

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI COURT – VI

ITEM NO. 810

CP.(CAA) NO. 04/ND/2023

IN

CA(CAA) No. 106/ND/2022

IN THE MATTER OF:

**M/s. MVR Share Trading Pvt. Ltd. and M/s. Pulin Investements Pvt.
Ltd.**

... Applicants

Order under Section 230-232 of Companies Act, 2013.

Order delivered on 14.09.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS,

HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR,

HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

CP.(CAA) NO. 04/ND/2023 IN CA(CAA) No. 106/ND/2022 stands allowed.

SD/-

(Rahul Bhatnagar)

Member Technical

SD/-

(Bachu Venkat Balaram Das)

Member Judicial

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

NEW DELHI BENCH-VI

CP.(CAA) NO. 04/ND/2023

IN

CA(CAA) No. 106/ND/2022

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 AMALGAMATION

M/S MVR SHARE TRADING PRIVATE LIMITED

having its Registered Office at
III Floor, 11/6B, Shanti Chambers,
Pusa Road, New Delhi- 110005.

**PETITIONER COMPANY NO.1)/
(TRANSFEROR COMPANY NO.1)**

AND

M/S AROMA SECURITIES LIMITED

having its Registered Office at
17, Netaji Subhash Marg,
Darya Ganj, New Delhi – 110092.

**PETITIONER COMPANY NO.2/
(TRANSFEROR COMPANY NO.2)**

AND

M/S SKY HIGH FINLEASE PRIVATE LIMITED

having its Registered Office at
UG-3, Sasco Bhawan, Azadpur
Commercial Complex, Delhi-110033.

**PETITIONER COMPANY NO.3/
(TRANSFEROR COMPANY NO.3)**

AND

M/S SMC SHARE BROKERS LIMITED

having its Registered Office at
17, Netaji Subhash Marg, Darya Ganj,
New Delhi- 110002.

**PETITIONER COMPANY NO.4/
(TRANSFEROR COMPANY NO.4)**

AND

M/S SVAN SECURITIES PRIVATE LIMITED

having its Registered Office at
UG-3, Sasco Bhawan, Azadpur
Commercial Complex, Delhi-110033.

**PETITIONER COMPANY NO.5/
(TRANSFEROR COMPANY NO.5)**

WITH

M/S PULIN INVESTMENTS PRIVATE LIMITED

having its Registered Office at
9B, Netaji Subhash Marg, Darya Ganj,
New Delhi - 110002.

**PETITIONER COMPANY NO.6/
(TRANSFeree COMPANY)**

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER, JUDICIAL

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER, TECHNICAL

Appearance:

For the Petitioner/Applicant

Ms. Rekha Mittal, PCS

For the OL :

Ms. Hemlata Rawat, Adv.

For the RD:

Ms. Shankari Mishra, Adv

For the Income Tax Department

Mr. Ruchir Bhatia (SSC),
Mr. Mr. Pratyaksh Gupta,
(JSC)

ORDER

PER: RAHUL BHATNAGAR, MEMBER, TECHNICAL

Pronounced on 14.09.2023

1. This joint petition has been filed by the Petitioner Companies 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 Companies into the Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred as the “Scheme”), has been placed on record.
2. The Petitioner Company No.1 i.e., M/s. MVR Share Trading private Limited bearing Corporate Identification No. (CIN-U74899DL1991PTC046691) was incorporated under the provisions of the Companies Act, 1956, as a private limited company vide Certificate of Incorporation dated 09th December, 1991, having its registered office at III Floor, 11/6B, Shanti Chambers, Pusa Road, New Delhi- 110005.
3. The Petitioner Company No.2, i.e., M/s. Aroma Securities Limited bearing Corporate Identification No. (CIN-U74899DL1994PLC056954) was incorporated under the provisions of the Companies Act, 1956, as a private limited company vide Certificate of Incorporation dated 18th January,

1994, having its registered office at 17, Netaji Subhash Marg, Darya Ganj, New Delhi- 110002.

4. The Petitioner Company No.3, i.e., M/s. Sky High Finlease Private Limited bearing Corporate Identification No. (CIN-U67100DL1996PTC075582) was incorporated under the provisions of the Companies Act, 1956, as a private limited company vide Certificate of Incorporation dated 19th January, 1996, having its registered office at UG-3, Sasco Bhawan, Azadpur Commercial Complex, Delhi-110033.
5. The Petitioner Company No.4, i.e., M/s. SMC Share Brokers Limited bearing Corporate Identification No. (CIN-U74899DL1995PLC070754) was incorporated under the provisions of the Companies Act, 1956, as a private limited company vide Certificate of Incorporation dated 13th July, 1995, having its registered office at 17, Netaji Subhash Marg, Darya Ganj, New Delhi-110002.
6. The Petitioner Company No. 5, i.e., M/s. Svan Securities Private Limited bearing Corporate Identification No. (CIN-U74899DL1994PTC063183) was incorporated under the provisions of the Companies Act, 1956, as a private limited company vide Certificate of Incorporation dated 5th December, 1994, having its registered office at UG-3, Sasco Bhawan, Azadpur Commercial Complex, Delhi- 110033.

7. The Petitioner Company No 6, M/s. Pulin Investments Private Limited is a private limited company incorporated under the provisions of Companies Act, 1956 on 22nd March, 1995 vide (CIN-U74899DL1995PTC074891) with Registrar of Companies, NCT of Delhi & Haryana and having its registered office at 9B, Netaji Subhash Marg, Darya Ganj, New Delhi-110002.

8. The Petitioner companies submitted that the amalgamation of 'Transferor Company 1', 'Transferor Company 2' 'Transferor Company 3' 'Transferor Company 4' 'Transferor Company 5' (collectively referred to as 'Transferor Companies') with the Transferee Company would, inter alia, entail the following benefits:

- a) All the Transferor Companies and the Transferee Company are closely held group Companies under common shareholding, management and control. The proposed amalgamation of the Transferor Companies with the Transferee Company would result in business synergy, consolidation and pooling of their resources.
- b) The Transferor Companies and the Transferee Company are engaged in similar business activities. The proposed amalgamation would enable pooling of physical, financial and human resource of these Companies for the most beneficial utilization of these factors in the combined entity. Post Scheme, the Transferee Company will enjoy large net worth and financial resources.

- c) The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of financial, human and other resource and enhancement of overall business efficiency. The proposed Scheme will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses.
- d) The said Scheme of Amalgamation will contribute in fulfilling and furthering the objects of these Companies. It will strengthen, consolidate and stabilize the business of these Companies and will facilitate further expansion and growth of their business. The resulting amalgamated company will be able to participate more vigorously and profitably in the competitive market scenario.
- e) The proposed amalgamation would enhance the shareholders' value of the Transferor and the Transferee Companies.
- f) The said Scheme of Amalgamation will have beneficial impact on the Transferor and the Transferee Companies, their shareholders, employees and other stakeholders and all concerned.

9. A perusal of the petition discloses that the first motion application bearing CA (CAA)106/ND/2022 was jointly filed

by the Petitioner Companies. Based on the averments made in the said application this Tribunal vide order dated 22.12.2022 dispensed with the requirement of convening of meetings of all the Petitioner Companies.

10. This Tribunal vide order dated 09.02.2023 directed the petitioner companies 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 Delhi editions of 'Business Standard (English, Delhi Edition) and 'Jansatta' (Hindi, Delhi Edition).
11. The Petitioner Companies in compliance to the aforesaid order filed affidavit of service of notice to the statutory authorities and paper publication dated 14.03.2023 affirming service of notice and affirming that notice of hearing was duly advertised in "Business Standard (English, Delhi Edition) and 'Jansatta' (Hindi, Delhi Edition). on 17.02.2023.
12. Pursuant to the notice issued to the Statutory Authorities, Official Liquidator and RoC, RD participated in the proceedings.
13. The Official Liquidator has filed its report dated 23.03.2023, wherein no specific objection has been raised against the

approval of the Scheme. It has been submitted in the report that the Official Liquidator has not received any complaint against the proposed Scheme from any shareholders, unsecured creditors or other stakeholders interested in the Scheme.

14. The Regional Director has filed its report dated 18.04.2023. The observations as well as reply of the Petitioner Companies are as under: -

Serial No	Observations in the RD Report	Response of the Applicant Company
1.	Copy of valuation report has not been furnished with the petition	Copy of the Report on Valuation of Shares & Share Exchange Ratio has already been filed along with the 1 st Motion Joint Application as Annexure 'A-7'.
2.	Transferor Company no. 2 and 3 are not doing any significant business activity since past two years and appears 'Dormant'	Transferee Company No. 2 and 3 have suffered immensely due to COVID-19 pandemic for the past two years and due to lack of funds the Companies have not been getting appropriate business, therefore, they were unable to generate

		<p>revenue since past two years. However, the companies are regular in filing their financials and annual returns with the statutory authorities and are holding their Board meetings and general meetings on regular basis. The Companies have filed their Balance sheets and annual returns till the financial year ended on 31st March. 2022. So. the Companies are active and not dormant.</p>
3.	<p>As per annexure-A to the auditor's report for the FY. 31.03.2022 of Transferee company, there are pending statutory dues of Income Tax amounting Rs. 84,53,050 & Rs. 79,06,036- on account of dispute.</p>	<p>The Transferee Company is liable and will pay its legal dues. Since the pending statutory dues of Income tax are on account of dispute the Transferee Company will pay once the same is finally settled or disposed off by the competent authority. It is a matter of fact that upon amalgamation, the</p>

		Transferee Company will remain in existence and is liable to pay its liabilities on regular basis and will also remain liable to pay any existing or future liabilities of the Transferor companies in respect of which it has already executed the Affidavit and submitted with this Tribunal.
4.	As per audited financial statement for FY 2021-22. Transferor Company no. 2, 3 and 5 have financial assets more than 50% of the total assets of the company and income from financial assets constitutes 100% of the gross income for at least last two financial years. Therefore, it appears that these companies are operating as NBFC. However, neither the	It is submitted that Transferor Company No. 2 is an unregistered Core Investment Company (CIC) with an asset size of less than Rs. 100 crores therefore, it is not required to register with the Reserve Bank of India under section 45-IA of RBI Act, 1934. It is submitted that the Transferor Company No 3 and 5 are not operating as NBFC, the Companies

	<p>company have appropriate certification from RBI nor the Auditors have disclosed any such remark in their Auditor's Report for the FY 2021-22.</p>	<p>have suffered immensely due to COVID-19 pandemic for the past two years and have invested the surplus funds in shares and securities to generate some income. Therefore, the Board of Directors and the Shareholders of the Companies have decided to merge the companies with the Transferee Company so that the resources of the Companies can be utilized in a better, efficient and economical manner by the Transferee Company as a combined entity. The Transferor Company No. 3 and 5 are not financial institutions or NBFC's under the RBI Act.</p>
5.	<p>Refer to Clause 16 of the scheme, the Transferee company may kindly be directed to comply with the provision of section</p>	<p>That it is confirmed that the Transferee Company shall ensure due compliance of the</p>

	<p>232(3)(i) of the Companies Act, 2013 in regard to fee payable on its revised authorized share capital.</p>	<p>provisions of Section 232(3)(i) of the Companies Act. 2013 in regard to fee payable on its revised authorised share capital the same also forms the part of Scheme of Amalgamation.</p>
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15. We have gone through the observations made by the RD and the Reply filed by the petitioner company. We are satisfied with the response given by the petitioner company w.r.t observation made by the ROC.

16. The Income Tax Department has not submitted its report However, Counsels for Counsel for the Petitioner has filed an affidavit-cum-undertaking dated 28.04.2023 wherein the Transferee company undertakes to make the payment of tax dues as and when they are crystallized by the Income Tax Department in accordance with law.

17. 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.

18. 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.

19. 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. It is well settled that the Tribunal evaluating the Scheme, of which sanction is sought under Section 230-232 of the Companies Act of 2013, will not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors.

20. It has also been affirmed in the petition that the Scheme is in the interest of all the transferor companies 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.

21. 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. *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.*
- III. *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.*
- IV. The appointed date as proposed in the Scheme of Amalgamation i.e. 01.04.2022 by the petitioner companies is confirmed by this Tribunal.

22. This Tribunal hereby further order

- 1) *That the Transferor Companies shall stand dissolved without following the process of winding-up; and*
- 2) *That all the property, rights and powers of all the Transferor Companies, 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 all the Transferor Companies, 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 Companies, 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 Companies 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 all the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to all the Transferor*

Companies 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.

23. The petition stands disposed of on the above terms. Let copy of the order be served to the parties.

**SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)**

**SD/-
(BACHU VENKAT BALRAM DAS)
MEMBER (JUDICIAL)**