

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**COURT NO VI, NEW DELHI**

**CA(CAA) – 34/ND/2024**

*(Under sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.)*

**IN THE MATTER OF SCHEME OF ARRANGEMENT OF**

**1. M/s NETBIZ TECHNOLOGY LIMITED**

**Plot No. 8, Block-A, Naraina Industrial Area, Phase 2, Delhi – 110028**

**[CIN : U74899DL2000PLC106345]**

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

**2. M/s SKN GAS PRIVATE LIMITED**

**Plot No. 8, Block-A, Naraina Industrial Area, Phase 2, Delhi – 110028**

**[CIN : U11100DL2007PTC166703 ]**

**... Applicant No. 2/Transferor Company No.2**

**3. M/s WEB METALS PRIVATE LIMITED**

**Plot No. 8, Block-A, Naraina Industrial Area, Phase 2, Delhi – 110028**

**[CIN : U72900DL2000PTC106179 ]**

**... Applicant No. 3/ Transferor Company No.3**

**AND**

**4. J.S. NIRMAN PRIVATE LIMITED**

**B-65/3, Naraina Industrial Area, Phase-II, New Delhi – 110028**

**[CIN : U74899DL1988PTC1031162]**

**...Applicant No. 4/ Transferee Company**

**APPEARANCES:**

**For the Petitioners:** Adv. Nikhil Verma and Ms. Abha Tyagi, PCS

**CORAM:**

**SH. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

**SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**PER – MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)**

**Order Delivered on: 29.04.2024**

1. This is a first motion application filed jointly by the all the four aforementioned applicant companies under Section 230-232 of Companies Act, 2013 read with other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of amalgamation (hereinafter referred to as the "SCHEME") proposed between the applicants who have made the following prayers: -

- (i) For sanctioning the scheme of merger,  
*and for...*
- (ii) For allowing the dispensation of both the meetings of creditors and shareholders/members of all the four aforementioned applicant companies on the ground that all **shareholders and creditors (representing 100% both in number and value)** of all the respective applicant companies individually and separately have given their NO objection via affidavits regarding the dispensation of meetings of both the creditors as well as shareholders respectively,
- (iii) For further allowing the dispensation of requirement of issue and publications of the notices for the same in public domain pertaining to all the four aforementioned applicant companies,
- (iv) Pass such other order as this Tribunal may deem fit in the interest of justice.

2. That all the four aforementioned Applicant Companies under the Scheme of Arrangement have their respective registered office in Delhi and hence are under the jurisdiction of the National Company Law Tribunal, New Delhi.

3. The Scheme of Arrangement by way of amalgamation was considered and unanimously approved by Board of Directors of all the three Transferor companies (“Applicant Companies No 1, 2 & 3”) and also the Applicant no.4 company (Transferee company) on 22.12.2023. Copies of the aforesaid Board Resolutions passed in the corresponding Board Meetings have been placed on record by the applicants.
  
4. The Applicant Company No.1 namely M/s NETBIZ TECHNOLOGY LIMITED **[CIN : U74899DL2000PLC106345]** is a public company limited by shares which was incorporated in accordance with the provisions of the Companies Act, 1956 as a Private Limited Company by the virtue of Certificate of Incorporation dated 19/06/2000. The company has its registered office at Plot No. 8, Block-A, Naraina Industrial Area, Phase 2, Delhi – 110028. The Applicant Company No.1 has Authorised Capital amounting to INR 10,00,000 and Paid up Capital amounting to INR 8,55,600. It has a member strength of 7 equity shareholders with no preference shareholders.
  
5. The Applicant Company No.2 namely M/s SKN GAS PRIVATE LIMITED **[CIN : U11100DL2007PTC166703]** was incorporated in accordance with the provisions of the Companies Act, 1956 as a Private Limited Company vide Certificate of Incorporation dated 07/08/2007. The company has its registered office at R- Plot No. 8, Block-A, Naraina Industrial Area, Phase 2, Delhi – 110028. The Applicant Company No.2 has Authorised Capital

amounting to INR 5,00,000 and Paid up Capital amounting to INR 5,00,000. It has a member strength of 3 equity shareholders with no preference shareholders.

6. The Applicant Company No.3 namely M/s WEB METALS PRIVATE LIMITED (CIN: **U43299DL2000PTC106179**) was incorporated in accordance with the provisions of the Companies Act, 1956 as a Private Limited Company vide Certificate of Incorporation dated 08.06.2000 It has its registered office at Plot No. 8, Block-A, Naraina Industrial Area, Phase 2, Delhi – 110028. The Applicant Company No.2 has Authorised Capital amounting to INR 10,00,000 and Paid up Capital amounting to INR 1,10,300. It has a member strength of 2 (two) equity shareholders with no preference shareholders.
7. The Applicant Company No.4 namely M/s J.S NIRMAN PRIVATE LIMITED [**CIN : U74899DL1998PTC031162**] was incorporated in accordance with the provisions of the Companies Act, 1956 as a Private Limited Company vide Certificate of Incorporation dated 30.03.1988. It has its registered office at B-65/3, Naraina Industrial Area, Phase-II, New Delhi – 110028. The Applicant Company No.2 has Authorised Capital amounting to INR 2,00,000 and Paid-up Capital amounting to INR 1,97,000. It has a member strength of 4 (four) equity shareholders with no preference shareholders.

8. The number of unsecured creditors pertaining to each company along with their consent thereof to the proposed scheme of arrangement herein is as follows: -

<b>COMPANY</b>	<u>Number of UNSECURED CREDITORS</u>	PERCENTAGE OF UNSECURED CREDITORS WHO HAVE CONSENTED TO THE PROPOSED SCHEME OF ARRANGEMENT
<u>Transferor No.1</u> <b>M/s NETBIZ TECHNOLOGY LIMITED</b>	7 (seven)	100%
<u>Transferor No.2</u> <b>M/s SKN GAS PRIVATE LIMITED</b>	5 (five)	100%
<u>Transferor No.3</u> <b>M/s WEB METALS PRIVATE LIMITED</b>	3 (three)	100%
<u>Applicant No.4</u> <b>Transferee company</b> M/s JS NIRMAN PRIVATE LIMITED	4 (four)	100%

9. It is contended that in regard to all the four aforementioned companies, the following documents (individually and separately attested), however common dated in a parallel timeline have been submitted with the petition:-

(i) Annual Audited Accounts as on 31/03/2023.

*along with*

(ii) Auditors Report and Provisional Balance Sheet as on 30/09/2023.

10. It is further averred that the Board of Directors of all the four aforementioned applicant companies have respectively and separately vide their Resolutions dated 10.11.2023 (executed parallely in a common timeline) approved the appointment of Mr. Gyaneshwar Sahai, Registered Valuer [IBBI/RV/03/2018/10226] for the purpose of preparing the valuation report with respect to the valuation of shares and the swap ratio thereof in regard to all the 4 applicant companies as follows: -

<b>Particulars</b>	<b>Transferor-1</b>	<b>Transferor-2</b>	<b>Transferor-3</b>
No. of Shares of Transferor Company	85,560	50,000	11,030
Exchange Ratio for every 1 shares held	<b>0.074</b>	<b>0.083</b>	<b>0.061</b>
No. of Shares required to be issued to the shareholders of the Transferor Companies.	<b>6,348</b>	<b>4,135</b>	<b>673</b>

11. A broad range of objectives of each of the applicant companies as enshrined in their Memorandum of Association (annexed) of all the corresponding 4 applicant companies respectively is briefly stated as follows: -

**11.1** Transferor No.1 (M/s NETBIZ TECHNOLOGY LIMITED)

*“To carry on all kind of agency business including that of clearing agents, freight contractors, forwarding agents, licensing agents and general brokers etc.”*

**11.2** Transferor No.2 [M/s SKN GAS PRIVATE LIMITED]

*“To carry on the business of buying, selling, trading, importing and exporting all kind of plant and machinery including turbines for gas/energy generation by way of gas power, hydro power, fuel power and other conventional and non-conventional mode of energy generation etc.”*

**11.3** Transferor No.3 [M/s WEB METALS PRIVATE LIMITED]

*“To carry on in India and elsewhere the business of trading, manufacturing and providing service in the field of internet, web based electronic commerce and other allied services thereof etc.”*

**11.4** Applicant No.4/ **TRANSFeree COMPANY** [M/s JS NIRMAN PRIVATE LIMITED]



*"To promote, undertake or direct, whether on own account or in association with others or through others or for and on behalf of others the management, construction, reconstruction, alteration, pulling down, improving, running, developing, decorating, renovating, designing, furnishing, maintaining, rebuilding, wood working and act as real estate Agent of roads, building houses, flats, cinemas, studios, hotels, guest houses, factories, office, shops, showrooms, hospitals, nursing homes, dams, canals, tanks, reservoirs, aqua-ducts, bridges, hydel projects, power houses, tunnels, culverts, channels, sewages, gardens, arms, warehouses, cold storages, stores and warehouses and the consolidating, connecting or sub-dividing of properties and the leasing or otherwise disposing of the same as multi-storied or other building and group housing schemes or office complexes etc."*

12. Is further observed that all the four aforementioned applicant companies have a common set of 2 Board of Directors namely: -

(i) Mr. Kapil Chopra [DIN : 00228705 ]  
r/o 47, Anand Lok, New- Delhi 11049.

(ii) Mr. Rahul Chopra [DIN : 01587805]  
r/o 47, Anand Lok, New- Delhi 11049.

The exception however is that the Applicant No. 1 Transferor Company in addition to the aforesaid 2 directors has a third director also namely Mr. Rati Chopra [DIN : 00228799] r/o 47, Anand Lok, New- Delhi 11049.

13. It is further stated that the via the proposed scheme herein, the Transferor companies intend to merge and amalgamate the entire consolidated business of all the 4 companies respectively into one single combined entity of the transferee company leading to a consequential increase in authorized share capital of the transferee company ultimately with dissolution of the Transferor Companies without following the process of winding up.
  
14. The proposed scheme would inter-alia lead to the following benefits owing to their rationale as follows: –
  - a. 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.
  
  - b. The proposed scheme would result in a simpler corporate structure by eliminating duplicate procedures/compliances etc and shall facilitate effective management owing to unified control of operations.
  
  - c. The proposed scheme of amalgamation will result in usual economies of a centralized and a large company for efficiency.

- d. It is further contended that the proposed scheme does not have the effects of debt re-structuring and does not vary the debt obligations of neither any of the transferor companies nor the transferee company (Joint Petitioners) towards their respective creditors.
15. All the 4 Applicant Companies have appointed a Common Statutory Auditor namely M/s Bhatia Behl and Associates [FRN : 000547N] who have in their report stated that the provisions relating to the accounting treatment for the proposed scheme shall be accounted as per “The Pooling of Interest Method” provided under Accounting Standard-14 which is in conformity with the applicable provisions of the Companies Act, 2013.
16. The Appointed Date, as specified in the proposed Scheme is 01.04.2023.

### **ANALYSIS AND FINDINGS**

17. In light of the submissions and the corroborating documents filed therewith, the following directions are issued forthwith pertaining to convening/holding or dispensing with the meetings of the Shareholders. Secured and Unsecured Creditors, this Tribunal hereby orders as follows: –

#### **I. In relation to the Transferor Company No.1**

- i. With respect to Equity Shareholders:** In view of consent affidavits from the 7 Shareholders, having 100% voting share, been

filed, convening the meeting of shareholders/members is dispensed with.

**ii. With respect of Secured Creditors:** In light of the fact that there are no secured creditors, the requirement for a meeting of the secured creditors does not arise.

**iii. With respect to Unsecured Creditors:** In light of the submissions made by the applicant no.1 and the affidavit affirming the consent of the seven unsecured creditors, the requirement for a meeting of the unsecured creditors is dispensed with.

## **II. In relation to the Transferor Company No. 2 –**

**i. With respect to Equity Shareholders:** In view of consent affidavits from the three Shareholders, having 100% voting share, been filed, convening the meeting of shareholders/members is dispensed with.

**ii. With respect of Secured Creditors:** In light of the fact that there are no secured creditors, the requirement for a meeting of the secured creditors does not arise.

**iii. With respect to Unsecured Creditors:** In light of the submissions made and the affidavits affirming the consent of the five unsecured creditors, the requirement for a meeting of the unsecured creditors is dispensed with.

**III. In relation to the Transferor Company No. 3 –**

**iv. With respect to Equity Shareholders:** In view of consent affidavits from the two Shareholders, having 100% voting share, been filed, convening the meeting of shareholders/members is dispensed with.

**v. With respect of Secured Creditors:** In light of the fact that there are no secured creditors, the requirement for a meeting of the secured creditors does not arise.

**vi. With respect to Unsecured Creditors:** In light of the submissions made and the affidavits affirming the consent of the four unsecured creditors, the requirement for a meeting of the unsecured creditors is dispensed with.

**IV. In relation to the Transferee Company (Applicant No.4) –**

**vii. With respect to Equity Shareholders:** In view of consent affidavits from the four Shareholders, having 100% voting share, been filed, convening the meeting of shareholders/members is dispensed with.

**viii. With respect of Secured Creditors:** In light of the fact that there are no secured creditors, the requirement for a meeting of the secured creditors does not arise.

**ix. With respect to Unsecured Creditors:** In light of the submissions made and the affidavits affirming the consent of the four unsecured creditors, the requirement for a meeting of the unsecured creditors is dispensed with.

18. **IN RELATION TO PRAYER FOR DISPENSATION OF PUBLICATIONS**

There is no requirement for publication at this stage. Accordingly, this specific prayer is disposed off as infructuous.

19. Notice of this application shall be served on the following:

- i. Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2<sup>nd</sup> Floor, Paryawaran Bhavan, CGO Complex, New Delhi-110003;
- ii. Registrar of Companies at 4<sup>th</sup> floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;
- iii. Official liquidator, Lok Nayak Bhavan, 8<sup>th</sup> Floor, Khan Market, New Delhi-110001;
- iv. Income Tax Department, Income Tax Office, Additional Commissioner of Income Tax, Special Range 4, Central Revenue Building, IP Estate, New Delhi-110002. The notices to Income Tax Authorities shall disclose sufficient details like PAN, ward numbers and assessing officers so that timely and proper reply may be filed.
- v. Any other sectoral regulators required to be served.

20. The application stands allowed on the aforesaid terms and is accordingly disposed off.

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

-SD/-  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**