

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

NEW DELHI BENCH-VI

CP.(CAA) NO. 43/ND/2023

IN

CA(CAA) No. 36/ND/2023

IN THE MATTER OF SECTION 230-232 OF THE COMPANIES ACT, 2013

(Under Section 230 & 232 of the Companies Act, 2013 read with other applicable provisions of the Companies Act, read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016)

IN THE MATTER OF SCHEME OF AMALGAMATION

**M/S. CUSHMAN & WAKEFIELD
ADVISORY ASIA (INDIA) PRIVATE LIMITED**
CIN - U93090DL2008FTC362940
11th Floor, Tower A, DLF Towers Jasola,
Jasola District Centre,
New Delhi-110025

**PETITIONER COMPANY NO.1)/
(TRANSFEROR COMPANY NO. 1)**

AND

**M/S CUSHMAN & WAKEFIELD
PROPERTY ADVISERS PRIVATE LIMITED**
CIN - U07010DL2004PTC356279
JA 1120 and JA 1121, 11th Floor Tower A,
DLF Towers Jasola,
Jasola District Center,
New Delhi 110025,

**PETITIONER COMPANY NO.2)/
(TRANSFEROR COMPANY NO. 2)**

WITH

**M/S CUSHMAN AND WAKEFIELD
INDIA PRIVATE LIMITED**
CIN - U70101DL1997PTC090431
JA 1120 and JA 1121, 11th Floor, Tower A,
DLF Towers, Jasola,
Jasola District Center,
New Delhi 110025

**PETITIONER COMPANY NO. 3/
(TRANSFEEEE COMPANY)**

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER, JUDICIAL

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER, TECHNICAL

Appearance:

For the Petitioner/Applicant

For the RD

For the OL

For the IT Department

Adv. Ravi Sharma

Adv. Shankari Mishra

Ms. Hemlata Rawat and

Mr. Rahul Bhatt Advs

Mr. Sanjay Kumar, Ms. Easha

and Ms. Hemlata Rawat; St.

Counsels

ORDER

PER: RAHUL BHATNAGAR, MEMBER, (TECHNICAL)

Pronounced on 29.04.2024

1. This joint petition has been filed by the Petitioner Companies in accordance with Sections 230 to 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 approval of the present Scheme of Amalgamation of the Transferor Companies into the Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred as the "Scheme"), has been placed on record.

2. The Petitioner Company No.1 i.e., M/s Cushman & Wakefield
Advisory Asia (India) Private Limited (CIN

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U93090DL2008FTC362940), a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 11th Floor, Tower A, DLF Towers Jasola, Jasola District Centre, New Delhi-110025. Through its authorized signatory Anand Kumar Gupta

3. The Petitioner Company No. 2 i.e., Cushman & Wakefield Property Advisers Private Limited (CIN U07010DL2004PTC356279), a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at JA 1120 and JA 1121, 11th Floor Tower A, DLF Towers Jasola, Jasola District Center, New Delhi 110025, India. Through its authorized signatory Rajeev Kumar Gupta.

4. The Petitioner Company No. 3 i.e., Cushman And Wakefield India Private Limited (CIN U70101DL1997PTC090431), a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at JA 1120 and JA 1121.. 11th Floor, Tower A, DLF Towers, Jasola, Jasola District Center, New Delhi 110025. Through its authorized signatory Anand Kumar Gupta

5. The Petitioner companies submitted that the amalgamation of Transferor Company with the Transferee Company would, inter alia, entail the following benefits:

- i. The scheme of amalgamation would allow for streamlining the current organization structure and achieving an optimized legal entity structure more aligned with the business and achieving greater efficiency in resource management, cost savings resulting from rationalization, standardization and simplification of business processes and group structure
- ii. The Scheme of Amalgamation will enable pooling of physical, financial and human resource of these Companies for the most beneficial utilization of factors in the combined entity, since the Transferor Companies and Transferee Company are engaged in the similar business activities i.e. real estate consulting and advisory
- iii. The Scheme of Amalgamation will result in growth of economies as a centralized large Company including elimination of duplication of work and efforts, reduction in cost of overheads better and more productive utilization of all the resources and enhancement of overall business efficiency. It will enable these Companies to combine their managerial and operational strength, to build a wider organizational structure and to promote security in growth of their businesses
- iv. The Scheme of Amalgamation will contribute in fulfilling and furthering the objects of the Transferor Companies

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and the Transferee Company. It will strengthen, consolidate and facilitate further expansion and growth of their businesses. The resulting Amalgamated/Transferee Company will be able to participate more vigorously and profitably in the competitive market scenario.

- v. The Scheme of Amalgamation will result in optimum utilization of the manpower of the concerned Companies and it will open better avenues for the employees. The employees will have a better choice of skill upgradation, development and career growth
- vi. Consolidation of the Transferor Companies and The Transferee Company will enable regulatory procedural complications being made by a single unified company, thus resulting in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Companies and Transferee Company and also avoid duplication of administrative functions and eliminate multiple record keeping.

6. A meticulous perusal of the petition discloses that the first motion application bearing CA (CAA) 36/ND/2023 was jointly filed by the Petitioner Companies. Based on the averments made in the said application this Tribunal vide order dated 25.05.2023 dispensed with the requirement of

calling and convening the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferor and Transferee Companies.

7. This Tribunal by the virtue the order dated 03.07.2023 directed to issue notices to the (i) Regional Director, Ministry of Corporate Affairs (ii) Registrar of Companies, NCT of Delhi and Haryana, (iii) Official Liquidator, Lok Nayak Bhavan, Delhi (iv) concerned Income Tax Department.
8. Further, the petitioner companies were directed to carry out the publication of advertisement in Delhi editions of Business Standard (English, Delhi Edition) and Business Standard (Hindi, Delhi Edition).
9. The Petitioner Companies in compliance to the aforesaid order filed affidavit of service of notice to the statutory authorities and paper publication affirming service of notice and affirming that notice of hearing was duly advertised in Business Standard (English, Delhi Edition) and Business Standard (Hindi, Delhi Edition) on 10.08.2023.
10. Pursuant to the notices issued, Regional Director, Ministry of Corporate Affairs, Income Tax Department and Official Liquidator participated in the proceedings.

11. The RD has filed its report dated 29.09.2023, wherein certain observations were made to which petitioner company has filed its response. The major observations as well as reply of the Petitioner Companies are as under –

Serial No	Observations in the RD Report	Response of the Petitioner Companies
1.	As per audited Financial Statements of the Transferor Company no. 01 for the F.Y.2021-22, it is seen that the company has nil revenue from its operation since last two year. Hence the company appears to be dormant u/s 455 of the Companies Act, 2013.	That there is no specific restriction under Sections 230-232 of the Companies Act, 2013 on amalgamation/merger of dormant companies. The Petitioner Companies further states that they have been filing their Annual Returns on a timely basis. Also, the Petitioner Companies state that on the Scheme becoming effective, the Petitioner Companies (Transferor Company No. 1 and 2) shall be dissolved without winding up in accordance with the provisions of sections 230 to

		232 of the Act as per clause 20 of the Scheme of Amalgamation.
2.	In case of Transferor Company no. 02 and Transferee Company, auditor has stated in the audit reports that the companies have certain statutory dues pending on account of dispute and case for the same are being pending before their respective authority.	<p>That it is submitted that with regard to the income tax statutory dues, the Applicant Companies have filed an indemnity bond dated 27th October 2023 and 16th November 2023 giving an unconditional undertaking that the Transferee Company shall indemnify the concerned department on behalf of the Transferor Companies 1 and 2 in case the demand becomes enforceable against the Applicant companies.</p> <p>That the income tax department has issued no objection in the case of Transferor Co. 2 and reports in case of Transferee Company and Transferor Company 1. In response to the same, the</p>

		Applicant companies have provided an unconditional undertaking/ indemnity bond to the concerned Assessing officer (Income Tax Department) for the payment of demand (subject to the right of Appeal provided under the Income Tax Act, 1961.
3.	The Transferee company may kindly be directed to comply with the provisions of Section 232(3) (i) of the Companies Act, 2013 regarding fee payable of its revised Authorised share capital.	That the Transferee Company undertakes that it shall comply with the provisions of Section 232(3) (i) of the Companies Act, 2013 regarding fee payable of its revised Authorized share capital. That by virtue of clause 11 of the Scheme the Applicant companies shall comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 regarding fee payable of its revised Authorized share capital.

12. The Official Liquidator has filed its report dated 25.09.2023, wherein no specific objection has been raised against the approval of the Scheme. It has been submitted in the report that the Official Liquidator has not received any complaint against the proposed Scheme from any shareholders, interested in the Scheme. Further the Counsel for the OL also appeared before this Tribunal and stated that they have no objection in the matter.

13. The Counsel for the RD and OL appeared before this Tribunal on 21.12.2023. Vide order dated 21.12.2023, it was noted that

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“Ld. Counsel for the Petitioner is present. Ld. Counsel for the RD and OL is also present and submitted that they have filed their report and they have no objection if the scheme is approved.”

14. The Income Tax Department has filed its reports and raised certain objections therein, the aforesaid objections and their corresponding replies by the petitioner have been elucidated below –

Objections raised by the Income Tax Department	Response of the petitioners
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<p>Vide letter No. DCIT/ Circle 4(2)/2023-24/614 dated 14th September 2023, the Deputy Commissioner of Income-Tax, Circle 4(2), New Delhi ("Ld. AO 1") for Cushman & Wakefield India Private Limited ("Transferee Company") has raised no objections on the proposed scheme of amalgamation and provided the status of the petitioner's dues towards the IT Department.</p>	<p>It is submitted that the Transferee company has given an unconditional undertaking vide indemnity bond dated 3rd October 2023 to indemnify the Income Tax Department for any demands raised by it.</p>
<p>Vide letter No. DCIT-C-2(1)(1)/BLR/2023-24 dated 5th September 2023, the DCIT, Circle 2(1)(1), Bengaluru ("Ld. AO 2") for Cushman & Wakefield Property Advisors Private Limited ("Transferor Company No. 2") has raised no objections on the proposed scheme of amalgamation and provided</p>	<p>It is submitted that the Transferee company has given an unconditional undertaking vide indemnity bond dated 16th November 2023 to indemnify the Income Tax Department for any demands raised by it.</p>

the status of the petitioner's dues towards the IT Department.	
Vide report dated 25th October 2023, the Income Tax Officer, Ward 23(4), New Delhi ("Ld. AO 3") for Cushman & Wakefield Advisory Asia (India) Private Limited ("Transferor Company No. 1") has raised no objections on the proposed scheme of amalgamation.	It is submitted that the transferee company has given an unconditional undertaking vide indemnity bond dated 27th October 2023 to indemnify the Income Tax Department for any demands raised by it.

Consequently, in light of the report issued by the IT department and the lack of any objections raised against the scheme of amalgamation by the IT department, we are satisfied with the response/s provided by the petitioner in the present case.

15. 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.

16. Certificates of respective Statutory Auditors of all the petitioner companies, have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation 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.

17. 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 the Tribunal for the reason that it is not a part of the judicial function to examine entrepreneurial activities and their commercial decisions.

18. The Hon'ble Supreme Court in ***Miheer H. Mafatlal vs Mafatlal Industries Ltd JT 1996 (8) 205*** while considering the scope of the jurisdiction of the Company Court in respect of matters of sanction of the Scheme of Amalgamation as per the provisions of Section 391 read with Section 393 of the Companies Act, 1956, observed as under:

It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the

usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court certainly would not act as a court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority. Consequently, the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate.

In view of the law laid down by the Supreme Court, this Tribunal is not supposed to examine the merits/benefits of the commercial wisdom of the decision of the shareholders.

19. It has also been affirmed in the petition that the Scheme is in the interest of the Transferor company and the Transferee company, 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.

20. Consequently, **sanction is hereby granted** to the Scheme under Section 230 to 232 of the Companies Act, 2013 with the following conditions.

- I. *The Petitioners shall however remain bound to comply with the statutory requirements in accordance with the law.*
- II. *The Transferee company shall be responsible to pay the Income Tax dues of the Transferor Company, as per law.*
- III. *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.*
- IV. *While approving the Scheme as above, it is further clarified 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.*
- V. *The Petitioner Companies have proposed 01.04.2023 as appointed date. However, this Tribunal confirms and approve 01.04.2023 as appointed date.*

21. This Tribunal hereby further order

- 1) *That the Transferor Company shall stand dissolved without following the process of winding-up; and*
- 2) *That all the property, rights and powers of the Transferor Company, be transferred without further act or deed, to the Transferee company and accordingly the same shall, pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee company; and*
- 3) *That all the liabilities and duties of the Transferor Company, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee company; and*
- 4) *That all proceedings now pending by or against the Transferor Company, be continued by or against the Transferee company; and*
- 5) *That all the employees of the Transferor Company 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 Company on the said date; and*
- 6) *That 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 Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company registered with him 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; and

7) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary

22. The petition stands disposed of on the above terms. Let copy of the order be served to the parties.

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

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