

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI, COURT-III
COMPANY PETITION NO. (CAA)- 72(ND)/2021
CONNECTED WITH
COMPANY APPLICATION NO. (CAA) -33(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 SCHEME OF AMALGAMATION

BETWEEN

M/s. JUVALIA MARKETING PRIVATE LIMITED (JMPL)

..... Petitioner Company No.1/ Transferor Company No.1
AND

M/s. SMILE MERCHANDISING PRIVATE LIMITED (SMPL)

..... Petitioner Company No.2/ Transferor Company No.2
WITH

M/s. JUVALIA SALES PRIVATE LIMITED (JSPL)

..... Petitioner Company No.3/ Transferee Company
AND

THEIR RESPECTIVE CREDITORS AND SHAREHOLDERS

Order Pronounced On: 02.05.2024

CORAM:

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

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Hitesh Sachar, Advocate.

For the RD : Ms. Shankari Mishra, Adv.

For the OL : Ms. Hemlata Rawat, Mr. Rahul Bhatt, Advs.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Second Motion Petition has been filed jointly by the M/s. Juvalia Marketing Private Limited (Petitioner Company No.1/Transferor Company No.1), M/s. Smile Merchandising Private Limited (Petitioner Company No. 2/

Transferor Company No.2), M/s. Juvalia Sales Private Limited (Petitioner Company No. 3/Transferee 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 Amalgamation between the Transferor Companies No.1 and 2 with Transferee Company and their respective shareholders and creditors.

2. The Registered Office of the Transferor Companies No.1 and 2 and the Transferee Company is situated in the NCT of Delhi and therefore, it is under the jurisdiction of the National Company Law Tribunal, New Delhi.

3. Ld. Counsel has given the brief description of the Applicant Companies, which are as follows:

a) The Transferor Company No. 1 namely M/s. Juvalia Marketing Private Limited bearing CIN: U52300DL2012PTC231551 was incorporated on 15.02.2012 under the Companies Act 1956 with the Registrar of Companies, Delhi & Haryana as a Private Limited Company.

The Registered Office of the Transferor Company No.1 is situated at L-2A, Hauz Khas Enclave, New Delhi -110016.

The Authorised Share Capital of the Transferor Company No. 1 at the time of filing of this Application is Rs.1,00,000/- (Rupees One Lakh Only) divided into 10,000 (Ten Thousand) Equity Shares of Rs. 10/- (Rupees Ten Only) each.

The Issued, Subscribed and Paid-up Share Capital is Rs. 1,00,000/- (Rupees One Lakh Only) divided into 10,000 (Ten Thousand) Equity Shares of Rs. 10/- (Rupees Ten Only) each.

b) The Transferor Company No. 2 namely M/s. Smile Merchandising Private Limited bearing CIN: U51909DL2012PTC231754 was incorporated on 17.02.2012 under the Companies Act 1956 with the Registrar of Companies, NCT of Delhi & Haryana as a Private Limited Company.

The Registered Office of the Transferor Company No.2 is situated at D-119, Lajpat Nagar - 1, New Delhi - 110024.

The Authorised Share Capital of the Transferor Company No. 2 at the time of filing of this Application is Rs.1,00,000/- (Rupees One Lakh Only) divided into

10,000 (Ten Thousand) Equity Shares of Rs. 10/- (Rupees Ten Only) each.

The Issued, Subscribed and Paid-up Share Capital is Rs. 1,00,000/- (Rupees One Lakh Only) divided into 10,000 (Ten Thousand) Equity Shares of Rs. 10/- (Rupees Ten Only) each.

- c) The Transferee Company namely M/s. Juvalia Sales Private Limited bearing CIN: U52399DL2012PTC244217 was incorporated on 30.12.2012 under the Companies Act 1956 with the Registrar of Companies, NCT of Delhi & Haryana as a Private Limited Company.

The Registered Office of the Transferee Company is situated at D-119, Lajpat Nagar - 1, New Delhi – 110024.

The Authorised Share Capital of the Transferee Company at the time of filing of this Application is Rs. 75,00,000/- (Rupees Seventy Five Lacs Only) divided into 750000 (Seventy lacs Fifty Thousand) Equity shares of Rs. 10/- each.

The Issued, Subscribed and Paid-up Share Capital is Rs. 71,50,940/- (Rupees Seventy One Lakhs Fifty Thousand Nine Hundred Forty Only) divided into 7,15,094 (Seven Lacs Fifteen Thousand Ninety Four) Equity Shares of Rs. 10/- (Rupees Ten Only) each fully paid-up.

4. It is stated that the Transferor Companies No. 1 and 2 and Transferee Company has moved the necessary second motion Petition being **CP(CAA)-72(ND)/2021** on 08.04.2021, connected with the first motion Application being **CA(CAA)-33(ND)/2021**, before the National Company Law Tribunal, New Delhi.
5. The Board of Directors of the Transferor Companies and of the Transferee Company in their respective Board Meetings dated 20.07.2020 considered and unanimously approved the proposed Scheme of Amalgamation.
6. The Amalgamation of the Petitioner Company No. 1/ Transferor Company, Petitioner Company No. 2/ Transferor Company with the Petitioner Company No. 3/ Transferee Company shall result in:
- (i) *consolidation of the businesses and lead to synergies in operation and ease of doing business together.*
- (ii) *combining the activities and operations of all companies into a single Company for synergistic linkages and the benefit of*

combined financial resources. This will be reflected in the profitability of the Transferee Company.

(iii) merger in the nature of merger as per the Accounting Standard 14 on Accounting for Amalgamations issued by the Institute of Chartered Accountants of India and thus on consolidation of business of all the Transferor Companies and the Transferee Company in one entity, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform.

(iv) provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of all the companies.

(v) cost saving for all the companies as they are capitalizing on each other's core competency and resources which are expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company.

(vi) ease of doing statutory compliances for a combined entity.

7. Upon the Scheme becoming finally effective, in consideration of the transfer and vesting of the Undertaking of the First Transferor Company in the Transferee Company in terms of the Scheme, the Transferee Company shall subject to the provisions of the Scheme and without any further application or deed, issue and allot 1 (One) Equity Shares of Rs. 10/- (Rupees Ten) each, credited as fully paid-up in the capital of the Transferee Company to all Equity Shareholders of the First Transferor Company whose names appear in the Register of Members, on a record date to be fixed by the Board of the Transferee Company, for every 100 Equity Share of the face value of Rs. 10/- (Rupees Ten) each held by the Shareholders of the First Transferor Company.
8. Upon the Scheme becoming finally effective, in consideration of the transfer and vesting of the Undertaking of the Second Transferor Company in the Transferee Company in terms of the Scheme, the Transferee Company shall

subject to the provisions of the Scheme and without any further application or deed, issue and allot 1 (One) Equity Share of Rs. 10/- (Rupees Ten) each, credited as fully paid-up in the capital of the Transferee Company to all Equity Shareholders of the Second Transferor Company whose names appear in the Register of Members, on a record date to be fixed by the Board of the Transferee Company, for every 100 Equity Share of the face value of Rs. 10/- (Rupees Ten) each held by the Shareholders of the Second Transferor Company.

9. If necessary, the Transferee Company shall, before allotment as aforesaid of the equity shares in terms of the Scheme, increase its authorized capital by the creation of at least such number of equity shares of Rs. 10/-each as may be necessary to satisfy its obligations under the Scheme. No fractional shares shall be issued by the Transferee Company and the fractional share entitlements, if any, arising out of the allotment shall be rounded off to the nearest complete share.

10. The share exchange ratio between the Transferor Companies 1 and 2 and the Transferee Company based on the Share Valuation Report dated 14.07.2020 prepared by Mr. Vishal R. Lahiri, Registered Valuer is as follows:

a. The Transferee Company will issue and allot 1 (One) Equity Shares of Rs. 10/- (Rupees Ten) each, credited as fully paid-up in the capital of the Transferee Company to all Equity Shareholders of the First Transferor Company whose names appear in the Register of Members, on a record date to be fixed by the Board of the Transferee Company, for every 100 Equity Share of the face value of Rs. 10/- (Rupees Ten) each held by the Shareholders of the First Transferor Company.

b. The Transferee Company will issue and allot 1 (One) Equity Shares of Rs. 10/- (Rupees Ten) each, credited as fully paid-up in the capital of the Transferee Company to all Equity Shareholders of the Second Transferor Company whose names appear in the Register of Members, on a record date to be fixed by the Board of the Transferee Company, for every 100 Equity Share of the face value

of Rs. 10/- (Rupees Ten) each held by the Shareholders of the Second Transferor Company.

11. This Adjudicating Authority vide order dated 17.03.2021 has dispensed the requirement of convening the meetings of the Shareholders, Secured and Unsecured Creditors of the Petitioner Companies.
12. The Second Motion petition was moved by the Petitioner Companies in connection with the Scheme of Amalgamation for issuance of notices. This Tribunal vide order dated 23.07.2021 directed to issue notice to all the Statutory Authorities, namely, the Regional Director (Central Government) - Ministry of Corporate Affairs, Registrar of Companies, NCT of Delhi and Haryana - Ministry of Corporate Affairs, Official Liquidator and Income Tax Department.
13. It is submitted by the Petitioners that in compliance of the above-stated directions, the Petitioners duly filed an Affidavit of Service dated 10.08.2021 by confirming that the aforesaid Notices of the present Company Petition were published on 06.08.2021 in Business Standard (English Edition) and in Business Standard (Hindi Edition) on 06.08.2021 Delhi edition.
14. The Regional Director along with the Registrar of Companies vide it's report dated 18.01.2023 has not objected to the proposed scheme of the amalgamation but has made certain observations. The Petitioner companies have filed Rejoinder Affidavit to the reply filed by the Ld. Regional Director dated 02.12.2023 in response to the observations made by the Regional Director and Registrar of Companies, wherein the Petitioner Companies have given an undertaking to appropriately comply with the observations made by the Regional Director and Registrar of Companies.
15. The Petitioners Companies submit that the provisions relating to the accounting treatment for the proposed amalgamation, as contained in the Scheme of Amalgamation, are in conformity with the applicable provisions of Section 133 of the Companies Act, 2013 and the Accounting Standards as prescribed under the Companies (Accounting Standards) Rules, 2006. The Statutory Auditors of the Petitioner Companies have confirmed the same vide Certificate dated 05.02.2021 filed by M/s. Narain Sethi Ahuja & Associates,

Chartered Accountants.

16. 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.
17. It is submitted by the Petitioner Companies that this Second Motion Petition is made bona fide and in the interest of justice and no one will be prejudiced if orders are made/or directions are given as prayed for.
18. **Analysis and Finding**
 - i. After considering the reports, we are of the considered view that the Scheme is not prejudicial to the interest of the equity shareholders and creditors of the Transferor Companies and the Transferee Company and the Scheme will be beneficial to the Transferor Companies, Transferee Company 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 both the Transferor Companies, Transferee Company, 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.

19. Consequently, the sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.

- 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, the 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.
- iv. In compliance with the requirement of Section 230 (1) of the Act, the transferee company shall until the full implementation of the Scheme of Amalgamation filed stated in Form CAA 8 along with the required fee as prescribed in the Companies (Registration offices and fees) Rules 2014 within 210 days from the end of each financial year.
- v. The appointed date proposed by the Petitioner Companies for the scheme of Amalgamation is 01.04.2020 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'.

20. This Tribunal does further order: -

- i. That the Transferor Companies shall stand dissolved without following the process of winding-up from the appointed date i.e., 01.04.2024; and
- ii. That all properties, rights and powers of the Transferor Companies be transferred without further act or deed to the Transferee Company and

accordingly, the same shall pursuant to Section 230-232 of the Companies Act, 2013 be transferred to and vested in the Transferee Company for all intents, purposes and interest of the Transferor Companies subject nevertheless to all changes now affecting the same; and

- iii. That all the liabilities, (if any) and powers, engagements, obligations and duties of the Transferor Companies shall pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to the Transferee Company and accordingly the same become the liabilities and duties of the Transferee Company; and
- iv. That all proceedings now pending by or against the Transferor Companies shall be continued by or against the Transferee Company; and
- v. 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
- vi. That 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 deemed to be transferred; and
- vii. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

21. Accordingly, the Scheme of Amalgamation stands **sanctioned** and **CP(CAA)/72(ND)/2021** stands **allowed** and **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)**