

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

CP(CAA) NO 21 / KB / 2023  
Connected With  
CA (CAA) No. 125/ KB /2022

*A petition under Section 230(6) read with Section 232(3) of Companies Act 2013*

**In the matter of:**

**A Scheme of Amalgamation of (Second Motion):**

**J G Trading & Investment Private Limited**, a company incorporated under the provisions of the Companies Act,1956 and having Company Identification NumberU65929WB1990PTC048704 and having its Registered Office at 128, Sukanta Sarani, P.O – Bhadrakali, Hooghly–712232in the state of West Bengal.

**Transferor Company No 1 / Petitioner No 1**

And

**S. K. Finserve Private Limited**, a company incorporated under the provisions of the Companies Act,1956and having Company Identification NumberU51909WB1995PTC074464and having its Registered Office at 67, Park Street, Apsara Apartments, Ground Floor, Kolkata- 700016 in the State of West Bengal .

**Transferor Company No 2 / Petitioner No 2**

And

In the Matter of:

**Hi-Tech Designs Private Limited**, a company incorporated under the provisions of the Companies Act, 1956 and having Company Identification Number U95000WB1996PTC080111 and having its Registered Office at Ground Floor, Apsara Apartments 67, Park Street, Kolkata – 700016in the State of West Bengal .

**Transferee Company / Petitioner No 3**

And

**IN THE MATTER OF:**

1. J G Trading & Investment Private Limited;
2. S. K. Finserve Private Limited;
3. Hi-Tech Designs Private Limited;

.... .... .... **PETITIONERS**

**Date of Hearing: 16 / 06 / 2023**

**Date of pronouncing the order: 14 /09/ 2023**

**Coram:**

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

**For the Petitioners** : 1. Ms. Manju Bhuteria, Advocate  
2. Mr. N. Gurumurthy, FCA  
3. Mr. Madan Kumar Maroti, FCA  
4. Ms. Aisha Amin, Advocate  
5. Mr. S. Agarwal.

**For the Regional Director**

(Appearance Via Video Conferencing ) : Mr. Alope Tandon , Joint Director  
from the office of the Regional Director ,  
Eastern Region

### **ORDER**

**Per: Balraj Joshi, Member (Technical)**

1. The instant Company Petition has been filed in the second stage of the proceedings under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (“Act”) for sanction and confirmation of the Scheme of Amalgamation of

J G Trading & Investment Private Limited	Transferor Company No 1 / Petitioner No.1
S. K. Finserve Private Limited	Transferor Company No 2 / Petitioner

	No.2
HI-Tech Designs Private Limited	Transferee Company / Petitioner No. 3

whereby and where under the Transferor Companies are proposed to be amalgamated with the Transferee Company from the **Appointed Date, 01st April,2022** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”). A copy of the said Scheme is annexed to the Company Petition marked – **Annexure – A** in VOL I at Page No 54 to 86.

2. It is submitted by Ld. counsel appearing for the Petitioner(s) that as per the Scheme the **Appointed Date is 01<sup>st</sup> April,2022**.
3. It is submitted by Ld. counsel appearing for the Petitioner(s) that the Board of Directors of the Petitioner No 1 and Petitioner No 3 have at their respective meeting held on **11<sup>th</sup> August,2022** and Petitioner No 2 have at their meeting held on **16<sup>th</sup> August, 2022** passed resolution adopting the proposed Scheme of Amalgamation. A copy of the Board Resolution is annexed to the Company Petition marked – **Annexure – K** in VOL II at Page No 343 to 345.
4. It is submitted by Ld. counsel appearing for the Petitioner(s) that the Valuation Report dated 01-12-2021 recommending the Swap Ratio has been prepared by CA MUKESH BANKA, IBBI Registered Valuer. A copy of the said Report is annexed to the Company Petition marked – **Annexure – I** in VOL II at Page No 325 to 338.
5. It is submitted by Ld. counsel appearing for the Petitioner(s) that the Petitioner Companies are all **NBFC** Company duly registered with Reserve Bank of India and is holding a valid Certificate of Registration issued by the said Bank.
6. It is submitted by Ld. counsel appearing for the Petitioner(s) that the list of Equity Shareholders of the Petitioner Companies as on 31-07-2022 duly certified by the statutory auditor are all collectively annexed to the Company Petition marked – **Annexure – E** in VOL – II at Page No 288 to 290.
7. It is submitted by Ld. counsel appearing for the Petitioner(s) that Petitioner No 1, and Petitioner No 2 had NIL Secured Creditors as on 31-07-2022 , duly certified

by the statutory auditor are all collectively annexed to the Company Petition marked – **Annexure – Fin VOL – II** at Page No 291 to 292.

8. It is submitted by Ld. counsel appearing for the Petitioner(s) that the list of Secured Creditors of Petitioner No3 as on 31- 07-2022 duly certified by the statutory auditor is annexed to the Company Petition marked – **Annexure – F** in VOL – II at Page No 293.
9. It is submitted by Ld. counsel appearing for the Petitioner(s) that Petitioner No 1 had NIL Unsecured Creditors as on 31-07-2022 duly certified by the statutory auditor is annexed to the Company Petition marked – **Annexure – Fin VOL – II** at Page No 291.
10. It is submitted by Ld. counsel appearing for the Petitioner(s) that the list of Unsecured Creditors of Petitioner No 2 and Petitioner No 3 as on 31- 07-2022 duly certified by the statutory auditor are all collectively annexed to the Company Petition marked – **Annexure – F** in VOL – II at Page No 292 to 293.
11. It is submitted by Ld. counsel appearing for the Petitioner(s) that the statutory auditor of Petitioner No 1 and Petitioner No 2 have by their certificate dated **16-08-2022** and the statutory auditor of Petitioner No 3 have by their certificate dated **11-08-2022** have confirmed 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 and Rules made there under. Copy of the said certificate is annexed to the Company Petition marked – **Annexure – J** in VOL II at Page No 339 to 342.
12. It is submitted by Ld. counsel appearing for the Petitioner that , the Petitioner have the following classes of shareholders and creditors:-

PARTICULARS	AS ON 31ST JULY , 2022			
	Equity Share Holders	Preference Share Holders	Secured Creditors	Unsecured Creditors
Transferor Company No 1 / Petitioner No 1	4	NIL	NIL	NIL
Transferor Company No 2 / Petitioner No 2	5	NIL	NIL	14
Transferee Company/ Petitioner No 3	3	NIL	3	9

13. It is submitted by Ld. counsel appearing for the Petitioner(s) that by an order dated 15<sup>th</sup> November, 2022 passed in Company Application No. C.A (CAA) NO.125/ KB / 2022 this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) of the Act:-

(a) **Meetings dispensed:**

**Equity Shareholders**

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

(b) **No requirement of meetings**

**Secured Creditors**

Secured Creditors of Petitioner No 1 and Petitioner No 2 - NIL  
Creditors verified by auditors certificate.

**Unsecured Creditors**

Unsecured Creditors of Petitioner No 1 - NIL Creditors verified by auditors certificate.

(c) **Meetings to be held**

**Secured Creditors**

Meeting of Secured Creditors of Petitioner No 3

**Unsecured Creditors**

Meeting of Unsecured Creditors of Petitioner No 2 and Petitioner No 3.

14. It is submitted by the Ld. counsel appearing for the Petitioner(s) that the Petitioner No 3 had 3 Secured Creditors as on 30-11-2022 ( being cut off date ) who together held debt of Rs 4,49,51,460/ . The said meeting of Secured Creditors convened and held on 23-12-2022 was attended by 2 Secured Creditors who collectively held debt of Rs 4,30,18,792/ representing 95.70% of the Secured Debt all of whom voted in favor of the resolution contained in the notice. Copy of the minutes of the said meeting are all annexed to Company Petition and marked **Annexure –L** in VOL II at Page No 347 to 351.

15. It is submitted by the Ld. counsel appearing for the Petitioner(s) that the Petitioner No 3 had 3 Unsecured Creditors as on 30-11-2022 ( being cut off date ) who together held debt of Rs 2,04,71,576/ . The said meeting of Secured Creditors convened and held on 23-12-2022 was attended by 2 Unsecured Creditors who collectively held debt of Rs 1,40,00,000/ representing 68.39% of the Unsecured Debt all of whom voted in favor of the resolution contained in the notice. Copy of the minutes of the said meeting are all annexed to Company Petition and marked **Annexure –L** in VOL II at Page No 352 to 356.
16. It is submitted by the Ld. counsel appearing for the Petitioner(s) that the Petitioner No 2 had 8 Unsecured Creditors as on 30-11-2022 ( being cut off date ) who together held debt of Rs 3,15,05,392/ . The said meeting of Secured Creditors convened and held on 23-12-2022 was attended by 6 Unsecured Creditors who collectively held debt of Rs 3,01,88,890/- representing 95.82% of the Unsecured Debt all of whom voted in favor of the resolution contained in the notice . Copy of the minutes of the said meeting are all annexed to Company Petition and marked **Annexure –L** in VOL II at Page No 357 to 361.
17. It is submitted by Ld. counsel appearing for the Petitioner(s) that , the Petition has now come up for final hearing. Counsel for the Petitioners submits as follows:-
- (a) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-
- (a) The Transferor Company No.1, Transferor Company No.2 and the Transferee Company are all NBFC Companies. The Transferor Company No.1, Transferor Company No.2 and Transferee Company are Family Owned Closely Held Companies. The restructuring is proposed to scale down the number of NBFC Companies within the family and to have one big Company. The Transferor Company No.2 holds 16.71% shares in Transferor Company No.1.The Transferee Company holds 27.64% in

Transferor Company No.2. The Transferor Company No.2 holds 49.06% in Transferee Company;

- (b) The amalgamation will enable the TRANSFEREE COMPANY to consolidate its line of business by restructuring and re-organizing its business activities and Capital Structure;
- (c) The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the TRANSFEREE COMPANY;
- (d) The amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources;
- (e) The business of the Companies can be conveniently and advantageously combined together in general business of the Company concerned and will be carried on more economically and profitably under the said Scheme;
- (f) The said Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business of the company concerned. The said scheme will also enable the undertakings and business of the said applicant company to obtain greater facilities possessed and enjoyed by one large company compared with a number of small Companies for raising capital, securing and conducting trade on favorable terms and other benefits;
- (g) The said scheme will contribute in furthering and fulfilling the objects of the Company concerned and, in the growth and development of these businesses;
- (h) The said scheme will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability;

- (i) The said scheme will enable the undertakings concerned to pool their resources and to expand their activities;
- (j) The said scheme will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages;
- (k) The said scheme will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.
18. It is submitted by Ld. counsel appearing for the Petitioner(s) that , there are no proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).
19. Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 29<sup>TH</sup> March,2023 the instant petition was admitted by this Tribunal and fixed for hearing on 08<sup>TH</sup> May,2023 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 29<sup>TH</sup> March,2023 the Petitioner(s) have duly served such notices on the Regulatory Authorities viz

NAME OF THE REGULATORY AUTHORITY	DATE OF SERVICE	AFFIDAVIT OF SERVICE	
		ANNEXURE NO	PAGE NO
<b>THROUGH SPECIAL MESSENGER ( BY HAND DELIVERY)</b>			
Principal Commissioner of Income Tax – 1	05-04-2023	C	19
Income Tax Officer Ward – 3(1)	05-04-2023	C	20
Deputy Commissioner of Income Tax – Circle 1(1)	05-04-2023	C	21
Income Tax Officer Ward – 7(1)	05-04-2023	C	22
Regional Director , Eastern Region , Ministry of Company Affairs	10-04-2023	D	27
Upon Registrar Of Companies, West Bengal	10-04-2023	E	29
Upon Reserve Bank of India	05-04-2023	F	31
Upon Official Liquidator , High Court Calcutta	05-04-2023	G	32
<b>BY ELECTRONIC MAIL</b>			
Principal Commissioner of Income Tax – 2	12-04-2023	C	23



Deputy Commissioner of Income Tax –7(1)	12-04-2023	C	25
Income Tax Officer Ward – 3(1)	12-04-2023	C	26
Deputy Commissioner of Income Tax – Circle 1(1)	12-04-2023	C	24
Regional Director , Eastern Region , Ministry of Company Affairs	12-04-2023	D	28
Upon Registrar Of Companies, West Bengal	12-04-2023	E	30
<b>PAPER PUBLICATION OF NOTICE</b>			
Financial Express – In English	07-04-2023	B	15 to 16
Aajkal – In Bengali Translation	07-04-2023	B	17 to 18

An affidavit duly affirmed on 18<sup>th</sup> April,2023 has also been filed with the Registry.

20. All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.
21. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (“RD”), Official Liquidator, High Court have filed their representations before this Tribunal.
22. The Official Liquidator has filed his report dated 02-03-2023 and concluded as under:-

**Para 8**

*That the Official Liquidator has not received any complaint against the Proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner till the date of filing of this Report.*

**Para 10**

*That the Official Liquidator on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is applicable.*

23. The RD has filed his reply affidavit dated 03<sup>rd</sup> May,2023 (“RD affidavit”) which has been dealt with by the Petitioner(s) by their Rejoinder affidavit dated 04<sup>th</sup>

May,2023 (“Rejoinder”). The observations of the RD and responses of the Petitioner(s) are summarized as under:-

**Paragraph 2 (a) of RD Affidavit**

*That it is submitted that as per available record, it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. Further, all the petitioner companies are also up-dated in filing their Financial Statements and Annual Returns for the financial year 31/03/2022.*

**Paragraph 2 (a) of the Rejoinder**

The Deponent submits that no adverse comments made by the Registrar of Companies, West Bengal in his report to the Regional Director. Further the Registrar of Companies, West Bengal has not received any Complaint and / or representation from any person on the proposed Scheme. Hence no reply is made for the same.

**Paragraph 2 (b) of RD Affidavit**

*It is submitted that the Transferee Company namely Hi- Tech Designs Private Limited and both the Transferor Companies namely, JG Trading & Investment Private Limited and S. K. Fin serve Private Limited are registered with RBI as NBFC Companies. The RBI vide its letter no. KOL.DOS.RSG.No.S2573/ 99-06-002/2022-23 dated 31.01.2022 addressed to the Board of Directors of M/ s Hi-Tech Designs Private Limited (Transferee Company) issued their "No Objection" to the proposed scheme of amalgamation. Further, RBI has also stated in the said letter that the said approval (No Objection) is valid for six months from the date of issuance of that letter i.e. 31/01/2022. (A copy of the said letter of RBI marked as Annexure-1 is annexed herewith for kind perusal and ready reference]*

**Paragraph 2 (b) of the Rejoinder**

The Reserve Bank of India have vide its letter no. KOL.DOS.RSG.No.S2573/ 99-06-002/2022-23 dated 31.01.2022 addressed to the Petitioner Transferee Company namely - Hi- Tech Designs Private Limited have granted their No

Objection to the proposed Scheme of Amalgamation. The same has been annexed to the Company Petition .

**Paragraph 2 (c) of RD Affidavit**

*The Petitioner Companies should be directed to provide list / details of Assets, if any, to be transferred from the respective Transferor Company to the Transferee Company in respect of each Transfer, upon sanctioning of the proposed Composite Scheme.*

**Paragraph 2 (c) of the Rejoinder**

The Deponent duly authorised hereby confirms that the Petitioner Transferee Company undertakes to file list / details of assets that will be transferred from the Transferor Company to the Transferee Company upon sanction and confirmation of the Scheme by the Hon'ble Tribunal.

**Paragraph 2 (d) of RD Affidavit**

*That the Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act,2013 through appropriate affirmation.*

**Paragraph 2 (d) of the Rejoinder**

The Deponent duly authorised hereby confirms that the Transferee Company undertakes that it shall comply with the provisions of Sec 232(3)(i) of the Companies Act, 2013 in regard to adjustment of fees upon clubbing of Authorized Share Capital of the Transferor Company with the Authorized Share Capital of the Transferee Company in post-amalgamation and shall file a detailed statement thereof with the Registrar of Companies at the time of filing of INC – 28.

**Paragraph 2 (e) of RD Affidavit**

*That the Transferee Company should be directed to pay applicable stamp duty on transfer of the immovable properties, if any, from the Transferor Company to the Transferee Company.*

**Paragraph 2 (e) of the Rejoinder**

The Deponent duly authorised hereby confirms that the Transferee Company undertakes that it shall pay applicable stamp duty on the transfer of the immovable properties from the Transferor Company to the Transferee Company.

**Paragraph 2 (f) of RD Affidavit**

*The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.*

**Paragraph 2 (f) of the Rejoinder**

The Deponent duly authorised by the Petitioner Companies hereby affirms that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

**Paragraph 2 (g) of RD Affidavit**

It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 22/11/2022 for their views/observations in the matter. However the report from the authority is still awaited.

**Paragraph 2 (g) of the Rejoinder**

*The Income Tax authorities have not made any observations on notice served by the office of the Regional Director. Further the Petitioner Companies have also complied with the directions contained in the order passed by the Hon'ble Tribunal and have effected service upon the Income Tax Department. However the said department have not made/ filed observation pursuant to the said notices filed by the Petitioner Companies.*

24. Heard submissions made by the Ld Counsel appearing for the Petitioner, submissions made by the authorized representative for RD(ER) and No Objection issued by the Reserve Bank of India . Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-

- a. The Scheme of Amalgamation mentioned in this Petition being **Annexure "A"** hereto be sanctioned by this Tribunal with the Appointed date as **1st day of April, 2022** on J G Trading & Investment Private Limited and S. K. Finserve Private Limited with

Hi-Tech Designs Private Limited and their respective shareholders and creditors and all concerned;

- b. all the property, rights and powers of the Transferor Companies, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without further act or deed, to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme;
- c. all the debts, liabilities, duties and obligations of the Transferor Companies be transferred from the said Appointed Date, without further act or deed to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company;
- d. the employees of the Transferor Companies shall be engaged by the Transferee Company, as provided in the Scheme;
- e. all proceedings and/or suits and/or appeals now pending by or against the Transferor Companies be continued by or against the Transferee Company, as provided in the Scheme, for which the necessary records shall be preserved by the Transferee company as required under Section 239 of the Companies Act 2013.
- f. The Transferee Company do without further application issue and allot to the shareholders of the Transferor Companies, the shares in the Transferee Company to which they are entitled in terms of the Scheme;
- g. Leave is granted to the Petitioner(s) to file the Schedule of Assets and Liabilities of the Transferor Companies in the form as prescribed in the Schedule to Form No. CAA7 of the Companies (Compromises,

Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of receiving a copy of this order;

- h. The Transferor Companies and the Transferee Company shall each within thirty days of the date of the receipt of this order, cause a certified copy thereof to be delivered to the Registrar of Companies for registration and on such certified copies being so delivered, the Transferor Companies shall be dissolved without winding up.
25. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets and liabilities in acceptable form to the department and the department will append such printout, upon verification to the certified copy of the order.
26. The C.P (CAA) No. 21 / KB / 2023 connected with C.A(CAA) NO 125 / KB / 2022 is disposed of accordingly.
27. Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

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

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

Order signed on the day of 14<sup>th</sup> September, 2023

*mb*