

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
SPECIAL BENCH
(Through web-based video conferencing platform)

CP (CAA) No. 16/BB/2022
(Second Motion)
U/s. 230-232 & Other Applicable
Provisions of the Companies Act, 2013

IN THE MATTER OF:

M/s. Madhuvan Enterprises Private Limited

R/o: Sy.No. 26, Bellary Road, Sahakar Nagar,
Byatarayanapura,
Bangalore – 560 092

... Petitioner Company No.1/
Transferee Company

And

M/s. Yujya Developers Private Limited

R/o: Sy.No.26, Bellary Road, Sahakar Nagar,
Byatarayanapura,
Bangalore – 560 092

... Petitioner Company No.2/
Transferor Company

Order delivered on: 16th March, 2023

CORAM:

1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Satya Ranjan Prasad, Member (Technical)

PRESENT:

For the Petitioner Companies : Ms. Aparna Purkayastha, Adv.
For the ROC & RD : Shri. Hemanth Rao, Adv.
For the IT Department : Shri. Ganesh R Ghale. Adv.

ORDER

Per: T. Krishnavalli, Member (Judicial)

1. This is a second motion petition filed on 16.03.2022 by M/s. Madhuvan Enterprises Private Limited (for brevity, the "Petitioner Company No.1/ Transferee Company") and M/s. Yujya Developers Private Limited (for brevity, the "Petitioner Company No.2/ Transferor Company") under

Sections 230 and 232 and Other Applicable Provisions of the Companies Act, 2013 by *inter-alia* seeking for the sanction of Scheme so as to be binding on the Petitioner Companies and their respective shareholders etc.

2. The Petitioner Companies filed First Motion Application bearing CA (CAA) No. 44/BB/2021 before this Tribunal. And based on such application moved under section 230-232 of the Companies Act, 2013 R/w Companies (CAA) Rules, 2016 necessary directions were issued vide order dated 10.03.2022. Details of the First Motion order are as under:

	Transferor Co.,	Transferee Co.,
Equity Shareholders	Meeting Dispensed (Consent Obtained)	Meeting Dispensed (Consent Obtained)
Secured Creditors	No Secured Creditors	Meeting Dispensed (Consent Obtained)
Unsecured Trade Creditors	Meeting Dispensed (Consent Obtained)	Meeting Dispensed (Consent Obtained)

3. When the petition was listed on 27.06.2022, the following directions were issued:-

“1. Heard Ms. Aparna Purakayastha, learned Counsel for the Applicant Companies.

2. Admit and Issue notice. Registry is directed to issue notice on all the statutory authorities viz. the Registrar of Companies, Karnataka, the Regional Director, Hyderabad, the Official Liquidator, Designated Nodal Officer, the Jurisdictional Income Tax Authority, the Secretary, Competition Commissioner of India and other applicable Sectoral Regulators, if any, by email. The Petitioner is also permitted to collect the notices and serve it personally to all the statutory authorities along with material papers and company application by authorized email as well as Speed Post, and to file proof of service in the Registry within ten days.

3. The Petitioner is also directed to publish paper publication in one English Newspaper viz. “The Hindu” and in one Kannada Newspaper viz. “Udayavani”, at least ten days before the next date of hearing.

4. The said statutory authorities may file their respective reports, if any, within three weeks from the date of receipt of the notice, with a copy served on the Applicant Companies. The Petitioner shall also file the

response, if any, thereto within two weeks from the date of receipt of copy of reports.

5. List the matter on **10.08.2022.**”

4. In pursuant to the aforesaid notice, the learned Counsel for the Petitioner Companies has filed copies of proof of service of notices along with paper clipping of the Paper Publication vide diary No. 2914 dated 07.07.2022 and Diary No. 3393 dated 08.08.2022.
5. The main objects, dates of Incorporation, authorized, issued and paid-up share capital, rationale of the scheme and interest of employees have been discussed in detail in first motion order dated 10.03.2022.
6. The Board Resolution of the Petitioner Companies approving the Scheme is annexed as Annexure F1 & F2 of the Petition.
7. It is further submitted that the Certificate of Statutory Auditors of the Transferee Company, stating that the accounting treatment in the books of Transferee Company proposed in the Scheme is in compliance with the Indian Accounting Standards ('Ind AS') as prescribed under Section 133 of the Act read with Companies (Indian Accounting Standard) Rules, 2015 as amended from time to time and Other Generally Accepted Accounting Principles in India.
8. The learned Counsel for the Petitioner has filed various affidavits with regard to the sectoral regulator, no corporate debt restructuring and no investigation proceedings pending against the Petitioner Companies or its directors under Companies Act, 2013 or under any others statues are at Page Nos. 321 to 332 and 44 to 48 of the Petition. Further, the Petitioner Companies has filed an affidavit stating no objection from the objector vide Diary No. 5489 dated 16.12.2022.
9. The Audited Financial Statement as on 31.03.2021 of the Petitioner Companies is attached as Annexure C1 and E1 and the Unaudited Provisional Financials as on 31.12.2021 of Petitioner Companies is attached as Annexure C2 and E2 of the Petition.

- 10.** As per the Scheme, the “Appointed Date” means 1st Day of April 2021 for merger of Yujya into Madhuvan.
- 11.** In pursuant to the notice, the Regional Director (RD) and the Registrar of Companies (ROC) has filed its Common Report vide Diary No. 3837 dated 09.09.2022. Both RD and ROC have raised the following observation vide para 2:
- i) This is a case of reverse merger wherein the Transferee Company is a wholly owned subsidiary of the Transferor Company. Both the companies have common Directors. Further majority shares in the Transferee Company are held by GBTC 1(Master) Pte Ltd, a Singapore based company.
 - ii) The appointed date of the scheme is mentioned as 01.04.2021, being an old date, the same may be changed to 01.04.2022.
 - iii) The Transferor Company is engaged in the business of lessors, builders, developers, experts, advisers, surveyors, planners, dealers, re-sellers, house and estate agents, auctioneers, furnishers, immovable and movable properties. Whereas the Transferee Company is engaged in the business of real estate development. Hence the main objects of the Transferee Company need to be altered suitably to allow it to carry out the objects of the Transferor Company after amalgamation. In this regard, the amalgamated company shall furnish an undertaking before the Hon’ble NCLT.
 - iv) It is seen that both the petitioner companies were registered only in the year 2019 and both are loss making companies. The petitioner company shall explain the rationale for merging one loss making company with another loss-making company.
 - v) As the shares would be allotted to foreign shareholders, the amalgamated company shall comply with FEMA/RBI regulations and furnish an undertaking before the Hon’ble NCLT in this regard.
 - vi) Both the Transferor and Transferee Companies have Related Party Transactions during the financial year 2020-21. Hence the petitioner companies shall furnish an undertaking with regard to compliance of section 188 of the Companies Act, 2013 before the Hon’ble NCLT.

- vii) Clause 16 of part C of the Scheme provides for Clubbing of Authorized Capital wherein the Authorized Share Capital of the Transferee Company shall automatically stand increased without any payment of stamp duty and fees. Hence the amalgamated company shall comply with the provision of section 232(3)(i) of the Companies Act, 2013 and pay the differential fee. In this regard, an undertaking before the Hon'ble NCLT be submitted.
- viii) Any statutory dues payable by the petitioner companies shall be paid by the amalgamated company. An undertaking in this regard be submitted to the Hon'ble NCLT.
- ix) As per Clause 6.1 of the Scheme, the paid-up capital of the Transferee Company shall stand cancelled and reduced by the shares held in aggregate by the respective transferor company pursuant to amalgamation. Likewise, as per clause 7.3, the investment held in the Transferee company by the Transferor company shall be adjusted against the respective equity share capital of the Transferor company to the extent of the face value of the shares and stand cancelled. During the period just preceding year of the scheme, the company has issued CCDs and equity by obtaining investment from the Transferor Company for general business of the Company and subsequently during the immediate next year the petitioners are approaching the Hon'ble NCLT through the present scheme, wherein, the equity/CCDs and investments are getting cancelled. The petitioner companies shall explain in detail justifying the same to the Hon'ble NCLT.
- 12.** Subsequently, reply affidavit to the Common Report of RD & ROC have been filed by the Petitioner Companies vide Diary No. 3969 dated 19.09.2022, inter alia stating as under:-
1. **Reply to point 2(ii) of the ROC & RD report:** It is submitted that as per Clause 1.2 of the Scheme of Amalgamation of Yujya Developers Private Limited with Madhuvan Enterprises Private Limited and their respective shareholders, the Appointed Date is 01.04.2021 for merger of Transferor Company into Transferee Company. In compliance with Section 230-232 of Companies Act, 2013 read with General Circular No. 09/2019 issued by the Ministry of Corporate Affairs on 21st August,

2019; a joint Company Application was filed by the Petitioner Companies before this Honourable Tribunal in C.A. (CAA) No. 44/BB/2021 on 24.05.2021 within the prescribed time frame (2 months from the Appointed Date). The Honourable Tribunal has passed orders on the Company Application on March 10, 2022. Accordingly, the Transferee Company has already made accommodation for this merger in its financial statements for the F.Y. 2021-22. We submit that in terms of the provisions of the Companies Act and the General Circular No. 09/2019 considering that the timelines therein have been met there is no requirement for the appointed date to be changed from 01.04.2021 to 01.04.2022.

2. **Reply to point 2(iii) of the ROC & RD report:** It is submitted that the Petitioner Companies carry on similar business activities and that objects stated in Clause III (a) of the Memorandum of Association of Transferee Company are similar to objects stated in Clause III (a) of the Memorandum of Association of Transferor Company. The Transferee Company however undertakes to alter its objects clause if needed in accordance with the observations of the Regional Director/ROC.
3. **Reply to point 2(iv) of the ROC & RD report:** The rationale of this amalgamation is to achieve simplified corporate structure, reduce managerial overlaps, enable cost saving and enable effective utilization of valuable resources which will enhance the management focus thereby leading to higher operational efficiency. Consequently, there would be lesser regulatory and legal compliance obligations including accounting, reporting requirements, statutory and internal audit requirements, tax filings, company law requirements, etc. and therefore reduction in administrative costs and total loss to the organization.
4. **Reply to point 2(v) of the ROC & RD report:** The Transferee Company undertakes to comply with FEMA/RBI regulations for allotments made to foreign shareholders upon amalgamation.
5. **Reply to point 2(vi) of the ROC & RD report:** The Transferee Company undertakes to comply with Section 188 of the Companies Act, 2013 for Related Party Transactions if any falling within the scope of the Section.

6. **Reply to point 2(vii) of the ROC & RD report:** The Transferee Company undertakes to company with Section 232(3)(1) of the Companies Act, 2013 and pay the differential fee if any for clubbing of Authorised Share Capital of Transferor Company with Transferee Company.
7. **Reply to point 2(viii) of the ROC & RD report:** The Transferee Company undertakes to pay statutory dues payable if any by the amalgamated entities.
8. **Reply to point 2(ix) of the ROC & RD report:** the Transferee Company is a subsidiary of the Transferor Company and the amalgamation is in the nature of a reverse merger. The OCDs and equity have been issued by the Transferee Company to Transferor Company for the general business purpose. Upon amalgamation, the OCDs and equity issued will stand cancelled and the amounts received therein will remain with the Transferee Company. The said arrangement is in accordance with Ind AS as specified in the Scheme of Amalgamation.
13. The Income Tax department has filed its report for the Transferee Company vide Diary No. 4263 dated 10.10.2022, and again through the Counsel vide Diary No. 3987 dated 20.09.2022, wherein it is observed as follows:

1	Name of the Assessee	M/s. Madhuvan Enterprises Pvt Ltd
2	PAN/CIN	AAMCM9119R U70109KA2019YC127534
3	Arrears outstanding	NIL
4	Appellate proceedings pending if any	NIL
5	Other Proceeding pending if any	NIL

14. The learned Counsel for the Petitioners has filed IT report of Mumbai for the Transferor Company vide Diary No. 5117 dated 28.11.2022, wherein it is observed as follows:

1	Name of the Assessee	Yojya Developers Pvt Ltd
2	PAN	AABCY1635K
3	Arrears outstanding	NIL
4	Appellate proceedings pending if any	143(3) proceeding is pending for AY 2021-22
5	Other Proceeding pending if any	NIL

15. The Official Liquidator (OL) has filed its report vide Diary No. 3993 dated 20.09.2022, wherein it is stated that the Chartered Accountant in their report have concluded as under:

- i. "The Company has maintained books of accounts and statutory registers and papers up to date.*
- ii. The Company has filed all the necessary statutory returns with various authorities.*
- iii. The Company has been regular in holding applicable meetings of all classes of the Directors as required under the law.*
- iv. Meetings of Secured Creditors, unsecured creditors (only one creditor) were organised by the Company. Necessary Affidavits were collected and consents of all vested interest parties were received.*
- v. Necessary Board resolutions were passed, wherever required.*
- vi. Necessary applications were filed and Information about this merger has been passed on to the concerned.*
- vii. Transferor Company has filed all the statutory and regular annual returns with income tax authorities and Registrar of Companies for all the financial years.*
- viii. Since inception of the Company.*
- ix. On scrutiny of the books and papers maintained and according to the information and explanations obtained from the Company, we confirm that:*
- x. The Company has maintained proper books and papers.*
- xi. That the affairs of the Company have not been conducted in a manner prejudicial to the interests of the members or Public interest as per Companies Act, 2013."*

16. The reports of the ROC, RD, OL, CCI, IT and RBI are taken on record. Similarly, reply filed by the petitioner companies to the above mentioned reports are also taken on record.

17. In view of the above discussion, we conclude that the objections/observations to the Scheme received from RD, ROC, IT, CCI, RBI and OL have been adequately replied by the Petitioner Companies and hence there is no impediment in approval of the Scheme.

18. The Scheme in question as annexed at Annexure-A is approved and we hereby declare that the same is to be binding on all the shareholders and creditors of the Transferor as well as Transferee Companies. While approving the Scheme, it is clarified that this order should not be construed as an order in anyway granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.

AND THIS TRIBUNAL DOES FURTHER ORDER:

- (i) That the Petitioner Companies do, within 30 days after the date of receipt of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies, Karnataka for registration. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company and the files relating to Transferor and Transferee Companies shall be consolidated accordingly, as the case may be; and
- (ii) That the Transferee Company shall deposit an amount of Rs.75,000/- with the Pay & Accounts Office, Chennai in respect of the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad and Rs.25,000/-in favour of The Prime Minister's National Relief Fund, within a period of four weeks from the date of receipt of certified copy of this Order; and
- (iii) That any person interested shall be at liberty to apply this Tribunal in the above matter for any directions that may be necessary.
- (iv) The approval /sanctioning of the Scheme shall not be construed as an exemption from any of the provisions under the Income Tax Act, 1961 or the Companies Act,2013 and that the authorities under both the Acts, are at liberty to take appropriate action, in accordance with law, if so advised.

19. As per the directions, Form No.CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the petitioner companies on filing of the Schedule Property i.e., (i) freehold

property of the Transferor Company and (ii) leasehold property of the Transferor Company by way of affidavit of the Transferor Company respectively.

20. Accordingly, **CP (CAA) No.16/BB/2022**, is disposed of. Copy of this Order be communicated to the Counsel for the Petitioner Companies.

Sd/-

**(SATYA RANJAN PRASAD)
MEMBER (TECHNICAL)**

BR

Sd/-

**(T.KRISHNAVALLI)
MEMBER (JUDICIAL)**