

IN THE NATIONAL COMPANY LAW TRIBUNAL
AT JAIPUR

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER
SHRI MANOJ KUMAR DUBEY,
HON'BLE TECHNICAL MEMBER

CP (CAA) No. 01/230-232/JPR/2023
Connected with
CA (CAA) No. 08/230-232/JPR/2021

Section: Section 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 AMALGAMATION OF
SYNERGY SECURITY SOLUTIONS PRIVATE LIMITED

(Applicant No. 1/ Transferor Company)

AND

VEDANT SYNERGY PRIVATE LIMITED

(Applicant No. 2 / Transferee Company)

MEMO OF PARTIES

M/s Synergy Security Solutions Private Limited

CIN: U51109RJ2009PTC028730

Registered Office at 38, Hathroi Fort,
Ajmer Road, Jaipur-302001.

...Applicant No. 1 / Transferor Company

M/s Vedant Synergy Private Limited

CIN: U45201RJ2010PTC031073

Registered Office at 38, Hathroi Fort,
Ajmer Road, Jaipur-302001.

...Applicant No. 2 / Transferee Company

Counsel for the Applicant : Sandeep Kumar Jain, CS

Counsel for Regional Director : Pooja Singh, JTA

Order Pronounced on: 04.07.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This joint second motion petition under Section 230-232 of the Companies Act, 2013 ('Act') is filed by the Petitioner Companies in terms of Rule 15 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 ('Rules') for the sanctioning of the Scheme of Amalgamation of M/s Synergy Security Solutions Private Limited ('Applicant Company No. 1'/ Transferor Company) and M/s Vedant Synergy Private Limited ('Applicant Company No. 2'/ Transferee Company). The registered offices of the Transferor Companies and Transferee Company are situated in the State of Rajasthan, within the jurisdiction of this Bench.
2. From the records, it is seen that the first motion application seeking directions for dispensing with the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Companies was filed before this Tribunal *vide* CA (CAA) No. 08/230-232/JPR/2021 and based on such joint application moved under Section 230-232 of the Companies Act, 2013, directions were issued by this Tribunal, wherein the

meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Companies and Transferee Company were dispensed with vide Order dated 23.06.2022.

3. Thereafter, the Petitioner Companies filed a second motion joint petition before this Tribunal on 09.01.2023 within the time prescribed. Consequently, the matter was listed on 20.01.2023, and the following order was passed on 06.02.2023:

- i. The date of hearing of the Petition filed by the Petitioner Companies for the approval of the Scheme is fixed on 23.03.2023.*
- ii. Notice of the hearing shall be advertised in two Newspapers, one English and One vernacular, having wide circulation in Jaipur, not less than fifteen days before the aforesaid date fixed for the hearing.*
- iii. In addition to the above public notices, the Petitioner Company shall serve the notice of the Petition on the following Authorities, namely, Income Tax Authorities (indicating the respective PAN Nos.), ROC concerned, Official Liquidator and Regional Director (North Western Region), RBI as well as other Sectoral Regulators or authorities, which may govern the working of the Company in the Scheme, at least thirty days before the date fixed for hearing of the above Petition.*

- iv. *Further, notices shall also be served to Objector(s) or the representative(s) as contemplated under Sub-section (4) of Section 230 of the Companies Act, 2013, if any, who may have made representations and who have desired to be heard directly or through their representatives, along with a copy of the Petition and the extracts filed therewith, at-least fifteen days before the date fixed for hearing.*
- v. *The Petitioner Companies shall, at least seven days before the date of hearing of the Petition, file an affidavit of service concerning said publication effected as well as service of notice on the authorities mentioned above including the Sectoral Regulator(s) as well as to Objectors, if any.*
- vi. *Objections, if any, to the Scheme, contemplated by the Authorities to whom notice has been given, may be filed on or before the date of hearing fixed herein, failing which it may be considered by this Tribunal that there is no objection on the part of the Authorities to the approval of the Scheme, by this Tribunal, subject to other conditions being satisfied as may be applicable under the Companies Act, 2013 and Regulations/Rules framed thereunder.*
- vii. *The Petitioner Companies shall comply with the proviso to Sub-Section (7) of Section 230 as may be applicable under the*

circumstances on or before the date fixed for hearing by filing a certificate of the Companies' Auditor.

4. The Transferor Company/ Applicant No. 1 and Transferee Company/Applicant Company No. 2 have filed a compliance affidavit of the order dated 06.02.2023 *vide* Diary No. 646/2023 along with the photocopies of newspapers cuttings evidencing publication of notice in 'The Economic Times' (Jaipur Edition) in English and 'Mahanagar Times' (Jaipur Edition) in Hindi, both dated 02.03.2023. Copies of proof of service of notice to the Statutory Authorities, namely:

- (a) Registrar of Companies ('RoC') and Official Liquidator ('OL')
- (a) Jurisdictional Income Tax Authorities

are also part and parcel of the compliance affidavit.

5. The Regional Director had filed its report *vide* Diary No. 915/2023 dated 10.04.2023 along with the report of the Registrar of Companies ('ROC'). The observations are as under:

- a. the Petitioner Company be directed to undertake the compliance of Section 232(3)(i) of the Companies Act, 2013 and to pay fees accordingly.
- b. it is also stated that the report of the office of the Registrar of Companies, Rajasthan, Jaipur has been received *vide* Letter No. ROC/Amal/2022-23/97 dated 19.01.2023; as per the said report,

there are no complaints against the petitioner transferee company and also there is no complaint/representation against the scheme of amalgamation of the Companies. A copy of ROC report is enclosed and marked as **Annexure-A** to the report of the RD.

- c. the Petitioner Company be directed to pay such amount of legal fees/ cost to the Central Government which may be considered appropriate.
 - d. the Regional Director has no other observations/ submissions and submits that the Scheme of Amalgamation of the Petitioner Companies may be considered on merits.
6. The Income Tax Department has filed its reply *vide* Diary No. 824/2023 dated 29.03.2023 and stated no objection to the proposed scheme however stated that there is a demand of Rs. 1910/- (Rupees One Thousand Nine Hundred Ten Only) is pending against the Transferor Company for the assessment year 2010-2011 under section 143(1)(a) of the Income Tax Act. Hence, it is directed that if there will be any liability concerning Income Tax Authorities, the Petitioner shall be liable and pay according to the Rules and Regulations of the Income Tax Act, 1961 and Income Tax Rules, 1962.
7. Further an affidavit has been filed *vide* Diary no. 3191/2022 dated 31.10.2022 for undertaking regarding tax liabilities stating that liabilities

of Income Tax and all other statutory dues concerning the Petitioner Transferor Companies shall be paid by the Transferee Company.

8. An affidavit in terms of Section 5 of the Competition Act, 2002 has been filed *vide* Diary no. 59/2023 dated 09.01.2023. It states that the scheme of amalgamation will not result in the creation of a combination under section 5 of the Competition Act, 2002.
9. In compliance with proviso to Sub-Section (7) of Section 230 of the Companies Act, 2013, the Petitioner Companies have placed on record a certificate of Chartered Accountant dated 18.01.2021 filed *vide* Diary No. 646/2023 dated 13.03.2023 at Page No. 16-17 confirming that their account treatment envisaged under the Scheme of Amalgamation complies with applicable accounting standards notified by the Central Government under Section 133 of the Companies Act, 2013.
10. The audited financial statement of the Transferor and Transferee Companies as on 31.03.2020 is annexed as Annexure- 3 and 6, respectively, *vide* Diary No. 1603/2021 dated 13.08.2021.
11. As per the Scheme, the appointed date shall mean 01.04.2021 or such other date as this Tribunal may propose and approve. The effective date, as stated in the Scheme, is reproduced below:

“The Effective Date” means the date on which certified copies of the Order(s) of the National Company Law Tribunal (Tribunal) vesting the assets, properties, liabilities, rights, duties, obligations, and the like of the Transferor Company in

the Transferee Company are filed with the Registrar of Companies, Jaipur, Rajasthan, after obtaining the necessary consents, approvals, permissions, resolutions, agreements, sanctions and orders in this regard.

12. The share exchange ratio under the Scheme has been determined in accordance with the report of Mr. Aashish Gupta, IBBI Registered Valuer, bearing No. IBBI/RV/06/2019/12275 (Page No. 163-182 of the Petition). The Share Exchange Ratio for the Scheme is mentioned under the valuation report submitted by Mr. Aashish Gupta is 1:15.
13. We have heard the Learned Counsel for Petitioner Companies and perused the documents placed on record. Upon considering the approval accorded by the Members and Creditors of the Petitioner Companies to the proposed Scheme and the affidavits/ no objection filed by the respective regulatory authorities, there appears no impediment in sanctioning the present Scheme. The petitioner company shall, however, remain bound to comply with the statutory requirement in accordance with the law.
14. The Scheme is hereby approved and declared the same to be binding on all the shareholders and creditors of the Petitioner Company and all concerns. While approving the Scheme, it is clarified that this Order should not be constructed as an order in any way granted exemption from payment of any stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect of any

permission/compliance with any other requirement which may be specifically required under any law.

15. Notwithstanding the above, if there is any deficiency found or violation committed qua any enactment, statutory rules, or regulations, the sanction granted by this Tribunal to the Scheme will not come in the way of action being taken, albeit, in accordance with the law, against the concerned persons, directors, and officials of the Petitioners.

16. While approving the Scheme as above, we further clarify that this Order should not be construed as an order in a manner granting exemption from payment of stamp duty or taxes, including income tax, GST, etc., or any other charges or payment in accordance with the law, or any kind of waiver in respect of any permission/compliance with any other requirement which may be specifically required under any law.

17. THIS TRIBUNAL DOES FURTHER ORDER:

- I. Upon the Scheme becoming effective, on and from the Appointed Date in the Scheme, i.e. 01.04.2021, the respective undertakings of the Transferor Company shall, together with all the property, rights, and powers of the Transferor Company, be transferred without further act or deed to the Transferee Company and accordingly, pursuant to Section 232 of the Act, shall stand transferred to and vest in the Transferee Company for all the estate and interest of the

Transferor Company therein but subject nevertheless to all charges now affecting the same.

- II. All licenses, permissions, permits, approvals, certificates, clearances, authorities, leases, tenancy, assignments, rights, claims, liberties, special status, other benefits or privileges and any power of attorney relating to the Transferor Company stand transferred to and vested in the Transferee Company, without any further act or deed and shall be in full force and effect in favour of the Transferee Company, as if the same were originally given to, issued to or executed in favour of the Transferee Company. The Transferee Company shall be bound by the terms thereof, the obligations and duties thereunder, and the rights and benefits under the same shall be available to the Transferee Company.
- III. All the liabilities and duties of the Transferor Company be transferred, without further act or deed, to the Transferee Company, and accordingly, the same shall be pursuant to Sections 230 & 232 of the Companies Act, 2013 transferred to and become the liabilities and duties of the Transferee Company.
- IV. All contracts, agreements, undertakings, insurance policies, bonds and all other instruments of whatsoever nature or description of the Transferor Company which are subsisting or having effect

immediately before the Effective Date as per the Scheme shall stand transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto / thereunder.

- V. All taxes paid or payable by the Transferor Companies and all existing and future incentives, un-availed credits and exemptions, the benefit of carried forward losses, and other statutory benefits to which the Transferor Company are entitled shall be available to and vest in the Transferee Company.
- VI. All proceedings pending by or against the Transferor Company shall be continued by or against the Transferee Company.
- VII. The Transferee Company shall, without further application, allot to the existing members of the Transferor Company the quantum of shares of the Transferee Company to which they are entitled under the said Scheme of Amalgamation and subject to appropriate uniform mechanism in respect of fractional entitlements.
- VIII. The fee, if any, paid by the Transferor Company on its / their authorised capital shall be set off against any fees payable by the

Transferee Company on its authorised capital subsequent to the sanction of the Scheme.

- IX. The Transferor Company shall be dissolved without winding up, and the Board of Directors and any committees thereof of the Transferor Company shall, without any further act, instrument or deed, stand dissolved.
- X. The Petitioner Company, within 30 days after the receipt of the certified copy of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies for registration. On such certified copy being provided, the Transferor Company shall be dissolved without undergoing the process of winding up. The Scheme will become effective upon filing the certified copy of this Order with the concerned Registrar of the Company. The concerned Registrar of Companies shall transfer all documents relating to the Transferor Company registered with him to the file relating to the said Transferee Company, and the files relating to the Transferor and Transferee Company shall be consolidated accordingly, as the case may be.
- XI. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

XII. The Copy of Scheme of Amalgamation filed on Page No. 19-35 of the second motion Applicant shall form an integral part of this Order.

18. As per the above directions, Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the Petitioners on the filing of the Schedule of Property, i.e. (i) freehold property of the Transferor and Transferee Companies; and (ii) leasehold property of the Transferor and Transferee Companies by way of affidavits of the Transferor and Transferee Companies respectively. Copy of this Order is to be communicated to the Counsel for the Petitioners.

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**MANOJ KUMAR DUBEY,
TECHNICAL MEMBER**

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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**