

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI, COURT-III
COMPANY PETITION NO. (CAA)- 45(ND)/2022
CONNECTED WITH
COMPANY APPLICATION NO. (CAA) –130(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. AKITA ELECTRONICS PRIVATE LIMITED (AEPL)

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

AND

M/s. RANCHOR INFRA DEVELOPERS PRIVATE LIMITED (RIDPL)

..... Petitioner Company No.2/ Transferee 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)

PRESENT:

For the Applicant : Mr. M.K. Bansal, Advocate.

For the RD : Ms. Shankari Mishra, Adv.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Second Motion Petition has been filed jointly by the **M/s Akita Electronics Private Limited** (Petitioner Company No.1/Transferor Company) with **M/s. Ranchor Infra Developers Private Limited** (Petitioner Company No. 2/ 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 Company with Transferee Company and their respective shareholders and creditors.

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2. The Registered Office of the Transferor Company 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 namely M/s. Akita Electronics Private Limited (AEPL) bearing CIN: U31908DL2007PTC159346 was incorporated on 15.02.2007 under the Companies Act 1956 with the Registrar of Companies, Delhi & Haryana as a Private Limited Company.

The Registered Office of the Transferor Company is situated at House No. 208 Allied Complex, Inder Lok, New Delhi - 110035.

The Authorised Share Capital of the Transferor Company at the time of filing of this Application is Rs. 6,00,000/- (Rupees Six Lakhs) divided into 60,000 (Sixty thousand) equity shares of Rs. 10/- each. The Issued, Subscribed and Paid- up Capital of the Applicant Transferor Company is Rs. 3,87,500 (Rupees Three Lakh Eighty Seven Thousand Five Hundred) divided into 38,750 (Thirty Eight Thousand Seven Hundred Fifty) equity shares of Rs. 10/- each.

b) The Transferee Company namely M/s. Ranchor Infra Developers Private Limited bearing CIN: U14100DL2005PTC136548 was incorporated on 24.05.2005 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 Shop No 207, Plot No. 2, 2nd Floor, Allied House, Old Rohtak Road, Shahzada Bagh, Inderlok, New Delhi – 110035.

The Authorised Share Capital of the Transferee Company at the time of filing of this Application is Rs. 32,00,000/- (Rupees Thirty Two Lakhs) divided into 3,20,000 (Three Lakh Twenty Thousand) equity shares of Rs. 10/- each.

The Issued, Subscribed and Paid- up Capital of the Applicant Transferee Company is Rs. 31,52,750/- (Rupees Thirty One Lakhs Fifty Two Thousand Seven Hundred and Fifty) divided into 3,15,275 equity shares of Rs. 10 each.

4. It is stated that the Transferor Company and Transferee Company has moved the necessary second motion Petition being **CP(CAA)-45(ND)/2022** on 19.04.2022, connected with the first motion Application being **CA(CAA)-130(ND)/2021**, before the National Company Law Tribunal, New Delhi.

5. The Board of Directors of the Transferor Company and of the Transferee Company in their respective Board Meetings dated 30.09.2021 considered and unanimously approved the proposed Scheme of Amalgamation.
6. The circumstances, which justify and/or necessitate the said Scheme of Amalgamation are, inter alia, as follows:
- a) *The proposed Amalgamation would result in business synergy and consolidation of these Companies into one large Company with a stronger asset base.*
 - b) *The proposed Amalgamation would enable pooling of physical, financial and human resources of these companies for the most beneficial utilization of these factors in the combined entity.*
 - c) *The proposed scheme of Amalgamation will result in economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other resource and enhancement of overall business efficiency. It will enable these companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses.*
 - d) *The said scheme of Amalgamation will strengthen, consolidate, and stabilize the business of these Companies and will facilitate further expansion and growth of their business. The resulting amalgamated company will be able to participate more vigorously and profitably in the competitive market scenario.*
 - e) *The proposed amalgamation would enhance the shareholder's value of the Transferor Company and Transferee Company.*
 - f) *The said scheme of Amalgamation will have beneficial impact on Transferor Company and the Transferee Company, their Shareholders, employees and other stakeholders and all concerned.*
 - g) *That the assets of the Transferor Company and of the Transferee Company are sufficient to meet all their liabilities and the said scheme will not adversely affect the rights of any creditors of the Transferor Company and of the Transferee Company in any*

manner whatsoever.

h) That all assets and liabilities including income tax and all other statutory liabilities of the Transferor Company will be transferred to and vest in the Transferee Company.

i) It is submitted that none of the Director of Transferor Company and Transferee Company has any material interest in the said scheme of Amalgamation except as Shareholders/creditors in general, the extent of which will appear from the Register of Director's shareholding maintained by the Petitioner Companies.

j) That this petition is made bonafide and in the interest of the Company and its members.

7. The said Scheme of Amalgamation, inter alia, provides as under:

- i. "That all assets and liabilities including Income Tax and all other statutory liabilities of the Transferor Company will be transferred to and vest in the Transferee Company.*
- ii. All the employees of the Transferor Company, if any, in service on the date immediately preceding the date on which the scheme finally 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 conditions not less favorable than those subsisting in the concerned Transferor Company on the said date.*
- iii. The Amalgamation shall take effect from 1st April, 2022 or such other date, as the Hon'ble Tribunal may approve.*
- iv. On the Scheme becoming effective, the shareholders of the AEPL (Transferor Company) become the shareholders of RIDPL (Transferee Company). The Transferee Company (RIDPL) shall allot shares to the shareholders of Transferor Company according to of their shares and accordingly the exchange ratio shall be 1:0.002 (i.e., against 550 equity shares of Transferor Company 1 share of Transferee Company will be issued), Cross holding, if any, shall be cancelled."*

8. This Adjudicating Authority vide order dated 25.02.2022 has dispensed the requirement of convening the meetings of the Shareholders, Secured and Unsecured Creditors of the Petitioner Companies as all the shareholders and creditors of the Petitioner Companies have given their written consents/ NOC for the proposed amalgamation.
9. 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 25.02.2022 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.
10. It is submitted by the Petitioners that in compliance of the above-stated directions, the Petitioners duly filed an Affidavit of Service dated 23.05.2022 by confirming that the aforesaid Notices of the present Company Petition were published on 07.05.2022 in Business Standard (English Edition) and in Business Standard (Hindi Edition) on 07.05.2022 Delhi edition.
11. The Regional Director filed its Reply Affidavit dated 01.03.2023 along with the Registrar of Companies Report dated 19.07.2022 and has not objected to the proposed scheme of the amalgamation but has made certain observations. The Petitioner companies have filed an Affidavit to the reply filed by the Ld. Regional Director dated 23.05.2023 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.
12. The Official Liquidator, Delhi High Court vide its report dated 11.07.2023 submitted to this Adjudicating Authority states that they have no objection with respect to the present scheme of amalgamation.
13. In compliance with the Order of this Adjudicating Authority dated 15.01.2024, the Directors of the Petitioner Companies filed Affidavits dated 02.03.2024 stating that there is no Income Tax Demand/Dues payable by the Petitioner Companies and the Assessment Order u/s 143 of the Income Tax Act, 1961 is also attached with the Affidavit showing no demand of tax liability for FY 2023-24. The Petitioner Companies have also given an undertaking to pay any future demand raised by the Income Tax Department.

14. The Petitioner 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 06.04.2022 filed by M/s. Sunil K. Gupta & Associates, Chartered Accountants.
15. The exchange ratio for the purpose of implementation of the terms of the Scheme of Arrangement and Reconstruction has been prepared by a Registered Valuer and the same has been unanimously accepted by the Board of Directors of the Demerged Companies and the Resulting Companies. The Valuation Report dated 20.09.2021 prepared by Mr. Manish Chandra, Chartered Accountant is attached with the present Application.
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.
17. 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.
18. It is submitted by the Petitioner Companies that none of the Directors of the Transferer Company and Transferee Company has any material interest in the said Scheme of Amalgamation except as Shareholders in general, the extent of which will appear from the Register of Director's Share Holdings maintained by the Applicants Companies.
19. It is submitted by the Petitioner Companies that the assets of the Transferer Company and of the Transferee Company are sufficient to meet all their liabilities and the said Scheme will not adversely affect the rights of any creditors of the Transferer Company and of the Transferee Company in any manner whatsoever and the 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.

20. **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 Company and the Transferee Company and the Scheme will be beneficial to the Transferor Company, 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 Company, 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.

21. 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 232(7) of the Act, the transferee company shall until the full implementation of the Scheme of Amalgamation shall file a statement every year in the Form CAA 8 along with the required fees with the Registrar of Companies 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 01.04.2021 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'.

22. This Tribunal does further order: -

- i. That the Transferor Company 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 Company 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 Company subject to all changes now affecting the same; and
- iii. That all the liabilities, (if any) and powers, engagements, obligations and duties of the Transferor Company 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 Company shall be continued by or against the Transferee Company; and
- v. 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

- 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 Company 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.
23. Accordingly, the Scheme of Amalgamation stands **sanctioned** and **CP(CAA)/45(ND)/2022** 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)**