

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH – III  
COMPANY PETITION NO. (CAA) – 36(ND)/2021  
CONNECTED WITH  
COMPANY APPLICATION NO. 09(ND)/2021**

*Under Section 230-232 and other applicable provisions of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016)*

**IN THE MATTER OF:**

**A.Y. TRADERS PRIVATE LIMITED**

**...APPLICANT NO.1/TRANSFEROR COMPANY**

**AND**

**PERNAM COMTRADE LIMITED**

**...APPLICANT NO.2/TRANSFEROR COMPANY**

**AND**

**KUMSTER TRADERS LIMITED**

**...APPLICANT NO.3/TRANSFEROR COMPANY**

**AND**

**GRASSLANDS VYAPAAR PRIVATE LIMITED**

**...APPLICANT NO.4/TRANSFEROR COMPANY**

**AND**

**G S G PROPERTIES PRIVATE LIMITED**

**...APPLICANT NO.5/TRANSFEREE COMPANY**

**Order Delivered On: 16.05.2023**

**CORAM:**

**SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**  
**SHRI. ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

**For the Applicant:** Mr. Sourabh Kalia, Advocate

**For the RD:** Ms. Shankari Mishra for RD

**For the OL:** Ms. Hemlata Rawat and Mr. Aayushmaan Vatsyayana, Counsel for OL

**ORDER**

**PER: ATUL CHATURVEDI, HON'BLE MEMBER, (TECHNICAL)**

1. The present Joint Petition is filed by the Petitioner Companies viz., A.Y. TRADERS PRIVATE LIMITED (Transferor Company/Applicant No.1) and M/s PERNAM COMTRADE LIMITED (Transferor Company/Applicant No.2) and KUMSTER TRADERS LIMITED (Transferor Company/Applicant No.3) and GRASSLANDS VYAPAAR PRIVATE LIMITED (Transferor Company/Applicant No.4) and G S G PROPERTIES PRIVATE LIMITED (Transferee Company/Applicant No.5) under Section 230-232 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 Sanction of the proposed Scheme of Amalgamation of the Transferor Company with G S G PROPERTIES PRIVATE LIMITED (Transferee Company/Applicant No.5). The copy of the Scheme of Amalgamation (hereinafter referred as the "Scheme"), has been placed on record.

2. The Transferor Company No.1 i.e. A.Y. Traders Private Limited is a private limited company incorporated on 19.02.2003 under the provisions of the Companies Act, 1956 vide CIN: U51909DL2003PTC353190, having its registered office situated at Ground Floor, House No. 23, Village Sarai Pipal Thalla, New Delhi-110033. The registered office of the Transferor Company is under the jurisdiction of the Tribunal. The Authorized Share Capital of the Transferor Company is Rs. 40,00,000/- (Forty Lakhs) divided into 4,00,000 (Four Lakhs) Equity shares of Rs. 10/- (Ten) each total. The issued, subscribed and paid-up capital of the Company is Rs. 31,22,920/- (Thirty-One Lakhs Twenty-Two Thousand Nine Hundred Twenty Only) divided into 3,12,292 (Three Lakhs Twelve Thousand Two Hundred Ninety-Two) Equity shares of Rs. 10/- (Ten) each.
3. The Transferor Company No. 2 i.e. Pernam Comtrade Limited CIN: U74900DL2015PLC347245 incorporated on 10.08.2015 under the provisions of the Companies Act, 1956, and having its registered office at Ground Floor, House No. 23, Village Sarai Pipal Thalla, New Delhi-110033. The registered office of the Transferor Company is under the jurisdiction of the Tribunal. The authorised share capital of the Transferee Company is Rs. 8,00,000/- (Eight Lakh Only) divided into 80,000 Equity shares of Rs. 10/- (Ten) each total. Rs. 8,00,000/- (Eight Lakhs). The issued, subscribed and paid-up capital of the Company is Rs. 8,00,000/- (Eight Lakh Only) divided into 80,000 (Eighty Thousand) Equity shares of Rs. 10/- (Ten) each.

4. The Transferor Company No. 3 i.e. Kumster Traders Limited CIN: U74900DL2015PLC353110 incorporated on 10.08.2015 under the provisions of the Companies Act, 1956, and having its registered office at Ground Floor, House No. 23, Village Sarai Pipal Thalla, New Delhi-110033. The registered office of the Transferor Company is under the jurisdiction of the Tribunal. The authorised share capital of the Transferee Company is The authorised share capital of the Transferee Company is Rs. 8,00,000/- (Eight Lakh Only) divided into 80,000 Equity shares of Rs. 10/- (Ten) each total. Rs. 8,00,000/- (Eight Lakhs). The issued, subscribed and paid-up capital of the Company is Rs. 8,00,000/- (Eight Lakh Only) divided into 80,000 (Eighty Thousand) Equity shares of Rs. 10/- (Ten) each.
5. The Transferor Company No. 4 i.e. Grasslands Vyapaar Private Limited CIN: U51909DL1995PTC353191 incorporated on 10.03.1995 under the provisions of the Companies Act, 1956, and having its registered office at Ground Floor, House No. 23, Village Sarai Pipal Thalla, New Delhi-110033. The registered office of the Transferor Company is under the jurisdiction of the Tribunal. The authorised share capital of the Transferee Company is Rs. 1,60,00,000/- (One Crore Sixty Lakhs Only) divided into 16,00,000 (Sixteen Lakh) Equity shares of Rs. 10/- (Ten) each total. The issued, subscribed and paid-up capital of the Company is Rs. 1,54,57,000/- (One Crore Fifty-Four Lakh Fifty-Seven Thousand Only) divided into 15,45,700 (Fifteen Lakh Forty-Five Thousand Seven Hundred) Equity shares of Rs. 10/- (Ten) each total.

6. The Transferee Company No. 5 i.e. G S G Properties Private Limited CIN: U45201DL2004PTC123810 incorporated on 01.01.2004 under the provisions of the Companies Act, 1956, and having its registered office at 214, Durga Chambers, DB Gupta, Karol Bagh, New Delhi-110005. The registered office of the Transferor Company is under the jurisdiction of the Tribunal. The authorised share capital of the Transferee Company is Rs. 1,00,000/- (One Lakh Only) Equity shares of Rs. 10/- (Ten) each total Rs. 10,000/- (Ten Thousand). The issued, subscribed and paid-up capital of the Company is Rs. 1,00,000/- (One Lakh Only) divided into 10,000 (Ten Thousand) Equity shares of Rs. 10/- (Ten) each total.
7. The Petitioner Companies submit that the proposed scheme of amalgamation of the Transferor Company and Transferee Company would have the following benefits: -
- i. Achieving business and administrative synergies.
  - ii. Consolidation and simplification of the group structure, cost savings/synergies resulting from rationalization, standardization and simplification of business processes.
  - iii. Improved organizational capability arising from pooling of financial resources.
  - iv. Avoiding duplication of costs of administration, distribution, selling and marketing and reduction in legal and regulatory compliances,

- v. Maximize the overall shareholders value by strengthening its core competencies.
8. The appointed date as fixed for the proposed scheme of Amalgamation is 1<sup>st</sup> April, 2020 or such other date as may be directed by the Hon'ble National Law Tribunal.
9. From the records, it is seen that the First Motion joint application was filed before this Tribunal vide CA(CAA)09/ND/2021. Vide order dated 19<sup>th</sup> January, 2021, the meeting of Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Company and the Transferee Company was dispensed with. Therefore, no chairperson was appointed by the Hon'ble NCLT, no report of chairperson is being submitted. There were nil Secured Creditors and Unsecured Creditors of the Transferor Company therefore, the necessity of convening and holding a meeting did not rise.
10. The Tribunal directed the petitioner companies to issue individual notices to the (i) Regional Director, Northern Region of Ministry of Corporate Affairs, (ii) Income Tax Department, (iii) Registrar of Companies NCT of Delhi and Haryana, (iv) Official Liquidator
11. The Petitioner Companies were also directed to carry out publication in the newspapers. It is seen from the records that the petitioners have filed an Affidavit affirming compliance and disclosing that the applicants have effected publication in "Business Standard" (English) New Delhi edition as well as "Jansatta" Hindi edition, both dated on 03.04.2021. In addition to the public notice, notices were served on the

Regional Director (Northern Region), Official Liquidator, the Income Tax Department, Registrar of Companies, NCT of Delhi and Haryana, Reserve Bank of India and to the other relevant sectoral regulators.

12. Pursuant to the notice issued to the Regional Director and Official Liquidator, they have filed their response/reply in the matter.

13. The Regional Director (RD) in its report dated 04.08.2020 has made certain observations as under: -

- i) The present scheme involves merger of transferor companies namely A.Y. Traders Private Limited (Transferor Company No.1) Pernam Comtrade Limited (Transferor Company No.2), Kumster Traders Limited (Transferor Company. 3), Grasslands Vyapaar Private Limited (Transferor Company No.4) and as per the present scheme share capital of the Transferor Company No.4 namely Grasslands Vyapaar Private Limited is held by the Transferor Company No.2 and Transferor Company No.3. The details of their shareholding of Grasslands Vyapaar Private Limited (Transferor Company No.4) is enclosed herewith and marked as Annexure-C. On perusal of the balance sheet as at 31.03.2020 of the above Petitioner companies it is found that the paid-up share capital of Grasslands Vyapaar Private Limited (Transferor Company No.4) is Rs. 1,54,57,000/- divided into 15,45,700 no. of equity

shares of Rs. 10 each fully paid-up and Security Premium Account has been shown as Rs. 12,19,02,892/-. It is also found from the documents filed by said petitioner transferor company that they have allotted shares to large number of shareholders during earlier years at high premium, the details are as under:

Date of allotment of Equity Shares	No. of allottees	No. of shares allotted	Face Value per share (in Rs.)	Security Premium per share (in Rs.)	Amount received against Security Premium (in Rs.)
31.03.20	77	13,39,500	10	90	12,05,55,000
31.03.20	03	40,000	10	90	40,00,000
Total	80	13,79,500			12,45,55,000

As per the Annual return filed by the said company for the financial year 31.03.2016 it is stated that the total share capital of said Transferor Company were transferred to the petitioner Transferor Companies namely Kumster Traders Limited and Pernam Comtrade Limited. The relevant extracts of transfer details



submitted by the petitioner company Grasslands Vyapaar Private Limited is enclosed herewith and marked as Annexure-D. From the Balance sheet as at 31.03.2017 and onwards the petitioner Transferor Company no. 2 & Transferor Company no. 3 have shown that they have hold the entire paid-up share capital of Transferor Company no. 4 and have acquired at Rs. 1 per share. So from the above it is to submit that while the Transferor Company no. 4 have issued the shares at the issue price of Rs. 100/- per share, the same shares were acquired by the Transferor Company no. 2 & Transferor Company No. 3 at Rs. 1/- per share. In the process there is loss of Rs. 13,69,70,500/- (Rs. 12,45,55,000 + Rs.1,24,15,500 viz the Premium amount & variance of Face value of shares through the process of allotment of shares as stated above and the acquisition of shares as described above. In view of the above it is prayed before the Hon 'ble Tribunal may refer the matter to the Revenue Authorities/ Directorate of Revenue Intelligence for further examination and its logical conclusion.

- ii) It is also observed that the Transferor Company No. 4 has contravened the provisions of section 67 of the Companies Act, 1956 since it has allotted more than 49 members without following the procedure of public offer

and without issuing prospectus, as stated above in para (i) i.e. on 31.03.2006 the company has issued equity shares to 77 members, therefore the allotment of said shares may be treated as "Deemed Public Offer" as observed by the Hon'ble Supreme Court in the matter of Sahara India Real Estate Corporation Limited & Ors. Vs Securities Exchange Board of India in Civil Appeal no. 9813 of 2011. In view of the above the Hon'ble Tribunal may kindly direct the Petitioner Transferor Company No. 4 to refund the amount to the allottees in ett interest before make the offence good in terms of guidelines issued by securities and Exchange Board of India vide No. CIR/CFD/DIL3/18/2015 dated December 31, 2015 before consideration for approval by the Hon'ble Tribunal.

14. The Petitioner Companies had filed reply dated 05.10.2020 in response to the observations made by the Regional Director, under wherein the Petitioner Companies gave clarification and undertaking to address the observations made by the Regional Director. The reply of the Petitioner Companies are mentioned below:

- i) The Ld.Regional Director, Northern Region did not ask for any clarification from the Applicant Companies in respect of observation mentioned.

- ii) The Transferor Company No.4 states that, in terms of Circular No.CIR/CFD/DIL3/18/2015 dated December 31, 2015 issued by Securities and Exchange Board of India (SEBI) in respect of procedure to deal with cases prior to April 01,2014 involving offer/allotment of securities to more than 49 up to 200 investors in a financial year.
- iii) It was stated in the above circular, considering the Higher cap for private placement provided in the Companies Act, 2013, it has now been decided that in respect of earlier cases involving issuance of securities to more than 49 persons but up to 200 persons in a Financial year, the companies may avoid penal action if they provide the investors with an option to surrender the securities and get the refund amount at a price not less than the amount of subscription money paid along interest.
- iv) The terms of para 6 of said SEBI circular, in case of transfer of Securities by the original allottees, the option for refund shall be provided to the current holders of the securities.
- v) The Transferor Company No.4 allotted shares to 77 persons in year 2006 and the original allottees transferred their shares in the year 2006 and in subsequent years the further transferred their shares in the year 2006 and in subsequent years the further transferees also transferred their holding to different persons. On March 30, 2016, Transferor Company No.2 and Transferor Company No.3 purchased

all the equity shares of Transferor Company No.4 from then existing shareholders.

- vi) At the time when Transferor Company No.2 and Transferor Company No.3 acquired shares of Transferor Company No.4, none of the original allottees were holding any shares in the Transferor Company No.4.

After acquisition of the aforesaid shares and on becoming aware about the said circular, the Transferor Company No.2 and Transferor Company No.3 provided exit opportunity in terms of para 6 of the said SEBI circular to each other being the then current holders of the securities

Therefore, we are satisfied with the Transferor Companies.

15. The Official Liquidator has filed its report dated 09.07.2021, wherein no specific objection has been raised against the approval of the Scheme. It is submitted in the report that the affairs of the transferor companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.
16. That the office of Income Tax Department vide its reports dated 17.08.2021 in respect of Transferor Company No.1, Transferor Company No.2 and Transferor No.3 have submitted that there is no outstanding demand in respect of the Assessee Company with this office and no proceeding is pending of the Assessee Company. Hence this office has no objection in proposed amalgamation.

That the Ld. Income Tax Officer in its report respect of Transferor Company No.4 has submitted his representation as under:

- There is no outstanding demand against the assessee at the moment.
- The cases of the assessee for the assessment year 2016-17 has been selected for scrutiny assessment u/s 147 of the IT Act, 1961.

The petitioner companies have filed a reply affidavit dated 22.11.2021 stating as follows: “

That the Income Tax Department has no objection to the proposed scheme of amalgamation in respect of Transferee Company No.5. The scheme of amalgamation has been examined by Ld. Income Tax Department and there are no impediments in sanctioning of the present scheme.

17. Considering the reply of the Petitioner Companies and further, the undertaking of the Petitioner Companies with respect to the observations and clarifications, we find no impediment in approving the present scheme of amalgamation.
18. 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.
19. Certificates of Statutory auditor of the petitioner companies, has been placed on record to the effect that Accounting Treatment proposed in

the Scheme of Arrangement 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.

20. The shareholders of the petitioner company are the best judges of their interest, being 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.
21. It has also been affirmed in the petition that the Scheme is in the interest of all the Petitioner Companies 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.
22. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013 with the following directions: -

- (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, we further clarify 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.

23. This tribunal further directs with respect to Transferor companies and Transferee company, that:

- (i) Upon the sanction becoming effective from the appointed date as provided under the scheme, the Transferor Companies shall stand dissolved without undergoing the process of winding up.
- (ii) All contracts of the Transferor Companies, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favor of the Transferee Company and may be enforced by or against it as fully and effectually as if,

instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto;

- (iii) All the employees of the Transferor Company shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favorable than those on which they are engaged by the Transferor Company, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;
- (iv) All liabilities of the Transferor Companies, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Companies Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company, as if it had incurred such liabilities.
- (v) All proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company.



(vi) Any person interested or effected shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

24. Further, the 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 companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies 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.

25. In compliance with the requirement of Section 232 (7) of the Act, the transferee company shall until the full implementation of the Scheme of Amalgamation shall file a statement every year in the Form CAA 8 along with the required fees with the Registrar of Companies as prescribed in the Companies (Registration offices and fees) Rules 2014 within 210 days from the end of each financial year.

26. The petition stands disposed of in the above terms.

Let copy of the order be served to the parties.

**SD/-**

**(ATUL CHATURVEDI)**

**MEMBER (TECHNICAL)**

**SD/-**

**(BACHU VENKAT BALARAM DAS)**

**MEMBER(JUDICIAL)**