

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

CP(CAA) No. 102/KB/2022  
Connected with  
CA (CAA) No. 39/KB/2022

*A Petition under 2013-Section 230(6) read with Section 232(3)*

***In the Matter of:***

**Tusk Investment 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. U74110WB2006PLC134436 and its registered office at Jassal House, Fl-22 4/A Auckland Square Kolkata-700017

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

**And**

**Amodini Sales 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. U51109WB1995PTC067095 and its registered office at 59, Gopal Banerjee Lane Ground Floor, Room No-G1 Howrah-711101

.... **Petitioner Company No. 2/ Transferee Company**

In the matter of:

1. Tusk Investment Limited.
2. Amodini Sales Private Limited.

**Date of Hearing: 11.10.2022**

**Date of Pronouncement: 07.12.2022**

**Coram:**

**Shri Rohit Kapoor, Member (Judicial)**

**Shri Balraj Joshi, Member (Technical)**

**Appearances (via Hybrid Mode):**

Mr.Patita Paban Bishwal, Adv ] For the petitioners

Mr. Harihar Sahoo JD ] For RD's office

## **ORDER**

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

- i. The court convened through hybrid mode today. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (“Act”) for sanction of the Scheme of Amalgamation of Tusk Investment Limited, being the **Petitioner Company No. 1 /Transferor Company**, with Amodini Sales Private Limited, **Petitioner Company No. 2/ Transferee Company** whereby and where under the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, viz. 1<sup>st</sup> January 2022 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”).
- ii. This Petition has now come up for a final hearing. Ld. Counsel for the Applicants submits as follows: -
  - a. The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on 23<sup>rd</sup> March 2022.
  - b. The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, *inter alia*, as follows: -
    - i. The proposed amalgamation of the Transferor Company with the Transferee Company in accordance with the Scheme would enable the Amalgamating Companies to realize benefits of greater synergies between their business and avail of the financial resources as well as the managerial, technical, distribution and marketing resources of each other in the interest of maximising the shareholders’ and stakeholders’ value;
    - ii. The proposed amalgamation shall ensure a streamlined group structure by reducing the number of legal entities in the group structure which will significantly reduce

- multiplicity of legal and regulatory compliance requirements and costs and will enhance the business oversight and eliminate duplicative communication and co-ordination efforts across multiple entities;
- iii. Realization of benefits of greater synergies and economies of the scale for the business of the Transferee Company, yielding beneficial results and pooling and optimal utilization of financial resources as well as managerial, technical, distribution and marketing resources of each other in the interest of maximizing value of their shareholders and other stakeholders. It will further enable greater efficiency in cash management and unfettered access, to cash flow generated by the combined businesses, which can be deployed more efficiently for better debt management;
  - iv. Simplification of management structure, better administration and reduction in administrative and operational costs over a period of time, standardization and simplification of business processes, better utilization of common facilities, sharing of best practices and cross functional learning, the elimination of duplication and multiplicity of compliance requirements and rationalization of administrative expenses;
  - v. The proposed amalgamation also aims to enable better tax planning at a combined level and also assist in leveraging resources of the overall downstream combined entity;
  - vi. The amalgamation shall aid in reducing time and efforts for consolidation of financials at the group level; and

- vii. The proposed amalgamation aims to create value for stakeholders including respective shareholders, customers, lenders and employees.
- c. The Statutory Auditors of the Transferee Company have by their certificates dated 23<sup>rd</sup> March 2022 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.
- d. No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioners.
- e. By an order passed by the Hon'ble Tribunal dated 20<sup>th</sup> May 2022 and Corrigendum order dated 24<sup>th</sup> May 2022 in Company Application (CAA) No.39/KB/2022, this Tribunal made the following directions with regard to the meetings of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act:
- i. Meetings dispensed:
- Meetings of the Equity Shareholders of both the Petitioner Companies and the Creditors of the Petitioner Companies No. 2 has dispensed in view of the fact that all such shareholders and creditors have already given their consent to the Scheme by way of affidavits.
- f. Consequently, the Petitioners presented the instant petition for sanction of the Scheme. By an order dated 27<sup>th</sup> July, 2022 the instant petition was admitted by this Tribunal and fixed for final hearing on 31<sup>st</sup> August 2022 upon issuance of further notices to the Statutory Authorities and advertisement of date of hearing. In compliance with the said order dated 27<sup>th</sup> July, 2022, the Petitioner Companies have duly served such notices through Email to all the Sectoral/ Statutory Authorities on 2<sup>nd</sup> August 2022 and through Hand Delivery on the (i) Regional Director (Eastern Region), Ministry of Corporate Affairs,

Kolkata; (ii) Registrar of Companies, West Bengal on 2<sup>nd</sup> August 2022 on the (iii) Official Liquidator, High Court at Kolkata on 29<sup>th</sup> July 2022; on the (iii) Income Tax, Kolkata Region, Ward No.10 (2), 13 (1) and (iv) Reserve Bank of India, Kolkata by Speed Post on 5<sup>th</sup> August 2022. The Petitioner Company have also published such advertisements once each in the English daily newspaper namely “**Business Standard**” and Bengali daily newspaper namely “**Aajkaal**” on 29<sup>th</sup> July 2022. An affidavit of compliance in this regard has also been filed by the Petitioner Company on 30<sup>th</sup> July 2022.

- g. 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.
- iii. Pursuant to the said advertisements and notices, the Regional Director, Ministry of Corporate Affairs, Kolkata (“**RD**”) and the Official Liquidator, High Court of Calcutta (“**OL**”) have filed their representations before this Tribunal.
- iv. The Official Liquidator has filed his report dated 7<sup>th</sup> September 2022 and concluded as under: -

*“8. That the report of Official Liquidator is based upon the documents/ reply submitted by the petitioner companies. Balance Sheet, Memorandum and Article of Association and other documents furnished by the petitioner companies has not been enclosed with the report as the same are already on records of National Company Law Tribunal.*

*9. 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.*

*10. That in view of the submission made above the Hon'ble National Company Law Tribunal may like to pass such order/orders as deemed fit and proper in the facts and circumstance of the case*

- v. The Regional Director, Eastern Region, Kolkata *Vide* his representation dated 29<sup>th</sup> August 2022 (“**RD Representation**”) which has been dealt with by the Petitioners by Rejoinder/Undertaking dated 7<sup>th</sup> September 2022 (“**Rejoinder**”). The observations of the RD and responses of the Petitioner(s) are summarized as under: -

a) **Paragraph No. 2(b) of the RD Affidavit:**

*“The Petitioner Companies should be directed to provide list/details of Assets, if any, to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the proposed Scheme.”*

**Paragraph No. 2 of the rejoinder:**

With reference to paragraph No. 2(b), of the said reply dated 29<sup>th</sup> August 2022 it is stated that as per the Scheme of Amalgamation in Part II, clause 6(A) and (C), all the Assets of the Transferor Company will be transferred to the Transferee Company. All the assets which are mentioned in the Balance Sheet for the financial year ended 31.03.2021 of the Petitioner Company will be transferred to the Transferee Company.

b) **Paragraph no. 2(c) of the 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 No. 3 of the Rejoinder:

With reference to paragraph No. 2 (c) of the said reply dated 29<sup>th</sup> August, 2022, we do hereby undertake that the Petitioner Companies will comply with the provision of Section 232(3)(i) of the Companies Act, 2013.

c) **Paragraph No. 2(d) of the RD Affidavit:**

*“That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.”*

Paragraph no. 4 of the Rejoinder:

With reference to the paragraph No. 2(d) of the said reply dated 29<sup>th</sup> August, 2022 it is stated that the Transferee Company shall pay stamp duty if applicable on the transfer of immovable properties from the Transferor Companies to it..

d) **Paragraph No. 2(e) of the 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 No. 5 of the Rejoinder:

With reference to the paragraph No. 2(e) of the said reply dated 29<sup>th</sup> August 2022 it is stated the Scheme enclosed of the Company Application and Company Petition is one and same and there is no discrepancy or no change is made.

e) **Paragraph No. 2(f) of the RD Affidavit:**

*“The Transferor Company, Tusk Investments Limited, holds large sums of non- current investments. But the names of the Investee companies in many cases are not stated in full, as a result of which the disclosure requirements laid down in section 129 of the Companies Act, 2013 were not made and financial statements fail to report the statutorily mandated information.”*

**Paragraph No. 6 of the Rejoinder:**

With reference to the paragraph No. 2(f) of the said reply dated 29<sup>th</sup> August, 2022 it is stated that all the names of the investee companies in the financial statements are reflected in the Statement of holding of Tusk Investment Ltd as on 31.03.2021.

**f) Paragraph No. 2(g) of the RD Affidavit:**

*“An investment of Rs. 20,02,824/- in 971 nos. quoted shares of “Aavas” is shown as on 31.3.2021, in the financial statement of 2020-21 of the Transferor Company, Tusk Investment Limited, without mention the name of the investee company in full. On checking a listed company by the name “Aavas Financiers Limited” is found but in the Annual return of “Aavas Financiers Limited” for 2020-21 no shareholding of Tusk Investments Ltd as on 31.3.2021 is shown, as it appears. The Applicant should clarify.”*

**Paragraph No. 7 of the Rejoinder:**

With reference to the paragraph No. 2(g) of the said reply dated 29<sup>th</sup> August, 2022 it is stated that name of “Aavas Financiers Limited” holding 971 nos. quoted shares in the Financial statement of 2020-21 of the Transferor Company,



Tusk Investment Limited is being reflected in the Statement of Holding of Tusk Investment Private Limited as on 31.03.2021.

**g) Paragraph No. 2(h) of the RD Affidavit:**

*“It is submitted that the Transferor Company, Tusk Investment Limited did not file Form PAS-6 regarding Reconciliation of Share Capital Audit Report (Half Yearly) in pursuant to sub-rule (8) of rule 9A of the Companies (Prospectus and allotment of Securities) Rules, 2014 in respect of period ending 30/09/2019, 31/03/2020 and 30/09/2020. Therefore, the Company should file the pending Form PAS-6 with Registrar of Companies in prescribed manner before the merger, since once merged, the status of the company in MCA portal would no more be ACTIVE and hence the Company would become free from the responsibility of filing the pending statutory documents. This would result in the MCA portal continuing with the contravening gap in filing beside loss of filing fee to the Government.”*

**Paragraph No. 8 of the Rejoinder:**

With reference to the paragraph No. 2(h) of the said reply dated 29<sup>th</sup> August, 2022 it is stated that the company has filed the necessary Form PAS-6 vide SRN F23288095, F23902091 and F23902422 with the MCA Portal.

**h) Paragraph No. 2(i) of the RD Affidavit:**

*“It is submitted that the Transferor Company, M/s Tusk Investment Limited, did not file Form MGT-14 in respect of any resolution under section 179(3) of the Companies Act, 2013 for approval of the Financial Statement and Board’s report for the year 2019-20. The Company should file the said*

*pending statutory documents with Registrar of Companies in prescribed manner before the merger, since once merged, the status of the company in MCA portal would no more be ACTIVE and hence the Company would become free from the responsibility of filing the pending statutory documents. This would result in the MCA portal continuing with the contravening gap in filing beside loss of filing fee to the Government.”*

Paragraph No. 9 of the Rejoinder:

With reference to the paragraph No. 2(i) of the said reply dated 29<sup>th</sup> August, 2022 it is stated that the Company has filed the necessary Form MGT-14 vide SRN T08151524 with the MCA Portal.

vi. Heard submissions made by the Ld. Counsel appearing for the Petitioner and the representative of RD(ER). Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders: -

(a) That the Scheme of Amalgamation as mentioned in the Petition being Annexure “A” hereto be sanctioned by the Tribunal with appointed date fixed as **1st January 2022** and shall be binding on Tusk Investment Limited (herein referred to as Transferor Company) and Amodini Sales Private Limited (herein referred to as Transferee Company) and their Shareholders and all concerned;

(b) All the properties, rights and interests of the Transferor Company be transferred to and vested in without further act or deed in Transferee Company and accordingly the same shall pursuant to Section 230-232 of the Companies act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and vested in the Transferee Company for all the estate

and interest of the Transferor Company but subject nevertheless to all charges, now affecting the same as provided in the Scheme;

(c) All the liabilities, duties and obligations of the Transferor Company be transferred from the said Appointed Date, without further act or deed to the Transferee Company and, accordingly, the same shall pursuant to Section 230-232 of the Companies Act, 2013, and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and become the liabilities, duties and obligations of the Transferee Company;

(d) All the employees of the Transferor Company shall be transferred to and be engaged by the Transferee Company, as provided in clause 11(i) of the Scheme;

(e) All proceedings and/or suits and/or appeals now pending by or against the Transferor Company be continued by or against the Transferee Company, as provided in the Scheme, for which the Transferee company shall preserve the necessary records that may be required for such proceedings.

(d) The Transferee Company do issue and allot Shares to the Shareholders of the Transferor Company as envisaged in the said Scheme of Amalgamation and for that, if necessary, to increase the Authorized Share Capital.

(g) Leave be granted to the Petitioner to file the Schedule of Assets and liabilities of the Transferor Company in the form as prescribed in the Schedule to Form No. CAA-7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date the order to be made herein;

(i) The Transferee Company and Transferor Company do each within thirty days of the date of the receipt of this order (Effective date), cause a certified copy to be delivered to the Registrar of Companies for registration.

In the National Company Law Tribunal,  
Kolkata Bench

Tusk Investment Limited and Ors.  
C.P.(CAA) No. 102/KB/2022 connected with C.A.(CAA) No.39/KB/2022

- (h) The Transferor Company shall stand dissolved without winding up upon the scheme coming into effect.
- vii. The Petitioners shall supply legible print out of the scheme and schedule of assets and liabilities in acceptable form to the registry and the registry will upon verification, append such printout, to the certified copy of the order.
- viii. Company Petition (CAA) No.102/KB/2022 connected with Company Application (CAA) No.39/KB/2022 is **disposed of** accordingly.
- ix. Certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

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

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

Order signed on the 7<sup>th</sup> day of December, 2022

Ankita S. LRA