

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (COURT-I).  
KOLKATA**

**C.A. (CAA)/13(KB) 2024**

*An application under section 230 read with section 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions of law.*

**IN THE MATTER OF :**

**First motion - Scheme of Amalgamation of:**

**PRABHU SWITCHGEAR PRIVATE LIMITED**, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. **U28113WB1997PTC085380** and its registered office at 1, Tarpan Ghat Road, Kolkata 700053, in the State of West Bengal.

**... Applicant Company No. 1/ Transferor Company No. 1**

**AND**

**IN THE MATTER OF :**

**PRABHU INDUSTRIAL UDYOG PRIVATE LIMITED**, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. **U31200WB1986PTC040780** and its registered office at 1, Tarpan Ghat Road, Kolkata 700053, in the State of WestBengal.

**... Applicant Company No. 2/ Transferee Company No. 2**

**IN THE MATTER OF :**

- 1) Prabhu Switchgear Private Limited,
- 2) Prabhu Industrial Udyog Private Limited,

**... Applicant Companies**

**Date of pronouncing the order: 24.04.2024**

**CORAM:**

**Rohit Kapoor** : **Member (Judicial)**  
**Balraj Joshi** : **Member (Technical)**

**Counsel on Record for the Applicants appeared Physically /through Video Conferencing:**

1. Mrs. Sonal Shah, Advocate
2. Mr. Aniket Chaudhury, Advocate

... For the Applicants

**ORDER**

**Per: Rohit Kapoor , Member (Judicial):**

1. The instant application has been filed in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 (hereinafter referred as “Act”) for orders and directions with regard to dispensation of meeting of shareholders of all the applicant companies and dispensation of meeting of creditors of all the applicant companies in connection with the SCHEME OF AMALGAMATION of **Prabhu Switchgear Private Limited, being the Applicant no. 1 (Transferor company) with Prabhu Industrial Udyog Private Limited, being the Applicant No. 2** above named (**Transferee Company**) whereby and whereunder the Transferor Company is proposed to be amalgamated with the Transferee Company from the Appointed Date **1<sup>st</sup> Day of April, 2023** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (hereinafter referred as “**Scheme**”). The Copy of the Scheme of Amalgamation is annexed to the Company Application being **Annexure – A on page 24 - 38 of Vol. I.**
2. It is submitted by Ld. Counsel appearing for the Applicants that the shares of the ApplicantNo. 1 to 3 are not listed in any stock exchanges. Further, the Applicants have the followingclasses of shareholders and creditors:

Sl. No.	Name of Applicant Companies	Equity Class - A Shareholders (with voting rights) (Nos)	Equity Class - B Shareholders (without voting rights) (Nos)	Preference Shareholders (Nos)	Secured Creditors (Nos)	Unsecured Creditors (Nos)
1	<b>Prabhu Switchgear Private Limited</b> (Applicant No. 1)	6 (pg 169A Vol II)	NIL	NIL	NIL	25 (pg 188 Vol. II)
2	<b>Prabhu Industrial Udyog Private Limited</b> (Applicant No. 2)	6 (pg 189A Vo. II)	NIL	NIL	NIL	32 (pg. 190 Vol. II)

3. The Board of Directors of the applicant companies has approved the scheme in their respective board meeting held on 4<sup>th</sup> September, 2023. Copy of the Board Resolution is annexed to the Company Application being **Annexure F and G at Page 161 - 164 of Vol. II.**
4. It is submitted by Ld. Counsel appearing for the Applicants that the Valuation Report regarding Exchange Ratio has been prepared by Chartered Accountants Agarwal Vishwanath & Associates. A copy of the same is annexed to the Company Application and marked as **Annexure H at pages 165 to 166 (Vol. II).**
5. It is further submitted by the Advocates for the Applicants that the statutory auditor of the Applicant Companies certified the Accounting Treatments in the proposed Scheme of Amalgamation is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013. A copy of the Certificate issued by Statutory Auditor of the Applicant Company is annexed to the Company Application and marked as **Annexure N** at

Page No 192 (vol II).

6. It is submitted that 100 per cent of the Equity Shareholders of the Applicant Companies have already given their consent to the Scheme by way of affidavits which are annexed to the application being **Annexure – “J”** on Pages 170 - 187 of Vol. II.
7. It is further submitted that Applicant No. 1 and 2 have NIL creditor (Secured) and therefore convening and holding of separate meetings of Creditors of the Applicant No. 1 and 2 does not arise.
8. It is further submitted that Applicant No. 1 has 25 Unsecured trade creditors while the Applicant no. 2 has 32 unsecured trade creditors of the Applicant No. 2 as on 31<sup>st</sup> March, 2023. It is also submitted that such Unsecured Trade Creditors have been paid off during the financial year 2023-2024 and a certificate from the Chartered Accountant has been annexed at Annexure “O” page 4 and 5 of the Supplementary Affidavit.
9. Directions are sought accordingly for dispensing with meetings of the shareholders (Equity) and unsecured creditors of the Applicants who have already given their consent to the Scheme or have been paid respectively.
10. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicants, we allow the instant application and make the following Orders:-

A. **i. Meetings dispensed:**

**Equity Shareholders**

Meeting of Equity Shareholders of the Applicant Companies for considering the Scheme are dispensed with in view of all shareholders of Applicant Companies having respectively given their consent to the Scheme by way of affidavits.

**Unsecured Creditors**

Meeting of Unsecured Creditors of the Applicant Companies for considering the Scheme are dispensed with in view of the Applicant companies having exhausted their liabilities against such Unsecured Trade Creditors in the current accounting year and a certificate of the Chartered Accountant being Annexed to the supplementary affidavit as Annexure O at pages 4 and 5 has been filed to such effect.

**ii. No requirement of Meetings**

**Secured Creditors**

Since the Secured Creditors of Applicant No 1 & 2 as verified by auditors’

certificate is NIL there is no requirement of Meeting

**iii. Meetings to be held**

No meeting is required to be held.

11. Notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013 shall also be served on the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal with whom the Applicants are registered, Official Liquidator, Kolkata and Income Tax Department as well as other sectoral regulators like GST etc., having jurisdiction over the Applicants by sending the same by hand delivery through special messenger, by speed post and also by e-mail within two weeks from the date of receiving this order. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Authorized Representative of the said Applicants. If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme of Amalgamation. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA 3 of the said Rules with necessary variations, incorporating the directions herein.
12. The Company Application being **C.A. (CAA) No. 13/KB/2024** is **disposed of** accordingly.
13. The Authorized Representative is directed to file an affidavit proving service of notice and compliance of all directions contained herein at least a week before the date of hearing.
14. Liberty is given to file joint application by the Transferee and Transferor Companies in accordance with Rule 15 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 within a period of 30 days as mentioned in Section 230(5) of the Companies Act, 2013.
15. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

**Signed on this, the 24<sup>th</sup> day of April, 2024.**

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