

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT V

**CP(CAA) NO. 143/MB OF 2023
IN
CA(CAA) NO. 112/MB OF 2021**

In the matter of the Companies Act, 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 Arrangement in the form of Merger by absorption of ALLYGROW ENGINEERING SERVICES PRIVATE LIMITED, the Transferor Company with ALLYGROW TECHNOLOGIES PRIVATE LIMITED, the Transferee Company.

ALLYGROW ENGINEERING SERVICES)
PRIVATE LIMITED, a company incorporated)
under the Companies Act, 2013 having its)
registered office at House No. D-7,)
Gopalkrishna CHS, Pimpale Nilakh Aundh)
Camp, Pune 411027, Maharashtra.) ...First Petitioner

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CIN: U72200PN2015FTC167067

Company / Transferor
Company.

ALLYGROW TECHNOLOGIES PRIVATE)
LIMITED, a company incorporated under the)
Companies Act, 2013 having its registered)
office at Office No. 4A, Ground Floor, IT-8)
Building, Plot No. 2, Qubix Business Park,) ...Second Petitioner
SEZ, Blue Ridge Township, Phase II, Near Company/ Transferee
Rajiv Gandhi Infotech Park – Phase I, Company.
Hinjewadi, Pune-411057.

CIN: U74900PN2015PTC155682

Order dated: 09.02.2024

Coram:

Reeta Kohli: Hon'ble Member, (Judicial)

Madhu Sinha: Hon'ble Member, (Technical)

Appearances(PH):

For the Petitioner(s): Mr. Ashish Lalpuria, Practising Company Secretary of
M/s. Ashish O. Lalpuria & Co., Mr. Mahesh Darji, Practising Company
Secretary of M/s. Nilesh Shah & Associates

For the Regional Director: Mr. Tushar Wagh, Deputy Director for the Office
of the Regional Director

ORDER

Per: Reeta Kohli, Member (Judicial)

The sanction of the Tribunal is sought under sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (the Act) for confirmation of the Scheme of Arrangement in the form of Merger by absorption of ALLYGROW ENGINEERING SERVICES PRIVATE LIMITED, the First Petitioner Company/ Transferor Company; with ALLYGROW TECHNOLOGIES PRIVATE LIMITED, the Second Petitioner Company / Transferee Company and their respective Shareholders.

1. The Scheme envisages Arrangement in the form of Merger by absorption of ALLYGROW ENGINEERING SERVICES PRIVATE LIMITED, the First Petitioner Company/ Transferor Company with ALLYGROW TECHNOLOGIES PRIVATE LIMITED, the Second Petitioner Company / Transferee Company.
2. We have heard the Learned Authorised Representative for the Petitioner Companies and the Deputy Registrar of Companies, for Regional Director, Western Region, Ministry of Corporate Affairs. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.

3. The Learned Authorised Representative for the Petitioners submits that the Petitioner Companies are directly or indirectly in the same line of business activities. The Transferor Company is engaged in to the business of inventing and developing of software systems. The Transferee Company is engaged in the business of providing engineering, design development and manufacturing consultancy solutions.
4. The Board of Directors of Petitioner Companies have approved the scheme at their respective Board Meetings conducted on 11th December, 2020 respectively. The appointed date of the scheme is 1st April, 2023.
5. The learned Counsel for the Petitioner Companies further submitted the following rationale for the Scheme:
 - i. Reduction in number of entities leading to simplification of group structure;
 - ii. Pooling of resources;
 - iii. Enable cost saving and reduction in administrative inefficiencies;
 - iv. Combining / consolidating business and Reduction in administrative overheads;

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- v. Reduction of intra-group transactions and compliance requirements under various laws;
 - vi. Reduction of operating and compliance costs; and
 - vii. Enhancing shareholder's value;
6. The Company Petition is filed in consonance with Sections 230 to 232 of the Act along with the order dated 23rd September, 2021 passed in CA (CAA) No. 112/MB/2021 of this Tribunal.
7. The Learned Authorised Representative appearing on behalf of the Petitioner Companies submits that the Transferor Companies is a wholly owned subsidiary of the Transferee Company and therefore no shares will be issued upon amalgamation.
8. The Learned Authorised Representative appearing on behalf of the Petitioner Companies stated that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and have filed necessary affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory/regulatory requirements, if any, as required under the Act and the Rules made thereunder. The undertaking given by the Petitioner Companies is accepted.

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9. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed its Report dated 02nd August, 2023 inter alia stating therein its observations on the Scheme as stated in para 2 (a) to (j) of the Report. In response to the observations made by the Regional Director, the Petitioner Companies filed an Affidavit in Rejoinder and have given necessary clarifications and undertakings. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

| Sr. No. Para 2 | RD Report / Observation Dated 02nd August, 2023 | Response of the Petitioner Companies |
|---------------------------------|--|--|
| a) | <i>That on examination of the report of the Registrar of Companies, Pune dated 10.05.2023 (Annexed as Annexure A-I) for Petitioner Companies namely Allygrow Engineering Services Private Limited (Transferor Company) and Allygrow Technologies Private Limited (Transferee Company) fails within the</i> | a) Paragraph 2 (a) of the report of Regional Director refers to report of Hon'ble Registrar of Companies, Pune which mentions that no complaint / representation regarding the proposed scheme has been received, the petitioner companies has filed |

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| <p><i>jurisdiction of ROC, Pune. It is submitted that no complaint and / or representation regarding the proposed scheme of Amalgamation / Arrangement has been received against the Petitioner Companies. Further, the Petitioner Companies has filed Financial Statements up to 31.03.2022.</i></p> <p><i>The ROC, Pune has further submitted in his report dated 10.05.2023 which are as under:</i></p> <p><i>i. That the ROC Pune in its report dated 10.05.2023 has also stated that No Inquiry, Inspection, Investigations, Prosecutions and complaint under CA, 2013 have been pending against the Petitioner Companies.</i></p> <p><i>ii. The Transferor Company has no operation from the financial year ending 01/04/2017.</i></p> | <p>financial statements upto 31.03.2022 and that no Inquiry, Inspection, Investigations, Prosecutions and complaint under CA, 2013 have been pending against the Petitioner Companies. The said observations are favourable and self-explanatory. As regards to observation that the Transferor Company has no operations from the financial year ending 01.04.2017, I state that the management of the Transferor Company could not feasibly commercialize the object of the Company from 2017 and hence in order to reduce the number of entities leading to simplification of group structure, the present</p> |
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| | <p><i>The matter may be decided on merits. Hence, the Petitioner Companies shall undertake to submit detailed reply against observations mentioned above.</i></p> | <p>scheme of merger as a part of corporate restructuring is proposed.</p> |
| b) | <p><i>Transferee company should undertake to comply with the provisions of section 232(3)(i) 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>b) Apropos observation made in paragraph 2 (b) of the report of Regional Director is concerned, the Transferee Company undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 with respect to payment of differential fees in the increased Authorised Share Capital and would pay the differential fees, if any.</p> |
| c) | <p><i>In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the transferee company shall pass such accounting entries</i></p> | <p>c) Apropos observation made in paragraph 2 (c) of the report of Regional Director is concerned, the Petitioners</p> |

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| | <p><i>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><i>undertake to comply with AS-14 (IND AS-103) and such applicable accounting standards for Amalgamation and as per other applicable provisions of the Companies Act, 2013 while passing necessary entries in connection with the Scheme</i></p> |
| <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><i>d) Apropos observation made in paragraph 2 (d) of the report of Regional Director is concerned, the Petitioner Companies undertake that there is no change in the Company Scheme Application and Company Scheme Petition except the details of Authorized, Issued, Subscribed Paid up Share Capital of Transferee Company for below</i></p> |

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| | | <p>events:</p> <ul style="list-style-type: none"> • <i>In the Authorized Share Capital, (i) existing 1,95,000 Equity Shares of Rs. 10/- each were classified as Class A Equity Shares and (ii) 2,50,000 Series A Preference Shares of Rs. 20/- each were re-classified as 5,00,000 Class B Equity Shares of Rs. 10/- each;</i> • <i>In the Issued, Subscribed and Paid Share Capital, (i) 2,52,780 Series A Preference Shares of Rs. 20/- each were converted into 2,52,780 Class B Equity Shares of Rs. 10/- each (ii) 67,058 Class A Equity Shares of Rs. 10/- each were bought back.</i> |
| e) | <i>The Petitioner Companies under provisions of section 230(5) of the</i> | e) <i>Apropos observation made in paragraph 2 (e) of the</i> |

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| | <p><i>Companies Act, 2013 have to serve notices to the concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the Scheme by 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><i>report of Regional Director is concerned, the Petitioner Companies state that there are no specific regulatory authorities which are likely to be affected by the Amalgamation or arrangement.</i></p> |
| <p><i>f)</i></p> | <p><i>As per Definition of the Scheme, "Appointed Date" means the 1st day of April 2020 or such other date as the Hon'ble National Company Law Tribunal (NCLT), Mumbai may direct, which shall be the date with effect from which this Scheme shall become effective and with effect from which date the Transferor Company shall amalgamate with the Transferee</i></p> | <p><i>f) Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2 (f) of his report concerned, the Petitioners states that as per the Scheme, the definition "Appointed Date" means 01st day of April, 2020. Further, Clause 1.2 of Part I of the Scheme specifies that the</i></p> |

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| <p><i>Company in terms of the Scheme, upon the order sanctioning this Scheme becoming effective.</i></p> <p><i>"Effective Date" means the last of the dates on which the certified or authenticated copies of the orders of the Hon'ble National Company Law Tribunal ("NCLT"), is filed by the Transferor Company and the Transferee Company with the concerned Registrar of Companies, Any references in this Scheme to "upon this Scheme becoming effective" or "upon coming into effect of this Scheme" shall be construed to be a reference to the Effective Date.</i></p> <p><i>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</i></p> | <p><i>appointed date shall be 1st April, 2020. Further, the Petitioners confirms that the "Effective Date" shall be the date on which certified copies of the Order(s) of the National Company Law Tribunal, Mumbai Bench and vesting the assets, property, liabilities, rights, duties, obligations and the such other assets of the Transferor Company and the Transferee Company are filed with the Registrar of Companies, Maharashtra, Mumbai as required under the provisions of the Companies Act, 2013. The Petitioner Companies further undertakes to comply with the circular no. F. No.7/12/2019/CL-1 dated</i></p> |
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| | <p><i>effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.</i></p> <p><i>However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.</i></p> <p><i>Further the Appointed Date is 01.04.2020 which is ante dated more than 2 years which needs to be changed.</i></p> <p><i>The Petitioners may be asked to 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.</i></p> | <p><i>21.08.2019 issued by the Ministry of Corporate Affairs.</i></p> <p><i>The Petitioners further submits that considering the time elapsed since filing of Company Scheme Application and in line with the observation of Hon'ble Regional Director, and in view of practical hardships, the Petitioner Companies accepts and confirm that the amalgamation as embodied in the Scheme shall take effect from the Appointed Date i.e. 1st April 2023.</i></p> |
| <p><i>g)</i></p> | <p><i>Petitioner Companies shall undertake to comply with the directions of Income tax department, if any.</i></p> | <p><i>g) Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2 (g) of his report</i></p> |

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| | | <i>concerned, the petitioner companies undertake to comply with the directions of Income Tax Department, if any.</i> |
| <i>h)</i> | <i>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.</i> | <i>h) Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2 (h) of his report concerned, the petitioner companies state that there are no Sectoral Regulators which are likely to be affected by the Amalgamation or arrangement and hence the petitioner companies are not subject to directions of any specific sectoral regulator.</i> |
| <i>i)</i> | <i>The Petitioner Company states that the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In</i> | <i>i) Apropos observation made in paragraph 2 (i) of the report of Regional Director is concerned, the Petitioner</i> |

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| | <i>this regard, the petitioner company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder;</i> | <i>Companies undertake the compliance of all provisions of the Income Tax Act, 1961 including provisions of section 2(1B) of the Income Tax Act.</i> | | | | | | | | | | |
|----------------|--|--|---------------------------|--|------------------------|---------------|---|---------------------------------------|-------------------------------|--------|--|--|
| <i>j)</i> | <p><i>As per financial statements as on 31.03.2022 submitted by the Petitioner companies, details of shareholding is as follows:</i></p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="text-align: center;">Sr. No.</th> <th style="text-align: center;">Petitioner Company</th> <th style="text-align: center;">Name of Share holder</th> <th style="text-align: center;">%of shares held</th> <th style="text-align: center;">Remark</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">Allygrow Engineering Services Private</td> <td style="text-align: center;">Allygrow Technologies Private</td> <td style="text-align: center;">99.99%</td> <td style="text-align: center;">No Form BEN-2 has been filed by any of</td> </tr> </tbody> </table> | Sr. No. | Petitioner Company | Name of Share holder | %of shares held | Remark | 1 | Allygrow Engineering Services Private | Allygrow Technologies Private | 99.99% | No Form BEN-2 has been filed by any of | <p><i>j) Apropos observation made in paragraph 2 (j) of the report of Regional Director is concerned, the Petitioner Companies submits that (a) as regards to Transferor Company, Form BEN 2 has been filed vide SRN F68914514 dated 17.10.2023 and (b) as regards to Transferee Company, Form BEN 2 has been filed vide SRN F68915677 dated 17.10.2023.</i></p> |
| Sr. No. | Petitioner Company | Name of Share holder | %of shares held | Remark | | | | | | | | |
| 1 | Allygrow Engineering Services Private | Allygrow Technologies Private | 99.99% | No Form BEN-2 has been filed by any of | | | | | | | | |

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| | | <i>Limited (Transf eror Compa ny)</i> | <i>Limit ed</i> | | <i>the Petition er Compa nies as</i> | |
| | 2 | <i>Allygro w Technol ogies Private Limited (Transf eree Compa ny)</i> | <i>Ceins ys Tech Limit ed (ultim ate holdi ng Com pany)</i> | <i>82.70 %</i> | <i>per records availab le at MCA 21 portal</i> | |
| <p><i>No Form BEN-2 has been filed by any of the Petitioner Company as per records available at MCA21 Portal, hence Petitioner Companies shall undertake to comply with the</i></p> | | | | | | |

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| | <p><i>provisions of section 90 of Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment Rules, 2019, thereunder and to file Form BEN-2 for declaring name of the significant beneficial owner with concerned ROC.</i></p> | |
|--|--|--|

10. The Regional Director appeared through its representative Mr. Tushar Wagh, Deputy Director (RDW) and submitted that their observations/objections have been satisfactorily explained by the Petitioner Companies and are acceptable to them. Hence, the Regional Director does not have any further objection to the proposed Scheme Company Petition.

11. The Official Liquidator has filed his report dated 31st October, 2022, inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and the Scheme is not prejudicial to the interest of the public and the Shareholders of the Transferor Companies.

12. From the material on record, the Scheme appears to be fair, reasonable

and is not in violation to any provisions of law nor is contrary to public interest/policy. The undertakings given by the Petitioner Companies are hereby accepted.

13. Since all the requisite statutory compliances have been fulfilled, CP (CAA) No.143/MB-V/2023 is made absolute in terms of prayer clauses 23 of the Company Petition. Hence Ordered.

ORDER

The Petition is allowed subject to the following.

- (i) The Scheme, with the Appointed Date fixed as 1st April, 2023 placed as Exhibit – A of the Company Petition, is hereby sanctioned. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Creditors and Employees.
- (ii) The Transferor Company will be dissolved.
- (iii) The Registrar of this Tribunal shall issue the certified copy of this Order along with the Scheme forthwith. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme with the Registrar of Companies concerned, electronically in E-form INC-28 within 30 days from the date of receipt of the Certified True Copy of

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the Order from the Registry.

- (iv) The Petitioner Companies shall lodge a copy of this Order and the Scheme duly authenticated by the Registrar of this Tribunal with the Superintendent of Stamps concerned, within 60 working days from the date of the receipt of the Order, for the purpose of adjudication of stamp duty, if any, payable.
- (v) The Petitioner Companies shall comply with all the undertakings given by them.
- (vi) The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.
- (vii) All concerned shall act on a copy of this Order along with the Scheme duly authenticated by the Registrar of this Tribunal.
- (viii) Any person interested in the above matter shall be at liberty to apply to the Tribunal for any directions that may be necessary.

SD/-

Madhu Sinha
Member (Technical)

/Aakansha/

SD/-

Reeta Kohli
Member (Judicial)