

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-II**

C.P. (CAA)/198/MB/2023

Connected With

C.A. (CAA)/122/MB/2022

In the matter of

the Companies Act, 2013

AND

In the matter of

*Section 230 to 232 of the Companies Act, 2013 and
other applicable provisions of the Companies Act,
2013.*

AND

In the matter of

Scheme of Amalgamation

between

Anand Veena Twisters Private Limited

*(hereinafter referred to as 'Transferor Company 1' or
'AVTPL')*

and

*Vishwas Investment and Trading Company Private
Limited*

*(hereinafter referred to as 'Transferor Company 2' or
'VITPL')*

With

Houghton Hardcastle (India) Private Limited

*(hereinafter referred to as 'Transferee Company' or
'HHIPL' or 'the Company')*

and

their respective Shareholders ('Scheme')

Anand Veena Twisters Private Limited,)
a Private Limited Company incorporated)
under Companies Act, 1956 having its)
Registered Office situated at Office No.)
802, Floor-8, Plot – 213, Raheja)
Chambers, Free Press Journal Marg,)...Transferor Company 1/
Nariman Point, Mumbai - 400021,) Petitioner Company 1/ 'AVTPL'
Maharashtra, India.
CIN: U17100MH1988PTC049986

Vishwas Investment and Trading)
Company Private Ltd, a Private Limited)
Company incorporated under Companies)
Act, 1956 having its Registered Office)
situated at Office No. 802, Floor-8, Plot –)
213, Raheja Chambers, Free Press Journal)
Marg, Nariman Point, Mumbai - 400021,)...Transferor Company 2/
Maharashtra, India.) Petitioner Company 2/ 'VITPL'
CIN: U65990MH1990PTC059496

Houghton Hardcastle (India) Private)
Limited, a Private Limited Company)
incorporated under Companies Act, 1956)
having its Registered Office situated at)
Office No. 802, Floor-8, Plot – 213, Raheja)
Chambers, Free Press Journal Marg,)

Nariman Point, Mumbai - 400021,)...Transferee Company /
Maharashtra, India.) Petitioner Company 3/ 'HHIPL'
CIN : U24100MH1986PTC040352

Order Dated: 08.04.2024

Coram:

Anil Raj Chellan
Member (Technical)

Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Petitioners : Ajay Singh Tawar

For the Regional Director : Mr. Bhagwati Prasad, Office of the
Regional Director, MCA (WR),
Mumbai

ORDER

Per: Coram

1. Heard the learned Counsel for the Petitioners 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.
2. The sanction of the Tribunal is sought under Sections 232 r/w Section 230 of the Companies Act, 2013 read with the Companies (Compromises,

Arrangements and Amalgamations) Rules, 2016, to the Anand Veena Twisters Private Limited (hereinafter referred to as 'Transferor Company 1' or 'AVTPL') and Vishwas Investment and Trading Company Private Limited (hereinafter referred to as 'Transferor Company 2' or 'VITPL') with Houghton Hardcastle (India) Private Limited (hereinafter referred to as 'Transferee Company' or 'HHIPL' or 'the Company') and their respective Shareholders ('Scheme').

3. The Counsel for the Petitioner Companies further submits that:
 - The Petitioner Company 1 / the Transferor Company 1 is engaged in the business of supply of personnel and investments.
 - The Petitioner Company 2 / the Transferor Company 2 is engaged in the business of supply of personnel and investments.
 - The Petitioner Company 3 / the Transferee Company is engaged in the business of commission agent and investments. -
4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions on 19th day of April, 2022.
5. The Petitions have been filed in consonance with the order dated 28th day of April, 2023, passed by this Tribunal in the connected Company Scheme Application bearing C.A.(CAA)/122/MB/2022.
6. The learned Counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary affidavits of compliance in 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. The said undertaking is accepted by the Petitioner Companies.

7. The Learned Counsel for the Petitioner Companies states that, by sanction of this Scheme of Amalgamation amongst the Petitioner Companies, will be able to achieve the following rationale:

As a result of the Amalgamation of Transferor Company 1 and Transferor Company 2 into/with the Transferee Company will result in the following benefits:

- Consolidation and simplification of the group structure;
- Reduction of administrative and operative costs;
- Reduction of legal and regulatory compliances;
- Greater administrative efficiency; and
- Operational rationalization, organizational efficiency and optimal utilization of various resources.

In view of the aforesaid, the Board of Directors of the Petitioner Companies have considered the present Composite Scheme of Amalgamation of Petitioner Companies.

8. The learned Counsel for the Petitioner Companies state 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 Company would be allotted the shares of the Transferee Company in the below mentioned ratio:

To the shareholders of Transferor Company 1:

“1,82,797 (One Lakh Eighty-Two Thousand Seven Hundred and Ninety Seven)

Equity Shares of Transferee Company of Rs. 10/- each fully paid-up for every 1,000 (One Thousand) Equity Shares held in Transferor Company 1 of Rs. 10/- each fully paid up.

12,480 (Twelve Thousand Four Hundred and Eighty) Equity Shares of Transferee Company of Rs. 10/- each fully paid-up for every 1,00,000 (One Lakh) Preference Shares held in Transferor Company 1 of Rs. 10/- each fully paid up”

To the shareholders of Transferor Company 2:

“9,77,424 (Nine Lakhs Seventy-Seven Thousand Four Hundred and Twenty Four) Equity Shares of Transferee Company of Rs. 10/- each fully paid-up for every 1,000 (One Thousand) Equity Shares held in Transferor Company 2 of Rs. 100/- each fully paid up.”

On approval of the scheme, the inter-company holdings between the Transferor and Transferee Companies, if any, shall stand cancelled and extinguished. Consequently, there shall be no further rights and obligations with respect to inter-company shareholdings.

9. In view of the above, management of the Transferor Companies and the Transferee Company have decided and made requisite applications and/or petitions before the National Company Law Tribunal (“NCLT”) under Sections 230 to 232 read with other applicable provisions of the Companies Act, 2013, for the sanction of this Scheme.
10. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai has filed its Report dated 25th day of November 2023 (“Report”), inter

alia stating therein the observations on the Scheme as stated in paragraph 2 (a) to (j) of the said Report. In response to the observations made by the Regional Director, the Petitioner Companies have filed Joint Rejoinder dated 12th day of December 2023 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:

RD Report / Observations	Response of the Petitioner Companies
<p><i>a) That on examination of report of Registrar of Companies Mumbai dated 24.11.2023 for the Petitioner Companies falls within the jurisdiction of ROC, Mumbai (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 the Petitioner Companies has filed Financial Statements upto 31.03.2023.</i></p> <p><i>The ROC, Mumbai has further submitted that in his report dated 24.11.2023 which are as under:</i></p> <p style="margin-left: 40px;"><i>i. That the ROC Mumbai in his report dated 24.11.2023 has stated that No Inquiry,</i></p>	<p>In so far as observation made in paragraph 2(a) is concerned, the Petitioner Companies state that the observation of Registrar of Companies, Mumbai is self-explanatory, and no comments are required to be offered for the same.</p> <p>In so far as observations made in paragraph 2(a)(i) is concerned, the Petitioner Companies state that the observation of Registrar of Companies, Mumbai is self-explanatory, and no comments are required to be offered for the same.</p> <p>In so far as observations made in paragraph 2(a)(ii) is concerned, the Transferee Company undertakes</p>

<p><i>Inspection, Investigations, Prosecutions and complaints under CA, 2013 have been pending against the Petitioner Companies</i></p> <p><i>ii. As per the provisions of Section 232(3)(i) of the CA, 2013, where the transferor company is dissolved, the fee, paid by the transferor 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 authorised capital, must be paid by the transferee company on the increased authorized capital subsequent to the amalgamation.</i></p> <p><i>iii. The Company has not filed GNL-1 for Scheme of amalgamation which is</i></p>	<p>that it shall comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 and that the fees paid by the Transferor Companies on their Authorised share capital shall be set-off against any fees payable by the Transferee Company on its Authorised share capital subsequent to the Amalgamation. The remaining fee, if any after setting-off the fees already paid by the transferor companies on their authorized capital, will be paid by the Transferee Company.</p> <p>In so far as observations made in paragraph 2(a)(iii) is concerned, the Petitioner Companies state that the Form GNL-1 for the Scheme of Amalgamation is filed on 08th December, 2023 after due payment of requisite fees. The Challans are annexed to the Affidavit as Annexure A.</p> <p>In so far as observations made in paragraph 2(a)(iv) is concerned,</p>
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<p><i>resulted in loss of generation of government revenue.</i></p> <p><i>iv. Interest of the Creditor should be protected.</i></p> <p><i>v. May be decided on its merits.</i></p>	<p>the Petitioner Companies state that the interest of the Creditors will be protected.</p> <p>In so far as observations made in paragraph 2(a)(v) is concerned, the Petitioner Companies state that the observation of Registrar of Companies, Mumbai is self-explanatory, and no comments are required to be offered for the same.</p>
<p><i>b) 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></p>	<p>In so far as observations made in paragraph 2(b) is concerned, the Petitioner Companies undertake to pass necessary accounting entries in connection with the Scheme as per AS -14 (IND AS-103) for accounting treatment, to the extent applicable. The Petitioner Companies also undertake to comply with the other applicable Accounting Standards, such as AS-5 (IND AS-8) etc., to the extent applicable.</p>
<p><i>c) Transferee company should undertake to comply with the provisions of section 232(3)(i) of the Companies</i></p>	<p>In so far as observations made in paragraph 2(c) is concerned, the Transferee Company undertakes</p>

<p><i>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>that it shall comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 and that the fees paid by the Transferor Companies on their Authorised share capital shall be set-off against any fees payable by the Transferee Company on its Authorised share capital subsequent to the Amalgamation. The remaining fee, if any after setting-off the fees already paid by the transferor companies on their authorized capital, will be paid by the Transferee Company.</p>
<p><i>d) 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>In so far as observations made in paragraph 2(d) is concerned, the Petitioner Companies undertakes through this affidavit that the Scheme enclosed to the Company Scheme Application and Company Scheme Petition are one and same and there is no discrepancy, or no change is made.</p>
<p><i>e) The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which</i></p>	<p>In so far as the observations made in paragraph 2(e) is concerned, the Petitioner Companies states that, the Notices under section 230(5) of</p>

<p><i>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>Companies Act, 2013 have been served on (i) the Registrar of Companies, Maharashtra, Mumbai through hand delivery on 30th day of October, 2023 (ii) to the Central Government, through the office of Regional Director, Western Region, Mumbai through hand delivery on 30th day of October, 2023 (iii) the Income Tax Authority on 31st day of October, 2023 through hand delivery (iv) The Official Liquidator, High Court, Bombay by Transferor Companies through hand delivery on 30th day of October, 2023 (v) GST Authority by Second Petitioner Company through hand delivery on 31st day of October, 2023 and by Third Petitioner Company through hand delivery 31st day of October, 2023. The Petitioner Companies undertakes that the approval of the Scheme by the Hon'ble Tribunal will not deter such authorities to deal with any of the issue arising after giving effect to the Scheme. The decision of</p>
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	such authorities shall be binding on the Petitioner Companies concerned.
<p><i>f) As per Definition of the Scheme</i></p> <p><i>"Appointed Date" means the opening business hours of 01st Day of April, 2022 for the purposes of Section 232(6) and the Scheme shall be effective from the aforesaid date;</i></p> <p><i>"Effective Date" means the date on which the certified or authenticated copies of the order sanctioning this Scheme, passed by the National Company Law Tribunal at Mumbai are filed with the Registrar of Companies, Mumbai, Maharashtra by the Transferor Companies and the Transferee Company under Sections 230 to 232 and other applicable provisions of the Act;</i></p> <p><i>References in this Scheme to the date of "coming into effect of this Scheme" or "upon the Scheme being effective" shall mean the Effective Date.</i></p>	<p>In so far as the observations made in paragraph 2(f) is concerned, the Petitioner Companies confirm and clarify that as per clause 1.2 at Part A of the Scheme, "Appointed Date" means the opening business hours of 01st day of April, 2022 for the purposes of Section 232(6) and the Scheme shall be effective from the aforesaid date;</p> <p>Further clause 1.3 at Part A of the Scheme specifies the "Effective Date" means the means the date on which the certified or authenticated copies of the order sanctioning this Scheme, passed by the National Company Law Tribunal at Mumbai are filed with the Registrar of Companies, Mumbai, Maharashtra by the Transferor Companies and the Transferee Company under Sections 230 to 232 and other applicable provisions of the Act;</p>

“Record Date” means the date to be fixed by the Board of Directors of the Transferee Company for determining names of the equity shareholders of the Transferor Companies, who shall be entitled to equity shares of the Transferee Company.

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 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.

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.

References in this Scheme to the date of “coming into effect of this Scheme” or “upon the Scheme being effective” shall mean the Effective Date.

Further clause 1.11 at Part A of the Scheme specifies the “Record Date” means the date to be fixed by the Board of Directors of the Transferee Company for determining names of the equity shareholders of the Transferor Companies, who shall be entitled to equity shares of the Transferee Company pursuant.

The Scheme was presented before this Tribunal on 30th day of April, 2022 by mentioning the Appointed Date as 1st day of April 2022. Further the Petitioner Companies state that, the Company Scheme Application was filed on 30th Day of April, 2022 with this Hon’ble NCLT. As per circular no. F. No. 7/12/2019/CL-I dated 21.08.2019

	<p>issued by the Ministry of Corporate Affairs, the Scheme was filed/ presented before this Hon'ble NCLT within one year of the Appointed Date. i.e. 1st April, 2022, hence the Petitioner Companies states that they are in compliance of the circular no. F. No. 7/12/2019/CL-I dated 21.08.2019, the e-filing receipt of filing Company Scheme Application is annexed to the Affidavit as Annexure B.</p>
<p><i>g) 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 7 subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.</i></p>	<p>In so far as the observations made in paragraph 2(g) is concerned, the Petitioner Companies undertakes that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meeting of the Petitioner Company 3 directed by the Tribunal duly held in terms of Section 230(1) read with 7 subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are annexed to this Affidavit as Annexure C. Further the meeting of shareholders of the Petitioner</p>

	<p>Company 1 & 2 were dispensed with basis the consent affidavits received from them. The meeting of Creditors was dispensed with as there were no secured creditors in any of the Petitioner Companies and Unsecured Creditors in Petitioner Company 1 & 3 and the Sole Unsecured Creditor of Petitioner Company 2 has given consent to the scheme. As the meetings were dispensed with there was no requirement to place the minutes of meeting before this Tribunal.</p>
<p><i>h) Petitioner Companies may satisfy the Hon'ble NCLT that the interest of creditors shall be protected on implementation of the scheme.</i></p>	<p>In so far as the observations made in paragraph 2(h) is concerned, the Petitioner Companies state that the interest of the Creditors will be protected on implementation of the scheme.</p>
<p><i>i) Petitioner Companies shall undertake to comply, with the directions of the concerned sectoral Regulatory, if any.</i></p>	<p>In so far as the observations made in paragraph 2(i) is concerned, the Petitioner Companies undertakes to comply with the directions of the concerned Sectoral Regulatory if any, arising in the future.</p>
<p><i>j) The Petitioner Company states that</i></p>	<p>In so far as the observations made</p>

<i>the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this regard, the petitioner company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder.</i>	in paragraph 2(j) is concerned, the Petitioner Companies undertakes to comply with the provisions of Section 2(1B) of the Income Tax Act, 1961 and any other compliances of Income Tax Act and Rule thereunder, to the extent applicable.
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11. The Official Liquidator dated 8th day of November 2023, inter alia stating therein that the affairs of the Transferor Companies are not conducted in a manner prejudicial to the interest of its shareholders, creditors and the representation of the Official Liquidator be taken on record by this Tribunal
12. 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.
13. The Income Tax Department will be at the liberty to examine the aspect of any tax payable because of this scheme and it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.
14. All the assets & liabilities, the undertakings and entire business of the Transferor Companies as a going concern including taxes and charges, if any and duties of the respective Transferor Companies, shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and become the assets & liabilities, the undertakings and entire businesses and duties of the Transferee Company.
15. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P.(CAA)/198/MB/2023 filed by the Petitioner Companies

is made absolute in terms of prayers clause of the said Company Scheme Petition.

16. The Transferor Company be dissolved without winding up.
17. 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 Order, duly certified by the Deputy Registrar or the Assistant Registrar, as the case may be, of this Tribunal.
18. 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 30 days from the date of receipt certified copy of the order.
19. All Authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai.
20. The Scheme of Amalgamation is hereby sanctioned, and the appointed date of the Scheme is fixed as 01st day of April, 2022 for Petitioner Companies for the purposes of Section 232(6) of the Companies Act, 2013.

Sd/-

**ANIL RAJ CHELLAN
MEMBER (TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
MEMBER (JUDICIAL)**