

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

COURT NO VI, NEW DELHI

CA(CAA) – 38/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 SUNCITY MULTI PRODUCTS PRIVATE LIMITED**
415, LAXMIDEEP-9, LAXMI NAGAR DISTRICT CENTER,
VIKAS MARG, Delhi – 110092
[CIN : U52100DL2004PTC129824]
[PAN : AAJCS4438G]

... Applicant No. 1/Transferor Company

AND

- 2. M/s GOODLUCK PUBLISHERS LIMITED**
415, LAXMIDEEP-9, LAXMI NAGAR DISTRICT CENTER,
VIKAS MARG, Delhi – 110092
[CIN : U74899DL2000PLC108729]
[PAN : AABCG6186D]

...Applicant No. 2/ Transferee Company

APPEARANCES:

For the Petitioners: Adv. Naresh Kumar

CORAM:

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

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

ORDER

PER – RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Order Delivered on: 29.04.2024

1. This is a first motion application filed jointly by both the 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 jointly made the following prayers: -

- (i) Dispense with the requirement of convening meetings of equity shareholders of both the transferor company and the transferee company.
- (ii) Dispense with the requirement of convening meetings of the secured creditors of the transferee company only as the transferor company does not have any secured creditors.
- (iii) Dispense with the requirement of convening meetings of un-secured creditors of both the transferor company and the transferee company.

(iv) Direct service of notice of present application to the following authorities: -

- a. Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryawaran Bhavan, CGO Complex, New Delhi-110003;
- b. Registrar of Companies (NCT of Delhi & Haryana) situated at 4th floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;
- c. Official liquidator, Lok Nayak Bhavan, 8th Floor, Khan Market, New Delhi-110001;
- d. Concerned Income Tax Department.

(v) Pass such other order as this Tribunal may deem fit in the interest of justice.

2. That both the aforementioned Applicant Companies under the Scheme of Arrangement have their respective registered office in Delhi (415, Laxmideep-9, Laxmi Nagar District Centre, Vikas Marg, Delhi – 110092) and hence fall under the jurisdiction of the National Company Law Tribunal, New Delhi Bench.
3. The Scheme of Arrangement by way of amalgamation was considered and has been approved by Board of Directors of both the Transferor Company and the Transferee Company vide Board Resolution dated 11.12.2023 (both done individually/separately with a common timeline). 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 (Transferor) namely M/s SUNCITY MULTI PRODUCTS PRIVATE LIMITED [**CIN : U52100DL2004PTC129824**] was incorporated in accordance with the provisions of the Companies Act, 1956 as a Private Limited Company in the name and style of “Sun City Steel Private Limited” vide Certificate of Incorporation dated 12/10/2004 issued by RoC, NCT of Delhi and Haryana. Later the name of the company was changed to “Suncity Multi Products Private Limited” and a fresh certificate of incorporation dated 27.01.2022 was issued by RoC, Delhi.
5. The Applicant Company No.2 namely M/s GOODLUCK PUBLISHERS LIMITED [CIN : U74899DL2000PLC108729] was incorporated as per the provisions of the Companies Act, 1956 as a Public Limited Company vide Certificate of Incorporation dated 05/12/2000. The Certificate of Commencement of Business was subsequently obtained on 16.12.2001.
6. The Applicant Company No. 1 (Transferor) has Authorised Capital amounting to Rs.3,50,00,000/- and presently has a paid-up share capital worth Rs.3,35,00,000/-. *On the other hand*, the Applicant Company No.2 (Transferee) has Authorised Capital amounting to INR 5,00,00,000 and presently its Paid-up Capital is worth INR 4,63,98,000.

7. The copies of Audited Balance sheets as on 31/03/2023 and Profit & Loss Account for the year ended 31/03/2023 along with auditors report for both the applicant companies have been placed on record. (Individually/separately for both companies relating to same Financial Year). It is further stated that both the applicant companies have prepared their un-audited provisional accounts for the period ended on 30.09.2023 to ascertain status of secured creditors and unsecured creditors respectively. It is also stated that subsequent to the date of the aforesaid un-audited provisional accounts, there has been no substantial change in the financial position of either of the applicant companies except those arising out of or resulting from the normal course of business.
8. A broad range of objectives of each of the applicant companies as enshrined in their annexed Memorandum of Associations of both the corresponding applicant companies respectively is briefly stated as follows: -

8.1 Transferor Company (M/s SUNCITY MULTIPRODUCTS PRIVATE LIMITED)

“To engage in the business of dealer. trader, import and export agents, representatives, contractors, buying and selling agents, brokers. Importers, Buyers, Sellers, exporters and to buy, sell, or otherwise trade and deal in goods. produce, articles and merchandise of all types. on a wholesale cash, retail and any basis including books, novels, Magazines, journals, souvenirs, newsletters, periodicals. bulletins. pamphlets. forms catalogues,

diaries. calendar text books. law books, school books, college books, competitive books, newspapers & other allied publications.”

8.2 Transferee Company [M/s GOODLUCK PUBLISHERS LIMITED]

“To engage in the business of selling, exporting, printing, publishing or otherwise carry on business of publishers and printing of general books, technical books, news-papers, magazines, Periodicals, journals and other literary works and undertaking and also book clubs and lending libraries etc.”

9. FOLLOWING GROUNDS OF EXEMPTION ARE SOUGHT FOR DISPENSING WITH THE FOLLOWING MEETINGS IN RESPECT OF THE TRANSFEROR COMPANY: -

- (i) **SHAREHOLDERS MEETING** – It is pleaded that the transferor company has only 4 equity shareholders and all of them have given their consent affidavit to the proposed scheme of amalgamation, hence this Tribunal may allow dispensation of meeting of shareholders pertaining to the transferor company.
- (ii) **SECURED CREDITORS** – It is contended that the transferor company does not have any secured creditor, convening of meeting is not required.
- (iii) **UNSECURED CREDITORS** – It is pleaded that the transferor company has only 2 unsecured creditors and both of them have given their consent

affidavit for the proposed scheme of amalgamation. Accordingly, it is prayed that this Tribunal may allow dispensation of meeting of unsecured creditor of the transferor company.

10. **FOLLOWING GROUNDS OF EXEMPTION ARE SOUGHT FOR DISPENSING WITH THE FOLLOWING MEETINGS IN RESPECT OF THE TRANSFEREE COMPANY: -**

- (i) **SHAREHOLDERS MEETING** – Transferee company has 7 equity shareholders and all of them have given their consent affidavit to the proposed scheme of amalgamation. Accordingly, the transferee company pleaded to dispense with the meeting of equity shareholders pertaining to the Transferee company.
- (ii) **SECURED CREDITORS** – Transferee company has only 2 secured creditors and both of them have provided their Consent Affidavit/No Objection Letter. Accordingly, the transferee company pleaded to dispense with the meeting of secured creditors pertaining to the Transferee company.
- (iii) **UNSECURED CREDITORS** - It is pleaded with respect to the Transferee company that it has 43 (forty-three) unsecured creditors including current liabilities amounting to Rs. 13,97,44,198.39. Out of the said 43 unsecured creditors, 36 (thirty-six) unsecured creditors amounting to Rs. 13,26,35,731.09 representing 94.91% in value terms have given their written consents for the proposed amalgamation which exceeds the

threshold of requisite majority of 90% in value terms for approval of the proposed amalgamation as envisaged under Section 230(9) of the Companies Act, 2013. In light of the aforesaid submission, the Transferee company pleaded before this Tribunal to dispense with the meeting of unsecured creditors pertaining to the Transferee company.

11. It is further stated that the via the proposed scheme herein, the Transferor company intends to merge and amalgamate the entire consolidated business of transferor company 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 Company without following the process of winding up.

Post Merger Issued Capital Vs. Authorized Capital of the Transferee Company:

Sl. No	Particulars	Amount (Rs.)
A.	Present Authorised Share Capital of the Transferee Company	5,00,00,000
B.	Authorised Share Capital of the Transferor Company to be merged with the Transferee Company pursuant to the Scheme	3,50,00,000
C.	Total Authorised Capital of the Transferee Company after Amalgamation (A+B)	8,50,00,000
D.	Present Issued Equity Capital of the Transferee Company	4,63,98,000
E.	CROSS HOLDING	91,20,000
F.	Net Present Issued Equity Capital of the Transferee Company	3,72,78,000
G.	New Equity Shares to be issued to the Shareholders of the Transferor Company on Amalgamation	1,25,62,500

12. 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 sustainable long-term growth, profitability, cost reduction and eliminate multiplicity of regulatory compliances enabling it to realise strong potential.
 - 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 would have beneficial results for the applicant companies and their shareholders, creditors, customers, employees and stakeholders.
13. Both the applicant companies have appointed a common Chartered Accountant Firm namely M/s Sanjay & Sanjay Chartered Accountants [Firm Registration no. 0125728C] who have certified that the “accounting treatment” proposed in the aforesaid scheme herein are compliant as per Accounting Standards prescribed u/s 133 of The Companies Act, 2013 and

also the Generally Accepted Accounting Principles in India (Indian GAAP) as the case may be.

14. Further, both the applicant companies have appointed Ms. Swati Chaturvedi, Registered Valuer (IBBI/RV/03/2019/12673) for ascertaining the share exchange ratio in regard to the proposed scheme of amalgamation. As per the aforesaid Registered Valuers report dated 05.12.2023, they have concluded that “allotment of 3 equity shares of the transferee company of Rs. 10/- each fully paid up in exchange for every eight shares of transferor company worth Rs. 10/- each fully paid up.
15. Further, the transferor company has submitted an affidavit dated 12.03.2024 signed by its director namely Mr. Ankit Gupta [DIN : 02384145] and similarly, the transferee company has also submitted an affidavit dated 14.03.2024 signed by its director Mr. Deepak Agrawal (DIN : 01533391). Both the aforesaid affidavits have the same material content albeit with the difference in regard to name of transferor/transferee company respectively. The aforesaid affidavits have affirmed on oath the following submissions: -
 - (i) As per Section 230(2)(a) of the Companies Act, 2013 ; no proceedings for inspection, inquiry or investigation is pending against the Transferor Company/Transferee Company.

- (ii) As per Section 230(2)(b) of the Companies Act, 2013 ; Transferor Company/Transferee Company is not envisaging any reduction in its share capital.
- (iii) As per Section 230(2)(c) of the Companies Act, 2013 ; Transferor Company/Transferee Company does not envisage any corporate restructuring.
- (iv) That no investigations/proceedings are pending against the transferor company/transferee company under the provisions of Income Tax Act, 1961.

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

- i. With respect to Equity Shareholders:** In view of consent affidavits from the 4 Shareholders, having 100% voting share, been

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

- ii. With respect to Secured Creditors:** In light of the fact that there are no secured creditors, there is no requirement for convening a meeting.
- iii. With respect to Unsecured Creditors:** In light of the submissions made by the applicant no.1 and the affidavit affirming the consent of both the two unsecured creditors, the requirement for a meeting of the unsecured creditors is dispensed with.

II. In relation to the Transferee Company -

- i. With respect to Equity Shareholders:** In view of consent affidavits from all the seven Shareholders, having 100% voting share, been filed, convening the meeting of shareholders/members is dispensed with.
- ii. With respect to Secured Creditors:** In light of the fact that there are two secured creditors and both of them have given their consent affidavits to the proposed scheme, the requirement for a meeting of the secured creditors is dispensed with.

iii. With respect to Unsecured Creditors: In light of the submissions made by the applicant no. 2 that 94.91% value of unsecured creditors have given their consent affidavits and accordingly, they meet the threshold of 90% majority as stipulated u/s 230(9) of The Companies Act, 2013, the requirement for a meeting of the unsecured creditors is dispensed with.

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

- (i) Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryawaran Bhavan, CGO Complex, New Delhi-110003;
- (ii) Registrar of Companies at 4th floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;
- (iii) Official liquidator, Lok Nayak Bhavan, 8th 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.

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

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

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