

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

**Company Petition (CAA) No. 201/ (KB)/2023
Connected with
Company Application (CAA) No.176 /(KB)/2023**

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

In the Matter of :

Subir Udyog 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. U65001WB1984PLC037578 and its registered office at 36 Chowringhee Road Calcutta 700071 in the State of West Bengal.

**..... Applicant Company No. 1/ Transferee Company/ Resulting
Company**

And

In the Matter of :

Auto Distributors 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. U51909WB1949PLC018202 and its registered office at 36 Chowringhee Road Kolkata 700071 in the State of West Bengal.

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

And

In the Matter of :

Anand Epoxies 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. U24132WB1980PLC033149 and its registered office at 36 Chowringhee Road Kolkata 700071 in the State of West Bengal.

..... Applicant Company No. 3/ Transferor Company No. 2

And

In the matter of:

1. Subir Udyog Limited
2. Auto Distributors Limited
3. Anand Epoxies Limited

... **Petitioner**

Date of pronouncing the order: 2/05/2024

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**
Shri. D. Arvind : **Member (Technical)**

Advocate on Record for the Petitioner(s):

Arun Kumar Mishra, Advocate
Meenakshi Manot, Advocate
And
Mr Alok Tandon, Joint Director (MCA)

ORDER

Per: D. Arvind, Member (Technical)

1. The instant petition has been filed under Section 232(3) and other applicable provisions of the Companies Act, 2013 ("**Act**") for sanction of the Composite Scheme of Amalgamation & Arrangement ("Scheme") relating (a) De-merger of Auto Division and Investment Businesses ("Demerged Undertaking") of Auto Distributors Limited being the Applicant No. 2 abovenamed ("Transferor Company No. 1"/ "Demerged Company"/ "Auto"), with and into Subir Udyog Limited being the Applicant No. 1 abovenamed ("Transferee Company"/ "Resulting Company" or "Subir") on a going-concern basis; and (b) Amalgamation of Anand Epoxies Limited being the Applicant No. 3 abovenamed ("Transferor Company No. 2" or "Anand") with Subir Udyog Limited being the Applicant No. 1 abovenamed ("Transferee Company"/ "Resulting Company" or "Subir") from the Appointed Date, viz 1st Day of April, 2022 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("**Scheme**").
(Page No. 44-80 of Petition)

2. The Petition has now come up for a final hearing. Ld Counsel for the Petitioners submits as follows:-
- (a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on 01/08/2023 respectively. **(Page No. 38-40 of Petition)**
 - (b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-
 - (c) The Statutory Auditors of respective Petitioner Companies have by their certificates dated 02/08/2023 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013. **(Page No. 345-349 of Petition)**
 - (d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioners.
 - (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 SKA Business Advisory Services Private Limited, Registered Valuer. **(Page No. 356-367 of Petition)**
 - (f) The shares of all Petitioner Companies are not listed in any Stock exchange.
 - (g) By an order dated 08/11/2023 in Company Application (CAA) No. 176/(KB)/2023, this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) :- **(Page No:- 277-282 of Petition)**

Meetings dispensed: Meetings of the Equity Shareholders, of the Petitioner No. 1, 2, 3 , was dispensed with under Section 230(1) read with Section 232(1) of the Act.
 - (h) Consequently, the Petitioners presented the instant petition for sanction of the Scheme. By an order dated 11/12/2023 the instant petition was admitted by this Tribunal and initially fixed for hearing on 19/01/2024 upon issuance of notices to the Statutory /

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Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 11/12/2023 an affidavit of compliance duly affirmed on 10/01/2024 in this regard has also been filed and the Petitioners have duly served such notices by hand delivery upon the Statutory / Sectoral Authorities:-

Sl No	Description of Statutory / Sectoral Authorities including mode	Date	Page of Affidavit of Service affirmed on 10/01/2024
1	The Regional Director, Eastern Region, Ministry of Corporate Affairs	27/12/2023	7-8
2	The Registrar of Companies, West Bengal	27/12/2023	9-10
3	The Official Liquidator, High Court, Calcutta	27/12/2023	11-12
4	DCIT, Circle -1(1)	27/12/2023	13-14
5	DCIT, Circle- 7(1)	27/12/2023	15-16
6	Income Tax Assessing Officer , Ward: 8(1)	27/12/2023	17-18
7	The Chief Commissioner of Income Tax-1	27/12/2023	19-20
8	The Chief Commissioner of Income Tax-2	27/12/2023	21-22
9	Business Standard	08/01/2024	5
10	Aajkaal	08/01/2024	6

- (i) Further, in compliance with the said order dated 11/12/2023 notice was also sent by speed post and the Petitioners have also duly served such notices on the Statutory / Sectoral Authorities:

Sl No	Description of Statutory / Sectoral Authorities including mode	Date	Page of Affidavit of Service sent through speed
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			post affirmed on 10/01/2024
1	The Regional Director, Eastern Region, Ministry of Corporate Affairs	On 27/12/2023 delivered on 28/12/2023	23-25
2	The Registrar of Companies, West Bengal	On 27/12/2023 delivered on 28/12/2023	26-28
3	The Official Liquidator, High Court, Calcutta	On 27/12/2023 delivered on 28/12/2023	29-31
4	DCIT, Circle 1-(1)	On 27/12/2023 delivered on 28/12/2023	32-34
5	DCIT, Circle -7(1)	On 27/12/2023 delivered on 28/12/2023	35-37
6	Income Tax Assessing Officer , Ward: 8(1)	On 27/12/2023 delivered on 28/12/2023	38-40
7	The Chief Commissioner of Income Tax-1	On 27/12/2023 delivered on 28/12/2023	41-43
8	The Chief Commissioner of Income Tax-2	On 27/12/2023 delivered on 28/12/2023	44-46

- (j) Further, in compliance with the said order dated 11/12/2023 notice was also sent by email and the Petitioners have also duly served such notices on the Statutory / Sectorial Authorities:

Sl N	Description of Statutory / Sectoral Authorities	Date	Page of Affidavit of Service sent
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o	including mode		through email affirmed on 10/01/2024
1	The Regional Director, Eastern Region, Ministry of Corporate Affairs	06/01/2024	48-49
2	The Registrar of Companies, West Bengal	06/01/2024	50-51
3	The Official Liquidator, High Court, Calcutta	06/01/2024	52-53
4	DCIT, Circle- 1(1)	06/01/2024	54-55
5	DCIT, Circle- 7(1)	06/01/2024	56-57
6	Income Tax Assessing Officer , Ward: 8(1)	06/01/2024	58-59
7	The Chief Commissioner of Income Tax-1	06/01/2024	60-61
8	The Chief Commissioner of Income Tax-2	06/01/2024	62-63
9	Certificate in Compliance of Section 65B of Evidence Act	06/01/2024	47

- (k) Further, in terms of the order dated 11/12/2023, notice of Petition was published in newspapers Business Standard (English Edition) on 08/01/2024 and in Aajkaal (Bengali Edition) on 08/01/2024. **(Page No. 5 & 6 of Rejoinder dated 10/01/2024)**
- (l) All statutory formalities requisite for obtaining the 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”), Official Liquidator, High Court, Calcutta have filed their representations before this Tribunal.
4. The Official Liquidator has filed his report dated 18/01/2024 and concluded interalia as under:-

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 the public interest as per the provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is applicable.

5. The RD has filed his reply affidavit dated 17th January 2024 (“**RD affidavit**”) which has been dealt with by the Petitioners. The observations of the RD and responses of the Petitioner(s) are summarized as under:-

a) **Paragraph No. 2 (a) of RD affidavit:** (a) *That it is submitted that on examination of 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, all the petitioner companies have filed their Financial Statements and Annual Returns for the financial year 31/03/2023.*

Paragraph No. 5(a) of Rejoinder: (a) With reference to paragraph 2(a) of the said reply, since the statements made in the said paragraphs are general, no comments are required to the said statements.

b) **Paragraph No. 2 (b) of RD affidavit:** (b) *The Appointed Date stated in the Scheme is 1st April 2022. In terms of the Circular no. 09/2019 dated 21.08.2019 of the Ministry of Corporate Affairs, "where the 'appointed date' is chosen as a specific calendar date, it may precede the date of 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 filing, the justification for the same 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 provided by the Applicant whether the application for the scheme was filed before Hon'ble Tribunal within a year from the said Appointed Date. If 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. 5(b) of Rejoinder: (b) With reference to paragraph 2(b) of the said reply, I say that appointed date is April 1, 2022 and it is interalia stated in the Scheme that in Part- IV clause No. 32 of the Scheme that “It is stated the Scheme of Arrangement is not against the public interest, even if the appointed date precedes the date of filing of application before appropriate authority for sanctioning of the Scheme by more than one year”. Further the Board of Director of the Petitioner Companies have approved the Scheme on or around 17th March, 2023 and thereafter immediately on receipt of all necessary documents and consent from the shareholders and creditors company application was filed.

c) **Paragraph No. 2 (c) of RD affidavit:** (c) *That the Transferor Company namely Anand Epoxies Limited, being a Public Limited Company, has not filed Form MGT-14 regarding resolution passed, if any, in respect of approval of Financial Statements and Board's Report in respect of the financial year ended 31/03/2023, 31/03/2022 and 31/03/2021 as mandated under the provisions of section 179(3)(g) of the Companies Act 2013. Once merged the Transferor Company's filing status shall be extinguished and it shall become free from filing the pending statutory documents, therefore, this deponent prays for direction to the Petitioner to file the pending documents in prescribed manner in MCA portal at earliest.*

Paragraph No. 5(c) of Rejoinder: (c).. With reference to paragraph 2(c) of the said reply, I say that inadvertently MGT-14 relating to approval of financial statement by Board of Director was not filed for the year ending 31/03/2023, 31/03/2022, 31/03/2021 as observed by the Ld Regional Director. I say that the said does not have any effect on the Scheme of Arrangement . Further, immediately, after receipt of the report/reply of Ld Regional Director's, said company Anand Epoxies Limited has filed MGT-14 for the year ending 31/03/2023, 31/03/2022, 31/03/2021 with the office of the Registrar of Companies and a copy of the challan of filing of MGT-14 for the year ending 31/03/2023, 31/03/2022, 31/03/2021 are annexed hereto and marked with **letter “A”**.

d) **Paragraph No. 2 (d) of RD affidavit:** (d) *That the Demerged Company namely Auto Distributors Limited, being a Public Limited Company, has not filed Form MGT-14 regarding resolution passed, if any, in respect of approval of Financial Statements and Board's Report in respect of the financial years ended on 31/03/2023, 31/03/2022*

and 31/03/2021 as mandated under the provisions of section 179(3)(g) of the Companies Act 2013. This deponent prays for direction to the Petitioner to file that pending documents in prescribed manner in MCA portal at earliest.

Paragraph No. 5(d) of Rejoinder: (d). With reference to paragraph 2(d) of the said reply, I say that inadvertently MGT-14 relating to approval of financial statement by Board of Director was not filed for the year ending 31/03/2023, 31/03/2022, 31/03/2021 as observed by the Ld Regional Director. I say that the said does not have any effect on the Scheme of Arrangement . Further, immediately, after receipt of the report/reply of Ld Regional Director's, said company Auto Distributors Limited has filed MGT-14 for the year ending 31/03/2023, 31/03/2022, 31/03/2021 with the office of the Registrar of Companies and a copy of the challan of filing of MGT-14 for the year ending 31/03/2023, 31/03/2022, 31/03/2021 are annexed hereto and marked with **letter "B"**.

e) **Paragraph No. 2 (e) of RD affidavit: (e)** The Petitioner Companies should be directed to provide list/details of Assets, if any, to be transferred/demerged from the Transferor Company/Demerged Company to the respective Transferee/Resulting Company upon sanctioning of the proposed Scheme.

Paragraph No. 5(e) of Rejoinder: (e). With reference to paragraph 2(e) of the said reply, I say that as the appointed date is April 1, 2022, all assets and liabilities as per the audited financial statement as on 31/03/2022 will be transferred to Transferee Company. Further, I say that the assets and liabilities of Transferor Companies and demerged undertaking to be transferred to the Transferee Company are annexed hereto and marked with **letter "C"**.

f)**Paragraph No. 2 (f) of RD affidavit: (f)** 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. 5(f) of Rejoinder: (f) With reference to para 2(f), it is stated the Scheme of Arrangement clause No. 26 of Part-III is in compliance of section 232(3)(i) of the Companies Act 2013. However, I say that the Petitioner Companies undertake to comply with Section 232(3)(i) of the Companies Act 2013.

g) Paragraph No. 2 (g) of RD affidavit: (g) That the Transferee/Resulting Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the respective Transferor/ Demerged Companies to it.

Paragraph No. 5(g) of Rejoinder: (g) With reference to para 2 (g), it is stated that the petitioners' companies undertake to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

h) Paragraph No. 2 (h) of RD affidavit: (h) 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(h) of Rejoinder: (h) With reference to para 2(h), it is stated that the Scheme enclosed in the Company Application and Company Petition are the same and there is no discrepancy and no change.

i) Paragraph No. 2 (i) of RD affidavit: (i) 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 15/12/2023 for their views/observation in the matter. The Income Tax Authority has not forwarded the report. However the same is still awaited. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.

Paragraph No. 5(i) of Rejoinder: (i). With reference to para 2(i), it is stated that the petitioner companies have also sent the notice of the Scheme two times in three different modes to the respective income tax assessing officer and have received no communication. However, the Petitioner Companies undertakes that even after the sanction of the scheme, the Transferee Company will be liable for all liabilities of the Transferor Companies. I further say that proceedings if any initiated by the Income Tax Department against the Transferor Companies can be initiated after sanction of the Scheme against the Transferee Company.

Paragraph No. 5(j) of Rejoinder: I further say and submit that the petitioner companies undertake that if there are any deficiencies found, or violations committed relating to any enactment, statutory

rules or regulations, the sanction granted by the Hon'ble Tribunal to the scheme will not come in the way of action being taken in accordance with law as applicable including recovery of income tax demand in accordance with applicable provisions of Income Tax Act.

6. After hearing submissions made by the Ld Counsel appearing for the Petitioners, it is ordered that in case of any default including any Provisions of Income Tax Act in this respect of the Transferor Companies the Income Tax department , the ROC, West Bengal, Reserve Bank of India and all other Statutory Department 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 responsible for the liabilities/non-compliance of the Transferor Companies also.
7. Further, heard submissions made by the Ld Counsel appearing for the Petitioner, Joint Director for and on behalf of RD, who appeared and were heard. 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 Composite of Scheme of Arrangement 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 1st April, 2022 ("Appointed Date") on Transferor Companies including Transferor Company No. 2, Demerged Company and Transferee Company/Resulting Company, their respective shareholders and creditors and all concerned;
 - b) all the property, rights and powers of the Auto Division and Investment Businesses (Demerged Undertaking) of Auto Distributors Limited (Transferor Company No. 1/or Demerged Company/or Auto), 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/ Resulting 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/ Resulting Company for all the estate and interest of the Demerged Undertaking of Demerged Company 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 Demerged Undertaking of Demerged Company be transferred from the said Appointed Date, without further act or deed to the Transferee Company/ Resulting 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/ Resulting Company;
- d) the employees of the Demerged Undertaking of Demerged Company shall be engaged by the Transferee Company/ Resulting Company, as provided in the Scheme;
- e) all proceedings and/or suits and/or appeals now pending by or against the Demerged Undertaking of Demerged Company be continued by or against the Transferee Company/ Resulting Company, as provided in the Scheme;
- f) all the property, rights and powers of the Anand Epoxies Limited (Transferor Company No. 2 /or Anand) (relating to Amalgamation) , 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 No. 2 therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme;
- g) all the debts, liabilities, duties and obligations of the Transferor Company No. 2 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;
- h) the employees of the Transferor Company No. 2 shall be engaged by the Transferee Company, as provided in the Scheme;
- i) all proceedings and/or suits and/or appeals now pending by or against the Transferor Company No. 2 be continued by or against the Transferee Company, as provided in the Scheme;
- j) The Transferee Company do without further application issue and allot to the shareholders of the Transferor Company No. 2, the

shares in the Transferee Company to which they are entitled in terms of the Scheme;

- k) The Transferee Company/ Resulting Company do without further application issue and allot to the shareholders of the Demerged Company, the shares in the Transferee Company/ Resulting Company to which they are entitled in terms of the Scheme;
 - l) leave is granted to the Petitioners to file the Schedule of assets and liabilities of the Transferor Company No. 2, Demerged Undertaking of Demerged Company in the form as prescribed in the Schedule to Form No.CAA7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within four weeks from the date of receiving a copy of this order;
 - m) That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
 - n) The Transferor Company No. 2, Demerged Company and the Transferee Company /Resulting 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 No. 2 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 No. 2, Demerged Undertaking of Demerged 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 including Demerged Undertaking of Demerged Company shall be consolidated accordingly.
8. The Petitioners 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.
9. **Company Petition (CAA) No. 201/KB/2023 is disposed of** accordingly.

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10. Urgent certified copy of this order, if applied be supplied to the parties, subject to compliance with all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Order dated 2.05.2024

NKS(LRA)