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IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
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CP (CAA) No. 08/CB/2022  
Connected with  
CA (CAA) No. 05/CB/2021

**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**

**Manisha Agro Industries Private Limited**, a Company within the meaning of the Companies Act, 2013 and having its Registered Office at Railway Station Road, Bargarh 768028, India;

**And**

**Kansal Cement Private Limited**, a Company within the meaning of the Companies Act, 2013 and having its Registered Office at Main Road, Bargarh-768028, India;

**And**

**Good Earth Infra Solutions Private Limited**, a Company within the meaning of the Companies Act, 2013 and having its Registered Office at Ambapali, Bargarh-768028, India;

**And**

**Balgopal Food Products Private Limited**, a Company within the meaning of the Companies Act, 2013 and having its Registered Office at NH-6, Chakarkend, Bargarh-768028, Orissa, India;

**And**

1. **Manisha Agro Industries Private Limited**

...Applicant/Transferor Company No.1

2. **Kansal Cement Private Limited**

...Applicant/Transferor Company No.2

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**3. Good Earth Infra Solutions Private Limited**

... Applicant/ Transferor Company No.3

**4. Balgopal Food Products Private Limited**

... Applicant/ Transferee Company

**Order pronounced on: 30.04.2024**

**Coram:**

Shri P. Mohan Raj  
Shri Kaushalendra Kumar Singh

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

***Appearances (Through Video Conference)***

For the Applicant

Mr. Rahul Agarwal, PCS

For the Registrar of Companies, Odisha

Mr. Ujjwal Kumar, CP

**ORDER**

1) This is a joint petition for sanctioning of the Scheme of Amalgamation of Manisha Agro Industries Private Limited, Kansal Cement Private Limited and Good Earth Infra Solutions Private Limited (hereinafter referred to as the "Transferor Companies") with Balgopal Food Products Private Limited (hereinafter referred to as the "Transferee Company") under section 230 -232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. Copy of the Scheme has been attached herewith hereto and marked as "**Annexure A**".

2) The object of this petition is to obtain the approval of the Hon'ble Tribunal for sanctioning the Scheme of Amalgamation of the applicant companies namely Manisha Agro Industries Private Limited, Kansal Cement Private Limited and Good Earth Infra Solutions Private Limited (hereinafter referred to as the "Transferor Companies") with Balgopal Food Products Private Limited (hereinafter referred to as the "Transferee Company") wherein all the assets, properties, rights and claims whatsoever of the Transferor and their entire undertaking together with all their rights

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and obligations relating thereto are proposed to be transferred to and vested in the Transferee Company and on the terms and conditions fully stated in the Scheme of Amalgamation, which has been annexed with the petition.

3) By an Order passed by the Tribunal in CA (CAA) No. 05/CB/2021 on 03<sup>rd</sup> August, 2021, wherein the meetings of the Equity Shareholders (All Transferor Companies and Transferee Company) and creditors (Secured Creditor of Transferee Company and Secured and Unsecured Creditors of all transferor companies) were dispensed with in view of the receipt of the consent letters along with the affidavits for the approval of the scheme of arrangement or there being none.

4) By an Order passed by the Tribunal in CA (CAA) No. 05/CB/2021 on 03<sup>rd</sup> August, 2021, meeting of unsecured creditors of Transferee company was held on 27<sup>th</sup> September, 2021.

5) In compliance with the order dated 03<sup>rd</sup> August, 2021 passed by the Hon'ble Tribunal in (CAA) No. 05/CB/2021, the petitioners: -

- Made a joint paper publication in accordance with Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, in two newspapers on 24.08.2021 in 'Business Standard' and on 25.08.2021 in 'Pratidin'.
- notice has been served via E-mail pursuant to the provisions of Section 230 (3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 to the Unsecured Creditors of Transferee Company on 25.08.2021.
- served notices to the Central Government through Regional Director, Registrar of Companies and other sectoral Regulatory Authorities via E-mail on 25.08.2021.
- served notices to the Central Government through Regional Director, Registrar of Companies and other sectoral Regulatory Authorities via speed post on 26.08.2021.

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- filed affidavit of compliance to Hon'ble Tribunal via E-filing on 08.09.2021.
  - filed Chairman's Report of the meeting held on 27.09.2021 to Hon'ble Tribunal via E-filing on 20.10.2021.
- 6) By an Order passed by the Tribunal in CP (CAA) No. 08/CB/2022 on 06<sup>th</sup> May, 2022, the petitioner companies were further directed to advertise the Notice of hearing of petition in Form NCLT 3A and to service the Notice of hearing of petition to all the sectoral Regulatory Authorities via E-mail and Speed Post for the purpose of considering and approving the scheme of amalgamation.
- 7) It appears from the record that joint publication in form NCLT 3A was made in the newspapers English daily, "Business Standard" on 24<sup>th</sup> May, 2022 and in vernacular language, "Pratidin" on 26<sup>th</sup> May, 2022.
- 8) It appears from the record that the Petitioners served notices along with all other documents including the copy of the Scheme of Amalgamation and the statement disclosing necessary details via speed post and E-mail to the Central Government through Regional Director (Eastern Region, Ministry of Corporate Affairs, Kolkata), Registrar of Companies cum Official Liquidator (Odisha) and other sectoral Regulatory Authorities.
- 9) In compliance of the aforesaid Order an affidavit on behalf of the Petitioners encompassing original advertisement copy, speed post receipts and copies of E-mail sent to the necessary statutory authorities was submitted to the Adjudicating Authority on 02<sup>nd</sup> June, 2022.
- 10) Petitioners further submitted that sanctioning of the scheme of arrangement will be for the benefit of the company and no one will be prejudiced for such sanction.
- 11) The Regional Director, Eastern Region, Ministry of Corporate Affairs has made certain representations/observations in respect of this petition which was duly complied upon by the applicant companies and consequently Registrar of Companies, Odisha has not objected to the same and given their consent.

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12) No other statutory authorities had made any representations/observations in respect of this petition.

13) Supreme Court **Miheer H. Mafatlal vs Mafatlal Industries Ltd JT 1996 (8) 205** while considering the scope of the jurisdiction of the Company Court in respect of matters of sanction of the scheme of Amalgamation as per the provisions of section 391 read with section 393 of the Companies Act, 1956, observed as under:

*“It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court certainly would not act as a court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the scheme by the requisite majority. Consequently, the Company Court’s jurisdiction to that extent is peripheral and supervisory and not appellate.”*

In view of the law laid down by the Supreme Court, this Tribunal is not supposed to examine the merits/benefits of the commercial wisdom of the decision of the shareholders etc.

14) Heard the arguments of Ld. Counsel for the Petitioners. In view of the facts stated above and in the absence of any objection and since all requisite compliance has been fulfilled, We are of the considered view that the proposed Scheme is bona fide and in the interest of the shareholders and creditors. Further it is declared that the said sanctioned scheme shall be binding on the petitioner demerged company and their shareholders, creditors and all concerned under the scheme.

15) Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule, or regulation, the sanction granted by this Tribunal to the scheme will not come in the way of action being taken, albeit, in

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accordance with law, against the concerned persons, directors and officials of the petitioner.

16) While approving the Scheme as above, we further clarify that this order should not be construed as an order in granting any exemption from payment of stamp duty, taxes including income tax, GST etc. or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.

17) The Income Tax Department will be free to examine the aspect of any tax payable as a result of the sanction of the Scheme and if it is found that the Scheme of Arrangement ultimately results in tax avoidance or is not in accordance with the applicable provisions of Income Tax Act, then the Income Tax Department shall be at liberty to initiate appropriate course of action in accordance with the law. Any sanction of the Scheme of Arrangement under section 230-232 of the Companies Act, 2013 shall not adversely affect the rights of the Income Tax Department or any past, present or future proceedings and the sanction of the Scheme shall not come in its way for the appropriate course of action as per law for the tax liabilities, if any.

18) As a result, the Company Petition is allowed and we order as under:

a. The Revised Scheme of Amalgamation as filed through Supplementary Affidavit via e-filing dated 21.03.2024 is sanctioned with effect from **1<sup>st</sup> April 2023**.

b. All properties, rights and interests of the Transferor Companies be transferred to and be vested without further act or deed in the Transferee Company pursuant to Section 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

c. All the liabilities and duties of the Transferor Companies be transferred without further act or deed in the Transferee Company pursuant to Section 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

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d. That all the proceedings and/or suit appeals now pending by or against Transferor Companies shall be continued by or against Transferee Company.

e. The Transferee Company do issue and allot shares to the shareholders of Transferor Companies as envisaged in the said Scheme of Amalgamation and for that, if necessary, to increase the authorized share capital.

f. The Transferor Company shall stand dissolved from the appointed date.

g. The petitioner companies within thirty days of the date of receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration, and on such certified copy being so delivered, the entire undertaking of the transferor company shall stand transferred to the transferee company and the Registrar of Companies shall place all documents relating to the transferor company to the file kept by him in relation to the transferee company and the files relating to the said companies shall be treated accordingly.

h. The petitioner companies are further directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-form INC-28 in addition to a physical copy within 30 days from the date of issuance of the certified copy of the Order by the Registry as per relevant provisions of the Act.

i. All concerned Authorities to act on a copy of this order along with the Scheme authenticated by the Registrar of this Tribunal, and the Registrar shall issue the certified copy of this order along with the Scheme immediately.

j. The petitioner companies are directed to lodge a copy of this Order and the approved Scheme and Schedule of Assets of the transferor companies attached as **Annexure-B** with this order, duly authenticated by the Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, if any, within 60 days from the date of the Order.

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k. Any person aggrieved shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

19) The Company Petition No. CP (CAA) No. 08/CB/2022 connected with CA (CAA) No. 05/CB/2021 is disposed of accordingly and urgent Certified True Copy of the Order, if applied for, to be given to the Applicant Companies for filing the same with Registrar of Companies, Odisha within 30 days of receipt of Certified True Copy of this Order.

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**Kaushalendra Kumar Singh**  
Member (Technical)

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**P. Mohan Raj**  
Member (Judicial)

*Signed on this 30<sup>th</sup> day of April, 2024.*

*Kaushal p.s.*