

**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH**

**COURT III**

17. C.A.(CAA)/261/MB/2022

CORAM: SH. H. V. SUBBA RAO, MEMBER (J)  
MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON **12.01.2023**

NAME OF THE PARTIES: Ap Tulsyan Properties Private Limited

SECTION 230(I) OF COMPANIES ACT, 2013

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**ORDER**

Mr. Ahmed Chunawala, counsel for the Petitioner is present through virtual hearing.

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Heard the counsel appearing for the Petitioner and the above Company  
Application is **allowed. Detail order would follow:**

Sd/-  
MADHU SINHA  
Member (Technical)  
//SGP//

Sd/-  
H. V. SUBBA RAO  
Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT III

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*In the matter of*  
Companies Act, 2013

AND

*In the matter of*  
Companies Act, 2013 (18 of 2013) and  
Section 230-232 of the Companies Act,  
2013 and other applicable provisions of  
the Companies Act, 2013 read with the  
Companies (Compromises, Arrangements  
and Amalgamations) Rules, 2016;

*In the matter of*  
Scheme of Amalgamation of AP  
TULSYAN PROPERTIES PRIVATE  
LIMITED, the Transferor Company 1,  
YAMHA TRADINGCOMPANY PRIVATE  
LIMITED, the Transferor Company 2 with  
TULSYAN RETAIL PRIVATE LIMITED,  
the Transferee Company

AP TULSYAN PROPERTIES PRIVATE )  
LIMITED, is a company incorporated under )  
Companies Act, 1956, and having its )  
registered office situated at F-13, 4<sup>th</sup> Floor, )  
Pinnacle Business Park, Mahakali Caves )  
Road, Shanti Nagar, Andheri East Mumbai – )  
400093. )  
CIN: U45202MH2008PTC360821 )...Applicant Company No.1

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YAMHA TRADINGCOMPANY PRIVATE )  
LIMITED, is a company incorporated under )  
Companies Act, 1956, and having its )  
registered office situated at F-13, 4<sup>th</sup> Floor, )  
Pinnacle Business Park, Mahakali Caves )  
Road, Shanti Nagar, Andheri East Mumbai – )  
400093. )  
CIN: U51900MH2007PTC171935 ) ...Applicant Company No.2

TULSYAN RETAIL PRIVATE LIMITED, is a )  
company incorporated under Companies Act, )  
1956, and having its registered office situated )  
at F-13, 4<sup>th</sup> Floor, Pinnacle Business Park, )  
Mahakali Caves Road, Shanti Nagar, )  
Andheri East Mumbai – 400093. )  
CIN: U52322MH1997PTC327554 )  
...Applicant Company No.3

Order delivered on 12.01.2023

*Coram:*

Sh. H. V. Subba Rao : Member (Judicial)  
Ms. Madhu Sinha : Member (Technical)

*Appearances (via videoconferencing):*

For the Applicants : Mr Ahmed M Chunawala, i/b  
Rajesh Shah & Co, Advocates

**ORDER**

1. The Bench is convened by videoconference today.

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2. Learned Counsel for the Transferor Companies and Transferee Company (collectively referred to as 'Applicant Companies') states that the present Scheme is a Scheme of Amalgamation of AP TULSYAN PROPERTIES PRIVATE LIMITED, the Transferor Company 1, YAMHA TRADINGCOMPANY PRIVATE LIMITED, the Transferor Company 2 with TULSYAN RETAIL PRIVATE LIMITED, the Transferee Company under sections 230 to 232 of the Companies Act, 2013 ('Scheme').
3. Learned Counsel for the Applicant Companies states that the Board of Directors of the Transferor Companies and Transferee Company in their respective meetings conducted on 14<sup>th</sup> March, 2022 for the Transferor Company and the Transferee Company have approved the Scheme. The Appointed Date fixed under the Scheme is April 1, 2022.
4. The Applicant Company No.1 is engaged in the business of leasing of commercial / residential properties and that the Applicant Company No.2 is engaged in the business of Software Designing, development, Customization, implementation, maintenance, testing and its related services through applications service provider mode via internet or otherwise and Investment in immovable assets and that the Applicant Company No.3 is engaged in the business of retail sales of fabrics, readymade garments & women's ethnic wear through its brick & mortar store located at Basti, Kanpur.
5. The rationale for the proposed Scheme is as under:
  - (a) Consolidation would lead to more efficient utilization of capital for enhanced development and growth of the consolidated business in one entity.

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- (b) It is expected that such consolidation of entities will provide operational synergies which in turn will eliminate inefficiencies and will streamline corporate structure and cash flows.
  - (c) A single operating entity will result in better centralized management and oversight, cost efficiencies and supporting the group competitive growth.
  - (d) The proposed amalgamation shall result into elimination of duplication of work, rationalization of expenses, economies of scale
  - (e) The proposed amalgamation will eliminate and reduce managerial overlap, which are necessarily involved in running multiple entities.
6. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.1 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of AP TULSYAN PROPERTIES PRIVATE LIMITED, the Transferor Company 1, YAMHA TRADINGCOMPANY PRIVATE LIMITED, the Transferor Company 2 with TULSYAN RETAIL PRIVATE LIMITED, the Transferee Company is dispensed with in view of the consent affidavits given by the four Equity Shareholders of the Applicant Company No.1, which are annexed to the Company Scheme Application.
7. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.2 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of AP TULSYAN PROPERTIES PRIVATE LIMITED, the Transferor Company 1, YAMHA TRADINGCOMPANY PRIVATE LIMITED, the Transferor Company

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2 with TULSYAN RETAIL PRIVATE LIMITED, the Transferee Company is dispensed with in view of the consent affidavits given by the four Equity Shareholders of the Applicant Company No.2, which are annexed to the Company Scheme Application.

8. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.3 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of AP TULSYAN PROPERTIES PRIVATE LIMITED, the Transferor Company 1, YAMHA TRADINGCOMPANY PRIVATE LIMITED, the Transferor Company 2 with TULSYAN RETAIL PRIVATE LIMITED, the Transferee Company is dispensed with in view of the consent affidavits given by the four Equity Shareholders of the Applicant Company No.3, which are annexed to the Company Scheme Application.
9. That the counsel for the Applicant Companies submits that there are no Secured Creditors in the Applicant Company No. 1 mentioned in Para 25.4 of the Application.
10. That the counsel for the Applicant Companies submits that there are no Secured Creditors in the Applicant Company No. 2 mentioned in Para 25.5 of the Application.
11. That the counsel for the Applicant Companies submits that there are no Secured Creditors in the Applicant Company No. 3 mentioned in Para 25.6 of the Application.
12. That there are 2 (Two) Unsecured Creditor having value of Rs. 11,58,080/- (Rupees Eleven Lacs Fifty Eight Thousand Eighty Only) in the Applicant Company No.1. The Counsel for the Applicant Company No. 1 submits that so far as Unsecured Creditors of the Applicant

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Company No. 1 are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 1 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 1 and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Applicant Company No.1 is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 1 shall meet the liabilities of its unsecured creditors as they arise in the normal course. This bench hereby directs the Applicant Company No.2 to obtain the Consent of the Unsecured Creditors at the time of filling the Petition of more than 90% in value

13. That there are 3 (Three) Unsecured Creditor having value of Rs. 1,10,56,283/- (Rupees One Crore Ten Lacs Fifty Six Thousand Two Hundred & Eighty Three Only). The Counsel for the Applicant Company No. 2 submits that so far as Unsecured Creditors of the Applicant Company No. 2 are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 2 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 2 and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Applicant Company No.2 is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 2 shall meet the liabilities of its unsecured creditors as they arise in the normal course. This bench hereby directs the Applicant Company No. 2 to obtain the Consent of the Unsecured Creditors at the time of filling the Petition of more than 90% in value.

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14. That the Counsel for the Transferor Company submits that there are 476 (Four Hundred and Seventy Six) Unsecured Creditors having outstanding Rs. 42,21,00,360/- (Rupees Forty Two Crores Twenty One Lakhs Three Hundred and Sixty only). The Counsel for the Company submits that so far as Unsecured Creditors of the Company are concerned, most of them are in the nature of loan/ sundry/ trade creditors for activities of the Company and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Company and hence they will in no way be affected by the Scheme. It is further submitted that the Company is meeting the amounts payable to its creditors from its activities. Therefore, the meeting of the Unsecured Creditors of the Company is dispensed with. However, this bench hereby directs the Company to issue notice to all its Unsecured creditors by registered post or by air mail or by courier or by speed post or by hand delivery or email (for those cases where email IDs are available) as required under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Company.

15. The Consideration is as follows:

*Upon merger, it has been decided that Transferee Company shall issue and allot 1000 (One Thousand) fully paid-up equity shares of Rs. 10/- each to shareholders of Transferor Companies.*

16. The Applicant Companies to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal



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from Regional Director within 30 (thirty) days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

17. The Applicant Companies to serve the notice upon the Registrar of Companies, Mumbai, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, If no response is received by the Tribunal from the Registrar of Companies within 30 (thirty) days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules. 2016.
  
18. The Applicant Companies to serve the notice on the concerned Income Tax Authority within whose jurisdiction, The Applicant Company No. 1 PAN: AAHCA1022E having his address at The Income Tax Office, Aaykar Bhawan, Mumbai. The Applicant Company No. 2 PAN: AAACY4227C having his address at Ward 12(1)(1), Aaykar Bhawan, Mumbai. The Applicant Company No. 3 PAN: AABCT8612K having his address at DCIT Circle Faizabad, Krishna Palace, Uttar Pradesh. The Applicant Company's assessments are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Income Tax Authority within 30 (thirty) days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed

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Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

19. The Transferor Companies are also directed to serve intimations of the Scheme upon Official Liquidator, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal is appointing M/s. BHUSHAN KHOT & COMPANY, Chartered Accountant; having address at: B-15, Sai Prasad Telli Gully X Lane, Andheri (E), Mumbai - 400069; having Contact No. 022-26822541/ 42, (+91) 9892128724 and having Email address at: bhushan@cabkc.in/info@cabkc.in to assist the Official Liquidator to scrutinize the books of accounts of the said Transferor Companies for the last 5 years and submit its representation / report to the Tribunal. The aforesaid Companies to pay fees of Rs. 2,00,000 /- for this purpose. If no representation / response is received by the Tribunal from Official Liquidator, Bombay within a period of 30 (thirty) days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
20. The Applicant Companies shall host notices along with the copy of the Scheme on their respective websites, if any.

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21. The Applicant Companies to file an affidavit of service and Compliance within 10 (ten) working days after serving to notice to all the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.
22. The Appointed Date is 1<sup>st</sup> April, 2022

Sd/-  
Madhu Sinha  
Member (Technical)

Sd/-  
H. V. Subba Rao  
Member (Judicial)