

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

CHANDIGARH BENCH, CHANDIGARH

CP.(CAA) NO. 22/CHD/HRY/2022

IN

CA(CAA) No. 38/ CHD/HRY /2020

IN THE MATTER OF SECTION 230-232 OF THE COMPANIES ACT, 2013

(Under Section 230 & 232 of the Companies Act, 2013 read with other applicable provisions of the Companies Act, read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016)

IN THE MATTER OF SCHEME OF ARRANGEMENT

M/S ADVA IT Solutions India Private Limited.

having its Registered Office at
4th Floor, Quadrant 3& 4, Umiya Business
Bay Tower 2 Outer Ring Road, Marathahalli
(Sarjapur Sector), Bangalore, Karnataka
Pin- 560037, India.

**NON-PETITIONER COMPANY/
(TRANSFEROR COMPANY)**

WITH

M/s ADVA Optical Networking (India) Private Limited

having its Registered Office at
4A, Ground Floor, Building 10, Tower C,
DLF Cyber City, Gurugram, Haryana
122002 India.

**PETITIONER COMPANY/
(TRANSFeree COMPANY)**

CORAM:

SHRI HARNAM SINGH THAKUR, HON'BLE MEMBER, JUDICIAL

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER, TECHNICAL

Appearance:

For the Petitioner

For the RD

For the IT Department

For the OL

Mr. Shivam Narang, Advocate.

Mr. Vineet Khatri, Company
Prosecutor.

Mr. Yogesh Putney, Senior
Standing Counsel.

Mr. Edward Augustine George,
Advocate.

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)
HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

Pronounced on: 16.04.2024

1. This is a second motion petition filed by the Petitioner Company i.e., M/s ADVA Optical Networking (India) Private Limited (Transferee Company) under Sections 230 to 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation of the Transferor Company into the Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred as the “Scheme”), has been placed on record.
2. It is submitted that the registered office of Transferee Company is situated in the State of Haryana and Transferee Company falls under the territorial jurisdiction of this Bench.
3. The Petitioner Company i.e., M/s ADVA Optical Networking (India) Private Limited.(CIN U72200HR2010FTC056956) was incorporated under the provisions of the Companies Act, 1956, as a private limited company vide Certificate of Incorporation dated 23.07.2010. The Share Capital structure of Petitioner Company is as under: -

Authorised Capital	Amount (in Rs)
50,000 equity shares of INR 10/- each	5,00,000
Issued, Subscribed and Paid Up Share Capital	Amount (in Rs)
10,000 Equity Shares of INR.10/- each fully paid-up	1,00,000

4. The Petitioner company submitted that the amalgamation of Transferor Company with the Transferee Company would, inter alia, entail the following benefits:
- a) Consolidation and simplification of group structure by eliminating multiple companies.
 - b) Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, usage of common resource pool like administration, finance, accounts, legal and other related functions, leading to elimination of duplication and rationalization of administrative expenses.
 - c) Combined entity shall optimize and reduce duplication of cost of tax and various regulatory requirements. The Amalgamation of AISPL with AONIPL shall result in reduction of overheads, administrative, managerial and other expenditure, and bring about operational rationalization, tax and organizational efficiency, and optimal utilization of various resources.
 - d) Cash flow generated by the combined business can be deployed more efficiently to fund organic and inorganic growth opportunities.
 - e) Greater integration and financial strength for the amalgamated entity, which would result in maximising overall shareholder value, and would improve the financial position of the amalgamated entity.
 - f) Improved, organisational capability and leadership, arising from the pooling of human capital that has diverse skills, talent and vast experience to compete successfully in an increasingly competitive Industry.

5. A perusal of the petition discloses that the first motion application filed vide CA (CAA) No.38/Chd/Hry/2020 was disposed on 17.03.2022 wherein the meetings of equity shareholders, secured creditors and unsecured creditors of all the Applicant Companies were dispensed with for the reasons mentioned in the aforesaid order.
6. This Tribunal vide order dated 20.04.2022 directed to issue notices to the (i) Regional Director, Ministry of Corporate Affairs, (ii) Registrar of Companies, NCT of Delhi and Haryana, (iii) Official Liquidator, Lok Nayak Bhavan, Delhi (iv) concerned Income Tax Department. Further, the petitioner companies were directed to carry out the publication of advertisement in "The Tribune" (English) and 'Dainik Bhaskar' (Hindi). However, subsequently, the Petitioner moved an application bearing CA-152/2022 for publication of the advertisement in the "Business Standard" in English and Hindi which was allowed by this Tribunal vide order dated 04.06.2022.
7. The Petitioner Companies in compliance to the aforesaid order served notice to the statutory authorities and paper publication in 'Business Standard' (English) and 'Business Standard' (Hindi) on 26.08.2022.
8. The compliance affidavit dated 15.09.2023 has been filed by the petitioner company wherein it is state that pursuant to public announcement, they have not received any objection from general public.
9. Pursuant to the notice issued by this Tribunal, Regional Director, Ministry of Corporate Affairs and Income Tax Department participated in the proceedings.

10. The RD has filed its report dated 07.08.2023, wherein some observations were made to which petitioner company has filed its response. The observations as well as reply of the Petitioner Companies are as under: -

Serial No	Observations in the RD Report	Response of the Petitioner Companies
2.	The company has got its share exchange ratio valued by the V R Associates Chartered Accountant and not by the registered valuer. Hence, the company may be asked to clarify the compliance of the section 247 (1) of the Companies Act, 2013.	The Petitioner Company submitted that upon the scheme of Amalgamation coming into effect, the Petitioner Company has to issue equity shares to the Transferor Company for the purpose of allotment of the said shares, the Petitioner Company has taken a Valuation Report. That VR & Associates, Chartered Accountant has determined the Share Exchange ratio upon which the Transferee Company shall issue the shares to the Transferor Company and the said Valuation Report was obtained on 8th March, 2018. The Petitioner Company respectfully submitted that at the time of approval and

		<p>adoption of the scheme of amalgamation by the Board of the Petitioner Company, it was not mandatory to seek the valuation report from the registered valuer. That the Petitioner Company respectfully submits that the Ministry of Corporate Affairs vide Notification No. G.S.R 925(E) dated 25th September 2018 has made it compulsory to conduct valuation for the purpose to determine share exchange ratio after 31st January 2019 through a Registered Valuer only. The Petitioner Company further submits that the Hon'ble NCLT Bench at Bengaluru has passed Orders in the Company Petition filed by the Transferor Company seeking sanction of the scheme of amalgamation between Adva IT Solutions Pvt. Ltd. and Adva Optical Networking India Pvt Ltd by placing reliance on the same valuation report.</p>
3.	The Transferee company is directed to comply with the	The Board of the Petitioner Company i.e. Transferee

	<p>provisions of Section 232 (3) (i) of the Companies Act, 2013 regarding fee payable of its revised Authorized Share Capital.</p>	<p>Company while approving & adopting the Scheme of Amalgamation of Adva IT Solutions Private Limited and Adva Optical Networking India Private Limited on 16th March, 2018 has undertaken to comply with the provisions of the Companies Act, 2013 to be read with Companies (Compromises, Arrangements & Amalgamation) Rules 2016 or any other rules/regulations as framed hereunder to give effect to the Scheme of Amalgamation and the Petitioner Company in its board meeting has duly authorized, the undersigned to do all such acts necessary to give effect to the scheme of Amalgamation. That, the undersigned to give effect to the scheme of Amalgamation duly undertakes to comply and to take all necessary actions as required in accordance with law including the compliance of Section 232(3)(i) of the Companies Act 2013 upon the sanction of the</p>
--	--	---

		Scheme of Amalgamation by the Hon'ble NCLT Bench at Chandigarh.
--	--	---

11. Further, vide order dated 07.03.2024, the Counsel for the RD appeared before this Tribunal and stated that they are satisfied with the response given by the Petitioner Company w.r.t, observation made by the RD.

12. The Income Tax Department has filed its report dated 16.06.2023 wherein it has been stated that there are NIL Income Tax Demand and NIL Income Tax Proceedings against the Petitioner Company. Further vide order dated 07.03.2024 it was noted as under: -

*Similarly, the Ld. **Senior Standing Counsel for the Income Tax Department has no objection against the Scheme** and there is no report of Official Liquidator*

13. The Official Liquidator has not filed its report despite service of notice. Considering the lapse of time in the matter, it is presumed that there is no objection to the proposed Scheme of Amalgamation by Official Liquidator.

14. In this petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.

15. Certificates of respective Statutory Auditors of all the petitioner companies, have been placed on record to the effect that Accounting

Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies Accounts Rules, 2014 and Companies (Accounting Standards) Amendment Rules, 2016, and other generally accepted accounting principles in accordance with the Companies Act, 2013, as applicable.

16. The shareholders of the petitioner companies are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by the Tribunal for the reason that it is not a part of the judicial function to examine entrepreneurial activities and their commercial decisions.

17. The Hon'ble Supreme Court in **Miheer H. Mafatlal vs Mafatlal Industries Ltd JT 1996 (8) 205** while considering the scope of the jurisdiction of the Company Court in respect of matters of sanction of the Scheme of Amalgamation as per the provisions of Section 391 read with Section 393 of the Companies Act, 1956, observed as under:

It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court certainly would not act as a court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority. Consequently, the Company Court's

jurisdiction to that extent is peripheral and supervisory and not appellate.

In view of the law laid down by the Supreme Court, this Tribunal is not supposed to examine the merits/benefits of the commercial wisdom of the decision of the shareholders.

18. It has also been affirmed in the petition that the Scheme is in the interest of the Transferor company and the Transferee company, including their shareholders, creditors, employees and all concerned. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, there appears to be no impediment in sanctioning the present Scheme.

19. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013 with the following conditions.

- I. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with the law.*
- II. The Transferee company shall be responsible to pay the Income Tax dues of the Transferor Company, as per law.*
- III. Notwithstanding the above, if there is any deficiency found or, violation committed, qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken in accordance with the law, against the concerned persons, directors and officials of the petitioners.*
- IV. While approving the Scheme as above, it is further 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, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

V. *The Petitioner Companies have proposed 01.01.2018 as appointed date. However, as per circular dated 21.08.2019 issued by MCA bearing General Circular no. 9/2019, if the appointed date is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest. The appointed date being ante-dated in the present scheme, therefore, this Tribunal confirms and approve 01.04.2023 as appointed date.*

20. This Tribunal hereby further order

- 1) *That the Transferor Company shall stand dissolved without following the process of winding-up; and*
- 2) *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 Section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee company; and*
- 3) *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 Section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee company; and*

- 4) *That all proceedings now pending by or against the Transferor Company, be continued by or against the Transferee company; and*
- 5) *That all the employees of the Transferor Companies in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date, shall become the employees of the transferee company on such date, without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the concerned Transferor Company on the said date; and*
- 6) *That Petitioner companies shall, within thirty days of the date of the receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the Transferor Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file, kept by him in relation to the Transferee company and the files relating to all the petitioner companies shall be consolidated accordingly; and*
- 7) *That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.*

21. The Company Petition CP (CAA) No.22/Chd/Hry/2022 is allowed disposed of accordingly. Let copy of the order be served to the parties.

Sd/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

Sd/-
(HARNAM SINGH THAKUR)
MEMBER (JUDICIAL)

April 16, 2024

AG

CP.(CAA) NO. 22/CHD/HRY/2022
IN
CA(CAA) No. 38/ CHD/HRY /2020