

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT NO. II
SPECIAL BENCH**

Company Application (CAA) No. 64/KB/2024

An application under Section 230(1) to 232(1) of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and other applicable provisions of the law.

IN THE MATTER OF:

A Scheme of Arrangement of (First Motion):

DISHA LOHARUKA INFRATECH 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. **U70109PN2011PTC140668** and its registered office at “B2/1101 Sr No 19 Little Earth Kiwale, Pune, Masulkar City, Maharashtra-412101, India”.

..... Non-Applicant Company/Transferor Company No. 1

And

UTTAM GOODS & SERVICES 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. **U51109WB1995PTC070064** and its registered office at “Loharuka Niket, Dc-9/28, Shastri Bagan, Deshbandhu Nagar, Kolkata-700059, West Bengal, India”.

..... Applicant Company No. 1/Transferor Company No. 2

And

LOHARUKA INFRASTRUCTURE PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the

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Companies Act, 2013 having Corporate Identification No. **U18100WB1998PTC087772** and its registered office at “Loharuka Niket Dc-9/28, Shastri Bagan P.O. Deshbandhu Nagar, Kolkata-700059, West Bengal”.

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

IN THE MATTER OF:

1. **UTTAM GOODS & SERVICES PRIVATE LIMITED**
2. **LOHARUKA INFRASTRUCTURE PRIVATE LIMITED**

.....APPLICANTS

Date of pronouncing of the order: 26/04/2024

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances - For the Applicants:

Ms. Neha Somani, Practising Company Secretary

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court convened through hybrid mode today.

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2. 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 (“Act”) for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Amalgamation which provides for amalgamation of **Disha Loharuka Infratech Private Limited** being the Non Applicant Company (“Transferor Company No. 1”), **Uttam Goods & Services Private Limited**, being the Applicant Company No. 2 (“Transferor Company No. 2”) with **Loharuka Infrastructure Private Limited**, being the Applicant Company No. 3 (“Transferee Company”) and whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date. i.e. **1st April, 2023** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”). The Copy of the said Scheme of Amalgamation is annexed to the Company Application in **Annexure D** in **Volume II** at **Page No(s). 158 to 192.**
3. The Ld. Authorised Representative appearing for the Applicants submits that the Transferor Company No. 1 has its registered office at Pune in the State of Maharashtra. It has filed a separate Application with the Mumbai Bench of the Hon’ble National Company Law Tribunal and is not an Applicant herein.
4. The Board of Directors of all the Applicant Companies at their Board Meetings, held on 17th February, 2024 approved and resolved to carry out the said Scheme of Amalgamation. The copies of the resolution passed by the applicant companies are annexed with the Company Petition being **Annexure- C** in **Volume II** at **Page No(s). 152 to 157.**
5. It is submitted by the Ld. Authorised Representative appearing for the Applicants that the shares of all the Applicant Companies are not listed on any stock exchange. Further,

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the Applicants have the following classes of shareholders and creditors as on 29th February, 2024: -

Applicant No.	No. of Equity Shareholders	No. of Secured Creditors	No. of Unsecured Creditors
Applicant No. 1	5	NIL	NIL
Applicant No. 2	6	NIL	416

6. The Ld. Authorised Representative appearing for the Applicant Companies submits that the Valuation Report regarding recommendation share exchange ratios dated 16.02.2024 has been prepared by Mr. Anil Kumar Gupta, Registered Valuer having Registration No. IBBI/RV/06/2019/11155 which is annexed with the Company Application being **Annexure E in Volume II at Page No(s). 193 to 210.**
7. The certificate from Statutory Auditor confirming the accounting treatment contained in the scheme in compliance with all the applicable Accounting Standards specified under Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies (Accounts) Rules, 2014 is issued at the request of the Transferee Company pursuant to the requirements under Section 230(7) of the Companies Act, 2013 is annexed with the Company Application in **Annexure K in Volume II at Page No(s). 254 to 255.**
8. Ld. Authorised Representative appearing for the Applicant Companies submits that 100% of the Equity Shareholders of both the Applicant Companies have given their consent to the Scheme in writing by way of affidavits for the approval of the proposed Scheme of Arrangement which is annexed with the Company Application being **Annexure I in Volume II at Page No(s). 226 to 251.**

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9. Ld. Authorised Representative appearing for the Applicant Companies submits that there is no requirement of meeting of Creditors of Applicant Company No. 1 in view of Nil Creditors as on 29th February, 2024 as evidenced by the Chartered Accountant's certificates of the Companies, which is annexed to the Company Application and marked as **Annexure F** in **Volume II** at **Page No. 211**.
10. Directions are sought accordingly for:
- i. Dispensing with the meetings of Equity Shareholders of both the Applicant Companies.
 - ii. Holding the meeting of Unsecured Creditors of Applicant Company No. 2.
11. Heard the Ld. Authorised Representative for the Applicant Companies and 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. **Meetings dispensed:**
Meetings of the Equity Shareholders of both the Applicant Companies are dispensed with under Section 230(1) read with Section 232(1) of the Act.
- B. **No requirement of meetings:**
There is no requirement of holding meetings of Secured Creditors of Applicant Company No. 1 and 2 and Unsecured Creditors of Applicant Company No. 1 as there are Nil creditors verified by Chartered Accountant's certificates.
- C. **Meeting to be held/Date and Time:**
The meeting of the **Unsecured Creditors** of the Applicant No. 2 being the Transferee Company as on **29th February, 2024** duly certified by the Chartered Accountant shall

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be convened on 31/05/2024 at 2 PM at the registered office of Applicant No.2 for the purpose of considering, and, if thought fit, approving the said scheme, with or without modification.

D. **Mode of Meeting:**

The meeting as above, shall be held physically at Registered office of the Company at “Loharuka Niket DC-9/28, Shastri Bagan P.O. Deshbandhu Nagar, Kolkata-700059, West Bengal, India.

E. **Advertisement:**

At least 30 (thirty) clear days before the meeting to be held, as aforesaid, an advertisement of the notice of meeting, stating that copies of the Scheme and the statement containing necessary details required to be filed pursuant to section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 is being sent with the notice of meeting, be published once each in the “**Business Standard**” in English and “**Aajkaal**” in Bengali as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

F. **Individual Notices:**

At least 30 (thirty) clear days before the date of the meeting to be held, as aforesaid, notice convening the said meeting, along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Companies Act, 2013 shall be sent to each of the Unsecured Creditors of the Applicant No. 2 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, by registered post or air mail or courier and also by email or through personal messenger at their respective or last known addresses. The said notice along with accompanying documents shall also be displayed on the notice

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board of concerned Applicant at its registered office and shall also be posted on the website, if any, of such Applicant.

G. Chairperson:

CS **Aditi Jhunjhunwala** having Mobile No. **9874590012** and email-id aditijhunjhunwala23@gmail.com is appointed as the Chairperson of the meetings to be held, as aforesaid. The Chairperson shall be paid a sum of **Rs.80,000/-** for conducting the aforesaid meeting as Chairperson.

H. Scrutinizer:

Advocate **Alishakar** having Mobile No. **7718350115** and email-id advalishakar@gmail.com is appointed as the Scrutinizer of the meetings to be held, as aforesaid. The Scrutinizer shall be paid a sum of Rs. **60, 000/-** for conducting the aforesaid meeting as Scrutinizer.

I. Quorum and Attendance:

The quorum for the said meeting of persons entitled to attend the same shall be determined in accordance with Section 103 of the Companies Act, 2013. For the meetings to be held physically, only attendance of such persons physically at the venue shall be counted for quorum. In case the quorum of any meeting is not present within half an hour from the time appointed for the meeting, the Chairperson may adjourn such meeting to any date/time and take a decision on the quorum in the adjourned meeting.

J. Cut-off date:

The cut-off date for determining the eligibility to vote and value of votes shall be **29th February, 2024** for the meeting of Unsecured Creditors of the Applicant No. 2. The value of the votes cast shall be reckoned and scrutinized with reference to the said dates.

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K. Mode of Voting:

At the venue of the meeting held physically, voting shall be conducted physically by polling paper, shall be in accordance with the Companies (Management & Administration) Rules, 2014, and the forms thereunder shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.

L. Proxies & Board Resolution:

A person, including a Body Corporate, entitled to attend and vote at the venue of a meeting, as aforesaid, may do so personally or by proxy, provided the proxies in the prescribed form duly signed by such person and/or the certified copy of resolution of the Board of Directors or other governing body of such person, where it is a Body Corporate, authorizing its representative to attend and vote at such meeting on its behalf, as the case may be, is deposited at the registered office of the Applicant Company No. 2 not later than 48 (forty-eight) hours before the time for holding the meeting

M. That the Chairperson appointed for the said meeting or any person authorised by the Chairperson do issue and send the notice of the aforesaid meeting.

N. The resolution for approval of the Scheme of Amalgamation put to a meeting shall, if passed by a majority in number representing three-fourths in value of Unsecured creditors of the Applicant No. 2 casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of such meeting under Section 230(1) read with Section 232(1) of the Companies Act, 2013.

O. The Chairperson do report to this Tribunal the results of the said meeting within four weeks from the date of the conclusion of the said meeting. Such report shall be in Form

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No. CAA-4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

- P. The votes cast shall be scrutinized by the Scrutinizer. The Scrutinizer shall prepare and submit the respective report on the meeting along with all papers relating to the voting to the chairperson of the meeting at the Scrutinizer's earliest convenience and in any case within 3 days of the conclusion of the meeting. The Chairperson shall declare the results of the meeting after submission of the report of the Scrutinizer. The declaration of result by the Chairperson shall also be displayed on the Notice Board of the concerned Applicant at its registered office and shall also be posted on the website, if any, of such Applicant.
- Q. The value of each of the Unsecured Creditors of the Applicant Company no. 2 shall be in accordance with its books and records, where entries in the books are disputed, the chairperson shall determine the value for purpose of the said meeting.
- R. The Applicant Companies to serve a 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;
 - the Registrar of Companies, Kolkata, West Bengal with whom the Applicants are registered;
 - the Official Liquidator, High Court, Calcutta;
 - the Income Tax Department having jurisdiction over the Applicants
 - Other sectoral authorities like GST etc. who might be affected by the scheme.

These notices shall be sent by hand delivery or by Speed post/ Regd A.D post and also by email 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

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date of receipt of the notice with a copy of such representation being simultaneously sent to the Authorised 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.

- S. The Applicant Companies shall file an affidavit of service with the registry in regard to the directions given in this Order to report to this Tribunal that the directions regarding the issuance of notices have been duly complied with.
- T. The application being **Company Application (CAA) No. 64/KB/2024** is **disposed of** accordingly.
- U. Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities

Balraj Joshi
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Signed this, on the 26th day of April, 2024

NKS(LRA)