filed by Diary No. 00016/06 dated 20.07.2022.

9.4.3 On a perusal of the report, it is seen that the Competition Commission of India has made no adverse observation against the petitioner companies.

10. The certificate of the Statutory Auditors with respect to the Scheme between Petitioner Companies to the effect that the accounting treatment proposed in the Scheme is in compliance with applicable Indian Accounting Standards (Ind AS) as specified in Section 133 of the Act, read with rules thereunder and other Generally Accepted Accounting Principles was filed as Annexure-10 of the application.

11. We have heard the learned Counsel for petitioner companies, learned Senior Standing Counsel for the Income Tax Department and Registrar of Companies and perused the record carefully.

12. In the context of the above discussion, the Scheme contemplated between the petitioner companies, appears to be prima facie in compliance with all the requirements stipulated under the relevant Sections of the Companies Act, 2013. As the objections from the Statutory Authorities have been duly addressed by the Petitioner Companies and since all the requisite statutory compliance have been fulfilled, this Tribunal sanctions the scheme of amalgamation appended as Annexure-1 with the petition.

13. Notwithstanding the submission that no investigation is pending against the petitioner companies, if there is any deficiency found or, the violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

14. While approving the scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

- i. That all the property, rights and powers of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and vested in the Transferee

Company for all the estate and interest of the Transferor Company but subject nevertheless to all charges now affecting the same; and

- ii. That all the liabilities and duties of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company;
- iii. That the Appointed Date for the scheme shall be 01.04.2019 as specified in the Scheme;
- iv. That the proceedings, if any, now pending by or against the Transferor Company be continued by or against the Transferee Company;
- v. That the employees of the Transferor Company shall be transferred to the Transferee Company in terms of the 'Scheme'.
- vi. That the Transferee Company shall, without further application, allot to the existing members of the Transferor Company shares of Transferee Company to which they are entitled under the said Scheme;
- vii. That the carry forward and set off of accumulated losses and unabsorbed depreciation allowance in the Petitioner Companies, if any, shall be subject to applicable provisions of Income Tax including Section 72A and Section 79 of the Income Tax Act, 1961;
- viii. That the fee, if any, paid by the Transferor Company on their authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme'; and
- ix. That the Transferee Company shall file the revised memorandum and articles of association with the concerned Registrar of Companies and

further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company; after setting off the fees paid by the Transferor Company;

- x. That the Petitioner Companies shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the concerned Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company, and the files relating to the Companies and Transferee Company shall be consolidated accordingly, as the case may be;

15. As per the aforesaid directions, formal orders in Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 be issued after the filing of the Schedule of Properties within three weeks from the date of receiving a certified copy of this order by the petitioners.

16. All the concerned Regulatory Authorities to act on a copy of this order annexed with the Scheme duly authenticated by the Registrar of this Bench.

17. The Company Petition CP (CAA) No.4/Chd/HP/2021 is disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

November 23, 2022

PB/SA