

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

COURT NO. VI, NEW DELHI

CA(CAA) – 04/ND/2024

**IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT,
2013**

*Sections 230-232 and other applicable provisions of the Companies Act, 2013
read with Companies (Compromises, Arrangements and Amalgamations)
Rules, 2016.*

IN THE MATTER OF SCHEME OF ARRANGEMENT

M/s ABC INDUSTRIES PRIVATE LIMITED

Registered Office at:

R - 192, Greater Kailash-II,
New Delhi 110048

... Applicant Company No 1/Transferor Company

AND

M/s PELICAN INDIA LIMITED

Registered Office at:

R - 192, Greater Kailash-II,
New Delhi 110048

... Applicant Company No 2/Transferee Company

CORAM:

SH. MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

For the Applicants: Adv. Awnish Kumar

ORDER

PER – RAHUL BHATNAGAR, MEMBER (JUDICIAL)

Order Delivered on: 22.04.2024

1. The present first motion application has been jointly filed by the Applicant Companies No 1 & 2 under Section 230-232 of Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, the National Company Law Tribunal Rules, 2016, and other applicable provisions in relation to the Scheme of Arrangement by way of Amalgamation (hereinafter referred to as the “SCHEME”) proposed between the applicants.
2. That the Transferor Company and Transferee Company under the Scheme of Arrangement have their respective registered offices in the NCT of Delhi. Consequently, they fall under the jurisdiction of the National Company Law Tribunal, Bench at New Delhi.
3. The Applicant Company No.1– M/s ABC INDUSTRIES PRIVATE LIMITED (CIN: U74899DL1995PTC065786), was incorporated in accordance with the provisions of the Companies Act, 1956 as a Private Limited Company by the virtue of Certificate of Incorporation dated 24.02.1995. The company has its registered office at R-192, GREATER KAILASH - II, NEW DELHI, Delhi, India, 110048. The Applicant Company No.1 has

Authorised Capital amounting to INR 1,00,00,000 and Paid up Capital amounting to INR 82,50,000;

4. The Applicant Company No.2 – M/s PELICAN INDIA LIMITED (CIN: U55101DL1985PLC021123), was incorporated in accordance with the provisions of the Companies Act, 1956 as a Private Limited Company vide Certificate of Incorporation dated 03.06.1985, having its registered office at R-192 GREATER KAILASH-I, NEW DELHI, Delhi, India, 110048. The Applicant Company No.2 has Authorised Capital amounting to INR 50,00,000 and Paid up Capital amounting to INR 50,00,000.
5. The Board of Directors of the Transferor Company and the Transferee Company in their respective meetings held on 31.10.2023, considered and unanimously approved the proposed Scheme of Amalgamation. Copies of the aforesaid Board Resolutions passed in the corresponding Board Meetings have been placed on record by the applicants.
6. The advantages of the proposed amalgamation as stated by the petitioner, inter alia, are –
 - i. The proposed amalgamation would enable pooling of physical, financial and human resource of these companies for the most beneficial utilization of these factors in the combined entity.
 - ii. The proposed scheme would result in optimum utilization of the manpower of the concerned companies. It will open better avenues for the employees will have a better choice of skill up gradation, development and carrier growth.

- iii. The proposed scheme of amalgamation will result in usual 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 strengths, to build a wider capital and financial base and to promote and secure overall growth of their businesses.
- iv. The said scheme of Amalgamation will contribute in fulfilling and furthering the objects of the Transferor and the Transferee Companies. It will strengthen, consolidate and facilitate further expansion and growth of their businesses. The resulting amalgamated company will be able to participate more vigorously and profitably in the competitive market scenario.
- v. The proposed amalgamation would enhance the shareholders' value of the Transferor and Transferee Company.
- vi. The proposed scheme of Amalgamation will have beneficial impact on the Transferor and the Transferee Company, their employees, their shareholders and all concerned.

7. It has been averred by the Applicant Company No 1 / Transferor Company that it has 5 equity shareholders. A disclosure list, pertaining to the details of the equity shareholders has been annexed by the authorised signatory.

All the Shareholders have given their respective consents by way of corresponding affidavits, which have been annexed with the application.

8. Further, it has been averred that Applicant Company No 1 has 0 Secured Creditors. Certificate from the Chartered Accountant certifying the list of secured creditors or lack thereof, has been annexed with the present application.
9. Additionally, it has been averred that the Applicant Company No 1 has 1 Unsecured Creditor. Certificate from Chartered Accountant certifying details of the unsecured creditor has been annexed with the present application. The aforesaid unsecured creditor has also given his consent for the scheme of amalgamation by way of an affidavit, the said affidavit has been annexed with the present application.
10. With regard to the Equity Shareholders, Secured Creditors and Unsecured creditors, the applicant no. 1 has pleaded before the Tribunal to dispense with the requirement to convene the requisite meetings, in light of the fact that –
 - i. There are no Secured Creditors.
 - ii. The unsecured creditor has given his consent by way of an affidavit.
 - iii. The five Equity Shareholders have given their consent by the virtue of corresponding affidavits.
11. It has been averred that the Applicant Company No 2/ Transferee Company has 7 equity shareholders. A disclosure list, pertaining to the

details of the equity shareholders has been annexed by the authorised signatory. All the Shareholders have given their respective consents by way of corresponding affidavits, which have been annexed with the present application.

12. Further, it has been averred that Applicant Company No 2 has 0 Secured Creditors. Certificate from the Chartered Accountant certifying the list of secured creditors or lack thereof, has been annexed with the present application.

13. Additionally, it has been averred that the Applicant Company No 2 has 5 Unsecured Creditors. Certificate from Chartered Accountant certifying the details of the unsecured creditors has been annexed with the present application. The aforesaid unsecured creditors have also given their consent for the scheme of amalgamation by way of affidavits, the said affidavits have been annexed with the present application.

14. With regard to the Equity Shareholders, Secured Creditors and Unsecured creditors, the applicant no. 2 has pleaded before the Tribunal to dispense with the requirement to convene the requisite meetings, in light of the fact that –

- i. There are no secured creditors.
- ii. The unsecured creditors have given their consent by way of affidavits.
- iii. The seven equity shareholders have given their consent by the virtue of corresponding affidavits.

15. The Applicant Companies have stated that the provisions relating to the accounting treatment for the proposed scheme were in conformity with the applicable provisions of the Companies Act, 2013. Certificates from the Statutory Auditor of the Applicant Companies on the accounting treatment, as proposed in the Scheme, have been annexed to the present application and it is clearly stated that the accounting treatment is in conformity with procedure laid down under Section 133 of Companies Act, 2013.

16. The Appointed Date, as specified in the Scheme is 01.04.2023.

17. Affidavits in terms with section 230(2) of the Companies Act, 2013 have been filed.

18. In light of the submissions and the corroborating documents filed therewith, the following directions are issued forthwith pertaining to convening/holding or dispensing with the meetings of the Shareholders.
Secured and Unsecured Creditors –

I. In relation to the Transferor Company

i. With respect to Equity Shareholders: In view of consent affidavits from the 5 Shareholders, having 100% voting share, been filed, convening the meeting of shareholders/members is dispensed with.

ii. With respect of Secured Creditors: In light of the fact that there are no secured creditors, the requirement for a meeting of the secured creditors is dispensed with.

iii. With respect to Unsecured Creditors: In light of the submissions made by the applicant no.1 and the affidavit affirming the consent of the single unsecured creditor, the requirement for a meeting of the unsecured creditors is dispensed with.

II. In relation to the Transferee Company –

i. With respect to Equity Shareholders: In view of consent affidavits from the 7 Shareholders, having 100% voting share, been filed, convening the meeting of shareholders/members is dispensed with.

ii. With respect of Secured Creditors: In light of the fact that there are no secured creditors, the requirement for a meeting of the secured creditors is dispensed with.

iii. With respect to Unsecured Creditors: In light of the submissions made by the applicant no. 2 and the affidavits affirming the consent of the five unsecured creditors, the requirement for a meeting of the unsecured creditors is dispensed with.

19. Notice of this application shall be served on the following:

- i. Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryawaran Bhavan, CGO Complex, New Delhi-110003;
- ii. Registrar of Companies at 4th floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;

- iii. Official liquidator, Lok Nayak Bhavan, 8th Floor, Khan Market, New Delhi-110001;
- iv. Income Tax Department, Income Tax Office, Additional Commissioner of Income Tax, Special Range 4, Central Revenue Building, IP Estate, New Delhi-110002. The notices to Income Tax Authorities shall disclose sufficient details like PAN, ward numbers and assessing officers so that timely and proper reply may be filed.
- v. Any other sectoral regulators required to be served.

The application stands allowed on the aforesaid term and accordingly disposed off.

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

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