

**THE NATIONAL COMPANY LAW TRIBUNAL
BENCH, AT MUMBAI**

C.P.(CAA)/28(MB)/2024

IN

C.A.(CAA)/230(MB)/2023

In the matter of

The Companies Act, 2013 (18 of 2013);

And

In the matter of

Sections 232 r/w Section 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

Amongst

Parkinson-San Systems Private Limited

CIN: U31904MH2019PTC319375 ...Petitioner Company 1/

Transferor Company 1

Rayyi Dhoot Technologies Private Limited

CIN: U31900PN2019PTC184845 ...Petitioner Company 2/

Transferor Company 2

Burge Electronics Private Limited

CIN: U34202MH2020PTC347291 ...Petitioner Company 3/

Transferor Company 2

Dhoot Transmission Private Limited

CIN: U31300PN1998PTC131629

...Petitioner Company 4/

Transferee Company

Order delivered on 04.07.2024

Coram:

Shri Prabhat Kumar

Justice V.G. Bisht (Retd.)

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances (through)

For the Applicants

: Mr. Melvyn Fernandes &
Ms. Supriya Majumdar
with Mr. Ibrahim Shaikh,
Advocates

For the Regional Director

: Mr. Bhagwati Prasad,
Deputy Director, Western
Region, Mumbai

For the Income Tax Department

: Ms. Prachi Wazalwar,
Advocate

ORDER

1. Heard learned Counsel for Petitioner Companies as well as the Authorized Representative for the Regional Director, Western Region, Mumbai. No objection has come before this Tribunal to oppose the Scheme and nor has any party controverted any

averments made in the Petitions, except otherwise stated hereunder.

2. The present scheme is a scheme of amalgamation sought under Sections 232 r/w Section 230 of the Companies Act, 2013 and other Applicable provisions of the Companies Act, 2013 to a Scheme of Amalgamation amongst **Parkinson-San Systems Private Limited**, (Transferor Company 1) and **Rayyi Dhoot Technologies Private Limited** (Transferor Company 2) and **Burge Electronics Private Limited** (Transferor Company 3) with **Dhoot Transmission Private Limited**, (Transferee Company) and their respective Shareholders (“**Scheme**”).
3. The Counsel for the Petitioner Companies further submits that Board of Directors of the Petitioner Companies in their meetings held on 27th June, 2023 have approved the Scheme. The Appointed Date for the Scheme is 01st April, 2023.
4. The rational of the Scheme are as under:
 - a. The Transferor Companies are direct/indirect wholly owned subsidiaries of the Transferee Company and accordingly, to leverage the existing strength and capabilities of group entities, to enable consolidation of business activities under 1 (one) combined entity, to have optimized legal structure of the group with elimination of multiple legal entities, it is proposed to amalgamate the

above Transferor Companies with their existing business activities into the Transferee Company.

- b. With the proposed amalgamation, the amalgamated entity/combined entity, i.e., the Transferee Company will be able to combine infrastructural facilities and other assets such as space, plant & machinery, inventories etc., and optimally utilize the same and house substantial manufacturing in a single combined entity, thus, unlocking growth potential.
- c. On amalgamation, the combined entity would have improved financial health and better ability to raise finances with a larger asset base and customer network to boost its future growth as well as maximize value for its shareholders.
- d. The proposed amalgamation would result in significant reduction in multiplicity/ repetition of legal and regulatory compliances currently being undertaken, multiple record-keeping currently being maintained and cost saving by way of reduction of overheads, administrative, managerial and other expenditure.
- e. The amalgamation would result in improved competitive position of the Transferee Company as a combined entity and achieve economies of scale and greater synergies.

5. Consideration for under the scheme is as under:-

“Since, the Transferor Companies are direct or indirect wholly owned subsidiaries of the Transferee Company, accordingly, upon the Scheme becoming effective, all the equity shares as held by the Transferee Company (directly or indirectly) in the Transferor Companies either by itself or through its subsidiaries / nominees shall stand cancelled and extinguished. Therefore, there will be no issue and allotment of shares as consideration by the Transferee Company to the shareholders of the Transferor Companies upon coming into effect of this Scheme. The investments in the shares of the Transferor Company 1 and Transferor Company 2 appearing in the books of account of Transferee Company and the investments in the shares of Transferor Company 3 appearing in the books of account of Transferor Company 2 shall, without any further act or deed, stand cancelled.”

6. The Petitioners companies stated that they have complied with all requirements as per directions of this Tribunal in the company scheme application i.e. CA (CAA)230/2023 vide order dated 19.12.2023 and they have filed necessary Affidavits of compliance with this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.

7. The Regional Director has filed his Report dated 21.03.2024 making certain observations and the Petitioner Companies have undertaken/made following submission that :
- a. The Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable accounting standards such as AS-5 (IND AS-8) etc;
 - b. The Petitioner Companies shall comply with the requirements as clarified vide circular no. F. NO. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs (MCA);
 - c. The Petitioner Companies shall comply with the provisions of section 232(3)(i) of the Companies Act, 2013;
 - d. The Petitioner Companies shall comply with the provisions of Section 2(1B) of the Income Tax, 1961 and all other applicable provisions of Income Tax Act, 1961 and Rules thereunder;
 - e. The Transferor Companies states that they have filed the Form BEN-2 with the Registrar of Companies and have complied with the applicable provisions of the Companies Act, 2013;

- f. The Transferee hereby submits that the securities premium amount has been credited in the books of account of the Transferee Company on account of issue of additional shares during the Financial Years 2010-2011, 2011-12, 2012-13 and 2014-15. The Income tax scrutiny assessments of the Transferee Company have been completed for all aforementioned financial years and thus the issue of shares at a premium have been considered by the income tax department. The department has not made any additions with respect to the said issue of shares at a premium under section 68 or any other provision of the Income Tax Act, 1961 either in the hands of the company or the shareholders;
- g. The interest of the creditors will be protected and all creditors will be settled in the normal course of business;
- h. The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company.
8. The Official Liquidator has filed his report in the Scheme Petition No. 28/230-232 of 2024, inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner. Accordingly, the Transferor Companies may be ordered to be dissolved without winding up.

9. Ms. Prachi Wazalwar, learned Counsel for the Income Tax Department present on 14.06.2024 and submits that they have no objection if the Scheme in the present matter is approved provided liberty is granted to them to examine the aspects of the Scheme in relation to the avoidance of Tax. The said submissions are noted and liberty is granted to the Income Tax Department in this relation.
10. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. All the assets, liabilities including taxes and charges, if any and duties and employees of the Transferor Companies, shall pursuant to Section 230-232 of the Companies Act, 2013, be transferred to and become the assets, liabilities and duties of the Transferee Company. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 28/230-232 of 2024 is made absolute in terms of prayer clauses of the Petition.
11. The Scheme of Amalgamation is hereby sanctioned, and the appointed date of the Scheme is fixed as 1st day of April, 2023.
12. Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, within 30 (thirty) days from the date of receipt of the Order from the Registry.

13. The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the Deputy Registrar or the Assistant Registrar, as the case may be, of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of certified copy of the order.
14. The Transferor Companies will be dissolved without winding up.
15. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme ultimately results in tax avoidance under the provisions of the Income Tax Act, it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.
16. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
17. Accordingly, the Company Scheme Petition is hereby allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)