

IN THE NATIONAL COMPANY LAW TRIBUNAL,

NEW DELHI, COURT-III

COMPANY PETITION NO. (CAA)- 93(ND)/2017

CONNECTED WITH

CO. APPL. (M)- 359-360/2017

(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

BETWEEN

M/s. TR COMPUTERS PRIVATE LIMITED

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

AND

M/s. APC AIR SYSTEMS PRIVATE LIMITED

.... Petitioner Company No.2/Amalgamated Company/Transferee Company

AND

THEIR RESPECTIVE CREDITORS AND SHAREHOLDERS

Order Pronounced On: 03.05.2024

CORAM:

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

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Himanshu Harbola, Mr. Rohit Rajliwal, Advs.

For the RD : Ms. Shankari Mishra, Ms. Jyoti Khurana, Advs.

For the Income Tax : Mr. Sanjay Kumar, Ms. Easha, Ms. Hemlata Rawat, Advs.

Department

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Second Motion Petition has been filed jointly by M/s. TR Computers Private Limited (Petitioner Company No.1/Transferor Company) and M/s. APC Air Systems Private Limited (Petitioner Company No. 2/ 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.
2. The Registered Office of the Transferor Company and the Transferee Company is situated in the NCT of Delhi and therefore, it is under the jurisdiction of the National Company Law Tribunal, New Delhi.
3. Ld. Counsel has given the brief description of the Petitioner Companies, which are as follows:
 - a) The Transferor Company namely M/s. TR Computers Private Limited bearing CIN: U72900DL2007PTC291490 was incorporated on 04.10.2007 under the Companies Act 1956 with the Registrar of Companies, Delhi & Haryana as a Private Limited Company. The Registered Office of the Transferor Company No.1 is situated at House No. 70 B, Block-G & JU, Maharaja Agarsen Apartment, Pitampura New Delhi-110088.

The Authorised Share Capital as on 31.01.2016 of the Transferor Company is Rs. 10,00,000/- (Rupees Ten Lakhs Only) divided into 1,00,000 (One Lakh) Equity Shares of Rs. 10/- (Rupees Ten) each. The Issued, Subscribed and Paid-up Capital of the Transferor Company as on 31.03.2015 is Rs.6,00,000/- (Rupees Six Lakhs Only) divided into 60,000 (Sixty Thousand) Equity Shares of Rs. 10/- (Rupees Ten) each.
 - b) The Transferee Company namely M/s. APC Air Systems Private Limited bearing CIN: U29120DL2004PTC126235 was incorporated on 07.05.2004 under the Companies Act 1956 with the Registrar of Companies, NCT of Delhi & Haryana as a Private Limited Company. The Registered Office of the Transferee Company is situated at 1/7236, East Gorakh Pak, Behind Hanuman Mandir, Shahdara, Delhi-110032.

The Authorised Share Capital as on 31.01.2016 of the Transferor Company is Rs. 2,00,00,000/- (Rupees Two Crore Only) divided into 20,00,000 (Twenty Lakh) Equity Shares of Rs. 10/- (Rupees Ten) each. The Issued, Subscribed and Paid-up Capital of the Transferor Company as on 31.03.2015 is Rs.1,47,50,000/- (Rupees One Crore Forty Seven Lakhs Only) divided into 14,75,000 (Fourteen Lakhs Seventy Five Thousand) Equity Shares of Rs. 10/- (Rupees Ten) each.

4. It is stated that the Transferor Company and Transferee Company has moved the necessary second motion Petition being **CP(CAA)-3(ND)/2023** on 18.07.2017, connected with the first motion Application being **Co. Appl. (M)-359-360/2017**, before the National Company Law Tribunal, New Delhi.
5. The Board of Directors of the Transferor Company and Transferee Company in the respective meetings held on 28.02.2016 and 29.02.2016 respectively, considered and unanimously approved the proposed Scheme of Amalgamation.
6. The Transferor Company is engaged in the business of developing, designing, selling, and giving on hire computer programmes and acting as computer specialists, counsellors, advisors, programmers and to do all such acts required in connection with manufacture, sale, assembly, integration, arrangement, installation and operating computers, software and hardware programming data processing.
7. The Transferee Company is engaged in the business of manufacture, import, export, buyers and sellers and dealing in all kinds of fans such as industrial fans, axial flow fans and motors, air conditioning plants, air and gas treatment equipments and plants, coolers refrigeration and refrigeration equipments and plants, blowers, related fabricate items, starters and other such electrical/mechanical components, equipments, tools, instruments, electrical appliances, steam heaters and other such heater, heat convectors, air filters and complete system of all kinds and description in relation to air technology and spare parts of the plants machine and equipments.
8. The circumstances that necessitated the amalgamation and benefits sought to be achieved by the amalgamation and its effect are as under:
 - i. *That Transferor/Petitioner Company-I and Transferee/Petitioner Company- II are part of the same group and have inter-linkages in relation to each other as they have common directors and shareholders.*

- ii. *Greater efficiency in resource management, cost savings resulting from rationalization, standardization and simplification of business processes.*
 - iii. *To improve organizational capability arising from pooling of financial, managerial and technical resources*
 - iv. *To re-align the business operations as part of overall business reorganization plan.*
 - v. *To avoid un-necessary duplication of costs of administration, distribution, selling and marketing costs.*
9. Upon the coming into effect of the Scheme as per clause 12 of the Scheme of Amalgamation, the Authorized Share Capital of Transferor Company which is Rs. 10,00,000/- (Rupees Ten Lakh Only) consisting of 1,00,000 (One Lakh) Equity Shares of Rs.10/- (Ten) each shall without any further act or deed stand merged with the Authorized Share Capital of the Transferee Company and consequently, the combined authorized share capital of the Transferee Company shall be Rs. 2,10,00,000/- (Rupees Two Crore Ten Lakh Only) divided into 21,00,000 (Twenty One Lakh) Equity Shares of Rs. 10/- (Ten) each.
10. Upon the coming into effect of the Scheme as per clause 16 of the Scheme of Amalgamation, all the permanent employees of the Transferor Company in service on date immediately preceding the Date on which the scheme finally take effect shall become the employees of the Transferee Company without any break or interruption in their service.
11. Upon this Scheme coming into effect and upon transfer and vesting of the business and undertaking of the Transferor Company in the Transferee Company, as per clause 11 of the Scheme of Amalgamation, the Share Exchange Ratio would be as follows:

"1,35,000 (One Lakh Thirty Five Thousand equity shares of Rs. 10/- each in the Transferee Company, i.e. 2.25 equity shares of Rs.10/- each in the Transferee Company for every 1 (one) equity share of Rs. 10/- each in the Transferor Company"

The aforesaid exchange ratio has been arrived at on the basis of the valuation done by M/s. Acharya Goel & Associates, Chartered Accountants.
12. This Adjudicating Authority vide Order dated 01.05.2017 was pleased to dispense with the requirement of convening the meetings of the shareholders, secured and unsecured creditors of the Petitioner Companies.

13. From the records, it is seen that the First Motion seeking directions for dispensation of meetings was originally filed before the Hon'ble High Court of Delhi vide Co. Appl (M) 359-360/2017 and has been transferred to this Tribunal in terms of notification No. DL-33004/99 dated 07.12.2016 issued by the Ministry of Corporate Affairs and based on such joint application moved under Section 391-394 of the Companies Act 1956 (presently Sections 230-232 of the Companies Act 2013) and directions were issued by this Hon'ble Tribunal on 01.05.2017 wherein meetings of Equity Shareholders, Secured creditors and unsecured creditors of the Petitioner Companies has been dispensed.
14. 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 09.08.2017 directed to issue notice to all the Statutory Authorities, namely, the Regional Director (Central Government) - Ministry of Corporate Affairs, Registrar of Companies, NCT of Delhi and Haryana - Ministry of Corporate Affairs, Official Liquidator and Income Tax Department.
15. It is submitted by the Petitioners that in compliance of the above-stated directions, the Petitioners duly filed an Affidavit of Service dated 07.07.2018 by confirming that the aforesaid Notices of the present Company Petition were published on 01.06.2018 in Business Standard (English Edition) and in Jansatta (Hindi Edition) on 01.06.2018 Delhi edition.
16. The Regional Director along with the Registrar of Companies vide it's report dated 12.04.2019 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 22.07.2019 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.
17. This Adjudicating Authority vide Order dated 25.09.2023 recorded the submissions of the Counsel for the Applicant regarding the filing of the Reports of the Statutory Regulators on record.

The relevant part of the Order is reproduced for reference: -

“Ld. Counsel appearing for the Applicant has submitted that Income Tax Department as well as OL have filed report and he will be placing a copy of the said reports along with an affidavit. He shall do the needful and also shall serve a copy of the said affidavit to the OL as well as Income Tax Department within one week. The report filed by the ROC is on record. List the matter on 30.10.2023.”

18. The Petitioner Companies served the notice to the Income Tax Department and filed the Additional Affidavit containing the report of Income Tax Department dated 20.07.2018 and the Report of the Official Liquidator dated 24.01.2020 along with the Proof of Service on 26.10.2023 in compliance with the Order of this Adjudicating Authority dated 25.09.2023.

19. This Adjudicating Authority vide Order dated 19.02.2024 recorded that no Statutory Regulator has any objections to the present scheme of Amalgamation. The Relevant part of the Order is reproduced for reference: -

“Ms. Shankari Mishra, Ld. Counsel appearing for the RD has submitted that the department does not wish to file any fresh report as directed vide order dated 30.10.2023 and the Department will rely upon the report already filed in 2019 and there are no objections with respect to the present scheme.

Ld. Counsel appearing for the OL has also stated that there are no objections for approving the present scheme.

We grant one week time as a last and final opportunity to the Income Tax Department to file fresh report, if any. We also direct the petitioner to file an undertaking with respect to the Income Tax dues within one week.”

20. The Petitioner Companies in compliance with Order dated 19.02.2024 filed an Additional Affidavit dated 20.03.2024 undertaking to pay the income tax dues of the Transferor Company, if any, subject to its rights conferred under law.

21. The Petitioner Companies submit that the provisions relating to the accounting treatment for the proposed amalgamation, as contained in the Scheme of Amalgamation, are in conformity with the applicable provisions of the Companies Act, 2013, Accounting Standards as prescribed under the Companies (Accounting Standards) Rules, 2006, IND AS as prescribed under the

Companies (Indian Accounting Standards) Rules, 2015, and Generally Accepted Accounting Principles in India (Indian GAAP), as the case may be. The Statutory Auditors of the Petitioner Companies have confirmed the same vide Certificate filed by M/s. Acharya Goel & Associates, Chartered Accountants.

22. 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.
23. 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.
24. It is submitted by the Petitioner Companies that this 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.

25. **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 Company and the Transferee Company and the Scheme will be beneficial to the Transferor Company, Transferee Company and their respective shareholders and creditors.
- ii. The shareholders of the Petitioner Companies 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 Company, Transferee Company, their respective shareholders, creditors, employees and all concerned.

iv. 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.

26. 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 of the Scheme proposed by the Petitioner Companies for the scheme of Amalgamation is 31.01.2016. Having considered the time already elapsed and the fact that Accounts must have already been drawn for intervening period, we prescribe 01.04.2024 as the 'Appointed Date'.

27. This Tribunal does further order: -

i. That the Transferor Company shall stand dissolved without following the process of winding-up; and

- ii. That all properties, rights and powers of the Transferor Company 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 Company 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 Company 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 Company 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 Company on the said date; and
- vi. That the Petitioner Companies, shall within thirty days of the date of the receipt of this order cause a 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 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.

28. Accordingly, the Scheme of Amalgamation stands **sanctioned** and **CP(CAA)/93(ND)/2017** 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)