

**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

CA (CAA) No. 4/CB/2024

In the matter of:

The Companies Act, 2013;

-AND-

In the matter of:

An application under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013;

-AND-

In the matter of:

The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

-AND-

In the Matter of:

Lalchnd Gem & Jeweller Private Limited (CIN: U52393OR2015PTC019209) a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 1, Lalchand Market Complex Station Square Bhubaneswar 751 001 in the state of Odisha.

... Applicant

Order pronounced on 29.04.2024

Coram:

Shri P. Mohan Raj
Shri Kaushalendra Kumar Singh

Hon'ble Member (Judicial)
Hon'ble Member (Technical)

Counsels on Record for the Applicant (through hybrid mode)

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|----|-----------------------------|--|-------------------|
| 1. | Saroj Kumar Ray, PCS | | |
| 2. | Mr. Shaswat Kumar Rout, Adv | | For the Applicant |

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ORDER

1. 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 directions with regard to the proposed Scheme of Amalgamation of Lalchnd Gem & Jeweller Private Limited, being the Applicant Company (“Transferor Company”) with Lalchnd Jewellers Private Limited (“Transferee Company”), whereby and whereunder the Transferor Company is proposed to be amalgamated with the Transferee Company and the entire Undertaking of the Transferor Company is proposed to be transferred to the Transferee Company from the Appointed Date, viz., 1st April, 2023, in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”), a copy whereof has been annexed to the Company Application and marked as **Annexure “A-1”**.
2. The Board of Directors of the Transferor Company and the Transferee Company has resolved and approved the said Scheme of Amalgamation by Board Resolutions dated March 31, 2023, copies whereof have been annexed to Company Application and marked **Annexure “A-10”**.
3. The Transferor Company is a wholly owned subsidiary of the Transferee Company and is engaged in the business of trading of bullion, diamonds, gold and silver jewelry and luxury watches.
4. The Authorised Share Capital of the Transferor Company as on 31st March, 2023 was Rs.6,00,00,000/- (Rupees Six Crore only) divided into 60,00,000 Equity Shares of Rs. 10/- (Rupees Ten only) each. The Issued, Subscribed and Paid-up Share Capital of the Transferor Company as on 31st March 2023 was Rs.5,72,68,800/- (Rupees Five Crore Seventy-Two Lakh Sixty-Eight Thousand Eight Hundred only) divided into 57,26,880 Equity Shares of Rs. 10/- each fully paid up.
5. The Transferee Company is engaged in the business of trading of bullion, diamonds, gold and silver jewelry and luxury watches.

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6. The Authorised Share Capital of the Transferee Company as on 31st March, 2023 was Rs.3,00,00,000/- (Rupees Three Crore only) divided into 30,00,000 Equity Shares of Rs.10/- (Rupees Ten only) each. The Issued, Subscribed and Paid-up Share Capital of the Transferee Company as on 31st March, 2023 was. 2,61,47,590/- (Rupees Two Crore Sixty-One Lakh Forty-Seven Thousand Five Hundred Ninety only) divided into 26,14,759 Equity Shares of Rs. 10/- each fully paid up. On 25th January 2024, the authorized capital of the Company was enhanced to Rs.30,00,00,000/- (Rupees Thirty Crore only) divided into 3,00,00,000 (Three Crore) Equity Shares of Rs.10/- (Rupees Ten only) each.
7. In as much as the Transferor Company is a wholly owned subsidiary of the Transferee Company, the entire shares held by the Transferee Company in the share capital of the Transferor Company will be cancelled and no shares will be issued by the Transferee Company under the Scheme.
8. It is stated in the application that the Statutory Auditors of the Transferee Company, Messrs. PAMS and Associates, Chartered Accountants have confirmed that the accounting treatment contained in the Scheme is in compliance with applicable Accounting Standards specified under Section 133 of the Companies Act, 2013 and other generally accepted accounting principles. A copy of the said certificate has been annexed with the Application as **Annexure "A-11"**.
9. It has been stated in the Application that there are no legal proceedings for inspection, inquiry, or investigation under the provisions of the Companies Act 2013 pending against it.
10. It is also stated in the application that the Transferor Company is a wholly owned subsidiary of the Transferee Company. The entire equity shares of the Transferor Company is held by the Transferee Company and/or its nominees.
11. It is submitted that the Scheme does not involve any compromise or arrangement whatsoever between the Transferee Company and its shareholders or creditors or any other class of persons within the meaning of

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Sections 230 or 232 of the Companies Act, 2013. The Transferor Company/Applicant Company is a wholly owned (100%) subsidiary of the Transferee Company itself and no shares whatsoever are to be issued by the Transferee Company under the Scheme. The Scheme does not involve any reorganization or restructuring of the capital of the Transferee Company. Further, the aggregate assets of the Transferor Company and the Transferee Company will be more than sufficient to meet their liabilities and as such, the rights of shareholders or creditors of the Transferee Company will not be affected by the Scheme. In this regard, the applicant has annexed the combined net worth certificate issued by Messrs. PAMS and Associates, Chartered Accountants annexed with the Application as **Annexure "A-18**.

12. It is also submitted that no new shares are being issued by the Applicant Company and the scheme would not result in dilution of the shareholding of the Applicant Company. The Learned Counsel for the Transferor Applicant Company has relied upon the judgment of the Hon'ble Bombay High Court in the matter of '*Mahaamba Investment Limited v/s. IDI Limited (2001) 105 Company Cases*, inter-alia, observed and held that if the Scheme of Amalgamation provides for no issue of equity shares to the members of the transferor company, being a wholly owned subsidiary of the transferee company and the creditors of the transferee Company are not likely to be affected by the Scheme in view of the financial position of the transferee Company, a separate Petition by the transferee company was not necessary. The said observations are squarely applicable to the proposed Scheme of Amalgamation of the transferor company with the transferee Company, as the transferor company is directly or indirectly wholly owned subsidiary of the transferee company. Similar views have also been taken by various coordinate Benches. In this regard reference may be made to Order dated **9th December 2020** passed by National Company Law Board, Kolkata Bench in Company Application No (CAA) 1158/KB/2020 (In re: *Sunrise Foods Pvt. Ltd.*), Order dated **21st May, 2021** passed by National Company

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Law Board, Kolkata Bench in Company Application *No.124/KB/2021* (In re: *Majhulia Sugar Industries Ltd*), Order dated **12th January, 2023** passed by National Company Law Board, Kolkata Bench in Company Application (CAA) *No.164/KB/2022* (In re: *S&T Mining Company Limited*), Order dated **18th April, 2023** passed by National Company Tribunal, Cuttack Bench in *CA(CAA) no.2 of 2023* (in re: *Tata Steel Mining and Tata Steel Limited*) and), Order dated **9th May, 2023** passed by National Company Tribunal, Cuttack Bench in *CA(CAA) no.8 of 2023* (in re: *Patnaik Steels and Alloys Limited and MGM Minerals*). Reliance was also placed on a judgment passed by Hon'ble National Company Law Appellate Tribunal, in the matter of *Ambuja Cements Limited [Company Appeal (AT) No. 19 of 2021]* to argue that even filing of a separate petition by the Transferee Company is not necessary in such a case. In view of the above, it is directed that no application or proceedings for sanction of the Scheme under Sections 230 and 232 of Companies Act, 2013 are required to be taken by the Transferee Company.

13. It is submitted by the Ld. counsel appearing for the Applicant Company/ Transferor Company that the Applicant Company has the following classes of shareholders and creditors: -

SL. No.	PARTICULARS	AS ON DECEMBER 31, 2023		
		EQUITY SHAREHOLDERS	SECURED CREDITOR	UNSECURED CREDITOR
1	Lalchnd Gem & Jeweller Pvt Ltd (Applicant / Transferor Company)	1 with two nominee shareholders	4	43
		Consent – 100%	Consent – 100%	Consent – 91.98% in value

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14. It is further submitted that 100% of the Equity Shareholders of the Applicant Company have already given their consent to the Scheme by way of affidavits which are annexed to the Company Application as **Annexure A-15**.
15. It is further submitted that 100% of the Secured Creditors of the Applicant Company have already given their consent to the Scheme by way of affidavits which are annexed to the Company Application as **Annexure A-16**.
16. It is further submitted that 91.98% in value of Unsecured Creditors of the Applicant Company have already given their consent to the Scheme by way of affidavit which is annexed to the Company Application as **Annexure A-17**.
17. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicant Company, we allow the instant application and make the following **ORDERS**: -
 - A. The meeting of Equity Shareholders of the Applicant Transferor Company for considering the Scheme is dispensed with in view of all shareholders of Applicant Company having respectively given their consent to the Scheme by way of affidavits.
 - B. The meeting of Secured Creditors of the Applicant Company for considering the Scheme are dispensed with in view of all secured creditors of Applicant Company having respectively given their consent to the Scheme by way of affidavits.
 - C. Meeting of Unsecured Creditors of the Applicant Company for considering the Scheme are dispensed with in view of consent by 91.98% in value of Unsecured creditors of the Applicant Company having given its consent to the Scheme by way of affidavit.
 - D. Notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, along with a copy of the aforesaid Scheme under the provisions of the Companies Act, 2013, shall also be served upon:
 - a. Central Government (through Regional Director, Eastern Region, Ministry of Corporate Affairs);

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- b. Registrar of Companies, Cuttack, Odisha;
 - c. Official Liquidator having jurisdiction over the Transferor Company/Applicant Company; and
 - d. Income Tax Authorities having jurisdiction over the Transferor Company/Applicant Company.

These notices shall be sent **by hand delivery through special messenger or by speed post or by email**. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Counsels of the Applicant Company. 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.

- E. The Applicant Company shall file an affidavit proving service of notices compliance of all directions contained herein.
18. As regards the transferee company, it has been submitted that the creditors of transferee company are not likely to be affected by the scheme in view of the positive networth of transferee company. In the context we have noted the various case laws as relied upon by the applicant and stated hereinabove in para 12 and hold that a separate petition by the transferee company is not necessary in this matter also. Nevertheless, we are of the view that the creditors of the transferee company also need to be informed about the proposed scheme of amalgamation. We also note that the representation of the Income Tax Department onto the proposed amalgamation is required in respect of transferor and transferee company both. The Assessing Officers having jurisdiction over the transferor and transferee company may not be the same. As regards applicant transferor company, we have already directed



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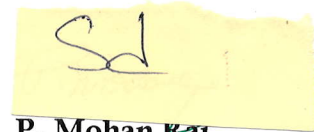
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hereinabove to the applicant to serve a copy of the aforesaid scheme upon the Income Tax authorities having jurisdiction over the transferor company. But this also will have to be done as regards transferee company. Accordingly we direct that a publication should be made in the newspapers with a view to intimate the creditors of transferee company also about the scheme of amalgamation. Not only that the creditors of transferee company should be made available a copy of the proposed scheme of amalgamation. This would give opportunity to the creditors (having outstanding debt amounting not less than 5% of total outstanding debt) at the stage of hearing of the matter for approval of the scheme. We also direct that a copy of the notice under Section 230(5) of the Companies Act, 2013 alongwith all accompany dcouments and a copy of the aforesaid scheme shall also be served upon the Income Tax authorities having jurisdiction over the transferee company also, in the manner as stated hereinabove in para 17 for their representation, if any, before this Tribunal within 30 days from the date of receipt of notice.

19. **Company Application (CAA) No. 4/CB/2024** is disposed of accordingly.
20. Urgent certified copies of this order, if applied for may be supplied to the parties upon compliance of all the requisite formalities.



Kaushalendra Kumar Singh
Member (Technical)



P. Mohan Raj.
Member (Judicial)

Signed on this the 29th day of April 2024

Kaushal_P.S.