

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT No. V, MUMBAI BENCH**

**CP(CAA)/124/MB/2022
IN
CA(CAA)/105/MB/2022**

In the matter of the Companies Act, 2013
(18 of 2013);

And

In the matter of Sections 230 to 232 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 of
Hurtado Home Decor Private Limited
(hereinafter referred to as “Transferor
Company 1” or “HHDPL”), Hurtado Impex
Pvt. Ltd. (hereinafter referred to as
“Transferor Company 2” or “HIPL”),
International Furniture Brands Private
Limited (hereinafter referred to as
“Transferor Company 3” or “IFBPL”) with
Multibiz (Exim) Private Limited (hereinafter
referred to as “Transferee Company” or
“MEPL”) and their respective Shareholders.

Hurtado Home Decor Private Limited

CIN: U52100MH2012PTC230539 ...Petitioner Company
1/Transferor Company 1

Hurtado Impex Private Limited

CIN: U51909MH2006PTC164584 ...Petitioner Company
2/Transferor Company 2

International Furniture Brands Private Limited

CIN: U20219MH2006PTC163548 ...Petitioner Company
3/Transferor Company 3

Multibiz (Exim) Private Limited

CIN: U17120MH1994PTC083788 ...Petitioner Company 4 /
Transferee Company

*(Hereinafter the Petitioner Company 1, 2 and 3 are collectively
referred to as "Transferor Companies")*

*(Hereinafter the Petitioner Company 1,2,3 and 4 are collectively
referred to as "Petitioner Companies")*

Order Delivered on: 06.01.2023

Coram: Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)
Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via videoconferencing):

For the Petitioner Companies : Adv. Manoj Kumar Mishra
For the Regional Director : Ms. Rupa Sutar, Authorized
Representative of Regional
Director, MCA (WR), Mumbai

ORDER

1. The court is convened by video conferencing.
2. Heard Learned Counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor has any party controverted any averments made in the petition.
3. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 ('Act') in the matter of the Scheme of Amalgamation of Hurtado Home Decor Private Limited, ("Transferor Company 1"), Hurtado Impex Pvt. Ltd. ("Transferor Company 2"), International Furniture Brands Private Limited ("Transferor Company 3") and Multibiz (Exim) Private Limited ("Transferee Company") and their respective Shareholders ("Scheme").
4. The Learned Counsel for the Petitioner Companies submits that the Petitioner Company 1 is currently engaged in the business of traders, importers, dealers, wholesalers and retailers in all kind of imported home decor and home furnishings, the Petitioner Company 2 and the Petitioner Company 3 is currently engaged in the business of manufacturing and dealing in furnitures, household appliances hosiery goods, readymade garments, fashion garments etc., the Petitioner Company 4 is currently engaged in the business of exports of garments chemicals.
5. The Learned Counsel for the Petitioner Companies submits that the rationale of the Scheme is as under:

- a. The amalgamation would result in the creation of a Transferee Company with large asset base and net worth with strong financials enabling further growth and development of Transferee Company and enable it to withstand with the growing competition in the market scenario;
- b. Since the management base is same of the Transferor Companies and the Transferee Company, the amalgamation will result into reduction in multiplicity of entities, thereby reducing compliance cost of multiple entities viz., statutory filings, regulatory compliances, labour law/establishment related compliances;
- c. The amalgamation would enable the Companies to consolidate their business operations and provide significant impetus to their growth;
- d. Reduction of overheads and other expenses facilitate administrative convenience and ensure optimum utilization of available services and resources and eliminate duplication of work;
- e. The Transferor and Transferee Companies are in the business of trading of furniture and accessories related products in the retail market; thus, they can use the facilities for the business purpose;
- f. The Shareholding in both Transferor and Transferee Companies are under common control, post-merger, the ownership will be consolidated in the single entity.

- g. The Amalgamation will lead to the benefits of the economies of scale.”
6. There is no likelihood of the interest of any shareholder or creditor of Transferor and Transferee Companies being prejudiced in any manner as a result of the Scheme.
7. The Learned Counsel for the Petitioner Companies submits that the Board of Directors of the respective Petitioner Companies vide resolution dated 21st February, 2022 have approved the Scheme and have approached the Tribunal for sanction of the Scheme.
8. The Learned Counsel for the Petitioner Companies submits that the Petition has been filed in consonance with the order dated 21st April, 2022 passed by this Tribunal in C.A. (CAA) /105/MB/2022.
9. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies have complied with all the requirements as per the 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 there under.
10. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai has filed its report dated 30th December, 2022 inter alia stating that, save and except the observations as stated in paragraph 2 (a) to (h) of the report, this Tribunal may pass such order or orders as deemed fit and proper in the facts and circumstance of the case. In

response to the observations made by the Regional Director, the Petitioner Companies have also given necessary clarifications and undertakings vide their affidavit dated 4th January, 2023. The observations made by the Regional Director and the clarifications /undertakings given by the Petitioner Companies are summarized in the table below:

Sr. No	RD Report dated 30th December 2022	Response of the Petitioner Companies
Para 2(a)	In compliance of AS-14 (IND AS-103), 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.	<i>Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(a) of the said report of Regional Director is concerned, the Petitioner Company 4 undertakes to pass necessary accounting entries in connection with the Scheme as per AS-14 (IND AS-103) as well as comply with other applicable accounting standards to the extent applicable.</i>
Para 2(b)	As per Definition of the Scheme, "Appointed Date" means the 1 st day of April, 2021 or such other date as the National Company Law Tribunal (Tribunal) or	<i>Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(b) of the report of Regional Director is concerned, the Petitioner Company 4 clarifies that, the Scheme shall be</i>

<p>other competent authority may otherwise direct/ fix.; And</p> <p>“Effective Date” means the date on which the certified true copy of the Order of Hon'ble National Company Law Tribunal sanctioning the Scheme of Amalgamation is filed by the Transferor Companies and the Transferee Company with the respective jurisdictional Registrar of Companies ("ROC"), Mumbai, as the case may be.;</p> <p>In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such</p>	<p><i>effective from the Appointed Date which is a specific date i.e., April 01, 2021. Accordingly, the Scheme is in conformity with the circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>
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	<p>date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.</p> <p>The Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>	
<p>Para 2(c)</p>	<p>Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee and stamp duty paid by the transferor company on its authorised capital shall be set-off against fees and stamp duty payable by the transferee company on</p>	<p><i>Apropos observation of the Regional Director, Western Region, Mumbai made in Paragraph 2(c) of the report concerned, the Petitioner Company 4 undertakes to comply with section 232(3)(i) of the Companies Act, 2013, wherein pursuant to the dissolution of the Transferor Companies, the fees, if any, paid by the respective Transferor Company on its</i></p>

	its authorised capital subsequent to the amalgamation and therefore, petitioners to undertake that the transferee company shall pay the difference of fees and stamp duty.	<i>Authorized Capital shall be set-off against any fees payable by the Transferee Company on its Authorized Capital subsequent to the amalgamation.</i>
Para 2(d)	The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.	<i>Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(d) of the report of Regional Director is concerned, the Petitioner Company 4 states that the Hon'ble Tribunal, Mumbai Bench vide Order dated April 21, 2022 passed in the Company Scheme Application CA(CAA)105/MB/2022 (hereinafter referred to as "the Application Order") a. Dispensed with the meeting of all the Equity Shareholders of Petitioner Companies (Reference para 9 of Application Order) being consent received by way of affidavits from equity</i>

		<p>shareholders of the Petitioner Companies.</p> <p>b. Dispensed with the meeting of Secured Creditors of Petitioner Company 1 (Reference para 10 of Application Order) being consent received by way of NOC from secured creditor.</p> <p>c. There are no secured creditors in the Petitioner Company 2 and the Petitioner Company 3 (Reference para 11 of Application Order).</p> <p>d. Dispensed with the meeting of Secured Creditors of Petitioner Company 4 (Reference para 12 of Application Order) being consent received by way of NOC from secured creditor.</p> <p>e. Dispensed with the meeting of Unsecured Creditors of Petitioner Companies (Reference para 13 to 16 of Application Order) and directed to serve individual notices to all its unsecured</p>
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		<i>creditors. The Petitioner Company 4 hereby undertakes that the same has been complied with and hence, the requirement of holding meeting of Equity Shareholders and Creditors in terms of Section 230(1) read with subsection (3) to (5) of the Companies Act, 2013 was not required.</i>
Para 2(e)	<p>The Petitioner Company states that the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961.</p> <p>In this regard, the petitioner company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder;</p>	<i>Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(e) of the report of Regional Director is concerned, the Petitioner Company 4 clarifies that the Scheme is in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961 and undertakes that all the relevant provisions of Income Tax Act, 1961 and Rules thereunder to the extent applicable will be complied with.</i>
Para 2(f)	<p>As per Clause 19 of the Scheme, Petitioner Companies have proposed that on the coming into effect of this</p>	<i>Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(f) of the report of Regional Director is</i>

<p>Scheme, the Transferee Company shall change its name from Multibiz (Exim) Private Limited to Hurtado Home Decor Private Limited on account of the latter being the name used in business operations which is known by all the customers, suppliers and other parties interacting with the Undertaking.</p> <p>In this regard, as per clause 8(2)(8) of the Companies (Incorporation) Rule, 2014, "The name released on change of name by any company shall remain in data base and shall not be allowed to taken by any other Company including the group company of the Company who has changed the name for the period of three years from the date of change</p>	<p><i>concerned, the Petitioner Company 4 hereby like to submit that name of Hurtado Home Decor Private Limited used in business operations which is known by all the customers, suppliers and other parties interacting with the Undertaking. Also the Petitioner Company 1 has reputed name in the field of home furnishing. Further, one of the purpose behind the amalgamation was that the transferee company will get benefit of the brand and name of the Petitioner Company 1. Hence, if such name change is not allowed as a part of the Scheme ultimately it may hamper the business of the Petitioner Company 4 post amalgamation. Further, as per Rule 8(2) of the Companies (Incorporation) Rules, 2014, the name change cannot be allowed in the normal course, however, it may be allowed on a specific</i></p>
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	<p>subject to specific direction from the competent authority in the course of compromise, arrangement and amalgamation.</p> <p>In view of the above, the change of name shall be allowed subject to compliance of provisions of Companies Act, 2013 and filing for INC-24 before Registrar of companies and upon approval of ROC subject to provisions of Companies Act, 2013 & Rules made thereunder, the said terms of the scheme may be considered on the merit of case by the Hon'ble NCLT.</p>	<p><i>direction from the competent authority in the course of compromise, arrangement or amalgamation. Hence the Petitioner Company 4 prays to the Hon'ble Tribunal to allow the change in the name of the Company from Multibiz (Exim) Private Limited to Hurtado Home Decor Private Limited subject to compliance of Section 4 of the Companies Act, 2013.</i></p>
<p>Para 2(g)</p>	<p>It is observed from latest financial statements 31/03/2021 that the transferor company-2 & Transferor Company-3 has Trust as Shareholder namely</p>	<p><i>Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(g) of the report of Regional Director is concerned, the Petitioner Company 4 states that, the</i></p>

	<p>Aruna Foundation having shareholding of 90% and 98%, respectively but the Transferor Company-2 & Transferor Company-3 have not filed form Ben-2 disclosing the name of beneficial owner of Trust namely Aruna Foundation. Therefore, petitioner company may be directed to clarify and comply with the same as required u/s. 90 of the Companies Act, 2013 r.w. companies (Significant Beneficial Owners) Rules, 2018.</p>	<p><i>Petitioner Company 2 and 3 have complied with provisions of Section 90 of the Companies Act, 2013 and rules prescribed thereunder by filing form BEN-2 on January 04, 2023 vide SRN F55954721 and F55971774 respectively.</i></p>
<p>Para 2(h)</p>	<p>That on examination of the report of the Registrar of Companies, Mumbai dated 14.07.2022 (Annexed as Annexure A-1) that the Petitioner Companies falls within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and/or representation regarding the proposed</p>	<p><i>Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(h) of the report of Regional Director is concerned,</i></p> <p><i>(i) the facts are self-explanatory and hence no response is required for the same;</i></p> <p><i>(ii) the interest of the creditors are protected as the Scheme of</i></p>

<p>scheme of Amalgamation has been received against the Petitioner Companies. Further, the Transferor Company have filed Financial Statements up to 31.03.2021 further observations in ROC report are as under:-</p> <p>(i) That the ROC Mumbai in his report dated 14.07.2022 has also stated that No Inquiry, inspection, investigation & prosecutions is pending against the subject applicant companies.</p> <p>(ii) Interest of creditors should be protected.</p> <p>(iii) As per the provisions of Section 230(3)(i) of the Companies Act, 2013 where the transferor company is dissolved, the fee, if any, paid by the transferor company on its</p>	<p><i>Arrangement does not affect the rights or propose any reduction in the amounts payable to the creditors of the Petitioner Companies;</i></p> <p><i>(iii) the Petitioner Companies shall comply with provisions of section 232(3)(i) of the Companies Act, 2013 and pay the remaining fees, if any, after setting off the fees already paid by the Transferor Companies on its Authorized Capital being transferred to the transferee company subsequent to amalgamation; and</i></p> <p><i>(iv) no response is required for the same.</i></p>
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	<p>authorized capital shall be set-off against any fees payable by the transferee company on its authorized capital shall be set off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation. Therefore, remaining fee, if any after setting off the fees already paid by the transferor company on its authorized capital, must be paid by the transferee company on the increased authorized capital subsequent to amalgamation.</p> <p>(iv) May be decided on its merits.</p>	
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11. The Petitioner Company 4 have filed an Affidavit in rejoinder to the report filed by the regional director with this Tribunal on 30th December, 2022 providing clarification/undertakings to the observations made by the Regional Director. A copy of

the same has been file with the office of the Regional Director on 05th January, 2023. The said clarification/undertakings are reproduced in Para 10 above. The clarifications and undertakings given by the Petitioner Company 4 are accepted.

12. The Official Liquidator has filed his report on 31st October, 2022, inter alia stating therein that the affairs of the Transferor Companies have been conducted in a proper manner. Accordingly, the Transferor Companies may be ordered to be dissolved without winding up.
13. Ms. Rupa Sutar, Authorised representative of the Regional Director, MCA (WR), Mumbai who is present at the time of Final hearing has submitted that the explanations and clarifications given by the petitioner companies are found satisfactory and that they have no objection for approving the scheme by the Tribunal.
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 is hereby sanctioned with the Appointed Date of 1st April 2021.
16. The Learned Authorised Representative respectfully submits that upon merger of the Companies, Shares of the Company would be allotted in the manner as mentioned below:
 - a) Petitioner Company 4 shall issue and allot 3,600 Equity Shares of Rs. 10/- (Rupees ten only) each to the eligible Equity Shareholders of the Petitioner Company 1 for every

10,000 Equity Shares of the face value of Rs. 10/- (Rupees ten only) each;

b) Petitioner Company 4 shall issue and allot 8,68,900 Equity Shares of Rs. 10/- (Rupees ten only) each to the eligible Equity Shareholders of the Petitioner Company 2 for every 10,000 Equity Shares of the face value of Rs. 10/- (Rupees ten only) each;

c) Petitioner Company 4 shall issue and allot 5,64,000 Equity Shares of Rs. 10/- (Rupees ten only) each to the eligible Equity Shareholders of the Petitioner Company 3 for every 50,000 Equity Shares of the face value of Rs. 10/- (Rupees ten only) each.

17. Upon the coming into effect of this Scheme, the Transferor Companies shall stand dissolved without winding-up and without any further act or deed.

18. Further, upon the coming into effect of this Scheme and with effect from the Appointed Date, entire undertaking of the Transferor Companies including all the assets and liabilities, shall pursuant to Sections 230 to 232 and other applicable provisions of the Act, without any further act, instrument or deed, be transferred to and vested in or be deemed to have been transferred to and vested in the Transferee Company and the same shall be assumed by the Transferee Company in accordance with the Scheme.

19. The authorised share capital of the Transferor Companies to the extent of INR 1,15,00,000 shall also stand transferred into and combined with the authorised share capital of the Transferee Company, without any further act, deed,

including without payment of any stamp duty, registration or filing fee on such combined authorised share capital pursuant to the Scheme.

20. The Learned Counsel for the Petitioner Companies submits that as far as change of name of the Transferee Company is concerned, the same has been upheld by Hon'ble Bombay High Court in the matter of Cinemax India Limited and Cinemax Exhibition India Limited in CSP 56 and 57 of 2012 and also by this Hon'ble Tribunal in the matter of Fermenta Biotech Limited and DIL Limited in C.P. (CAA)/MB/2819-2820 of 2019 and in the matter of Phoenix Innovative Healthcare Manufacturers Private Limited and Phoenix Innovative Medical Manufacturer Private Limited in CP(CAA)/1028/(MB)/ 2020 IN CA(CAA)/3088/(MB)/2019. The Learned Counsel for the Petitioner Companies further submit that the Transferee Company undertakes to comply with the provisions of the Companies Act, 2013 and the rules thereof enabling the change of name of the Transferee Company and as may be directed by this Hon'ble Tribunal.
21. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P.(CAA)124/MB/2022 filed by the Petitioner Companies are made absolute in terms of the prayer clauses of the said Company Scheme Petition.
22. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with e-form INC-28 within 30 days from the date of receipt of the Order, duly certified by the Joint Registrar or the Assistant Registrar, as the case may be, of this Tribunal.

23. The Petitioner Companies to lodge a copy of this Order along with the Scheme duly authenticated/certified by the Joint 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 the certified Order.
24. All concerned regulatory authorities to act on a copy of this Order duly certified by the Registrar of Tribunal, along with a copy of the Scheme.
25. Any person interested is at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.
26. Any concerned Authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
27. Ordered Accordingly. CP (CAA) No. 124 of 2022 is **Allowed and Disposed of.**

SD/-

Anuradha Sanjay Bhatia
Member (Technical)

SD/-

Kuldip Kumar Kareer
Member (Judicial)