

**IN THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL  
BENCH AT CHANDIGARH**

**CA (CAA) No. 3/Chd/Hry/2024  
(1<sup>st</sup> Motion)**

**Under Sections 230 to 232 of the  
Companies Act, 2013 read with  
Companies (Compromise,  
Arrangements and Amalgamations)  
Rules, 2016**

**IN THE MATTER OF SCHEME OF AMALGAMATION OF:**

**ADIDAS INDIA PRIVATE LIMITED**

Company registered under the Companies Act, 1956  
CIN:U19201HR1996PTC114728; PAN: AAACA8513D  
Income Tax Ward/Circle: Ward 1(1), Delhi,  
C.R. Building, Delhi.  
Registered office: Plot No.-53, Sector-32, Institutional  
Area, Gurugram - 122001, Haryana.  
Through its Authorized Representative Mr. Vivek Tyagi  
(authorized representative)

**..Transferor Company/ Applicant Company No. 1**

**With**

**ADIDAS INDIA MARKETING PRIVATE LIMITED**

Company registered under the Companies Act, 1956  
CIN: U74899HR1995PTC114816; PAN: AAACA5313P  
Income Tax Ward/Circle: Circle 1(1), Delhi,  
C.R. Building, Delhi  
Registered office: Plot No.-53, Sector-32, Institutional Area,  
Gurugram - 122001, Haryana, India.  
Through its Authorized Representative Mr. Vivek Tyagi  
(authorised representative)

**..Transferee Company/ Applicant Company No. 2**

**Order delivered on: 07.06.2024**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. L. N. GUPTA, MEMBER (TECHNICAL)**

**Present:-**

For the Applicant Companies: Mr. Abhinav Sood, Advocate

**Per: Mr. Harnam Singh Thakur, Member (Judicial)**  
**Mr. L.N. Gupta, Member (Technical)**

**ORDER**

This is a Joint First Motion Application filed by Applicant Companies namely; **ADDIDAS INDIA PRIVATE LIMITED** (referred to as “Applicant Company 1/Transferor Company”) and **ADDIDAS INDIA MARKETING PRIVATE LIMITED** (referred to as “Applicant Company 2/Transferee Company”), under Section 230-232 of the Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Amalgamation. The said Scheme is attached as Annexure A-1 with the Application.

2. The applicant companies have prayed for dispensing with the requirement of convening the meetings of equity shareholders, secured and unsecured creditors of the applicant companies.

3. The Applicant Company No.1 is investment company and Applicant Company No.2 is presently engaged in the business of manufacturing of shoes, footwear. The scheme involves the Amalgamation of holding company into subsidiary company.

. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferor Company/ Applicant Company No.1 as on 31<sup>st</sup> March 2023 are as under:

<b>Particulars</b>	<b>Amount in Rupees</b>
<b>Authorised Share Capital</b>	
47,50,00,000 equity shares of INR 10/- each	4,75,00,00,000
<b>Total</b>	<b>4,75,00,00,000</b>
<b>Issued, Subscribed and Paid-Up Share Capital</b>	
46,61,00,680 equity shares of INR 10/- each	4,66,10,06,800
<b>Total</b>	<b>4,66,10,06,800</b>

The Authorised, Issued, Subscribed and Paid-up share capital of the Transferee Company/ Applicant Company No. 2 as on 31<sup>st</sup> March 2023 are as under:

Particulars	Amount in Rupees
<b>Authorised Share Capital</b>	
47,50,00,000 equity shares of INR 10/- each	4,75,00,00,000
<b>Total</b>	<b>4,75,00,00,000</b>
<b>Issued, Subscribed and Paid-Up Share Capital</b>	
46,95,17,830 equity shares of INR 10 /- each	4,69,51,78,300
<b>Total</b>	<b>4,69,51,78,300</b>

4. It is submitted that the registered offices of the Applicant Company No. 1 and Applicant Company No. 2 are situated at the same address- Gurugram, Haryana and are within the State of Haryana, therefore, the territorial jurisdiction of Applicant Companies falls with this Bench.

5. The rationale of the Scheme is given below :-

- I. The initial shareholding structure of the Companies was approved pursuant to the approval vide letter dated 26.02.1996 and 19.03.1996 as issued by DIPP [(now referred as Department of Promotion of Industry and Internal Trade (DPIIT)], at a time where Applicable Laws including Foreign Exchange Regulation Act, 1973 imposed numerous restrictions including sectoral caps on direct shareholding of foreign entities into an Indian company. In view of such restrictions, a structure was implemented wherein a company being a wholly owned subsidiary of foreign group companies (i.e., now the Transferor Company), was incorporated to act as a holding company of a joint venture company (i.e., now the Transferee Company)

- II. Subsequently, with the liberalization of the FDI Policy by the Government of India, easing the restrictions on foreign shareholding and vide approval letter dated 09.01.2006 the shareholding of the joint venture partner (i.e., a minority shareholder) in the Transferee Company was acquired by one of the foreign group companies. This acquisition resulted in increasing the foreign equity participation in the Transferee Company to 100% (one hundred percent). Pursuant to an approval dated 26.07.2016, the Transferee Company commenced its Single Brand Retail Trade ("BRT") operations.
- III. Thereafter, with the issue of Press Note 1 of 2018 by the Government of India which was subsequently notified vide Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Amendment) Regulations, 2018, the foreign direct investment in SBRT was increased to 100% (One hundred percent) and brought under automatic route. Considering the said liberalization, the current structure where Transferor Company and the Transferee Company form part of the same group wherein the Transferor Company (directly and through its shareholders) owns 100% (One hundred percent) of the Transferee Company has become redundant and superfluous. Accordingly, this Scheme is a re- organization plan to rationalize and streamline the existing group structure in India.
- IV. Accordingly, the Boards of the Companies have jointly decided to amalgamate the Transferor Company together with its businesses and undertakings, with the Transferee Company, so as to achieve the following benefits:

- (a) simplification and consolidation of group and business structure resulting in the reduction of managerial overlaps, which are necessarily involved in running multiple entities;
  - (b) cost savings resulting from rationalization, standardization and simplification of business and compliance processes and elimination of duplication of activities and optimal utilization of resources;
  - (c) reducing time and efforts on consolidation of financials at the group level; and
  - (d) to achieve administrative and operational rationalization, organizational efficiencies, reduction in overheads and other expenses, and optimal utilization of various resources.
- V. The Scheme is in the best interest of the shareholders, employees and other stakeholders of the Applicant Companies.

6. It is stated that the Board of Directors of the Applicant Companies, in their meetings held on 29.11.2023, have considered and unanimously approved the Scheme subject to the sanction of the same by this Tribunal. The copies of the Board Resolutions of the Applicant Companies are part of Annexures A-4 and A9.

7. The appointed date of the Scheme is 01.04.2023 as defined in Part-A, Clause 1.3.3 of Scheme of Amalgamation which is attached as Annexure A-1 of the Application.

8. It is submitted that the Scheme of Amalgamation (Annexure A-1) also takes care of the interest of the staff/workmen and employees of the Applicant Companies, by virtue of Clause 3.9 of the Scheme.

9. It is stated that the Applicant Companies have filed the audited financial statements as at 31.03.2023 along with provisional financial statements as on 30.09.2023, with the application which are attached as Annexure- A-3, Annexure A-8 of the application respectively.

10. It is further submitted that in pursuance to Section 230 and Section 232 of the Act, the Applicant Companies have filed the certificate dated 18.12.2023 issued by the Statutory Auditor of the Applicant Companies certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act which is attached as Annexure A-15 of the application.

11. It is further submitted by the counsel for applicant companies that the valuation report has been submitted by Transaction Square Advisory LLP through Partner, Niranjana Kumar, IBBI Registered Valuer, having Regn. No. IBBI/RV-E/06/2023/194 which is attached as Annexure A-13 of the application. As per the valuation report dated 28.11.2023 the following share exchange ratio has been proposed :-

*“46,30,50,680 (Forty Six Crore Thirty Lakh Fifty Thousand Six Hundred and Eighty Only) fully paid-up equity shares of the face value of IN 10 each of AIMPL shall be issued and allotted as fully paid-up equity shares to the equity shareholders of AIPL, in the proportion to their holding as on the record date”.*

12. It is deposed by way of affidavits furnished by authorized signatories of the Applicant Companies that companies does not envisage any reduction of share capital under Section 66 of the Companies Act, 2013 (Annexure A-16 of the Application).

13. It is deposed by the way of affidavit that no proceeding(s) or investigation(s) under Sections 235 to 251 of the Companies Act, 1956 and/or under Sections 206 to 229 of the Companies Act, 2013 are pending or instituted

against Applicant Companies involved in the present Scheme (Annexure A17 of the Application).

14. It is deposed by the way of affidavit that the present Scheme of Amalgamation is not scheme of Corporate Debt restructuring as envisaged under Section 230(2)(c) of the Companies Act, 2013 (Annexure A-18 of the Application).

15. It is further deposed by the authorized representatives of Applicant Companies that the Applicant Companies are not regulated or governed by any sectoral regulators or authorities which are to be affected by the present Scheme of Amalgamation and hence not required to serve notices to any other authorities apart from the authorities- Registrar of Companies, Regional Director, Official Liquidator, Income Tax Department. Further, it is deposed that the requirement of obtaining approval from the Competition Commission of India under sub-clause (2) of Section 6 of the Competition Act, 2002 is exempted vide Entry 9 to Schedule I in terms of Regulation 4 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. The aforesaid affidavit has been attached as (Annexure A-19 of the Application).

16. The Applicant Companies have furnished the following documents:-

- a) Proposed Scheme (Annexure A-1 of the application).
- b) The Certificates of Incorporation along with Memorandum and Articles of Association of applicant companies. (Annexures A-2, A-7, respectively of the Application)

- c) List of Equity Shareholders of Applicant Company No.1 along with consent duly supported by affidavit of director (Annexures A-5 of the application).
- d) List of NIL Secured and Unsecured Creditors of Applicant Company No. 1 duly certified by N.S Kumar and Co., Chartered Accountant (Annexures A-11 of the application).
- e) List of Equity Shareholders of Applicant Company No. 2 along with consent duly supported by affidavit of director (Annexure A-10 of the application).
- f) List of secured Creditors of Applicant Company No. 2 duly certified by Chartered Accountant (CA 93/2024 filed vide Dairy No. 01201 dated 04.04.2024).
- g) List of Unsecured Creditors of Applicant Company No. 2 duly certified by Chartered Accountants along with consent affidavits (CA 93/2024 filed vide Dairy No. 01201 dated 04.04.2024).
- h) Certificates of Statutory Auditors to the effect that accounting treatment proposed in the Scheme is in conformity with Section 133 of the Act (Annexures A -15 of the application).
- i) Valuation Report (Annexure A-13 of the application).
- j) Audited Financial Statements as on 31.03.2023 of the applicant companies and provisional financial statements as on 30.09.2023 (Annexures A-3, A-8 of the application).
- k) Affidavit with regard to the Sectoral Regulator of the applicant companies (Annexure A-19 of the application).



- l) Affidavit with regard to the reduction of share capital (Annexure A-16 of the application).
- m) Affidavit with regard to the pendency of legal proceedings of the applicant companies (Annexure A-17 of the application).
- n) Affidavit with regard to the Debt Restructuring of the applicant companies (Annexure A-18 of the application).

17. The Applicant Companies have furnished the details of the Equity Shareholders, Secured Creditors, Unsecured Creditors as follows:

Name of the Applicant Companies	Shareholders along with their consent		Creditors along with their consent.			
	Equity Shareholder	Consent with calculations	Secured Creditors	Consent with calculations	Unsecured Creditors	Consent with calculations
Applicant Company 1	2	100% in Value	NA	NIL	NA	NIL
Applicant Company 2	3	100% in Value	NIL	NA	270	70.70% in Value (Meetings to be convened)

18. Accordingly, this Bench directs as under:

**I. In relation to Applicant Company No. 1/Transferor Company:**

- a. The meeting of the Equity Shareholders is dispensed with keeping in view the shareholding pattern, financial structure of the company, and the fact that the consents have been received by way of affidavits;
- b. Since, there are NIL secured and unsecured creditors, therefore, there is no scope of any meeting.

**II. In relation to Applicant Company No. 2/Transferee Company :**

- a. The meeting of the Equity Shareholders is dispensed with keeping in view the shareholding pattern, financial structure of the company, and the fact that the consent has been received by way of affidavits;
  - b. Since, there are NIL secured creditors, therefore, there is no scope of any meeting.
  - c. The meeting of unsecured creditors of the Applicant Company No. 2 has been dispensed with as the consent of unsecured creditors 70.70% in value have been furnished by way of affidavits filed by CA 93/2024 vide Dairy No. 01201 dated 04.04.2024. However as per Section 230 (9) of the Companies Act, 2013 atleast 90% of the consent is required by way of affidavit to the proposed scheme. Therefore, in view of the same, the meeting of the Unsecured Creditors of the Applicant Company No.2 be convened as prayed for on 27 July , 2024 (Saturday) at 10:00 AM through video conferencing with facility of remote e-voting, subject to notice of the meeting being issued. The quorum of the meeting of the Unsecured Creditors shall be 108 in number or 40% in value of the Unsecured Creditors;
- III.** In case the required quorum as noted above for the meetings is not present at the commencement of the meeting, the meeting shall be adjourned by 30 minutes and thereafter the persons present and voting shall be deemed to constitute the quorum.
- IV.** Mr. Akshay Bhan, Senior Advocate Address: # 302, Sector 10-B Chandigarh-160011, Mobile No. 9501059250, email id: akshaybhan302@gmail.com is appointed as the Chairperson for the meetings to be called under this order. An

amount of ₹2,00,000/- (Rupees Two Lakhs Only) be paid for his services as the Chairperson.

- V.** Ms. Deepika Bedi, Advocate, address: House No: 974 Street No: 14 Saraswati Vihar Sector 14 Dera Bassi SAS Nagar Punjab- 140507, Mobile No.: 6284287292, email: [advocatedeepikabedi@gmail.com](mailto:advocatedeepikabedi@gmail.com) is appointed as the Alternate Chairperson for the meetings to be called under this order. An amount of ₹1,50,000/- (Rupees One Lakh Fifty Thousand Only) be paid for her services as the Alternate Chairperson.
- VI.** Mr. Nikhil Sachdeva, Chartered Accountant, Address: House No: 2822 First Floor Sector 32-A Chandigarh Road Ludhiana Punjab-141010, Mobile No. 8699003124, email id:- [nikhilsachdeva.ca@gmail.com](mailto:nikhilsachdeva.ca@gmail.com), is appointed as the Scrutinizer for the above meetings to be called under this order. An amount of ₹1,25,000/- (Rupees One Lakh Twenty Five Thousand Only) be paid for his services as the Scrutinizer.
- VII.** The fee of the Chairperson, Alternate Chairperson and Scrutinizer and other out of pocket expenses for them shall be borne by the Applicant Company No.2.
- VIII.** It is further directed that along with the notices, Applicant Company No. 2 shall also send, statements explaining the effect of the scheme on the creditors, key managerial personnel, promoters and non-promoter members, etc. along with the effect of the scheme of amalgamation on any material interests of the Directors of the Company or the debenture trustees if any, as provided under sub-section (3) of Section 230 of the Act.
- IX.** That the Applicant Company No.2 shall publish an advertisement with a gap of at least 30 clear days before the aforesaid meeting, indicating the day, date and

place and the time of the meeting as aforesaid, to be published in “Financial Express” (English) and “Jansatta” (Hindi), both in Delhi NCR Edition. The publication shall also indicate that the explanatory statement required to be furnished pursuant to Sections 230 & 232 read with Section 102 of the Companies Act, 2019 can be obtained free of charge at the registered office of the Applicant Companies. The Applicant Company No.2 shall also publish the notice on its website, if any.

- X.** Voting shall be allowed on the “Scheme” through electronic means which will remain open for a period as mandated under Clause 8.3 of Secretarial Standards on General Meetings to the Applicant Companies under the Act and the Rules framed thereunder.
- XI.** The Scrutinizer’s report will contain his/her findings on the compliance to the directions given in Para VII to X above.
- XII.** 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, Arrangements and Amalgamations) Rules, 2016 within 7 (seven) days of the conclusion of the meeting. The Chairperson would be fully assisted by the authorized representative/Company Secretary of the Applicant Companies and the Alternate Chairperson. The Scrutinizer will assist the Hon’ble Chairperson and Alternate Chairperson in preparing and finalizing the report.
- XIII.** The Applicant Company No. 2 shall individually and in compliance of sub-Section (5) of Section 230 of the Act and Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form No. CAA-3 along with copy of the Scheme, Explanatory Statement and the disclosures

mentioned in Rule 6 of the “Rules” to (i) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi; (ii) Jurisdictional Registrar of Companies; (iii) Official Liquidator (iv) Reserve Bank of India (as the equity shareholders are foreign entities) (v) Income Tax Department through the Nodal Officer – Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh by mentioning the PAN number of the Applicant Companies; and to such other Sectoral Regulator(s) governing the business of the Applicant Companies, if any, stating that report on the same, if any, shall be sent to this Tribunal within a period of 30 days from the date of receipt of such notice and copy of such report shall be simultaneously sent to the applicant companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

- XIV.** The Applicant Companies shall furnish a copy of the Scheme free of charge within one day of any requisition for the Scheme made by any creditor or member/shareholder entitled to attend the meeting as aforesaid.
- XV.** The authorized representative of the Applicant Company No.2 shall furnish an affidavit of service of notice of meeting and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meeting.
- XVI.** All the aforesaid directions are to be complied 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.

19. With the aforesaid directions, this First Motion Application stands disposed of. A copy of this order be supplied to the learned counsel for the Applicant Companies who in

turn shall supply a copy of the same to the Chairperson, Alternate Chairperson and the Scrutinizer immediately.

20. In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition with a direction that the Applicant Companies shall make specific prayer for sending notices to the (a) Central Government through Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, (b) concerned Registrar of Companies; (c) Reserve Bank of India (as the equity shareholders of the Applicant Companies are foreign entities) (d) Official Liquidator; and (e) Income Tax Authorities by disclosing the PAN numbers of all the Applicant Companies in the title of the Second Motion Petition.

Sd/-

**(L. N. Gupta)**  
**Member (Technical)**

June 07, 2024

PKA/TB

Sd/-

**(Harnam Singh Thakur)**  
**Member (Judicial)**