

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, COURT-II**

**CP (CAA) No. 119/KB/2023**

**Connected with**

**CA (CAA) No. 78/KB/2023**

*A Petition under Section 230-232 of the Companies Act, 2013*

In the Matter of the Companies Act, 2013 - Section 230(6) read with Section 232(3)

And

**In the Matter of :**

**Manimaya Business Limited**, a company incorporated under the Companies Act, 2013 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U51909WB2015PLC206166 and its registered office at 2A, Ganesh Chandra Avenue, Commerce House, 7th Floor, Room No-1, Kolkata- 700013 in the State of West Bengal

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

And

**Impex Industries 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. U51109WB1999PLC089804 and its registered office at 35, Chittaranjan Avenue, Kolkata - 700012 in the State of West Bengal

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

**In the matter of:**

1. Manimaya Business Limited
2. Impex Industries Limited

..... Petitioner(s)

Date of pronouncing the order: 18/04/2024

**Coram:**

**Bidisha Banerjee: Member(Judicial)**

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

**Counsel on Record for the Petitioner(s):**

1. Jyoti Mandal, FCA
2. Swati Bajaj, CS

**ORDER**

**Per: Bidisha Banerjee, Member (Judicial)**

1. 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 Manimaya Business Limited, being the Petitioner No.1 abovenamed (“**Transferor Company**” or “**Petitioner No.1**”), with Impex Industries Limited, being the Petitioner No.2 abovenamed (“**Transferee Company**” or “**Petitioner No.2**”) whereby and whereunder the Transferor Company(ies) is/are proposed to be amalgamated with the Transferee Company from the Appointed Date, viz close of business hours of 01-April-2022 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“**Scheme**”).
2. The Petition has now come up for final hearing. Counsel(s) 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 07-February-2023
- (b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-
- “With a view to consolidate business of MBL into IIL, to create a larger entity, to achieve economy of scale, and to rationalize, streamline the ownership structure of IIL, the Amalgamation of MBL into IIL is being envisaged. The Amalgamation, when approved, would enable achievement of various objectives, including the following:*
- a. Both the Applicant Companies are under the same management group, having common shareholders and directors. Therefore, it is proposed to merge them into a single entity to reduce the managerial overlaps involved in operating different entities.*
  - b. Reduce overheads and administrative, managerial and other expenditure;*
  - c. Provide greater efficiency and more optimal utilization of resources;*
  - d. Reduce legal and regulatory compliances;*
  - e. Create enhanced value for all stakeholders of the respective companies;*
  - f. Reorganize businesses to optimize for operational efficiency, rationalize for cost and streamline for growth, since the Company are situated in West Bengal, i.e., a single state.”*
- (c) The Statutory Auditors of the Petitioner Companies have by their 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.
- (d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).

- (e) The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report thereon of CA Vidhi Chandak, Registered Valuers.
- (f) The shares of the Petitioner Companies are not listed on any Stock Exchange(s).
- (g) By an order dated 06-June-2023 in Company Application (CAA) No.78/KB/2023, this Tribunal made the following directions with regard to meeting(s) of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act:-

(a) *Meetings dispensed: Meetings of the Equity Shareholders and Unsecured Creditors of the Applicant No.1 and Equity Shareholders and Unsecured Creditors of the Applicant No.2 are dispensed with under Section 230(1) read with Section 232(1) of the Act.*

(b) *No Requirement of Meeting: Nil Secured Creditors of the Applicant Companies as verified by the Auditors Certificate dated 24-March-2023.*

(c) *Meetings to be held: No meeting is required to be held..”*

- (d) Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order 22-August-2023 the instant petition was admitted by this Tribunal and fixed for hearing on 29-September-2023 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 22-August-2023, the Petitioner(s) have duly served such notices as follows:

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, COURT-II

CP (CAA) No. 119/KB/2023  
Connected with  
CA (CAA) No. 78/KB/2023

S.No	Statutory/ Regulatory Authorities to whom Notice has been sent	Mode & Date of Service of Notice
1.	Notice to the Regional Director, Eastern Region	By Email on 12-September-2023 and 15-September-2023, hand delivery on 15-September-2023 and speed post on 12-September-2023
2.	Notice to the Registrar of Companies, Kolkata	By Email on 12-September-2023 and 15-September-2023, hand delivery on 15-September-2023 and speed post on 12-September-2023
3.	Notice to the Official Liquidator, Calcutta High Court	By Email on 12-September-2023 and 15-September-2023, hand delivery on 15-September-2023 and speed post on 12-September-2023
4.	Notice to the Income Tax Assessing Officer(s), having jurisdiction over the Petitioner Companies	By Email on 12-September-2023 and 15-September-2023, hand delivery on 18-September-2023 and speed post on 12-September-2023 and 15-September-2023.

- (e) The Petitioner(s) have also published such advertisements once each in the **Statesman**(Kolkata Edition) in English and **Dainik Statesman**(Kolkata Edition) in Bengali in their respective issues dated 18-September-2023. An affidavit of compliance in this regard has also been filed by them on 19-September-2023.
- (f) 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.

3. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (“RD”) and Official Liquidator, Calcutta High Court have filed their representations before this Tribunal.

4. The Official Liquidator has filed his report dated 25-September-2023 and concluded as under:

*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.*

*11. 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.*

5. The RD has filed his reply affidavit dated 07-November-2023 (“RD affidavit”) which has been dealt with by the Petitioner(s) by their 1<sup>st</sup> Rejoinder/Joint affidavit dated 10-January-2024 (“Jt. Affidavit”) and 2<sup>nd</sup> Rejoinder/Joint affidavit dated 26-March-2024 (“Jt. Affidavit”). The observations of the RD and responses of the Petitioner(s) are summarised as under:-

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

*That it is submitted that on the examination of the report of the Registrar of Companies, West Bengal, it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation.*

*Further, both the petitioner companies have filed their Financial Statement for the financial year 31/03/2023. However, the Transferor Petitioner Company should be directed to file Consolidated Financial Statement*

*in respect of financial year ended 31/03/2023 at earliest, if not filed already, before the merger takes place..*

**Paragraph No.4 of Jt. Affidavit:**

*With reference to paragraph 2(a) of the said affidavit, the statements made in the said paragraph is self-explanatory. However the Transferor Petitioner Company Manimaya Business Limited has filed Consolidated Financial Statement in respect of financial year ended 31/03/2023 vide SRN F89535454 dated 05.01.2024. Copy of form AOC-4 CFS along with payment receipts are enclosed as Annexure-A.*

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

*It is submitted that the Transferor Company, M/s Manimaya Business Limited, being unlisted public company, did not file Form PAS-6 regarding Reconciliation of Share Capital Audit Report (Half-Yearly) pursuant to sub-rule (8) of rule 9A of the Companies (Prospectus and allotment of Securities) Rules, 2014 in respect of any of the half yearly periods. Therefore, the Company should file the pending Form PAS-6 with concerned 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..*

**Paragraph No.5 of Jt. Affidavit:**

*With reference to paragraph 2(b) of the said affidavit, save what are matters of record, I submit as follows:*

*That the Transferor Company, M/s Manimaya Business Limited, being unlisted public Company, has now filed Form PAS-6 regarding Reconciliation of Share Capital Audit Report (Half-Yearly) pursuant to sub-*

*rule (8) of rule 9A of the Companies(Prospectus and allotment of Securities) Rules, 2014 in respect of the half yearly periods.*

*The Company has filed PAS-6 as follows:*

<u>S.No.</u>	<u>Half Yearly Period</u>	<u>SRN</u>	<u>Date of filing</u>
1	30.09.2023	AA6562989	09.01.2024
2	31.03.2023	AA6527099	09.01.2024
3	30.09.2022	AA6527032	09.01.2024
4	31.03.2022	AA6526898	09.01.2024
5	30.09.2021	AA7052917	22.03.2024
6	31.03.2021	AA7053156	22.03.2024
7	30.09.2020	AA7053258	22.03.2024
8	31.03.2020	AA7053752	22.03.2024
9	30.09.2019	AA7074092	22.03.2024

*Copy of all SRN are enclosed as Annexure-A Colly.*

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

*The Petitioner Companies should be directed to providelist/ details of Assets, if any, to be transferred from theTransferor Companies to the Transferee Company uponsanctioning of the proposed Scheme.*

**Paragraph No.6 of Jt. Affidavit:**

*With reference to paragraph 2(c) of the said affidavit, the statement(s) made in the said paragraph is self-explanatory and when directed, the list /details of assets, if any, to be transferred to the Transferee Company namely upon sanctioning of the proposed Scheme will be duly provided*

**(d) Paragraph No.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 No.7 of Jt. Affidavit:**

*With reference to paragraph 2(d) of the said affidavit, save what are matters of record, I submit as follows:*

- a. *That the Petitioner Transferee Company will comply with the provision of section 232(3)(i) of the Companies Act, 2013 in regard to adjustment of fees upon clubbing of Authorised Share Capital(s) of the Transferor Company(ies) with the Authorised Share Capital of the Transferee Company in post-amalgamation.*
- b. *That the Scheme of Amalgamation provides for the same in point no 3.10 (a) 'Combination of Authorised Capital' of Part III.*

**(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 companies to it.*

**Paragraph No.8 of Jt. Affidavit:**

*With reference to paragraph 2(e) of the said affidavit, the Transferee Company will pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it pursuant to the Scheme of Amalgamation*

**(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.9 of Jt. Affidavit:**

*With reference to paragraph 2(f) of the said affidavit, I duly affirm on behalf of the Petitioner Companies that the Scheme enclosed to the Company Application and Company Petition are one and the same and there is no discrepancy or no changes 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 14/07/2023 for their views/observation in the matter. However, no such views/observation in the matter from the Income Tax Department has been received yet. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.*

**Paragraph No.10 of Jt. Affidavit:**

*With reference to paragraph 2(g) of the said affidavit, save what are matters of record, the Petitioner Company(ies) have not received any observation from the office of the Income Tax Department till the date of filing this affidavit. The petitioner company(ies) affirm that if any demand arises in future against the Transferor Company by any authority then the same shall, subject to right to appeal and in terms of the provisions of law in force, be paid by the Transferee Company, after the Scheme becoming effective.*

6. Heard submissions made by the Ld. Counsel appearing for the Petitioner, RD. 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 paragraph 1 of the petition, being Annexure "A" hereto, be and is hereby sanctioned by this Tribunal to be binding with effect from the appointed date 01-April-2022 (“**Appointed**

**Date**") on Manimaya Business Limited, ("**Transferor Company** "), with Impex Industries Limited, ("**Transferee Company**"), their respective shareholders and creditors and all concerned;

- (b) All the property, rights and powers of the Transferor Company(ies), 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 Company(ies) 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 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 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company;
- (d) 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;
- (e) 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;
- (f) Leave is granted to the Petitioner(s) to file the Schedule of Assets of the Transferor Company in the form as prescribed in the Schedule to Form No. CAA7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 60 (sixty) days from the date of receiving a copy of this order;
- (g) The Transferor Company namely Manimaya Business Limited, ("**Transferor Company** shall stand dissolved without winding up from the appointed Date.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, COURT-II

CP (CAA) No. 119/KB/2023  
Connected with  
CA (CAA) No. 78/KB/2023

- (h) The Transferor Company 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 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.
7. 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.
8. **CP (CAA) No. 119/KB/2023** is **disposed of** accordingly.
9. Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

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

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

**Signed this, on the 18<sup>th</sup> day of April, 2024**

NKS(LRA)