

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

COMPANY PETITION NO. (CAA)- 29(ND)/2023

CONNECTED WITH

COMPANY APPLICATION NO. (CAA) – 102(ND)/2022

(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 SCHEME OF ARRANGEMENT

BETWEEN

M/s. GSC GLASS PRIVATE LIMITED

..... Petitioner Company No.1/ Demerged Company

AND

M/s. GSC ALUSYSTEMS PRIVATE LIMITED

..... Petitioner Company No.2/ Resulting Company/ Transferee Company

AND

M/s. EVERLAST ENGINEERING PRIVATE LIMITED

..... Petitioner Company No.3/ Transferor Company

AND

THEIR RESPECTIVE CREDITORS AND SHAREHOLDERS

Order Pronounced On: 07.06.2024

CORAM:

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

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

Appearances:

For the Applicant: Mr. Naveen Narang, CS

For the RD: Ms. Shankari Mishra, Ms. Jyoti Khurana, Adv.

For the Income Tax Department: Mr. Parth Semwal, Mr. Abhishek Maratha, Adv.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Second Motion Petition has been filed jointly by the M/s. GSC Glass Private Limited (Petitioner Company No.1/Demerged Company) and M/s. GSC Alusystems Private Limited (Petitioner Company No. 2/Resulting Company/Transferee Company) and M/s. Everlast Engineering Private Limited (Petitioner Company No.3/Transferor Company) under Sections 230-232 of the Companies Act, 2013 ("**Act**") read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ("**Rules**") for the Sanction of the proposed Scheme of Arrangement for Demerger and Amalgamation.
2. The Petitioner Company No. 1 namely M/s. GSC Glass Private Limited bearing CIN: U74899DL1989PTC035305 was originally incorporated on 02.03.1989 under the Companies Act, 1956 in the name and style of GSC Toughened Glass Private Limited and the certificate of incorporation was obtained from Registrar of Companies ("ROC"), Delhi. The name of company was subsequently changed to "GSC GLASS PRIVATE LIMITED" on 08.09.2009. The name was changed to GSC GLASS LIMITED on 16.03.2010 on conversion to public Limited Company and again changed to its present name GSC GLASS PRIVATE LIMITED on the 11.12.2019 on reconversion to private Limited company. The Registered Office of the Demerged Company is situated at 802 Arjun Nagar. Bhisham Pitamah

Marg, New Delhi - 110003. The Authorized Capital of the Petitioner Company No. 1 is INR 73,000,000.001 divided into 730,000 Equity Shares of INR. 100/- each. The Issued, paid-up and subscribed capital of the Petitioner Company No. 1 is INR 31,687,900.00/- divided into 316,879 Equity Shares of INR 100/- each.

- 3.** The Petitioner Company No. 2/Resulting Company/ Transferee Company namely M/s. GSC Alusystems Private Limited bearing CIN: U28999DL202iPTC388379 was incorporated on 14.10.2021 under the Companies Act 1956 with the Registrar of Companies, Delhi & Haryana as a Private Company. The Registered Office of the Resulting Company is situated at Shop No. 802, Kotla Mubarakpur, Near Temple, Bhisham Pitamah Marg, Delhi- 110003. The Authorized Capital of the petitioner Company No. 2 is INR 1,200,000.00/- divided into 120,000 Equity Shares of INR. 10/- each. The Issued, Paid-Up and Subscribed Capital of the petitioner Company No. 2 is INR 500,000.00/- divided into 50,000 Equity Shares of INR 10/- each.
- 4.** The Petitioner Company No.3/Transferor Company namely M/s. Everlast Engineering Private Limited bearing CIN U99999DL1987PTC395284 was incorporated on 07th July, 1987 as such under the provisions of Companies Act, 1956 in the name and style of Everlast Engineering Private Limited and certificate of incorporation was obtained from Registrar of Companies ("ROC"), Mumbai. On. 15.02.2022 the Company shifted its registered office from the state of Maharashtra to National Capital Territory of Delhi to the present address and ROC has issued Certificate of Registration of Regional Director order for Change of state on 22.03.2022. The Registered office of the company is presently situated at 802 Arjun Nagar, Kotla Mubarakpur (Near Temple), Bhisham Pitamah Marg, New Delhi 110003, India. The Authorised Capital of the petitioner Company No. 3 is INR 2,500,000.00/- divided into 250,000 Equity

Shares of INR 10/- each. The issued' paid-up and subscribed capital of the petitioner company No. is INR 2,000,000.00/- divided into 200,000 Equity Shares of INR 10/- each fully paid up.

5. The Registered Office of the Petitioner Companies is situated in the NCT of Delhi and therefore, it is under the jurisdiction of the National Company Law Tribunal, New Delhi.
6. It is stated that the Petitioner Companies have jointly moved the necessary second motion Petition being **CP(CAA)-29(ND)/2023** on 01.08.2023, connected with the first motion Application being **CA(CAA)-102(ND)/2022**, before the National Company Law Tribunal, New Delhi.
7. The object of this Petition is to obtain the sanction for the proposed Demerger of Aluminium Business of M/s. GSC Glass Private Limited ("Demerged Company") and Transferring to M/s. GSC Alusystems Private Limited ("Resulting Company" or "Transferee Company) and Subsequent Merger of M/s. Everlast Engineering Private Limited ("Transferor Company") with M/s. GSC Alusystems Private Limited ("Resulting Company" or "Transferee Company). The Scheme has been approved by the Board of Directors of the Petitioner Companies at their respective Board Meetings held on 30.08.2022.
8. The Petitioner Companies submit that the proposed scheme would have the following benefits: -
 - a. Currently, the Company is engaged in two (2) distinct lines of business namely: Glass Business and Aluminum Business.
 - b. Majority of equity shares of the Companies are held by common group of shareholders and the management is also done by common people. The proposed composite scheme for demerger of Aluminum Business (Demerged Undertaking) from the Demerged Company and its transfer to and vesting into the Resulting Company would enable segregation and unbundling of the

Aluminum Business and enhanced focus by both the Demerged Company and the Resulting Company on exploiting opportunities in their respective businesses and the subsequent merger of the Transferor Company with the Transferee Company would thereby lead to unlocking of values of the consolidated Transferee Company.

- c. The independent operations of Demerged Company and the Resulting Company would help in de-leveraging of the balance sheet of the Demerged Company including reduction of debt and outflow of interest as well as creation of value for its shareholders and the subsequent amalgamation will contribute in furthering and fulfilling the objectives and business strategies of all the companies thereby accelerating growth, expansion and development of their business. The amalgamation would also provide the Transferee Company a strong and focused base to undertake the business more advantageously.
- d. The Scheme shall be beneficial for the interest of the Companies, their shareholders, creditors and employees.
- e. Independent operations of Companies incur a significant cost and thus the proposed scheme would enable economies of scale by attaining critical mass and achieving cost saving.
- f. Proposed Composite Scheme of Arrangement will contribute in furthering and fulfilling the objectives and business strategies of applicant Companies thereby accelerating growth, expansion and development of their business. The amalgamation would also provide the Transferee Company a strong and focused base to undertake the business more advantageously.

The other benefits likely to arise through the proposed arrangement are

as follows:

- a. Reduction of overheads, administrative, managerial and other expenditure.
 - b. Optimum and efficient utilization of capital, resources, assets and facilities.
 - c. Consolidation of businesses and enhancement of shareholder value;
 - d. Better management and focus on growing of the businesses.
 - e. Proposed Demerger and amalgamation will not in any way affect the rights and service conditions of the creditors and employees, respectively.
 - f. The proposed arrangement would result in reduction of overheads, administrative, managerial and other expenditure and bring about operational rationalization, efficiency and optimum utilization of various resources.
- 9.** This Adjudicating Authority vide order dated 03.03.2023 had dispensed the requirement of convening the meetings of the shareholders, secured and unsecured creditors of the Petitioner Companies.
- 10.** The Second Motion petition was moved by the Petitioner Companies in connection with the Scheme of Arrangement for issuance of notices. This Tribunal vide order dated 24.04.2023 directed to issue notice to all the Statutory Authorities, namely, the Central Government, Registrar of Companies, NCT of Delhi & Haryana, Income Tax Department.
- 11.** It is submitted by the Petitioners that in compliance of the above-stated directions, the Petitioners duly filed an Affidavit of Service dated 22.05.2023 by confirming that the aforesaid Notices of the present Company Petition were published on 04.05.2023 in Business Standard

(English Edition) and in Business Standard (Hindi) Delhi Edition.

- 12.** The Regional Director along with the Registrar of Companies vide its report dated 22.08.2023 has not objected to the proposed scheme of the arrangement but has made certain observations. The Petitioner companies have filed their Reply dated 04.07.2023 in response to the observations made by the Regional Director and Registrar of Companies.
- 13.** The Petitioner Companies in its Affidavit dated 05.03.2024 undertakes to pay the income tax dues of the Petitioner Companies, if any, subject to its rights conferred under law.
- 14.** The Certificates of respective Statutory Auditors of both the petitioner companies, have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Demerger 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.
- 15.** No investigation proceedings have been instituted and are pending in relation to either of the Petitioner Companies under Sections 235 to 251 of the Act or under Sections 206 to 229 (Chapter XIV) of the Act. To the knowledge of each of the Petitioner Companies, no winding-up petition (including under Section 433 read with Section 434 of the Companies Act, 1956) and/or insolvency proceedings have been filed/instituted and are pending against either of the Petitioner Companies. None of the directors of the Petitioner Companies have any material interest in the Scheme except to the extent of their directorships and shareholding in the Petitioner Companies.

16. Analysis and Finding

- i.** After considering the reports of the Statutory Authorities and the reply of Petitioner Companies thereof, we are of the considered view that the Scheme is not prejudicial to the interest of the equity shareholders and

creditors of the Petitioner Companies and the Scheme will be beneficial to the Petitioner Companies and their respective shareholders and creditors.

- ii.** 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 this 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.
- iii.** It has also been affirmed in the petition that the Scheme is in the interest of all the Petitioner Companies, their respective shareholders, creditors, employees and all concerned.
- iv.** 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.

17. Consequently, the sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013 with the following directions: -

- i.** The appointed date for the proposed scheme of arrangement is 01.04.2022 or such other date as directed by this Tribunal. Having considered the time already elapsed and the fact that Accounts must have already been drawn for intervening period, we prescribe 01.04.2024 as the 'Appointed Date'.

- ii.** Upon the sanction becoming effective from the appointed date i.e., 01.04.2024 as prescribed by this Tribunal, the Transferor Company shall stand dissolved without undergoing the process of winding up.
- iii.** The Petitioners shall always remain bound to comply with the statutory requirements in accordance with law.
- iv.** Notwithstanding the sanction, 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.
- v.** 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.

18. This Tribunal does further order: -

- i. That all properties, rights and powers of Demerged Undertaking of Demerged Company and Transferor Company with Resulting Company /Transferee Company shall pursuant to Section 230-232 of the Companies Act, 2013 be transferred to and vested in the Resulting Company for all intents, purposes and interest of the Demerged Undertaking subject nevertheless to all changes now affecting the same; and
- ii. That all the liabilities, (if any) and powers, engagements, obligations and duties of the Demerged Undertaking and Transferor Company shall pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to the Resulting Company and accordingly the same become the liabilities and duties of the Resulting Company; and

- iii. That all proceedings now pending by or against the Demerged Undertaking shall be continued by or against the Resulting Company; and
- iv. That the Petitioner Companies, shall within thirty days of the date of the receipt of this order cause certified copy of this Order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Demerged Undertaking and Transferor Company shall be deemed to be transferred; and
- v. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
- vi. Accordingly, the present Scheme of Arrangement stands **sanctioned** and **CP(CAA)/29(ND)/2023** 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)