

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
NEW DELHI, COURT-III**

**COMPANY PETITION NO. (CAA) - 76(ND)/2022  
CONNECTED WITH  
COMPANY APPLICATION NO. CA(CAA) – 67(ND)/2022**

*(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**

OF

**M/s. SAMBHAV CONSTRUCTIONS PRIVATE LIMITED**

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

AND

**M/s. IMPEL ELECTRONICS PRIVATE LIMITED**

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

WITH

**M/s. FIJI FIBREMATICS PRIVATE LIMITED**

..... Non Petitioner/ Transferee Company No. 3

AND

**THEIR RESPECTIVE CREDITORS AND SHAREHOLDERS**

**Order Delivered on 15.04.2024**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)  
SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

**For the Applicant:** Mr. Naresh Kumar, Advocate

**For the RD:** Ms. Shankari Mishra, Mr. Himanshu Singhal, Advocates

**For the OL:** Ms. Hemlata Rawat and Mr. Rahul Bhatt, Advocates

## **ORDER**

### **PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. The present Second Motion Petition has been filed jointly by the M/s. Sambhav Constructions Private Limited, (Petitioner Company No. 1/ Transferor Company No. 1), M/s. Impel Electronics Private Limited , (Petitioner Company No. 2/ Transferor Company No. 2) and M/s. Fiji Fibrematics Private Limited (Non Petitioner/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 and Transferee Company and their respective shareholders and creditors (Scheme).

The Registered Office of the Transferor Companies 1 and 2 is presently situated at New Delhi and therefore, it is under the jurisdiction of the Hon'ble National Company Law Tribunal, New Delhi. The Transferee Company is outside the jurisdiction of this Tribunal, hence the Transferee Company is a Non-Petitioner Company.

2. The Transferor Company No. 1 namely M/s. Sambhav Constructions Private Limited, bearing CIN: U74899DL1991PTC042980 was incorporated on 06.02.1991 under the provisions of the Companies Act, 1956 as a Private Company Limited with the Registrar of Companies, NCT of Delhi and Haryana. The registered office address of Transferor Company No. 1 is situated at Plot No. 10, Block-D, R B C Nangal Raya, New Delhi, West Delhi-110 046. The Authorized Share Capital of the Company is Rs 5,00,000 divided into 5,000 Equity Shares of Rs 100 each. The present Issued, Subscribed and Paid-up Share Capital of the Company is Rs 5,00,000 divided into 5,000 Equity Shares of Rs 100 each.

- 3.** The Transferor Company No. 2 namely M/s. Impel Electronics Private Limited, bearing CIN: U31909DL1990PTC042307 was incorporated on 07.12.1990 under the provisions of the Companies Act, 1956 as a Private Company with the Registrar of Companies, NCT of Delhi and Haryana. The registered office address of Transferor Company No. 2 is situated at C-96, Anand Niketan, New Delhi-110021. The Authorized Share Capital of the Company is Rs 10,00,000 divided into 1,00,000 Equity Shares of Rs 10 each. The present Issued, Subscribed and Paid-up Share Capital of the Company is Rs 9,00,000 divided into 90,000 Equity Shares of Rs 10 each.
- 4.** The Transferee Company/Non Petitioner Company namely M/s. Fiji Fibrematics Private Limited, bearing CIN: U74999HR1990PTC030987 was incorporated on 27.06.1990 under the provisions of the Companies Act, 1956 as a Private Company with the Registrar of Companies, NCT of Delhi and Haryana. The registered office address of Transferor Company No. 3 is situated at at J-4/23, DLF Phase-11, Gurugram-122010, Haryana.
- 5.** The Board of Directors of the Transferor Companies and of the Transferee Company in their respective Board Meetings dated 30.04.2022 considered and unanimously approved the proposed Scheme of Amalgamation.
- 6.** The amalgamation of the Transferor Companies with the Transferee Company would inter alia have the following benefits:

  - a) Both the Transferor Companies and the Transferee Company are closely held Group Companies. The proposed Scheme of Amalgamation would result in business synergy, consolidation and pooling off their resources.*
  - b) Both the Transferor Companies and the Transferee Company are engaged in similar business activities i.e. in the business of real estate, sale/purchase of immovable properties and letting out the same on rent.*

- c) *The Proposed scheme will result in formation of a larger Company enabling further growth and development of the businesses of the said Company. The scheme will enable the undertakings and business of the concerned companies to obtain greater facilities possessed and enjoyed by one large Company compared to some small companies for raising capital, securing and conducting trade and business on favorable terms and other related benefits.*
- d) *The Proposed Scheme would enable sustainable long term growth, profitability, cost reduction and efficiencies and continuous customer service through focused management attention as different set of skills and resources would be available to meet competitive, regulatory environment and customer service requirements.*
- e) *With the enhanced capabilities and resources at its disposal, the Transferee Company will have greater flexibility to markets and meet customer needs and will be able to compete more effectively. Thus further strengthening its market position in domestic and international markets.*
- f) *The amalgamation will enable the Companies to pool in their financial, managerial, technical and other resources and use the financial, managerial technical and marketing and distribution expertise of each other.*
- g) *The Scheme will have beneficial results for the said companies, their shareholders, their creditors, customers, employees and all concerned.*

**7.** This Adjudicating Authority by its order dated 10.06.2022 dispensed with the requirement of holding the meeting of equity shareholders meeting of all the Transferor Companies involved in the present scheme of amalgamation.

**8.** 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 07.07.2022 directed to issue notice to the statutory

authorities i.e. Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi, Registrar of Companies (Delhi and Haryana), Official Liquidator, Ministry of Corporate Affairs, New Delhi and the Income Tax Department and such other Sectoral Regulatory Authorities who shall be affected by the proposed Scheme and to such other Objector(s), if any, and also directed that the notice be published in two newspapers i.e., “Business Standard” (English Delhi Edition) and “Business Standard” (Hindi Delhi Edition).

**9.** It is submitted by the Petitioners that in compliance of the above-stated directions, the Petitioners duly filed an Affidavit of Service dated 06.08.2022 by confirming that the aforesaid Notices of the present Company Petition were published on 28.07.2022 in Business Standard (English Edition) and Business Standard (Hindi Edition) Delhi edition. It is further submitted that the Petitioner Companies also served the Notices of the present Company Petition to all the statutory authorities as per the directions given by this Tribunal vide order dated 07.07.2022.

**10.** The Income Tax Department filed its report dated 10.10.2022 in respect of Transferor Company No.1 namely M/s. Sambhav Constructions Private Limited stated that which is reproduced hereunder:

**a.** Details of demands outstanding against the Company are as follows: -

As per the records available with the Income Tax Department a demand of Rs. 33,03,655/- exists for the assessee.

**b.** Details of returns filed by the Company are as follows: -

The Company has been regularly filing ITR for the last 10 years.

**c.** Details of proceeding pending against the Company are as follows: -

No proceedings are pending for the assessee.

**11.** The Transferor Company No.1 has filed its reply dated 10.02.2023 with respect to the outstanding demand of Rs. 33,03.655/-. The Transferor Company No.1 has paid demand for the Assessment Year 2012-2013, 2013-2014 and 2016-2017. Further, the Transferor Company No.1 has filed grievances and/or rectifications for the Assessment Year 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2018-2019 and 2020-2021. Rectification filed for A.Y. 2020-2021 has been processed and consequently, outstanding demand of Rs. 9,37,570/- for A.Y. 2020-2021 has been reduced to Nil. As on date, Income tax demand outstanding as per IT portal is Rs. 22,74,925/- in respect of which the Transferor Company No.1 has already filed grievances and rectifications with the Income Tax Department.

**12.** The Income Tax Department filed its report dated 26.08.2022 in respect of Transferor Company No.2 namely Impel Electronics Private Limited stated that which is reproduced hereunder:

**a.** Details of demands outstanding against the Company are as follows: -  
No demand exists as per the ITBA Portal

**b.** Details of returns filed by the Company are as follows: -  
As per the ITBA portal during the last 10 years, the assessee has filed Income Return for the A. Ys 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20.

**c.** Details of proceeding pending against the Company are as follows: -  
As per the ITBA Portal, no proceedings are pending against the Company.

**13.** The Petitioner Companies have filed an affidavit cum undertaking dated 18.01.2024 undertaking that if any tax dues are claimed by the Income Tax Department after the approval of the Scheme of Amalgamation of the Petitioner Companies, the same will be paid by the Transferee Company as per Law.

- 14.** The Regional Director along with the Registrar of Companies vide its report dated 27.03.2023 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 17.04.2023 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 Official Liquidator, Mr. A.K. Mahapatra vide its report dated 19.01.2023 has submitted that the affairs of the aforesaid Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest in terms of the provisions of the Companies Act, 2013.
- 16.** The Petitioners Companies have submitted that the provisions relating to the accounting treatment for the proposed arrangement, as contained in the Scheme of Amalgamation, are in conformity with the applicable provisions of the Companies Act, 2013 under Section 133 of the Companies Act, 2013), and Generally Accepted Accounting Principles in India. The Statutory Auditors of the Transferor Companies and the Transferee Company have confirmed the same vide Certificate dated 11.06.2022 filed by M/s. Bhupesh K. Dhingra & Co., Chartered Accountants.
- 17.** 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.

**18.** It is submitted by the Petitioner Companies that this Joint 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.

**19. 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 Scheme will be beneficial to the Transferor Companies and their respective shareholders and creditors.
- ii.** The shareholders of the petitioner company 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 and their respective shareholders, creditors, employees and all concerned.

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, the sanction is hereby granted to the Scheme with reference to Transferor Companies 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.** That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
- iv.** 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.
- v.** The appointment date as proposed in the Composite Scheme of Arrangement i.e., 01.04.2022 by the petitioner company is confirmed by this Tribunal. The Transferor Companies shall stand dissolved without undergoing the process of winding up.

**21.** Accordingly, the Scheme stands **sanctioned** limited to Transferor Companies only and **CP(CAA)/76(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)**