

THE NATIONAL COMPANY LAW TRIBUNAL,
COURT – I, MUMBAI BENCH

CP (CAA)24/MB/2024

C/W

CA(CAA)/130/MB/2023

In the matter of

The Companies Act, 2013 (18 of 2013);

AND

*In the matter of Sections 232 r/w 230
and other applicable provisions of the
Companies Act, 2013 and Rules framed
thereunder as in force from time to time;*

AND

In the matter of

Scheme of Amalgamation

Begonia Ventures Private Limited

CIN: U74110MH2014PTC255343

...Petitioner No.1/

Transferor Company

Business Match Services (India)

Private Limited

CIN: U74999MH1992PTC066170

...Petitioner No.2/

Transferee Company

Order delivered on 24.04.2024

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)

Hon'ble Member (Judicial)

Appearances

For the Petitioner(s) : CS Kamal Lahoty a/w CA Jay

Mehta i/b M/s A. T. Jain & Co,
Practicing Chartered Accountants
for the Petitioners.

ORDER

Per: CORAM

1. Heard the learned Authorized Representative for the Petitioner Companies and the representative of the Regional Director Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition, except otherwise stated.
2. The sanction of the Tribunal is sought under Sections 232 r/w Section 230 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, to the Scheme of Amalgamation of **Begonia Ventures Private Limited** (Transferor Company) with **Business Match Services (India) Private Limited** (Transferee Company) and their respective shareholders.
3. The Board of Directors of the Petitioner Companies have approved the Scheme at the respective Board Meetings held on 30th day of January, 2023 and have approached the Tribunal for sanction of the Scheme. The Appointed Date of the Scheme of Amalgamation is 1st day of April, 2022.
4. The Company Petition has been filed in consonance with the Order passed in the C.A.(CAA)130/MB/2023 of the Tribunal on

19.12.2023 and the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench.

5. That upon the coming into effect of this Scheme and in consideration of the transfer and vesting of the Transferor Company in the Transferee Company, the shareholders of Transferor Companies would be allotted the shares of the Transferee Company in the below mentioned ratio:

“34 (Thirty-Four) Equity Shares of Rs. 10/- each of the Transferee Company, for every 100 (One Hundred) Equity Shares of Rs.10 each fully paid-up, held by such shareholder in the capital of the Transferor Company”

6. The Transferor Company is engaged in real estate, tourism and hospitality business and the Transferee Company is engaged in the trading business.
7. The amalgamation of the Transferor Company with the Transferee Company shall be in the interest of all concerned stakeholders, including shareholders, creditors, employees, and general public, inter alia, for the following reasons:
- a. Consolidation of the Transferor Company and Transferee Company by way of amalgamation would lead to a more efficient utilization of resources and reduce administrative time

and costs of managing multiple entities.

- b. Greater efficiency in cash management of the amalgamated entity and unfettered access to cash flow which can be deployed more efficiently to fund growth opportunities.
 - c. The Scheme is expected to enable pooling of resources of the Transferor Company and the Transferee Company resulting in more productive utilization of the said resources and cost and operational efficiencies which would be beneficial for all stakeholders.
 - d. Benefit of operational synergies to the combined entity and greater leverage in operations, planning and process optimization.
 - e. Cost savings are expected to flow from more focused rationalization and standardization of administrative expenses.
 - f. The Transferee Company intends to expand its existing business by entering into the business of real estate, tourism and hospitality.
 - g. There is no adverse impact of the Scheme on the directors, key managerial personnel, promoters, non-promoters, shareholders, creditors, vendors and employees of the Transferor Company and the Transferee Company. The Scheme would be in the best interest of the Stakeholders.
8. The Regional Director has filed his Report dated 01.03.2024 making certain observations and the Petitioner Companies have

undertaken/made following submission that :

- a. The Petitioner Transferor company has filed its financial statements upto 31.03.2023 on 15th February, 2024 through ROC Form AOC-4 bearing SRN F92237270 and ROC Form AOC-4 CFS bearing SRN F92261080;
- b. The petitioner companies shall comply with the provisions of Section 92, 96 and 137 of the Companies Act, 2013;
- c. The petitioner companies has already filed audited financial statements upto 31.03.2023 with ROC. Further, the First Motion Application was filed on 30/03/2023 and accordingly the provisional financials as filed for period ended 31.12.2022 were not older than 6 months as per section 232 and therefore there is no additional requirement under the Companies Act, 2013 to submit provisional statement of accounts as on 31.12.2023.
- d. The interest of the creditors will be protected;
- e. The fee, if any, will be paid in compliance with the provisions of Section 232(3)(i) of the Companies Act, 2013;
- f. The Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy nor any changes have been made;
- g. The sanctioning of the scheme will not deter the right of the authorities from dealing with any of the issues arising after giving effect to the scheme and the decision of the authorities will be binding on Petitioner Companies, subject to right of appeal available to the Petitioner Companies under applicable laws;
- h. The Transferee Company will comply with Income Tax

Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company.’

9. Mr. Tushar Wagh, Deputy Director, Office of Regional Director (WR), Mumbai appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.
10. The Official Liquidator has filed his report dated 21st March, 2024, the Petitioner Companies in Rejoinder dated 21.03.2024 have submitted that;
- i. The Transferor Company does not have any intention to conduct any NBFC activities and has therefore not taken registration u/s 45-IA of the Reserve Bank of India Act, 1934. Further, on merger with the Transferee Company, the Petitioner companies will no longer be required to obtain registration u/s 45-IA of the Reserve Bank of India Act, 1934.
 - ii. As per the provisional financials dated 31.12.2022 attached as Exhibit-D1 (page 169) of the Company Petition, the Transferor Company has a positive net worth of Rs. 2,21,86,932/-. Further, even if any Company having negative net worth doesn't imply that the company may not be able to continue as a going concern.
 - iii. The Transferor Company does not have any director named “Ramesh Kumar Karnal” nor it has taken any loan of Rs. 1,00,00,000/- by such person. Therefore, the observation in paragraph 6 of the report is factually incorrect.

11. We have perused the submissions made by the Petitioner Companies in the rejoinder filed by the Petitioner Company and have feel that the observations made by the Regional Director and Official Liquidator have been properly explained addressing the issues raised by them.
12. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. Since all the requisite statutory compliances have been fulfilled, the said Company Scheme Petition is made absolute in terms of the prayer Clauses 25 (a) to 25 (f) thereof.
13. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this Scheme and it shall be open to the Income Tax Authorities to take necessary action to deal with, in relation to tax or any other kind of obligations of Transferor Company against the Transferee Company, as permissible under the Income Tax Laws.
14. The Scheme is hereby sanctioned with the Appointed Date fixed as the opening business hours of 1st August 2023.
15. The First Petitioner Company be dissolved without winding up.
16. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically in E-form INC 28 within 30 days from the date of receipt of the certified copy of this Order by the

Petitioner Companies.

17. The Petitioner Companies to lodge a copy of this Order along with the Scheme duly authenticated/certified by the Deputy Registrar/ Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the certified order from the Registry of this Tribunal.
18. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly certified by the Deputy Registrar or the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.
19. Ordered accordingly. File to be consigned to records.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)