

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (CAA) No.5/ALD/2023

(2nd Motion)

Under Sections 230 and 232 of the Companies Act, 2013 read with Rule 15(1) of the Companies Act, 2013, the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions of the Companies Act, 2013.

In the matter of Scheme of Amalgamation of:

1. **Epack Components Private Limited**, a Company incorporated under the Companies Act, 2013 having Registered office at 61-B, Udyog Vihar, Surajpur, Kasna Road Greater Noida, Noida, Gautam Buddha Nagar, Uttar Pradesh – 201306, CIN: U74999UP2019PTC115950
PAN: AAFCE4760R, E-mail: rajesh.mittal_ed@epack.in

...First Applicant Company /Transferor Company

AND

2. **Epack Durable Limited**, A Company, incorporated under the Companies Act, 2013 Registered office at 61-B, Udyog Vihar, Surajpur, Kasna Road Greater Noida, Noida, Gautam Buddha Nagar, Uttar Pradesh - 201306
CIN: U74999UP2019PLC116048 PAN: AAFCE4759E
E-mail: rajesh.mittal_ed@epack.in

...Second Applicant Company/ Transferee Company

ORDER PRONOUNCED ON: 2nd MAY, 2024

CORAM:

Shri Praveen Gupta : Member (Judicial)
Shri Ashish Verma : Member (Technical)

PRESENT:

Sh. Saurabh Khanna, Adv. : *For the Petitioner
Companies*
Sh. Ajeet Kumar Singh, AOL : *For the OL Alld*
Sh. Shivendra Bahadur Singh, CGSC : *For the ROC*
Sh. Niraj Kumar Singh, Proxy for : *For the IT Deptt.*
Sh. Gaurav Mahajan, Sr. S.C.

ORDER

1. The present Joint Company Petition is filed by the above named Petitioner Companies under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, for sanction of the Scheme of Amalgamation (hereinafter referred to as the '**Scheme**') for Amalgamation of Epack Components Private Limited (**First Applicant Company/ Transferor Company**) with Epack Durable Limited (**Second Applicant Company/ Transferee Company**) (collectively referred to as '**Petitioner Companies**').
2. The Petition has now come up for final hearing. The Ld. Counsel for the Petitioner Companies submits as follows:

- (i) The proposed 'Scheme of Amalgamation' has previously been approved by the Board of Directors of the Petitioner Companies in their respective Board Meetings held on 15th July, 2023.
- (ii) The factual position of the Authorized, Issued, Subscribed and Paid up Share Capital of the Petitioner Companies as on 31st March, 2022 is described in the present Company Petition.
- (iii) The rationale of the proposed Scheme of Amalgamation is elaborately described in the present Company Petition which may be summarized as under:

2.1 The Scheme of Amalgamation provides for Amalgamation of Epack Components Private Limited (**First Applicant Company/ Transferor Company**) with Epack Durable Limited (**Second Applicant Company/ Transferee Company**) in accordance with Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and rules made thereunder.

Rationale for Merger

- (i) The Transferor Company and the Transferee Company have common control, common management, common place of business, common fund management and common group administration. The amalgamation will result in simplification of corporate structure by reducing the number of legal entities, rationalization of

group shareholding pattern and reorganizing the legal entities in the group structure;

- (ii)** The amalgamation would integrate the business synergies and reap the benefit of consolidation through focused management, generating surplus funds to enable planning for further growth in business;
- (iii)** The amalgamation will lead to emergence of a single entity with strong financial capability to effectively withstand competition, to effectuate economies of scale and to optimize benefits available under the law. The consolidated Company with far enlarged asset base, higher profitability and net worth will be better placed to access low cost fund for its expansion and diversification requirements;
- (iv)** The amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried by the Amalgamating Company and will avoid duplication of administrative functions and eliminate multiple record keeping.

2.2 In consideration of the above mentioned business rationale and related benefits, this Scheme of Amalgamation between Epack Components Private Limited (First Applicant Company/Transferor Company) and Epack Durable Limited (Second Applicant Company/Transferee Company) is propounded in accordance with the terms set out in the

Scheme of Amalgamation. The Board of Directors of the Petitioner Companies are of the opinion that the proposed Scheme is in the best interests of these Companies, their Shareholders and other Stakeholders.

3. The Petitioners have stated that the accounting treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013 as certified by the respective Auditors of the Petitioner Companies.
4. It has also been stated in the Petition that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or under Sections 210 to 226 of the Companies Act, 2013 are pending against any of the Petitioner Companies.
5. It has also been stated that the Assets of the Transferor and Transferee Companies are sufficient to meet all the liabilities and the said scheme will not adversely affect the rights of any of the creditors of Transferor and Transferee Companies in any manner whatsoever. Further, there is no compromise or sacrifice called from any of the creditors of the Petitioner Companies.

6. It has also been stated that the proposed scheme is not a Corporate Debt Restructuring Scheme and hence a creditors responsibility statement and other requirements of Section 230(2)(c) are not applicable in the present case.
7. It has been stated that the First Applicant Company/ Transferor Company is a wholly owned subsidiary of the Transferee Company, upon the scheme becoming effective, no shares of the Transferee Company shall be allotted in lieu or exchange of it's holding in the Transferor Company.
8. A perusal of the present Petition discloses that initially the Petitioner Companies had filed a Company Application No. CA (CAA) No. 09 / ALD / 2022 seeking directions of this Tribunal to dispense with the requirement of holding meetings of the equity shareholders (in view of the consents of all received by way of affidavit) of Transferor Company as well as Transferee Company and the Preference Shareholders of the Transferee Company (in view of consents of all received by way of Affidavit). Accordingly, this Tribunal vide its order dated 21st February, 2023 allowed the above mentioned prayers and directed for dispensation of meetings of Equity Shareholders and Preference Shareholders. However, Hon'ble Tribunal directed the meetings

of Unsecured Creditors of the Transferor Company and the Transferee Company to be held at the registered office of the Companies on 08th April, 2023 at 11:00 AM and on 09th April, 2023 at 11:00 AM respectively. The Hon'ble Tribunal also directed the meetings of the Secured Creditors of the Transferor Company and the Transferee Company to be held at the registered office of the Companies on 08th April, 2023 at 02:00 PM and on 09th April, 2023 at 02:00 PM respectively.

9. As directed by the Hon'ble Tribunal, the meetings of the Secured as well as Unsecured Creditors of the Transferor Company were held on 08th April, 2023, at the registered office of the company, under the Chairmanship of Mr. Krishna Dev Vyas with Mr. S.K. Gupta (Scrutinizer), as appointed by the Hon'ble Tribunal. The meetings of the Secured as well as Unsecured Creditors of the Transferee Company were held on 09th April, 2023 at the registered office of the company, under the Chairmanship of Mr. Krishna Dev Vyas, with Mr. S.K. Gupta (Scrutinizer), as appointed by the Hon'ble Tribunal.
10. The Scheme was approved by the Secured Creditors and Unsecured Creditors of the Transferor and the Transferee Companies. The Scrutinizer submitted his report to the

Chairman and the Chairperson Report in Form CAA4 was filed on 21st April, 2023 before this Tribunal by the Petitioner Companies.

11. The Petitioner Companies filed 2nd Motion Petition which was registered as CP(CAA) No. 05/ALD/2023 and this Tribunal directed to issue notice of the said Company Petition along with the Scheme of Amalgamation and related documents to the Statutory Authorities, viz. (a) the Central Government through the office of the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi (b) the Registrar of Companies, Uttar Pradesh, Kanpur; (c) The Official Liquidator, Uttar Pradesh, Allahabad and (d) the Income-Tax Department having jurisdiction over the Petitioner Companies.
12. In the integrum, the Petitioner Companies filed an application registered as CA No. 28/2023 in CP(CAA) No. 5/ALD/2023 for amending the 2nd Motion Petition and the Scheme due to change in the legal status of the Transferee Company as it got converted from Private Limited to Public Limited w.e.f. 24th June, 2023 and also due to enhancement in the authorised share capital of the Transferee Company.

13. This Tribunal vide its order dated 18th October, 2023 directed to issue notice of hearing in respect of present Amended Company Petition to the Statutory Authorities and also to make paper publication in this respect in “Financial Express” (English) and “Jansatta” (Hindi) having circulation in the State of Uttar Pradesh in which the Registered offices of the Petitioner Companies are situated.
14. In compliance thereof, the Petitioner Companies on 01st November, 2023 filed an Affidavit of service of publication, confirming that notices have been duly published in “Financial Express” (English) and “Jansatta” (Hindi) newspapers having circulation the State of Uttar Pradesh in which the Registered office of the Petitioner Companies are situated. The Petitioner Companies have also served notice of the 2nd Motion Company Petition to (a) the Central Government through the office of the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi (b) the Registrar of Companies, Uttar Pradesh, Kanpur and (c) The Official Liquidator, Uttar Pradesh, Allahabad; (d) the Income-Tax Department having jurisdiction over the Petitioner Companies.

15. In response to the above stated notice, the Registrar of Companies (ROC), Ministry of Corporate Affairs, Uttar Pradesh submitted its Report dated 07th November, 2023 to the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi citing observations which were only factual statements and did not call for any further comments or explanation. There was no objection from the ROC to the Scheme being accorded sanction by this Tribunal. The ROC further did not express any objection to the application for amendment (supra) filed by the Petitioner Companies due to change in the legal status of the Transferee Company and also on account of enhancement of the Authorised Share Capital of the Transferee Company.
16. In response to the above stated notice, the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi has filed its Representation Affidavit dated 22nd November, 2023 (“RD Affidavit”) citing observations made in the Report of the Registrar of Companies, Uttar Pradesh which as per the submissions made by the Counsel representing the Petitioner Companies were only factual statements and did not call for any further comments or explanation. There was no objection in the RD Affidavit to the Scheme being accorded sanction by

this Tribunal. The RD Affidavit further did not express any objection to the application for amendment (supra) filed by the Petitioner Companies due to change in the legal status of the Transferee Company and also on account of enhancement of the Authorised Share Capital of the Transferee Company.

17. The Official Liquidator, Ministry of Corporate Affairs, Allahabad at Prayagraj, Uttar Pradesh also submitted his Report on 20th November, 2023 wherein Para 14 it has been stated that the Official Liquidator has no objection to the dissolution of the Transferor Company without winding up pursuant to provisions of Sections 230 - 232 of the Companies Act, 2013 and other applicable sections rules thereunder. There was no objection from the Official Liquidator in its report to the Scheme being accorded sanction by this Tribunal. The Official Liquidator further did not express any objection in its report to the application for amendment (supra) filed by the Petitioner Companies due to change in the legal status of the Transferee Company and also on account of enhancement of the Authorised Share Capital of the Transferee Company
18. The Income-Tax Department also filed its Representation Affidavit/Report dated 01st December, 2023 in respect of the

Petitioner Companies citing observations which were only factual statements and did not call for any explanations. The report of the IT Department however had no objection to the sanctioning of the Scheme also to the change in status of the Transferee Company from a Private Limited to a Public Limited Company and enhancement of Authorised Share Capital of the Transferee Company. However, Income Tax Department stated that from perusal of the Digital database of the Department i.e. ITBA, proceeding u/s 148 of the Income Tax Act have been initiated against the Transferor and Transferee Company for A/Y 2019-20 by the Income Tax Department by issuing notice u/s 148 of the Income Tax Act dated 25th March, 2023 and that reassessment proceedings are pending before the National Faceless Assessment Centre (NaFAC) and such reassessment proceedings have to be concluded within the period of limitation which will expire on 31st March, 2024.

19. The Petitioner Companies vide their Joint Affidavit dated 02nd December, 2023 furnished an undertaking to the effect that all Income Tax Liabilities pertaining to the Transferor Company arising in the ordinary course of business shall stand transferred to the Transferee Company.

20. Further, the Petitioner Companies vide Joint Affidavit dated 05th March, 2024 furnished another undertaking specifically to the effect that Transferee Company shall continue to remain liable for income tax liabilities in relation to faceless proceedings initiated under Section 148 of the Income Tax Act for the A.Y. 2019-20 or any other Income Tax Liability after giving effect to the Scheme of Amalgamation.
21. However, on 04th April, 2024 the representative of the Income Tax Department informed the Hon'ble Bench that Income Tax proceedings against the Transferor and the Transferee Company have been dropped by the Income Tax Department. This Tribunal directed the Ld. Counsel to file affidavit for the same. The relevant excerpt of the said order has been reproduced hereunder: -

“2. On the previous date of hearing i.e. 21.03.2024, it was observed at para no.2 by this Tribunal that some assessment proceeding was pending with the Income Tax Department, which was to be completed by 31.03.2024, and therefore at the request of Ld. Counsel representing the Income Tax Department, the matter was adjourned beyond 31.03.2024.

3. *Today, when the matter came up for hearing, the Ld. Counsel representing the Income Tax Department very candidly states that the assessment proceedings which was being carried out, have finally been dropped, however he does not have any written instruction to that effect, and he seeks one week time to file the said information on an affidavit.*
4. *The publications have been made in the newspaper in compliance of the notice of order dated 30.05.2023 and the affidavit of service has also been filed.*
5. *Ld. Counsel representing the Petitioner Companies states that neither the Petitioners nor any representative has received any adverse comments or observations from any of the stakeholders or any party pursuant of advertisement so made. The affidavit to this effect be filed within a period of one week.”*

22. However, the affidavit to that effect has not been filed by the Ld. Counsel representing the Income Tax Department.

23. The Petitioner Companies on 09th April, 2024 have also filed another Joint Affidavit confirming that neither the Petitioner Companies nor their Legal Counsel has received any objection / representation from any person against the Company Petition

or the proposed Scheme of Amalgamation in response to the publication of the notice of hearing of the present Petition in newspapers.

24. We have gone through the reports of the Ld. Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi, Ld. Registrar of Companies, Uttar Pradesh, Kanpur, Official Liquidator, Allahabad and the Income-Tax Department having jurisdiction over the Petitioner Companies and after perusing the same and hearing the submissions made by the Ld. Counsel representing the Petitioner Companies, we find that there appears to be no reservation to grant sanction to the Scheme and we are of the view that the sanction of the present Scheme of Amalgamation is not against public policy, nor it would be prejudicial to the public interest at large.
25. In addition to above, all the statutory compliances seem to have been complied with by the Petitioner Companies, therefore, the present Company Petition deserves to be allowed in terms of its Prayer clause.
26. As a result, the proposed Scheme of Amalgamation, which is annexed to the Company Petition stands approved and sanctioned and the same shall be binding on all the

Shareholders, Creditors and other Stakeholders of the above-named Petitioner Companies and also on the Petitioner Companies with effect from the 'Appointed Date' i.e. 1st April, 2022. The Petitioner Companies are required to act upon as per the terms and conditions of the sanctioned Scheme of Amalgamation.

27. While approving the Scheme of Amalgamation as above, it is clarified that this order should not be construed as, in any way, granting exemption from payment of stamp duty (if any, as applicable), taxes (including Income-Tax, GST or other charges, if any, as applicable) 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.

28. THIS TRIBUNAL DO FURTHER ORDER:

- i.** Upon the Scheme becoming effective, all the property, rights and powers of the First Applicant Company/ Transferor Company specified in the Schedule annexed hereto shall, pursuant to Sections 230 and 232 of the Companies Act, 2013, be transferred to and vested in the Second Applicant Company/ Transferee Company;
- ii.** Upon the Scheme becoming effective, all the liabilities and

duties of the First Applicant Company/ Transferor Company be transferred, without further act or deed, to Second Applicant Company/ Transferee Company and accordingly, the same shall pursuant to Sections 230 and 232 of the Companies Act, 2013 become the liabilities and duties of the Petitioner / Transferee Company; and

iii. Upon the Scheme becoming effective, all the employees of the First Applicant Company/ Transferor Company in service on the Effective Date, shall be transferred to and shall become the employees of the Second Applicant Company/ Transferee Company as provided in the Scheme of Amalgamation;

iv. Upon the Scheme becoming effective, all proceedings, if any, either pending by or against the First Applicant Company/ Transferor Company be continued and enforced by or against the Petitioner / Transferee Company; and

29. The Petitioner Companies shall within thirty days of the date of the receipt of certified copy of this Order cause a copy of this order delivered to the Registrar of Companies, Uttar Pradesh for registration and on such copy being so delivered, the First Applicant Company / Transferor Company shall stand

dissolved without undergoing the process of winding up and the Registrar of Companies, Uttar Pradesh shall place all documents relating to the First Applicant Company / Transferor Company in the file maintained in relation to the Second Applicant Company / Transferee Company and the file relating to the said First Applicant Company / Transferor Company shall be consolidated accordingly.

30. The Petitioner Companies shall supply legible print outs of the Scheme of Amalgamation and the Schedule of Assets in acceptable form to the Registry and the Registry will append such print outs, after verification, to the certified copy of the Order.
31. Certified copy of this Order be supplied, if applied for, subject to compliance with usual formalities.
32. That the Resulting Company shall deposit an amount of Rs. 25,000/- (Rupees Twenty-Five Thousand Only) in favour of "The Ministry of Corporate Affairs" within a period of four weeks from the date of receipt of the certified copy of this order and file affidavit of compliance thereof
33. All the concerned Regulatory Authorities and other persons to act on a copy of this Order annexed with the Scheme of

Amalgamation duly authenticated by the Registrar, National Company Law Tribunal, Allahabad Bench, Prayagraj.

34. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
35. Accordingly, the present Company Petition bearing CP (CAA) No. 05 / ALD / 2023 is allowed and stands disposed of.

-Sd-

(ASHISH VERMA)
Member (Technical)

-Sd-

(PRAVEEN GUPTA)
Member (Judicial)

Date: 2nd May, 2024