

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

**10. C.P.(CAA)/253(MB)2023 In C.A.(CAA)/114(MB)2022**

**CORAM:**

**SHRI ANIL RAJ CHELLAN**  
**HON'BLE MEMBER (T)**

**SHRI KULDIP KUMAR KAREER**  
**HON'BLE MEMBER (J)**

**ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE  
NATIONAL COMPANY LAW TRIBUNAL ON 29.04.2024**

**NAME OF THE PARTIES: Supreme Nonwovens Private Limited**

**Section: 230-232 of Companies Act, 2013**

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**ORDER**

Adv. Ajit Singh Tawar appeared for the Petitioner. Heard the submission of the Counsel for the Petitioner. The detailed order is followed vide separate order sheet.

**Sd/-**  
**ANIL RAJ CHELLAN**  
**Member (Technical)**  
29.04.2024  
Sushil

**Sd/-**  
**KULDIP KUMAR KAREER**  
**Member (Judicial)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, COURT II**

**C.P.(CAA)/253/MB/2023**

**CONNECTED WITH**

**C.A.(CAA)/114/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 Merger by Absorption

between Nowonext Private Limited (First Transferor Company) And Nextnowo Private Limited (Second Transferor Company) With Supreme Nonwovens

Private Limited (Transferee Company) and their respective shareholders.

**Nowonext Private Limited**, a Private )  
Limited Company incorporated under the )  
Companies Act, 2013 having its Registered )  
Office situated 8th Floor, Road No. 16th, )  
Plot No. 110, Near Chembur Gymkhana, )  
Chembur, Mumbai 400071, India, having )  
CIN: U74110MH2020PTC341626 )... **First Petitioner Company /**  
**First Transferor Company**

**Nextnowo Private Limited**, a Private )  
Limited Company incorporated under the )  
Companies Act, 2013 having its Registered )  
Office situated at 5<sup>th</sup>, Floor, 110, 16th Road, )  
Chembur, Mumbai 400071, Maharashtra, )  
India having ) ...**Second Petitioner Company /**  
CIN: U74110MH2021PTC373613 ) **Second Transferor Company**

**Supreme Nonwovens Private Limited**, a )  
Public Limited Company incorporated )  
under the Companies Act, 1956 having its )  
Registered Office situated at 110, 10th )  
Floor, 16th Road, Chembur, Mumbai )  
400071, Maharashtra, India, having CIN: ) ...**Third Petitioner Company /**  
U74110MH1981PTC025149 ) **Transferee Company**

**(Hereinafter the First Petitioner Company, the Second Petitioner  
Company and the Third Petitioner Company are collectively referred  
to as the “Petitioner Companies”)**

**Order pronounced on 29.04.2024**

**Coram:**

**Anil Raj Chellan**  
**Member (Technical)**

**Kuldip Kumar Kareer**  
**Member (Judicial)**

**Appearances:**

**For the Petitioner(s):**

Mr. Ajit Singh Tawar a/w Mr. Kushal  
Kumar i/b Ajit Singh Tawar & Co.,  
Advocates for Petitioner Companies

**For the Regional Director (WR)**

Ms. Aparna Mudiam

**ORDER**

**Per: Coram**

1. Heard the learned Counsel 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 and nor has any party controverted any averments made in the Petition.

2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 read with the Scheme of Merger by Absorption of Nowonext Private Limited (First Petitioner Company) And Nextnowo Private Limited (Second Petitioner Company) with Supreme Nonwovens Private Limited (Third Petitioner Company) and their respective Shareholders. The Petitioner Companies have its registered offices within the jurisdiction of this Hon'ble Tribunal.
3. The Counsel for the Petitioner Companies submit that the First Petitioner Company is engaged in the business of manufacturing, processing, producing, transporting, developing nonwoven items. To act as management consultant and render engineering, technical management and other skilled services to all types of industry and to carry on business of traders, importers/ exporters of goods and services.
4. The Counsel for the Petitioner Companies further submit that the Second Petitioner Company is engaged in the business of manufacturing, buying, selling, importing, exporting of all kinds of automotive trim components. To act as management consultant and render engineering, technical management and other skilled services to all types of industry and to carry on business of traders, importers, exporters of goods and services.
5. The Counsel for the Petitioner Companies further submit that the Third Petitioner Company is engaged in the business of manufacturing, processing, producing, transporting, developing nonwoven items. To act as management consultant and render engineering, technical management and other skilled services to all types of industry and to carry on business of traders, importers, exporters of goods and services.
6. The Board of Directors of the Petitioner Companies have approved the said Scheme in their respective Board Meetings held on 5th day of April, 2022 and later the modified Scheme in their respective Board Meetings held on 29th day of May, 2023, the copies of the Board Resolution passed by the respective Board of Directors of the Petitioner Companies are annexed to the Company Scheme Petition as ***Exhibit D (colly) and Exhibit E (colly)*** respectively.

7. The Appointed Date mentioned in the Scheme is 1<sup>st</sup> April 2022 and that the said Appointed Date is not against Public Interest.
8. The Learned Counsel appearing on behalf of the Petitioner Companies state that the Petition have been filed in consonance with the order dated April 28, 2023, passed by this Tribunal in the connected Company Scheme Application bearing C.A.(CAA)/114/MB-II/2022.
9. The Learned Counsel appearing on behalf of the Petitioner Companies state 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.
10. The Learned Counsel for the Petitioner Companies state that, the rationale of the Scheme are as follows:

The Transferor Companies and Transferee Company are engaged in the similar line of business. Combining of businesses would help in achieving operational efficiency, streamlining the business operations and reduction in compliance cost; hence it is proposed inter-alia to amalgamate the Transferor Companies into the Transferee Company. The proposed amalgamation will also result in following benefits:

  - Consolidation of the Transferor Companies and the Transferee Company will achieve simplified corporate structure, rationalise the number of entities and result in a single entity with combined businesses.
  - Provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, it will enable optimal utilization of existing resources and provide an opportunity to fully leverage assets, capacities, experience and infrastructure of the Transferor Companies and Transferee Company.
  - Reducing managerial overlaps involved in operating multiple entities, enable cost savings and effective utilization of valuable resources which

will enhance the management focus thereby leading to increase in operational and management efficiency; integrate business functions; eliminate duplication and rationalization of administrative expenses.

- Synchronization of efforts to achieve uniform corporate policy, greater integration and greater financial strength and flexibility for the Transferee Company.
- Upon completion of the Merger, the Transferor Companies will be dissolved. Consequently, there would be lesser regulatory and legal compliance obligations including accounting, reporting requirements, statutory and internal audit compliance requirements, tax filings, company law compliances, etc. and therefore reduction in administrative costs.

In view of the aforesaid, the Board of Directors of the Transferor Companies as well as the Board of Directors of the Transferee Company have considered and proposed the present Scheme of Merger by Absorption between the Transferor Companies with the Transferee Company.

11. The Learned Counsel for the Petitioner Companies states that, upon the Scheme becoming finally effective, as the Transferor Companies are indirect subsidiaries of the Transferee Company, no consideration shall be payable pursuant to the Merger by Absorption of the Transferor Companies with the Transferee Company and the Transferor Companies will be dissolved.

12. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai has filed its Report dated 5<sup>th</sup> Day of January 2024, making certain observations and the Petitioner Companies has undertaken / made following submission that:

<b>Sr. No.</b>	<b>RD Observations</b>	<b>Response of the Petitioner Companies</b>
2(a)	That on examination of the report of the Registrar of Companies, Mumbai dated 25.07.2023 (Annexed as Annexure A-1) for Petitioner Companies falls within	<i>The Petitioner Companies state that the observation of Registrar of Companies, Maharashtra Mumbai is self-explanatory and does not require any comment.</i>

	<p>the jurisdiction of ROC, Mumbai. It is submitted that no complaint and/or representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Companies. Further, the Petitioner Companies has filed Financial Statements up to 31.03.2022.</p> <p>The ROC has further submitted that in his report dated 25.07.2023 which are as under:</p>	
2(a) (i)	<p>That the ROC Mumbai in its report dated 25.07.2023 stated that No Inquiry, Inspection, Investigations, Prosecutions and Complaints under Companies Act, 2013 are pending against the Petitioner Companies.</p>	<p><i>The Petitioner Companies state that the observation of Registrar of Companies, Maharashtra Mumbai is self-explanatory and clarifies that no Inquiry, inspection, investigation, prosecution &amp; complaint under Companies Act, 2013 is pending against the Petitioner Companies.</i></p>
2(a) (ii)	<p>As per provisions of section 230(3)(i) of Companies Act, 2013 where the transferor company is dissolved, the fee, if any, 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 shall be set off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation. Therefore,</p>	<p><i>The Petitioner Companies undertakes that it shall comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 as regards to the combination of Authorised share capital, where the Transferor Company(ies) will be dissolved and the fees, if any, paid by the Transferor Company(ies) on its Authorised share capital shall be set-off against any fees payable by the Transferee Company on its</i></p>

	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.	<i>Authorised share capital subsequent to the Scheme of Merger by Absorption, the remaining fee, if any after setting-off the fees already paid by the Transferor Company(ies) on their authorized capital, will be paid by the Transferee Company.</i>
2(a) (iii)	Interest of the Creditor should be protected.	<i>The Petitioner Companies undertake to protect the interest of Creditors.</i>
2(a) (iv)	May be decided on merits.	<i>The Petitioner Companies state that the observation of Registrar of Companies, Maharashtra Mumbai is self-explanatory.</i>
2(b)	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>In so far as observation made in paragraph 2(b) of the RD Report is concerned, the Transferee Company undertakes that it shall comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 as regards to the combination of Authorised share capital, where the Transferor Companies will be dissolved and the fees, if any, paid by the Transferor Companies on its Authorised share capital shall be set-off against any fees payable by the Transferee Company on its Authorised share capital subsequent to the Scheme of Merger by Absorption, the remaining fee, if any, after setting-off the fees already paid by the</i>



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		<i>Transferor Companies on its authorized capital, will be paid by the Transferee Company.</i>
2(c)	In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the transferee 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>In so far as observation made in paragraph 2(c) of the RD Report is concerned, the Transferee Company undertakes to pass necessary accounting entries in connection with the Scheme as per Accounting Standard-14 or IND AS-103, for accounting treatment, to the extent applicable. The Transferee Company also undertakes to comply with the other applicable Accounting Standards, such as AS-5 (IND AS-8) etc., to the extent applicable.</i>
2(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>In so far as the observation made in paragraph 2(d) of the RD Report is concerned the Petitioner Companies had made modification to the Scheme with respect to the increase in the authorized share capital of the Transferor Companies by passing the board resolution of the respective Transferor Companies on May 29, 2023 further the said modification was approved by the Hon'ble Tribunal vide order dated March 4, 2024 passed in the Company Petition. Apart from the aforementioned modification no other material modification was done to the Scheme. Further the</i>

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		<i>copies of Company Petition along with the modified Scheme was served upon the authorities via hand delivery on March 6, 2024.</i>
2(e)	<p>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.</p>	<p><i>In so far as the observations made in paragraph 2(e) of the RD Report is concerned, the Petitioner Companies states that notices under section 230(5) of the Companies Act, 2013 have been served on (i) Registrar of Companies, Maharashtra, Mumbai; (ii) The Central Government through the office of Regional Director, Western Region, Mumbai; (iii) Concerned Income Tax Officer; iv) Principal Chief Commissioner of Income Tax; (v) the Goods and Service Tax Authority; (vi) The Official Liquidator, High Court, Bombay by the First Petitioner Company and Second Petitioner Company. The Petitioner Companies undertake 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 such authorities shall be binding on the Petitioner Companies concerned unless appealed further by the Petitioner Companies in accordance with the law.</i></p>

<p>2(f)</p>	<p>As per Definition of the Scheme, <b>“Appointed Date”</b> means 1st day of April 2022 for the purposes of Section 232(6) of the Companies Act, 2013.</p> <p><b>"Effective Date"</b> means the last of the dates, if applicable, on which the certified or authenticated copy of the order sanctioning the Scheme passed by the National Company Law Tribunal Mumbai, is filed with the Registrar of Companies, Maharashtra at Mumbai.</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 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>It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-</p>	<p><i>In so far as the observations made in paragraph 2(f) of the RD Report is concerned, the Petitioner Companies confirm and clarify as under:</i></p> <p><i>i. Appointed Date as per Clause 1.2 of the Scheme is 1st day of April 2022;</i></p> <p><i>ii. As per the clause 1.6 of the Scheme specifies that the Scheme shall be effective from the last dates, if applicable, on which the certified or authenticated copy of the order sanctioning the Scheme passed by National Company Law Tribunal Mumbai is filed with the Registrar of Companies Maharashtra at Mumbai.</i></p> <p><i>Further, the Petitioners have complied with the requirements of para 6 (c) of the circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs as the Appointed Date is not ante-dated beyond one year from the date of filing of Application and the Application was filed with the Hon'ble Tribunal on 26<sup>th</sup> day of April 2022.</i></p>
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	I dated 21.08.2019 issued by the Ministry of Corporate Affairs.	
2(g)	Petitioner Companies shall undertake to comply with the directions of the Income Tax Department & GST Department, if any.	<i>In so far as the observation made in paragraph 2(g) of the RD Report is concerned, the Petitioner Companies states a Notice under section 230(5) of Companies Act, 2013 have been served on to the concerned Income Tax Authorities and the GST Authorities through hand delivery and have yet not received any directions from the said Income Tax Authorities and GST Authorities. Further, the Petitioner Companies undertake to comply with any such directions issued by the said Income Tax or GST Authorities, if received.</i>
2(h)	Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.	<i>In so far as the observation made in paragraph 2(h) of the Report is concerned, the Petitioner Companies states a Notice under section 230(5) of Companies Act, 2013 is not required to be served upon, as there are no Sectoral Regulatory applicable on the Petitioner Companies. Further, the Petitioner Companies undertakes to comply with any such directions issued by the said Sectoral Regulatory, if received.</i>
2(i)	The Petitioner Company states that the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax	<i>In so far as the observation under paragraph 2(i) of the RD Report is concerned, the Petitioner Companies undertakes to comply</i>

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	Act, 1961. In this regards, the petitioner company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder.	<i>with all the provisions of Income Tax Act including provisions of Section 2(1B) of the Income Tax Act, 1961 and Rules thereunder.</i>
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13. The Official Liquidator has filed its report on 10<sup>th</sup> Day of January 2024, making certain observations and the Petitioner Companies have undertaken /made following submissions:

With reference to Paragraph 1 to 5 of the OL representation, the contents thereof do not require any comments.

<b>Sr. No.</b>	<b>OL Observations</b>	<b>Response of the Petitioner Companies</b>
6	<i>With reference to clause No. 14 of the scheme it is stated that such clauses overrides the provision of Companies Act, 2013 namely Section 232(3)(i) which inter-alia provides that, 'if a company is dissolved the fee paid by such companies on its Authorised Capital shall be set off against any fees payable by the transferee company on its Authorised Capital. Accordingly, clause No. 14 may be modified.</i>	<i>In response to the observations made in paragraph 6 of the report of the Official Liquidator, the Transferor Companies submits that the clause 14 of the Composite Scheme complies with the provisions of Section 232(3)(i) of the Companies Act, 2013 as regards to the combination of Authorised share capital, where the Transferor Companies shall stand dissolved and the fees, if any, 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 Merger by absorption, the deficit fee, if any after setting-off the fees already</i>

		<p><i>paid by the Transferor Companies on their authorized capital, will be paid by the Transferee Company. Hence, clause 14 of the Scheme does not override the provisions of Companies Act, 2013, and no modification is required for the same.</i></p>
7	<p><i>From the Assets and Revenue of the Nextnowo Private Limited (Transferor Company 2) as at 31.03.2022 it appears to be a deemed NBFC. There may be applicability of provisions of Sections 45-IA of Reserve Bank of India Act. Hon'ble Tribunal may require the Company to clarify on this.</i></p>	<p><i>In response to the observations made in paragraph 7 of the report of the Official Liquidator, the Transferor Company 2 submitted that –</i></p> <p><i>(a) the financial assets of Transferor Company 2 as on 31.03.2022 was Rs. 7,78,75,520/-, of the total assets of Rs. 28,17,45,801/- which constitutes less than 50% of the total assets. The revenue from operations (sale of goods) of Transferor Company 2 was Rs. 1,86,61,724/- whereas income from financial asset is Rs. 2,07,88,876/- which constitutes more than 50% of the gross income.</i></p> <p><i>(b) Further the main Activity of the Transferor Company 2 as per Memorandum of Association is Non-Financial Business Activity and the main business office the Transferor Company</i></p>

		<p><i>2 is the business of manufacturing, buying, selling, importing, exporting of all kinds of automotive trim components and to act as management consultant and render engineering, technical management and other skilled services to all types of industry and to carry on business of traders, importers, exporters of goods and services.</i></p> <p><i>(c) The Transferor Company 2 is not carrying on the business of an NBFC and is also not a deemed NBFC as the primary business of the Transferor Company 2 is not related to financial activities, as the financial assets of the Transferor Company 2 does not form more than 50% of its total assets.</i></p> <p><i>(d) As per the deemed NBFC criteria as mentioned by RBI any Company which fulfills both the criteria that is more than 50% of the total assets are financial assets and more than 50% of the total income is from those financial assets only in that scenario the company is deemed as an NBFC. Further</i></p>
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		<p><i>the purpose of the said criteria is to determine that the principal activity of the company should be similar to an NBFC.</i></p> <p><i>(e) Based on the above, since the Transferor Company 2 is not carrying on financial activity as principal business and further does not fulfill both the criteria as mentioned herein above. Therefore, the company is neither NBFC nor a CIC.</i></p>
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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. All the assets and liabilities including taxes and charges, if any and duties of the Transferor Companies, shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
16. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P. (CAA)/253(MB)2023 filed by the Petitioner Companies is made absolute in terms of prayers clause of the said Company Scheme Petition.
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 in addition to physical copy, 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



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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 of the order.

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. Ordered accordingly.

**Sd/-**

**Anil Raj Chellan**  
**Member (Technical)**

**Sd/-**

**Kuldip Kumar Kareer**  
**Member (Judicial)**