

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT – II)**

**IN**

**Company Petition No. – C.P.(CAA)-56(ND)/2022**

**IN**

**Company Application No. – C.P.(CAA)-29(ND)2022**

**IN THE MATTER OF SCHEME OF AMALGAMATION OF:**

**PREM INDUSTRIES INDIA LIMITED**

**...Applicant/  
Transferee Company**

**AND**

**PREM PIGMENTS LIMITED**

**...Non-Applicant/Transferor  
Company**

**WITH**

**THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS**

**Order delivered on 18.04.2024**

**Under Section: 230 to 232 of the Companies Act, 2013**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)**

**PRESENT:**

<b>For the Applicant</b>	<b>:</b>	Mr. Rishabh Jain, Advocate
<b>For the IT Deptt.</b>	<b>:</b>	Adv. Abhishek Maratha and Parth Semwal, St. Counsels with Adv. Utkarsh
<b>For the RD</b>	<b>:</b>	Adv. Niharika Tanwar
<b>For the OL</b>	<b>:</b>	Adv. Tanuja Rawat

## **ORDER**

1. The present petition has been preferred by the Transferee Company (hereinafter referred to as the Applicant Company”) under Section 230 to 232 of Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 for approval of the Scheme of Amalgamation (hereinafter referred to as ‘**Scheme**’ for brevity), as contemplated between the Companies, its Shareholders and Creditors. The copy of the Scheme has been placed on record. The details of the Companies proposed to be amalgamated, as placed on record, are given in the following paragraphs.
2. M/s Prem Pigments Limited (hereinafter referred to as the “**Non-Applicant/ Transferor Company**”) having CIN U24221UP1997PLC022752 is a company incorporated on 24.10.1997 under the erstwhile Companies Act, 1956. The Registered Office of the Transferor Company is situated at 22/13, 22/18, Industrial, South Side, GT Road, Ghaziabad, Uttar Pradesh.
3. M/s Prem Industries India Limited (hereinafter referred to as the “**Applicant/ Transferee Company**”) having CIN U21093DL2021PLC387673 is a company incorporated on 04.10.2021 under the Companies Act, 2013. The Registered Office of the Transferor Company is situated at B-1, D-8, Mohan Cooperative Industrial Estate, Delhi – 110044.
4. From the records, it is seen that the First Motion petition by the Applicant Company for seeking directions for dispensing with the meeting of Equity

Shareholders, Secured Creditors and Unsecured Creditors was filed before this Bench. Further, this Tribunal in the First Motion Application bearing No. – C.A.(CAA)-29/ND/2021, vide Order dated 20.04.2022, had dispensed with the requirement of convening the meetings of the Shareholders and Unsecured Creditors in respect of the Applicant Companies. Since there was no Secured Creditor in any of the Applicant Companies, the requirement of dispensing with their meeting did not arise.

5. It is submitted that the object for which the Transferee Company was incorporated is manufacturing of corrugated boxes and more particulars are set out in its Memorandum of Association. It is further submitted that the main object clause of the Petitioner Company was amended on 15.03.2022 to take over a partnership firm namely, M/s. Prem Industries w.e.f. 01.04.2022. Accordingly, after the alteration in the Memorandum of Association of the Petitioner Company, the main object of the Transferee Company are as under: -

*5.1 To take over the existing running business of a partnership firms namely M/s PREM INDUSTRIES, having registered office situated at C-209, Bulandshahr Road Industrial Area, Ghaziabad, Uttar Pradesh, 201001, (which is owned by Partners Mr. Ved Prakash Goel, Rajendra Kumar and Vijendra Kumar) with all its assets and liabilities w.e.f. 01.04.2022, and said partnership firms shall cease to exist after such takeover by the company namely M/s PREM INDUSTRIES INDIA LIMITED.*

5.2 To carry on business in India and elsewhere as manufacturers or and dealers in and importers and exporters of all kinds of packaging containers including cartons, boxes and cases wholly or partly made of papers, boards, wood, glass, plastic, rubber, metals, zelatine, tin or otherwise and glass bottles, glass jars, flasks, casks and glass containers of every description, fibrate boxes, corrugated containers, corrugated rolling boxes, display boxes, aluminium coils and packing requisite of every kind and description.

5.3 To carry on business in India and elsewhere as manufacturers or and dealers in and importers and exporters of all kinds of sticker, label including self-adhesive/non adhesive labels, tapes, bopp tapes, gummed tape, cello tape and self-adhesive tapes and all other kind and description.

5.4 To construct, erect, establish a factory or factories and work-shops with suitable machines, plants, engines, tools, instruments for manufacturing packing articles and to adopt all processes of manufacture such as cutting, treating, moulding, pasting, binding, shaping, fabricating, or other chemical, mechanical, electrical or manual operations for making packing articles, Stickers of all kind and also to take on hire, rent or acquire, purchase any plant, engines, machinery, tools as referred to above from any person or body or association and manufacture and deal in all types of flexible laminates made out of combinations of BOPP, BOPET, VMPET, VMOPP, BON, CPP, Aluminum foil, paper, LDPE/m-LLDPE, HDPE, acid Co- Polymer, lonomer, saran coating, security holograms and stand - up / Centre - Sealed, three side sealed, gusset pouches and bags' Re -Closable Zipper and slider

*pouches (for powders and granules), Re-closable Caps and pouring spout pouches (for liquids); carry bags, gift and promotional bags, big pouches & bags, flexi Tubes, Aseptic liquid packs, bar code stickers, sticker, label including self adhesive labels, tapes and to nm all allied business activities.*

*5.5 To carry on the business importing exporting and dealing in all kinds of H.D.P.E., L.L.D.P and L.D.P., containers and in all kinds of plastic/rubber and packing materials and in particular Polythene bags, Plastic injection and Blow Moulded, articles, Fiber dnnns, Plastic coating on Electric Cables, Plastic pipes, Industrial and House hold plastic products, Plastic Lamination on paper or any other articles, Plastic dyes and machines of all kinds for useful plastic conversion and undertaking job works of printing on the plastic products or any other products.*

*5.6 To carry on the business of manufactures, engineers, contractors, founders, and designers of all kinds of Industrial packing materials.*

6. The Appointed Date as per clause 1.2 of the Definitions clause of the Proposed Scheme of Amalgamation is 01.01.2022.
7. The Registered offices of the Applicant Company being in Delhi, the jurisdiction lies with this Bench. The Scheme qua Non-Petitioner/ Transferor Company has already been approved by the Allahabad Bench of this Tribunal vide its Order dated 11.05.2022 in CP (CAA) No-09/ALD/2022 in CA (CAA) No - 05/ALD/2022 The directions passed vide this order shall be confined to the Petitioner Companies only.

8. Subsequently, the Second Motion petition was moved by the Petitioner Companies in connection with the scheme of Amalgamation for issuance of notices to the Central Government, Registrar of Companies NCT of Delhi & Haryana, Regional Director (Northern Region) MCA, Income Tax Authorities, Official Liquidator and to such other Objector(s), if any, and also for publication of the said Scheme. Directions were issued vide Order dated 29.09.2022 of this Tribunal, requiring the Petitioner Companies to carry out necessary publication with regard to the said Scheme in two national newspapers.
9. It is submitted by the Petitioner Companies that in compliance of the above stated directions, the Petitioner Companies have duly filed an Affidavit of Service confirming that the aforesaid Notices of the present Company Petition were published in the “Financial Express” (English) and “Jansatta” (Hindi) on 07.10.2022.
10. Accordingly, the Regional Director has filed its Report dated 23.03.2023 and has relied on the observations made by the Registrar of Companies stating the following: -
- 10.1. *The meetings of the Shareholders and Creditors of Petitioner /Transferee Company was dispensed with by Hon'ble NCLT vide order dated 20.04.2022 and there are no secured creditors. As per scheme of Amalgamation there are 6 unsecured creditors. However as per Hon'ble m NCLT order dated 20.04.2022, there are 2 unsecured creditors m petitioner/ transferee company.*

- 10.2. *The Applicant Transferee company may kindly be directed to comply with the provision of section 232(3)(i) of the Companies Act, 2013 in regard to fee payable on its revised authorized share capital.*
- 10.3. *The Transferor Company has taken huge loans from individuals so, it may be asked to show compliance of the provisions related to acceptance of deposits. Further, it appears that this loan has been used for investing in Land & Building. The ostensible reason for the merger appears to be simply a transfer of fixed assets to the Transferee company as the Transferor Company is not doing any business.*
11. In response to the Report filed by the Regional Director, the Petitioner submitted the following: -
- 11.1. *There were 7 creditors in the Transferee Company and consent of all the 7 unsecured creditors was obtained which formed part of the First Motion application itself.*
- 11.2. *The operative para 13 of first motion order did not specifically mention dispensation of meeting qua 2 unsecured creditors only.*
- 11.3. *The number of creditors mentioned in para 11 are due to typing mistake in synopsis of first motion application.*
- 11.4. *With regard to Para 10, it is submitted that the Transferee Company unequivocally undertook to comply with the provision of Section 232(3) of the Companies Act, 2013.*
- 11.5. *With regard to loans taken from individuals the Transferor Company has obtained certain loans from the Directors of the*

*Company and as per Rule 2(1)(viii) of Companies (Acceptance of Deposits) Rules, 2016, any money received by the company from its director is not a deposit.*

12. We have considered the submissions of RD/ROC and the Petitioner Companies. The major objection by the RD/ROC is regarding the acceptance of deposits amongst the Petitioner Companies.

13. The impugned loans referred to in the report are stated to be received from the Directors, and prima facie enquiries into these transactions, in any case, by the relevant authorities, including RD/ROC, can always be carried out post the approval of this proposal for amalgamation as the Transferee Company will continue to exist post amalgamation. The observation regarding the transaction of transfer of shares amongst Petitioner Companies is of a general nature and no specific mention of any clause of scheme being alleged as violating the provisions of the law has been made by the RD/ROC. We also note that no enquiry against these transactions have been initiated against the applicant companies so far by any authority. Further, on sanction of the scheme, all the proceedings of Transferor Company can continue in the name of Transferee Company, as if those proceedings were initiated against Transferor Company. Hence, an order regarding approval of scheme cannot create any impediment before any Authority to proceed against either Transferor or Transferee Company.

14. Hence, we find no material objection raised by the RD and we would like to proceed ahead with the matter.



15. Despite service of notice there was no appearance on behalf of Jurisdictional Assessment Officer and therefore proceedings against the said Authority were set ex-parte vide order dated 09.06.2023.
16. Further no report has also been filed by the OL despite several opportunities, and thus, it is presumed that the OL has nothing to say in the matter.
17. This case was reserved on 05.01.2024 but was subsequently relisted vide Administrative Order dated 19.03.2024 mainly on the ground that the Applicant Company stated in the first motion application that there are only 02 unsecured creditors, whereas in the clarification to the RD's Report, the Applicant Company has stated that there are 07 unsecured creditors. Accordingly, the Petitioner was directed to file its clarification and the same was done by Affidavit dated 08.04.2024. The relevant excerpt reads thus:

2. That it is clarified that there were 7 unsecured creditors in the transferee company.
3. That it is clarified and reiterated that:
  - a. There were 7 unsecured creditors in the transferee company. **[List of Creditors @ 144 to 148, CA Certificate @147 to 148 and Consent Affidavits @ 149 to 170 of First motion petition]**  
**[List of Creditors @ 144 to 148, CA Certificate @147 to 148 and Consent Affidavits @ 149 to 170 of Second motion petition];**

Thus, the issue raised in our aforementioned Administrative Order now stands clarified.

18. In view of the aforementioned facts and discussion and upon considering the approval accorded by the Members and Creditors of all the Petitioner Companies to the proposed Scheme and no sustainable objections having been raised by the Office of the Official Liquidator, Regional Director (North), Income Tax Department or any other interested party, there does not appear to be any impediment in granting sanction to the Scheme. Accordingly, **sanction is hereby granted to the Scheme of Amalgamation proposed by the Petitioner Companies under Section 230 to 232 of the Companies Act, 2013**, in respect of Petitioner Companies only. The sanctioned Scheme of Amalgamation shall be binding on the Transferor Company and Transferee Company (Petitioner Companies) and their Shareholders and Creditors. The Petitioner Companies shall remain bound to comply with the statutory requirements in accordance with law.
19. Notwithstanding the above, if there is any deficiency found or violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Authority to the Scheme will not come in the way of action to be taken, albeit, in accordance with law, against the concerned persons, Directors and Officials of the Petitioner Companies.
20. While approving the Scheme as above, it is clarified that this Order should not be construed as an order in any way granting exemption from payment of Stamp Duty, Taxes or other statutory dues, 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.

Further the approval of the Scheme would in no manner affect the tax treatment of the transactions under the Income Tax Act, 1961 or serve as any exemption or defence for the Petitioner Companies against tax treatment in accordance with the provisions of Income Tax Act, 1961.

21. **THIS TRIBUNAL FURTHER DIRECTS** with respect to the Petitioner Companies, that:

- (i) Upon the sanction becoming effective from the appointed date of amalgamation i.e., 01.04.2020, all the Transferor Companies shall stand dissolved without undergoing the process of winding up.
- (ii) That all the property, 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 Sections 230 & 232 of the Act, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Companies but subject nevertheless to all charges now affecting the same; and
- (iii) That all the liabilities and duties of the Transferor Companies be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 to 232 of the Act, be transferred to and become the liabilities and duties of the Transferee Company;
- (iv) All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Companies are entitled to include under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government,

grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives and concessions;

- (v) All contracts of the Transferor Companies which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Companies, the Transferee Company had been a party or beneficiary or obliged thereto;
- (vi) All the employees of the Transferor Companies shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favourable than those on which they are engaged by the Transferor Companies, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;
- (vii) That the proceedings, if any, now pending by or against the Transferor Companies be continued by or against the Transferee Company;

- (viii) That the Transferee Company shall, without further application, allot to the existing members of the Transferor Companies shares of Transferee Company to which they are entitled under the said Scheme;
- (ix) That as per the Section 232(3)(i), the fee, if any, paid by the Transferor Companies on their authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme';
- (x) That the carry forward and set off of accumulated losses in the Petitioner Company, if any, shall be subject to applicable provisions of Income Tax including Section 72A and Section 79 of the Income Tax Act, 1961;
- (xi) That the assessment under the Income Tax Act, if any will be in accordance with the provisions of Section 170 (2A) of the Income Tax Act, 1961;
- (xii) That the Transferee Company shall file the revised memorandum and articles of association with the concerned Registrar of Companies and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company; after setting off the fees paid by the Transferor Companies;
- (xiii) That the Petitioner Company shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the concerned Registrar of Companies for registration; and
- (xiv) That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

22. The Petitioner Companies shall, within thirty days of the date of the receipt of this Order or on sanction of the Scheme with respect to Transferee Company, whichever is later, cause a Certified Copy of this Order to be delivered to the Registrar of Company for registration and on such Certified Copy being so delivered, the Transferor Company shall be dissolved and the Registrar of Company shall place all documents relating to the Transferor Company on the file kept by him in relation to the Transferee Company and the files relating to both the Petitioner Companies shall be consolidated accordingly.

23. **The Company Petition is disposed of in the aforesaid terms.**

Sd/-  
**(SUBRATA KUMAR DASH)**  
**MEMBER (T)**

Sd/-  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**