

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

**COMPANY PETITION NO. (CAA) -10(ND)/2021
CONNECTED WITH
COMPANY APPLICATION NO. (CAA) -96(ND)/2020**

(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. PANI CONSTRUCTIONS PRIVATE LIMITED

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

AND

M/s. RUS ENGINEERING SERVICES PRIVATE LIMITED

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

WITH

M/s. AAO SAI FURNISHINGS PRIVATE LIMITED

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

AND

THEIR RESPECTIVE CREDITORS AND SHAREHOLDERS

Order Delivered on 23.04.2024

CORAM:

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

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant: CS Manish Sohal

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

For the I.T. Department: Mr. Kunal Sharma, Sr. St. Counsel, Ms. Zehra Khan, Jr. St. Counsel, Ms. Anauntta Shankar, Advocate

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. Pani Constructions Private Limited, (Petitioner Company No. 1/ Transferor Company No. 1), M/s. RUS Engineering Services Private Limited, (Petitioner Company No. 2/ Transferor Company No. 2 and M/s. Aao Sai Furnishings 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 and Transferee Company and their respective shareholders and creditors (Scheme).

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

2. The Transferor Company No. 1 namely M/s. Pani Constructions Private Limited, bearing CIN: U45400DL2010PTC199187 was incorporated on 17.02.2010 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 202, Plot No.3, sector-6, vardhman plaza, central market, Dwarka, New Delhi, South West Delhi-110075. The Authorized Share Capital of the Company is Rs. 25,00,000/- divided into 2,50,000 Equity Shares of Rs. 10/- each and Issued, Subscribed and Paid-up Share Capital of the Transferor Company No. 1 Company is Rs. 25,00,000/- divided into 2,50,000 Equity Shares of Rs. 10/- each.

3. The Transferor Company No. 2 namely M/s. RUS Engineering Services Private Limited, bearing CIN: U74996DL2006PTC155545 was incorporated on 15.11.2006 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. 2 is situated at H.No 309, Plot No.8, Third Floor, RDDK best plaza, Netaji Subhash Place. Pitampura, Delhi, North West Delhi-110034. The Authorized Share Capital of the Company is Rs. 20,00,000/- divided into 2,00,000 Equity Shares of Rs. 10/- each and Issued, Subscribed and Paid-up Share Capital of the Company is Rs. 19,00,000/- divided into 1,90,000 Equity Shares of Rs. 10/- each.
4. The Transferee Company namely M/s. Aao Sai Furnishings Private Limited, bearing CIN: U36101DL2006PTC152053 was incorporated on 17.08.2006 under the provisions of the Companies Act, 1956 as a Private Company Limited with the Registrar of Companies, NCT of Delhi. The registered office address is situated at A-52, First Floor, Main Road Jitar Nagar, Parwana Road, Delhi, East Delhi-110051. The Authorized Share Capital of the Transferee Company is Rs. 50,00,000/- divided into 5,00,000 Equity Shares of Rs. 10/- each and Issued, Subscribed and Paid-up Share Capital of the Company is Rs. 44,00,000/- divided into 4,40,000 Equity Shares of Rs. 10/- each.
5. It is stated that the Transferee Company viz., M/s. Aao Sai Furnishings Private Limited has moved the necessary second motion Petition being **CP(CAA)10(ND)/2021**, connected with the first motion Application being **CA(CAA)-96(ND)/2020**, before the National Company Law Tribunal, New Delhi.
6. The Board of Directors of the Transferor Companies and of the Transferee Company in their respective Board Meetings dated 06.01.2020 considered

and unanimously approved the proposed Scheme of Amalgamation.

7. The amalgamation of the Transferor Companies with the Transferee Company would inter alia have the following benefits:

a) The Scheme would benefit the shareholder(s) and other stakeholder(s) of the respective Companies by consolidating and simplifying the structure, business operations, provide optimal utilization of various resources and eliminating cross holdings within the group.

b) Enhance growth prospects, reduce overheads, administrative, managerial and other costs and expenditure and remove inefficiencies and bring operational rationalization and organizational efficiency.

8. This Adjudicating Authority by its order dated 16.10.2020 dispensed with the requirement of holding the meeting of equity shareholders and unsecured creditors meeting of all the Companies involved in the present scheme of 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 09.02.2021 directed to issue notice to all the Statutory Authorities, i.e., the Regional Director, the Registrar of Companies, NCT of Delhi & Haryana and the Income Tax Department including the Assessing Officer 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" (New Delhi Edition) and "Jansatta" (Hindi, New Delhi Edition).

10. It is submitted by the Petitioners that in compliance of the above-stated directions, the Petitioners duly filed an Affidavit of Service dated 31.03.2021 by confirming that the aforesaid Notices of the present Company Petition were published on 02.03.2021 in “Business Standard” (New Delhi Edition) and “Jansatta” (Hindi, New 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 09.02.2021.
11. The Regional Director along with the Registrar of Companies vide it’s report dated 19.04.2022 has not objected to the proposed scheme of the amalgamation but has certain observations. The Petitioner Companies have filed Rejoinder Affidavit to the reply filed by the Ld. Regional Director dated 01.12.2023 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.
12. The Official Liquidator, Mr. A.K. Mahapatra vide it’s report dated 21.04.2023 submitted to this tribunal stating therein that they have no objection with respect to the present scheme of amalgamation.
13. It is noticed that despite notice being served, no comments have been received from the Income Tax Department with respect to any of the Petitioner Companies. As per the provisions of Section 230(5) of the Companies Act, 2013, on the expiry of 30 days from the date of the notice it may be presumed that the Income Tax Department does not have any comments on the proposed Scheme of Arrangement for Amalgamation.
14. The Petitioner Companies have filed an affidavit cum undertaking dated 13.04.2023 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.

15. 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 30.10.2020 filed by M/s. Shiv & Associates.
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 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.

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 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, Transferee Company, 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.

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 for the proposed scheme of amalgamation is 20.02.2020 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 01.04.2023 as the 'Appointed Date'.
- vi. Upon the sanction becoming effective from the appointed date i.e., 01.04.2023 as prescribed by this Tribunal, the Transferor Companies shall stand dissolved without undergoing the process of winding up.

20. This Tribunal does further order: -

- i. That the Transferor Companies shall stand dissolved without following the process of winding-up; 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 Company 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 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 stands **sanctioned** and **CP(CAA)/10(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)**