

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - IV

C.P.(CAA)/176(MB)2023 IN

C.A.(CAA)/240(MB)2021

In the matter of

The Companies Act, 2013;

And

In the matter of

Sections 230 to 232 of the Companies Act,
2013 and other applicable provisions of
the Companies Act, 2013 read with
Companies (Compromises,
Arrangements and Amalgamation)
Rules, 2016;

And

In the matter of

In the matter of

Scheme of Merger by Absorption of

Buffalo Carbon Private Limited,

With

Cybernetik Technologies Private

Limited ("Scheme" or "this Scheme")

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - IV

C.P.(CAA)/176(MB)2023 IN
C.A.(CAA)/240(MB)2021

Buffalo Carbon Private Limited

[CIN: U67120MH1993PTC07298]

...Transferor Company

First Petitioner Company

Cybernetik Technologies Private Limited,

[CIN: U72900MH1995PTC089376]

...Transferee Company

Second Petitioner Company

(Hereinafter the First Petitioner Company and Second Petitioner Company, are collectively referred to as the "Petitioner Companies")

Order delivered on: **17.04.2024**

Coram:

Ms. Anu Jagmohan Singh

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

For the Petitioner(s):

CS Rohit Ravikiran Kulkarni for Rohit
Kulkarni and Associates, Company
Secretaries.

For the RD office:

Mr. Altap Shaikh, Representative of
the RD West present.

ORDER

1. Heard the Ld. Professional 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, nor has any party raised any averments in the captioned Petition.

2. The sanction of the Tribunal is sought under sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, to the Scheme of Merger by Absorption of **Buffalo Carbon Private Limited** ('First Petitioner Company/First Applicant Company'), with **Cybernetik Technologies Private Limited** ('Second Petitioner Company/Second Applicant Company') and their Respective Shareholders.
3. The Petitioner Companies submit that, the First Petitioner Company is primarily engaged in a business of manufacture, sale, and deals in charcoal, carbon, activated carbon, specialty carbon and carbon products of all varieties and types and for that purpose to buy, sell, and deal in all raw materials such as wood in any form, shells, rice, husk, straws, bagasse.
4. The Petitioner Companies submit that, the Second Petitioner Company is primarily engaged in a business of manufacture, repairing, processing, fabricating, designing, assembling, buying,

selling, importing, exporting and dealing in various technologies in respect of machines, equipment, control systems and computer systems and dealing in their parts, spares, components, accessories, tools, instruments, apparatus, assemblies and sub-assemblies.

5. The Petitioner Companies submit that the proposed Scheme of Merger by Absorption was approved by the Board of Directors of the respective Petitioner Companies on **12th August 2021**.
6. It is submitted by Ld. counsel appearing for the Petitioner(s) that as per the Scheme the revised Appointed Date was **01st April, 2021**. However, on the directions of this bench and in compliance with the applicable provisions, the appointed date for the said scheme is **01st April 2022**.
7. The Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary Affidavits of compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made thereunder.
8. The Petitioner Companies state that the rationale for the proposed

scheme of merger (by way of absorption) which aims at amalgamation of the first petitioner company into the second petitioner company is as follows:

- a. Creating a unified structure, instead of two separate entities and thereby maintaining a simple corporate structure and eliminate duplicate corporate structures;
 - b. Reduction in and/or optimization in overheads costs, administrative, managerial and other expenditure, operational rationalization, organizational efficiency and optimal utilization of various resources;
 - c. Reduction in inter-company transaction thereby achieving operational & administrative efficiency and reducing duplication of efforts;
 - d. The consolidation of operations of the transferor company and the transferee company by way of amalgamation will lead to more efficient utilization of capital, superior deployment of brand promotion, and create a consolidation and diversified base for future growth of the amalgamated entity.
9. The Petitioner Companies submit that the captioned Company Scheme Petition has been filed in consonance with the order dated 12 April 2024 passed by this Tribunal in C.A.(CAA)/240/MB/2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - IV

C.P.(CAA)/176(MB)2023 IN
C.A.(CAA)/240(MB)2021

10. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai initiated a communication dated 30th June 2022, where they directed the Company to submit the declarations and documents for assessing the matter. The company complied with the requirements from the Regional Director in due course based on which the Regional Director initiated a report dated 01st October, 2023.

11. Furthermore, The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai has filed its Report dated 01st October 2023, stating therein the following in Para 2 (a) to (j) of the said report:

Para No.	Observations as per Report of the Regional Director dated 01st October 2023	Response of the Petitioner Companies
2 (a)	<i>That on examination of the report of the Registrar of Companies, Pune dated 13.09.2022 for the Petitioner Companies fall within the jurisdiction of ROC, Pune (Copy enclosed as Annexure – A1). It is submitted that no representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Companies. Further, Petitioner Companies has filed Financial Statements up to 31.03.2022.</i>	As so far as the observation in paragraph - 2 (a) (i) of the Report of the Regional Director is concerned, the Petitioner Companies hereby confirms that no Inquiry, Inspections, Investigations, Prosecutions and Complaint under CA, 2013 are pending against the subject Petitioner

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - IV

C.P.(CAA)/176(MB)2023 IN
C.A.(CAA)/240(MB)2021

	<p>i. <i>That the ROC Pune in its report dated 13.09.2022 has also stated that no Inquiry, Inspection, Investigations, Prosecutions and Complaint under CA, 2013 have been pending against the Petitioner Companies.</i></p> <p>ii. <i>As per the record available, the Transferor Company and Transferee Company are neither vanishing nor scam related company.</i></p> <p>iii. <i>The matter may be decided on merits</i></p> <p>iv. <i>Hon'ble NCLT may kindly direct the Petitioner Companies to furnish the reply on the observations of ROC, Pune to satisfy Hon'ble NCLT that scheme of merger is in public interest and creditors interest and will not affect adversely.</i></p>	<p>companies.</p> <ul style="list-style-type: none">- In so far as the observation in paragraph 2 (a) (ii) of the Report of the Regional Director is concerned, the Petitioner Companies hereby confirms that the Petitioner Companies are neither vanishing nor scam related companies.- In so far as the observation in paragraph 2 (a) (iii) of the Report of the Regional Director is concerned, the Petitioner Companies submits that Scheme may be decided on merits.- In so far as the observation in paragraph 2 (a) (iv) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the scheme of merger is in public interest and creditors' interest and will not affect adversely.
--	--	--

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - IV

C.P.(CAA)/176(MB)2023 IN
C.A.(CAA)/240(MB)2021

<p>b)</p>	<p><i>Transferee company should undertake to comply with the provisions of section 232(3)(1) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transfer of companies.</i></p>	<p>As so far as the observation in paragraph 2 (b) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the Transferee Company undertakes to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 in respect of fees payable, if any, by Transferee Company for increase of share capital on account of merger of transfer of companies.</p>
<p>c)</p>	<p><i>In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the resultant company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.</i></p>	<p>As so far as the observation in paragraph 2 (c) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the Transferee Company undertakes that in addition to compliance of AS-14 or IND AS-103 for accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 or IND AS-8 as applicable.</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - IV

C.P.(CAA)/176(MB)2023 IN

C.A.(CAA)/240(MB)2021

<p>d)</p>	<p><i>The Hon'ble Tribunal may kindly direct the Petitioner Companies 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.</i></p>	<p>As so far as the observation in paragraph 2 (d) of the Report of the Regional Director is concerned, the Petitioner Companies undertake that the Scheme enclosed to Company Application & Company Petition, are one and same and there are no discrepancy/any change/changes are made.</p>
<p>e)</p>	<p><i>The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the petitioner companies concerned</i></p>	<p>As so far as the observation in paragraph 2 (e) of the Report of the Regional Director is concerned, the Petitioner Companies hereby confirm that notices have been served to the concerned authorities which are likely to be affected by Amalgamation.</p>
<p>f)</p>	<p><i>As per Definition of the Scheme, "Appointed Date" means, for the purpose of this Scheme as opening of business hours on 01st April 2021.</i></p>	<p>As so far as the observation in paragraph 2 (f) of the Report of the Regional Director is concerned, the Petitioner Companies confirm that the Appointed Date mentioned in the Scheme is April 1, 2021. In</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - IV

C.P.(CAA)/176(MB)2023 IN

C.A.(CAA)/240(MB)2021

	<p><i>“Effective Date” means the date on which the authenticated copies or certified copies of the Orders of NCLT, Mumbai Bench sanctioning the Scheme are filed with respective Registrar of Companies by BCPL and CTPL.</i></p> <p><i>“Record Date” shall mean the date fixed by the respective Board of the Transferor Company and Transferee Company for the purpose of determining the shareholders of the Transferor Company to whom the Transferee Company shares shall be allotted under this scheme.</i></p> <p><i>The Appointed date is 01.04.2021 which is antedated more than 2 year which needs to be changed. The Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 is issued by the Ministry of Corporate Affairs.</i></p>	<p>this regard, the Petitioner Companies confirm and undertake that upon the Hon'ble National Company Law Tribunal, Mumbai Bench approving the Scheme, the Scheme shall take effect from the Appointed Date i.e. April 1, 2021 or any other date as maybe awarded by this Hon'ble Tribunal in terms of provisions of Section 232(6) of the Companies Act, 2013. Further, the Petitioner Companies through their counsel submits that they will comply with the provisions and requirements clarified vide circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs. However this aspect maybe decided by the Hon'ble Tribunal taking into account its inherent powers.</p> <p>However, on the directions of the Hon'ble bench and in compliance with the applicable provisions, the appointed date for the said scheme is 01st April, 2022.</p>
--	---	---

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - IV

C.P.(CAA)/176(MB)2023 IN
C.A.(CAA)/240(MB)2021

g)	<i>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.</i>	As so far as the observation in paragraph 2 (g) of the Report of the Regional Director is concerned, the Petitioner Companies submits that there are no sectoral authorities which governed the Petitioner Companies.
h)	<i>Petitioner Companies shall undertake to comply with the directions of the Income tax department & GST Authorities, if any</i>	As so far as the observation in paragraph 2 (h) of the Report of the Regional Director is concerned, the Petitioner Companies undertake that Petitioner Companies shall ensure compliance with the directions of Income tax department and GST Authorities.
i)	<i>Petitioner Companies may satisfy the Hon'ble NCLT that the interest of creditors shall be protected on implementation of the scheme.</i>	As so far as the observation in paragraph 2 (i) of the Report of the Regional Director is concerned, the Petitioner Companies submit that interest of the creditors shall be protected on implementation of the scheme.
j)	<i>Petitioner Transferor Company Buffalo Carbon Private Limited has corporate body shareholder namely Cybernetik Technology Private Limited having shareholding of</i>	As so far as the observation in paragraph 2 (i) of the Report of the Regional Director is concerned, the Petitioner Companies submit as under:

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - IV

C.P.(CAA)/176(MB)2023 IN
C.A.(CAA)/240(MB)2021

	<p><i>33.33%, but the Company has not filed Form Ben-2 disclosing the name of beneficial owner of Company namely Cybernetik Technologies Private Limited, hence Petitioner Company shall undertake to comply with the provisions of Section 90 of the Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment Rules, 2019,thereunder and to file Form BEN-2 for declaring the name of the significant beneficial owner with concerned ROC.</i></p>	<p>Cybernetik Technologies Private Limited holds 33.33% shares of Buffalo Carbon Private Limited. However, there is no natural person who is holding, individually and/or even acting in concert, majority of the shares i.e., more than 50% in Cybernetik Technologies Private Limited. Accordingly, there is no such natural person who is required to file Form BEN-1 with the Petitioner Transferor Company as a Significant Beneficial Owner (“SBO”) and therefore, the Petitioner Transferor Company is not required to file Form BEN-2 in accordance with the provisions of Section 90 of the Companies Act, 2013 read with the Companies (Significant Beneficial Owners) Amendment Rules, 2019</p>
--	---	--

12. Mr. Altap Shaikh, Authorized Representative of the Regional Director, MCA (WR), Mumbai, present at the time of the hearing has submitted that the explanation and clarifications given by the Petitioner/ Transferor Company are found satisfactory and stated that the Regional Director has no objections for approving the scheme by the Tribunal.

13. Upon this Scheme becoming effective and upon merger of First Applicant Company/Transferor Company with Second Applicant Company/Transferee Company in terms of this Scheme, Transferee Company shall, without any application or deed, issue and allot its equity shares, credited as fully paid up, to the extent indicated below, to the shareholders of Transferor Company whose names appear in the register of members of Transferor Company (other than as set out below), on the Record Date or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of Transferee Company in the following proportion viz.:

“1 (One) fully paid-up equity shares of Rs. 100/- each of the Transferee Company shall be issued and allotted for every 14 (Fourteen) equity share of Rs. 100/- each held by the shareholders of Transferor Company.”

14. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.
15. The Scheme annexed at Annexure G to the Company Scheme Petition is hereby sanctioned, and the Appointed Date of the scheme is **1st April 2022**. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Secured Creditors, Unsecured Creditors/Trade Creditors, Employees and/or any other stakeholders concerned.
16. The Petitioner Companies are directed to file a certified copy of this Order along with the copy of Scheme with the concerned Registrar of Companies, electronically in e-form INC-28 within **30 days** or an extended timeline with payment of additional fees, as may be applicable, from the date of receipt of the Order duly certified by the Designated Registrar of this Tribunal. The Scheme will become effective on filing of the copy of this order with the concerned Registrar of Companies.
17. The applicant companies submit that the copies of the present application had been duly served to the Official Liquidator, Mumbai, Maharashtra pursuant to the order dated 12.04.2022 read with the

order dated 28.07.2023. However, the Petitioners / applicants have not received any response from the Official Liquidator within the stipulated time allowing the applicants to interpret that the Official Liquidator has no objections in the Hon'ble Bench approving this scheme of merger by absorption.

- 18.** The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the Designated Registrar 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** working days from the date of receipt of the certified copy of order from the Registry of this Tribunal.
- 19.** All concerned regulatory authorities to act on a copy of this Order duly certified by the Registry of this Tribunal, along with a copy of the Scheme.
- 20.** Any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
- 21.** Any concerned authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - IV

C.P.(CAA)/176(MB)2023 IN
C.A.(CAA)/240(MB)2021

22. Ordered accordingly. Thus, the Company Scheme Petition with C.P.(CAA)/176(MB)2023 IN C.A.(CAA)/240(MB)2021 shall stand to be disposed off.

Sd/-

Anu Jagmohan Singh

Member (Technical)

Suresh/17.04.2024

Sd/-

Kishore Vemulapalli

Member (Judicial)