

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

COMPANY PETITION NO. (CAA) - 11(ND)/2019

CONNECTED WITH

COMPANY APPLICATION NO. (CAA) - 114(ND)/2018

(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

AMONGST

M/s. CLARITY VINIMAY PRIVATE LIMITED

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

AND

M/s. ANANDAMOYEE COMPLEX PRIVATE LIMITED

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

AND

M/s. LOKENATH NIRMAAN PRIVATE LIMITED

..... Petitioner Company No. 3/ Transferor Company No. 3

WITH

M/s. SIPS POWER DISTRIBUTION LIMITED

..... Petitioner Company No. 4/ Transferee Company

AND

THEIR RESPECTIVE CREDITORS AND SHAREHOLDERS

Order Pronounced On: 04.07.2024

CORAM:

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

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Gursat Singh, Adv.

For the IT Department : Mr. Sanjay Kumar and Easha, Standing Counsel.

For the Official : Mr. Kartikeya Asthana, Adv.
Liquidator

For the Regional : Ms. Shankari Mishra and Ms. Jyoti Khurana,
Director Adv.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Second Motion Petition is filed jointly by the M/s. Clarity Vinimay Private Limited (Petitioner Company No. 1/ Transferor Company No. 1), M/s. Anandamoyee Complex Private Limited (Petitioner Company No. 2/ Transferor Company No. 2), M/s. Lokenath Nirmaan Private Limited (Petitioner Company No. 3/ Transferor Company No. 3) and M/s. SIPS Power Distribution Limited (Petitioner Company No. 4/ 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 amongst the Transferor Companies and Transferee Company and their respective shareholders and creditors (Scheme).

The Registered office address of each Petitioner Company is situated in the NCT of Delhi and therefore, it is under the jurisdiction of the National Company Law Tribunal, New Delhi.

2. The Petitioner Company No. 1 namely M/s. Clarity Vinimay Private Limited, bearing CIN:U74900DL2009PTC305622 was incorporated on 18/03/2009 under the provisions of the Companies Act, 1956 as a Private Company Limited by Shares (Non-govt. Company) with the Registrar of Companies, NCT of Delhi and Haryana. The registered office address of Petitioner Company No. 1 is situated at F. No. 17, SFS Old Palam Marg, Vasant Enclave, New Delhi-110057. The Authorized Share Capital of the Company is Rs. 56,00,000/- divided into 5,60,000 equity shares of Rs. 10 each and the issued, subscribed and paid-up share

capital of the Company is Rs. 55,90,000/- divided into 5,59,000 equity shares of Rs. 10 each.

3. The Petitioner Company No. 2 namely M/s. Anandamoyee Complex Private Limited, bearing CIN:U70100DL2008PTC323681 was incorporated on 20/02/2008 under the provisions of the Companies Act, 1956, as a Private Company Limited by Shares (Non-govt. Company) with the Registrar of Companies, NCT of Delhi and Haryana. The registered office address of Petitioner Company No. 2 is situated at F. No. 17, SFS Old Palam Marg, Vasant Enclave, New Delhi-110057. The Authorized Share Capital of the Company is Rs. 5,00,000/- divided into 50,000 equity shares of Rs. 10 each and the issued, subscribed and paid-up share capital of the Company is Rs. 2,95,000/- divided into 29,500 equity shares of Rs. 10 each.
4. The Petitioner Company No. 3 namely M/s. Lokenath Nirmaan Private Limited, bearing CIN:U70101DL2005PTC323680 was incorporated on 01/12/2005 under the provisions of the Companies Act, 1956, as a Public Company Limited by Shares (Non-govt. Company) with the Registrar of Companies, NCT of Delhi and Haryana. The registered office address of Petitioner Company No. 3 is situated at F. No. 17, SFS Old Palam Marg, Vasant Enclave, New Delhi-110057. The Authorized Share Capital of the Company is Rs. 5,00,000/- divided into 50,000 equity shares of Rs. 10 each and the issued, subscribed and paid-up share capital of the Company is Rs. 3,95,000/- divided into 39,500 equity shares of Rs. 10 each.
5. The Petitioner Company No. 4 namely M/s. SIPS Power Distribution Limited, bearing CIN:U40300DL2012PTC231351 was incorporated on 10/02/2012 under the provisions of the Companies Act, 1956, as a Private Company Limited by Shares (Non-govt. Company) with the Registrar of Companies, NCT of Delhi and Haryana. The registered office address of Petitioner Company No. 4 is situated at 129, Transport Centre, Rohtak Road Punjabi Bagh, New Delhi-110035. The Authorized Share Capital of the Company is Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10 each and the issued, subscribed and paid-up

share capital of the Company is Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10 each.

6. It is stated that the Petitioner Company No. 4/ Transferee Company viz., M/s. SIPS Power Distribution Limited has moved the necessary second motion Petition being **CP (CAA) – 11(ND)/2019** connected with the first motion Application being **CA (CAA) –114(ND)/2018**, before the National Company Law Tribunal, New Delhi.
7. Affidavits in support of the above petition have been sworn by Mr. Dhruv Khod, Mr. Rajil Khod, Mr. Saroj Sindhu, Authorised Signatory of Petitioner Company No. 1, No. 2 and No. 3 and No. 4, who have been authorized vide board resolutions for all the Petitioner Companies and have been duly filed, along with the petition.
8. The Board of Directors of all the Petitioner Companies in their separate meetings approved and adopted the Scheme of Amalgamation of M/s. Clarity Vinimay Private Limited (Petitioner Company No. 1/ Transferor Company No. 1), M/s. Anandamoyee Complex Private Limited (Petitioner Company No. 2/ Transferor Company No. 2), M/s. Lokenath Nirmaan Private Limited (Petitioner Company No. 3/ Transferor Company No. 3) and M/s. SIPS Power Distribution Limited (Petitioner Company No. 4/ Transferee Company) in accordance with the terms of the Scheme of Amalgamation.
9. The Scheme of Amalgamation of the above-mentioned companies is proposed to achieve the following benefits:
 - a) Greater efficiency in resource management, cost savings resulting from rationalization, standardization and simplification of business processes.*
 - b) Improved organizational capability arising from pooling of financial, managerial and technical resources.*
 - c) Re-aligning the business operations as part of overall business reorganization plan.*
 - d) Avoiding un-necessary duplication of costs of administration, distribution, selling and marketing costs.*

e) Maximize the overall shareholders value by strengthening its core competencies.”

10. This Tribunal by its order dated 21.08.2018 dispensed with the requirement from convening and holding of the meetings of the Equity Shareholders, Secured Creditors and Un-Secured Creditors of all the Petitioner Companies, as sought through first motion application.
11. The Second Motion petition has been moved by the Petitioner Companies in connection with the Scheme of Amalgamation. This Tribunal vide order dated 24.01.2019 had directed to issue notice to the Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies, NCT of Delhi and Haryana, Ministry of Corporate Affairs, Income Tax Department, Official Liquidator attached to the High Court of Delhi and Such other Sectoral Regulatory Authorities who shall be affected by the proposed Scheme and to such other Objector(s), if any and had also directed that the notice be published in two newspapers i.e., “Business Standard” (English) and “Business Standard” (Hindi) Delhi Edition.
12. It is submitted by the Petitioner Companies that in compliance of the above-stated directions, the Petitioners duly filed an Affidavit of Service by confirming that the aforesaid Notices of the present Company Petition were published in “Business Standard” (English) and “Business Standard” (Hindi) 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 direction given by this Tribunal dated 24.01.2019.
13. The Regional Director along with the Registrar of Companies vide it’s report dated 24.10.2019 has not objected to the proposed scheme of the Amalgamation but has made certain observations. The petitioner companies filed a reply in response to the observations made by the Regional Director along with the Registrar of Companies, wherein the petitioner companies have given an undertaking to appropriately comply with the observations made by the Regional Director along with the Registrar of Companies.

14. The Official Liquidator vide it's report has submitted to this tribunal stating therein that they have no objection with respect to the present Scheme of Amalgamation.
15. The Income Tax Department vide it's report dated 27.08.2020 has not objected to the proposed scheme of the Amalgamation but has made certain observations. The petitioner companies has filed a reply in response to the observations made by the Income Tax Department, wherein the petitioner companies have given an undertaking to appropriately comply with the observations made by the Income Tax Department. However, on 10.06.2024, the Ld. Counsel appearing for the Income Tax Department has submitted that there are no objections with respect to the present Scheme of Amalgamation.
16. The Petitioner Companies have undertaken to maintain the account in accordance with and as per the method of Amalgamation prescribed in the applicable Indian Accounting Standard as notified under Section 133 of the Companies Act, 2013 read together with Paragraph 3 of the Companies (Indian Accounting Standard) Rules, 2016 and other accounting principles generally accepted in India.
- In this regard, Certified true copies of Certificates obtained from the Statutory Auditors of all the Petitioner Companies confirming the accounting treatment proposed in the Scheme of Amalgamation are filed along with the Petition.
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.

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.

In view of the foregoing discussions and 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 Tribunal 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 file a statement every year in Form CAA 8 along with the required fee 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 appointment date as proposed in the Scheme of Amalgamation i.e., 01.04.2018 by the Petitioner Company is confirmed by this Tribunal.

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 Transferee 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.

21. Accordingly, the Scheme stands **sanctioned** and **CP(CAA)/11 (ND)/2019** stands **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)