

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOLKATA BENCH, KOLKATA**

**CP (CAA) No. 123/KB/2023**

**IN**

**C.A.(CAA)/52(KB)/2023**

**In the matter of:**

A petition under Section 230 to Section 232 of the Companies Act, 2013 read with the provisions of The Companies (Compromise, Arrangement and Amalgamation) Rules, 2016;

**And**

**In the matter of:**

**PAWANPUTRA TRADE-LINK PRIVATE LIMITED** (hereinafter referred as the Transferor Company), having CIN- U51109WB2007PTC118203, a Company within the meaning of Companies Act, 2013 having its registered office at 6, Hanspukur Lane, Laxmi Plaza 1st Floor, Room No.-121 Kolkata West Bengal-700007 in the State of West Bengal, within the aforesaid jurisdiction..

**... Petitioner / Transferor Company**

**WITH**

**JAGDAMBA CHAINS PRIVATE LIMITED** (hereinafter referred as The Transferee Company), having CIN- U27205WB2006PTC111403, a Company within the meaning of Companies Act, 2013, having its registered office at 26 Adi Banstala Lane 1st Floor Kolkata-700007, in the State of West Bengal, within the aforesaid jurisdiction.

**... Petitioner / Transferee Company**

And

1. PAWANPUTRA TRADE-LINK PRIVATE LIMITED

..... Petitioners/ Transferor Company

2. JAGDAMBA CHAINS PRIVATE LIMITED

.....Petitioner/ Transferee Company

**Coram:**

**Smt. Bidisha Banerjee, Hon'ble Member (Judicial)**

**Shri D. Arvind, Hon'ble Member (Technical)**

**Appearances:**

For the Petitioners

: CS Anil Kumar Dubey & Bidisha  
Achari, PCS

**Date of pronouncement of order: 2/05/2024**

**Order**

**Per: Arvind Devanathan, Member (Technical)**

1. This instant petition has been filed by the Petitioners namely PAWANPUTRA TRADE-LINK PRIVATE LIMITED, the Transferor Company,

and JAGDAMBA CHAINS PRIVATE LIMITED, the Transferee Company under sections 230-232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 for sanctioning the Scheme of Amalgamation proposed between the Transferor Company and the Transferee Company. A copy of the Scheme has been annexed as “**Annexure-1**” from page number 28 to 64 of the petition.

2. The Appointed date as per the Scheme is **01<sup>st</sup> April, 2022** or any other date as may be approved by the Hon’ble National Company Law Tribunal.
3. The Petition has now come up for final hearing. Authorised Representative for the Petitioners submits as follows: -
  - i. The Authorized Representative for the Petitioner Companies submits that the Board of Directors of the Petitioner Companies at their respective Board Meetings had approved the Scheme of Amalgamation of PAWANPUTRA TRADE-LINK PRIVATE LIMITED (‘Transferor Company’) with JAGDAMBA CHAINS PRIVATE LIMITED (‘the Transferee Company’). The Board Resolutions approving the scheme are filed with Company Petition as Annexed in **Annexure “A-5”** of the Petition.
  - ii. The circumstances which justify and necessitate the said Scheme of Amalgamation are, *inter-alia*, as follows:
    - a) The said scheme has been proposed, inter alia, to specific group structure and provide for overall business efficiency to combine their managerial and marketing strength, to streamline administration, to build a wider capital and financial base and to

promote and secure the overall interest growth and economics of all the companies concerned.

- b) The amalgamation will result in usual economics of a centralized and a larger company including reduction in overheads, better and more productive utilization of labor and other resources and reduction in procedural and administrative work.
- c) The scheme would ensure higher retained earning leading to enhanced intrinsic value of shareholding to the investors.
- d) The corporate restructuring resulting from the scheme will integrate all the activities leading to increased opportunities in all areas of business.
- e) The amalgamated company would have stronger fundamentals which enhance its credit rating and resource raising ability in the financial markets.
- f) The said scheme will enable the establishment of a larger company with larger resources and a larger capital base facilitating further expansion and development of the business of all companies. The said scheme will enable the undertakings and business of the said companies to obtain greater facilities possessed and enjoyed by one large company as compared with a number of smaller companies, for raising capital, securing and conducting trade, on favorable terms and other benefits.

Thus, as a whole, amalgamation of the Transferor Company with the Transferee Company in terms of the Scheme will be beneficial for all the companies, their shareholders, their creditors, employees, customers and all others concerned with all the companies.

- iii. The Statutory Auditors of respective Petitioner Companies have by their respective certificates confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.
- iv. There are no proceedings pending under sections 235 to 251 of the Companies Act, 1956 and sections, 210, 217, 219, 221, 224 and 225 of the Companies Act, 2013 against any of the Petitioners Companies.
- v. The exchange ratio of shares in consideration of the amalgamation has been fixed on the basis of the valuation report obtained from CS Anil Kumar Dubey, Registered Valuer, IBBI Registration Number: IBBI/RV/03/2019/12411.
- vi. The shares of the Petitioner Companies are not listed in any Stock Exchange.
- vii. From the records it is seen that the First Motion seeking directions for dispensing of the meetings of the unsecured creditors were filed before the Tribunal in CA(CAA) No. 52/KB/2023. Based on such application moved under the provisions under sections 230-232 of the Companies Act, 2013, directions were issued by the Tribunal Vide its order dated 19<sup>th</sup> May, 2023 wherein Meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner No.1, Petitioner No. 2 for considering the Scheme were dispensed within view of all such shareholders having respectively given their consent to the Scheme by way of affidavits.
- viii. The Petitioners presented the instant petition for sanction of the Scheme. By an order dated 29<sup>th</sup> September, 2023 the instant petition

was admitted by this Tribunal and fixed for final hearing on 8<sup>th</sup> November, 2023. The matter was listed on 8<sup>th</sup> November, 2023, 14<sup>th</sup> December, 2023 and 22<sup>nd</sup> January, 2024.

- ix. That all the Petitioner Companies has served the notice *Vide* hand delivery/speed post and e-mail pursuant to the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 16(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 read with the Order dated 29.09.2023 of this Hon'ble Tribunal upon the following statutory authorities:

<b>Company</b>	<b>Name of Statutory Authorities</b>	<b>Date of Service</b>	<b>Mode of Service</b>
All Petitioner Companies	Regional Director – Eastern Region (Ministry of Corporate Affairs);	03.11.2023	Hand Delivery
All Petitioner Companies	Registrar of Companies – West Bengal;	03.11.2023	Hand Delivery
All Petitioner Companies	Official Liquidator;	03.11.2023	Hand Delivery
All Petitioner Companies	Income Tax Authority	02.11.2023	Hand Delivery

- x. It appears from the record that joint publication in form NCLT 3A was made in the newspapers English daily, “**Financial Express**”, Kolkata Edition and Bengali daily, “**Aajkal;**”, Kolkata Edition on **2<sup>nd</sup> November, 2023**. Also, notices were served to all the requisite statutory authorities.

- xi. In compliance of the aforesaid orders an affidavit was filed on behalf of the Petitioner Companies along with speed post receipts through which notices were served upon the necessary statutory authorities was submitted to the Hon'ble Tribunal.
4. Pursuant to the said advertisements and notices, the Regional Director, Eastern Region, Kolkata, and Official Liquidator, High Court at Calcutta, have not filed their representations before this Tribunal despite the service of notice done by the Petitioners vide Notice acknowledgement dated 3<sup>rd</sup> November, 2023.
5. The Regional Director, Eastern Region, Kolkata *Vide* his representation dated 21<sup>st</sup> February, 2024 ("**RD Representation**") which has been dealt with by the Petitioners by rejoinder/undertaking dated 22<sup>nd</sup> February, 2024 ("**Rejoinder**"). The observations of the RD and responses of the Petitioner(s) are summarized as under: -

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

*It is submitted that as per the available record, it appears that no complaint and /or representation regarding the proposed Scheme of Amalgamation has been received against the Petitioner Companies, Further, all the petitioner companies are updated in filing their Statutory Returns for the year ended 31/03/2023.*

Paragraph No. 1(a) of Rejoinder:

With regard to statements in Paragraph 2 (a), we say that the statements is general in nature and therefore does not require any explanation from our side.

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

*The Appointed date stated in the Scheme is 1<sup>st</sup> April, 2022. In terms of the Circular No. 09/2019 dated 21<sup>st</sup> August, 2019 of the Ministry of Corporate Affairs, where the 'appointed date' is chosen as a specific calendar date, it may precede the date of the filing of the application for scheme of merger/amalgamation in NCLT. However, if the appointed date is significantly ante dated beyond a year from the date of the filing, the justification for the scheme would have to be specifically brought out in the scheme and it should not be against public interest" It is not ascertainable from the documents provide by the Applicant whether the application for the scheme was filed with Hon'ble Tribunal after more than one year from the appointed date, Hon'ble Tribunal may kindly direct the applicant to bring out the justification for the appointed date being more than one year before the date of filing of the Application for the Scheme in accordance with the said Circular.*

**Paragraph No. 1(c) of Rejoinder:**

*we state that Application was filed on 15th March, 2023 whereas the Appointed date is 1st April, 2022. The Application is filed within one year in terms of Circular No. 09/2019 dated 21st August, 2019. Therefore, the observation made by esteemed office is already complied with.*

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

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

**Paragraph No. 1(d) of Rejoinder:**



*Petitioners submitted that to submit the list of assets at the time of getting certified copy and drawn up order as per the prevailing practice.*

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

*The Petitioner Companies should be directed to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.*

**Paragraph No. 1(e) of Rejoinder:**

*We do hereby undertake to comply with the provisions of the section 232(3)(i) of the Companies Act, 2013*

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

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

**Paragraph No. 1(f) of Rejoinder:**

*We do hereby undertake to pay applicable stamp duty on the transfer of the immovable properties, as may be applicable.*

**f. Paragraph No.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 No. 1(g) of Rejoinder:**

we affirm that the scheme enclosed to the Company Application and Company Petition are one and same and there is no change or discrepancy is made.

**g. Paragraph No.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 29/12/2023 for their views/observation in the matter. However, the report from the Authority is still awaited.

**Paragraph No. 1(h) of Rejoinder:**

we hereby submit that Notices to Income Tax Authorities under section 230(5) is already submitted before this Hon'ble Tribunal and it is part of the record.

- h. Heard Authorized Representative for the Petitioner Companies and have also considered the consent affidavits given by the members and no dues letters given by the creditors of the Petitioner Companies to the said Scheme and the representation filed by the Regional Director, and the rejoinder thereto and the Representation filed by Official Liquidator and the relevant income tax authorities, there appears to be no impediment in sanctioning the present Scheme. Consequently, sanction is hereby granted to the Scheme under Section 230 & 232 of the Companies Act, 2013.
- i. No objector has approached, neither to the Petitioner Companies nor before the Tribunal to oppose this Scheme of Amalgamation (by absorption).
- j. From the material on record and upon perusing the records and documents in the instant proceedings and considering the submissions, the Scheme of Amalgamation (by absorption) appears to

be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

k. Since all the requisite statutory compliances have been fulfilled, the Company Petition filed by the Petitioner Companies are made absolute in terms of the Scheme as stated in '**Annexure 1**' is sanctioned and the appointed date of the Scheme is fixed as 1<sup>st</sup> April, 2022 and is binding on the Transferor Company with the Transferee Company and their respective shareholders and all concerned and hereby this Bench, to the Petitioner Companies, **do order that:**

- a. That the Transferor Company with all their respective assets, properties, rights, powers, titles and interest thereof be respectively transferred to and vested without any further act or deed in the Transferee Company in terms of Section 232(4) of the Companies Act, 2013;
- b. All the debts, properties, rights, permission, license, titles and interest of Transferor Company to be transferred to and vested in Transferee Company without further act or deed in terms of Section 232(4) of the Companies Act, 2013;
- c. That all the liabilities and duties of the Transferor Company respectively be transferred without any further act or deed to the Transferee Company in terms of Section 232(4) of the Companies Act, 2013;
- d. With effect from the Appointed Date and up to and including the Effective Date, all legal, arbitration, and tax assessment proceedings/appeals of whatsoever nature by or against the Transferor Company pending and/or arising on or after the

Appointed Date shall be continued and/or enforced by or against the Transferee Company.

- e. The employees of the Transferor Company shall become employees of the Transferee Company, as provided in the Scheme;
- f. The Transferee Company do without further application issue and allot to the shareholders of the Transferor Company, the shares in the Transferee Company to which they are entitled in terms of the Scheme;
- g. On the Scheme becoming effective, the Transferor Company shall stand dissolved without being wound up and without any further act by the parties.
- h. That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
- i. The Petitioner Companies, respectively, do, within 30 days after the receipt of the certified copy of this order, cause a certified copy thereof to be delivered to the Registrar of Companies, Kolkata for registration and on such certified copies being so delivered, the Transferor Company shall be dissolved with effect from the date or last of the dates of filing of the certified copies of the order, as aforesaid (Effective Date) and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said companies shall be consolidated accordingly.

1. In case of any default, including in provisions of income tax in respect of transferred companies, the income tax department, the ROC West Bengal, and all others statutory departments/authorities shall be at liberty to initiate appropriate proceedings against the transferee company which after the sanction of the scheme by this tribunal is in any case shall be responsible for the liabilities/non-compliances of the transferee company as well.
  
- m. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets in acceptable form to the department and the department will append such printout, upon verification to the certified copy of the order.
  
- n. The **Company Petition (CAA) No. 123/KB/2023 connected with Company Application (CAA) No. 52/KB/2023** is disposed of accordingly.
  
- o. Certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**Signed this 2<sup>nd</sup> day of May, 2024**

NKS(LRA)