

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **09.05.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER : CA(CAA)/33/CHE/2023
PETITION NUMBER : CP(CAA)/49(CHE)/2023
NAME OF THE PETITIONER(S) : Simpliance Technologies pvt Ltd and
Other
NAME OF THE RESPONDENTS :
UNDER SECTION : Sec 230-232 of CA, 2013

ORDER

Present: Ld. Counsel Shri. Inbaraju R for Applicant.

Vide separate order announced in Open Court, the scheme is approved.

File be consigned to records.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH - I, CHENNAI**

CP(CAA)/49(CHE)/2023 In CA(CAA)/33(CHE)2023

(filed under Sections 230 to 232 of the Companies Act, 2013)

In the matter of Scheme of Amalgamation

Of

M/s. SIMPLIANCE TECHNOLOGIES PRIVATE LIMITED

CIN No: U72200TN2016PTC160665

Reg Off:-

5A, Rathinasamy Nadar Road,

Bibikulam, Madurai - 625 002,

Tamil Nadu

..... Applicant/ Transferor Company

With

M/s. APARAJITHA CORPORATE SERVICES PRIVATE LIMITED

CIN No: U74910TN2000PTC046218

Reg Off:-

5A, Rathinasamy Nadar Road,

Bibikulam, Madurai - 625 002,

Tamil Nadu

..... Applicant/ Transferee Company

And

THEIR RESPECTIVE SHAREHOLDERS

Order Pronounced on 9th May 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant(s): Inbaraju, Advocate

ORDER

(Heard Through VC)

CP(CAA)/49(CHE)/2023 is a joint Company Petition filed by the Petitioner Companies viz., Simpliance Technologies Private Limited (for brevity, "Transferor Company") and Aparajitha Corporate Services Private Limited (for brevity "Transferee Company") under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation (hereinafter referred to as the "SCHEME") proposed by the Petitioner Companies with its Shareholders. The said Scheme is appended as Annexure - M to the Petition filed.

2. The Scheme of Amalgamation as contemplated between the Petitioner Companies involves, "Transfer and Vesting of Transferor Company into the Transferee Company".

The Scheme is divided into following parts:

(i) Part I deals with Preamble, Description of Companies and Rationale of Amalgamation

(ii) Part II deals with Definitions, Interpretation, Share Capital, Date of Taking Effect and Operative Date of the Scheme

(iii) Part III deals with the Amalgamation of Simpliance Technologies Private Limited into and with Aparajitha Corporate Services Private Limited and their respective Shareholders and Creditors

(iv) Part IV deals with the General Terms and Conditions

3. RATIONALE OF THE SCHEME

It is stated that the amalgamation of the Transferor Company with the Transferee Company would inter alia have the following benefits:

- i. The amalgamation will enable pooling of resources of the companies involved in amalgamation to their common advantage, resulting in more productive utilization of the said resources and achieving economies of scale resulting in cost and operational efficiencies, which would be beneficial for all the stakeholders.
- ii. The amalgamation is expected to increase the financial strength thereby enabling further growth and development of the Transferee Company.

- iii. The amalgamation would result into simplification of the group structure by eliminating multiple entities.
- iv. The amalgamation would bring greater management focus and would help in achieving uniform corporate policies and faster/ effective decision-making and implementation.
- v. The amalgamation would help avoid duplication of regulatory and procedural compliances and consequently result into saving of time, resources and cost involved in such compliances.
- vi. The amalgamation would result in enhancement of net worth of the combined business to capitalize on future growth potential.
- vii. Larger integrated entity will improve the competitive position of the Transferee Company and it will have powers to better negotiate with vendors, customers and stakeholders.

- viii. Cost savings are expected to flow from more focused operational efforts, standardization and simplification of business processes and the elimination of duplication, and rationalization of administrative expenses.
- ix. Post amalgamation, the Transferee Company will have better financial and operational prospects. The amalgamation shall be beneficial and in the best interests of the shareholders, creditors, employees of the companies involved and all concerned.

4. 1st MOTION APPLICATION

4.1. The Petitioner Companies had filed a joint First Motion Applications vide CA(CAA)/33/CHE/2023. Based on such an application moved under Sections 230-232 of the Companies Act, 2013, directions were issued by this Tribunal, vide order dated 31.08.2023, for holding/dispensation of meeting as follows;

	EQUITY SHAREHOLDERS	SECURED CREDITORS	UNSECURED CREDITORS
TRANSFEROR COMPANY	<i>Dispensed with</i>	<i>NIL</i>	<i>Dispensed with</i>
TRANSFEREE COMPANY	<i>Dispensed with</i>	<i>Dispensed with</i>	<i>Dispensed with</i>

4.2. Subsequent to the said order dated 31.08.2023, the petitioner companies filed the joint Company Petition before this Tribunal. Thereafter, on 11.10.2023, this Tribunal passed an order directing issuance of notice to the Sectoral Regulators along with the Authorities concerned and for publication in “Business Standard” (English-All India Edition) and “Makkal Kural” (Tamil-Tamil Nadu Edition).

4.3. Pursuant to the said directions, notices were served on the Sectoral Regulators and other Authorities by the Petitioner Companies and the publications as directed were made on 26th October, 2023 by the Petitioner Companies. A joint Affidavit of service confirming the services and publications are placed on record vide Dy. no. 2611 / 17.11.2023.

5. STATUTORY AUTHORITIES

5.1. REGIONAL DIRECTOR

5.1.1. The Regional Director, Southern Region, (hereinafter referred to as ‘RD’) Chennai submitted his Report dated 15th December, 2023 before the Tribunal stating that they have no objection to the Scheme except for the observation at para 10 of the report, it was prayed that this Tribunal may dispose of the matters on merits. It is submitted by the RD that the Tribunal may direct the Transferee Company to pay the

difference in fee/stamp duty and also file the amended MOA and AOA with the Registrar of Companies in connection with the proposed increase of Authorised Share Capital.

5.1.2. It is seen from the report that, the Transferor & Transferee Company have filed their statutory returns up to 31.03.2023 and reported that no prosecution / Inspection or Investigation is pending against the Companies involved in the Scheme.

5.2. OFFICIAL LIQUIDATOR

5.2.1. The Official Liquidator, (hereinafter referred to as 'OL) Chennai to whom the notice was issued, filed his Report dated 20th February, 2024 before the Tribunal. The Official Liquidator has reported that M/s. Chandrasekar & Associates, Chartered Accountants has scrutinized the records of the Companies and has opined that the petition may be considered fairly as the affairs of the Companies have not been conducted in a manner prejudicial to the interest of its creditors or to the Public Interest.

5.2.2. The report is taken on record. This Tribunal directs the Transferor Company to pay a sum of **Rs. 50,000/- (Rupees Fifty Thousand only)** + GST (if applicable) to the Official Liquidator for the payment of fees payable towards the

Auditor who has investigated into the affairs of the Transferor Company.

5.3. INCOME TAX DEPARTMENT

5.3.1. In spite of notice having been served to the Income Tax Department, none turned up and no report was filed by the Income Tax Department. In the said circumstances as per section 230(5) of the Companies Act, 2013, this Tribunal presumes that the said Department does not have any objection in sanctioning the Scheme.

5.3.2. In Company Petition CAA-284/ND/2018 vide Order dated 12.11.2018, the NCLT New Delhi with a view to protect the interest of the revenue, has made the following observations with regard to the right of the IT Department in the Scheme of Amalgamation,

“taking into consideration the clauses contained in the Scheme in relation to liability to tax and also as insisted upon by the Income Tax and in terms of the decision in RE: Vodafone Essar Gujarat Limited v. Department of Income Tax (2013)353 ITR 222 (Guj) and the same being also affirmed by the Hon’ble Supreme Court and as reported in (2016) 66 taxmann.com.374(SC) from which it is seen that at the time of declining the SLPs filed by the revenue, however stating to the following effect vide its order dated April 15,2015 that the Department is entitled to take out appropriate proceedings for recovery of any statutorily dues from the transferor or transferee or any other person who is

liable for payment of such tax dues the said protection be afforded is granted. With the above observations, the petition stands allowed and the scheme of amalgamation is sanctioned."

6. ACCOUNTING TREATMENT

6.1. The Learned Counsel for the Petitioner companies submits that the Statutory Auditor of the Petitioner companies has examined the Scheme and individually certified that the Petitioner companies have complied with proviso to Section 230 - 232 and the Accounting Treatment contained in the proposed Scheme of Amalgamation is in compliance with the Applicable Indian Accounting Standards notified under section 133 of the Companies Act, 2013 read with the rules made there under and other generally accepted accounting principles in India. The Certificates issued by the Statutory Auditor certifying the Accounting Treatment of the Petitioner Companies are placed along with the typed set of documents in the Company Petition.

7. APPOINTED DATE & EFFECTIVE DATE

7.1. The Petitioner Companies in the Proposed Scheme of Amalgamation has indicated **01st April 2023** as the "Appointed Date".

7.2. The Scheme defines effective date in Clause 4.8 of the Scheme as follows, "Effective Date" - means the date or last of the dates on

which the certified / authenticated copy of the order of the National Company Law Tribunal, Chennai ('NCLT') sanctioning this Scheme is filed with the Registrar of Companies, Chennai by the Transferor Company and the Transferee Company.

8. OBSERVATIONS OF THIS TRIBUNAL

- 8.1. After analysing the Scheme in detail, this Tribunal is of the considered view that the scheme as contemplated amongst the Petitioner Companies prima facie would not be in any way detrimental to the interest of the shareholders of the Companies.
- 8.2. From the report of the RD we understand that no investigation proceedings are pending against the Companies under the provisions of the Companies Act, 1956 or the Companies Act, 2013 and no proceedings against the petitioner companies for oppression or mismanagement have been filed before this Tribunal or erstwhile Company Law Board.
- 8.3. Further, the Scheme does not require any modification as it appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. All the statutory compliances have been made under section 230-232 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Scheme of Arrangement (Merger) between the Petitioner Companies was duly approved by the shareholders of the respective companies.

- 8.4. In the absence of any other objections other than the Official Liquidator, and since all the requisite statutory compliances have been fulfilled, this Tribunal sanctions the Scheme of Amalgamation appended with the Company Petition as well as the prayer made therein.
- 8.5. The Appointed date of the said Scheme is 1st April 2023. The said Scheme of Amalgamation will not cast any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditor/s in any manner. Taking into consideration all the above, the Company Petition is allowed and the Scheme of Amalgamation (Merger) annexed with the petition is hereby sanctioned which shall be binding on all the members, creditors and shareholders.
- 8.6. While approving the scheme as above, we clarify that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.
- 8.7. The Companies to the said Scheme or other persons interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme. The Petitioner Companies shall file with the Registrar of Companies,

the certified copy of this Order, within 30 days of the receipt of the order.

8.8. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.

9. THIS TRIBUNAL DO FURTHER ORDER

- (i) That all properties, rights and interests of the Transferor Company shall, pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the Transferee Company in terms of the Scheme; and
- (ii) That all the liabilities, powers, engagements, obligations and duties of the Transferor Company shall pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the Transferee Company in terms of the Scheme; and
- (iii) That all proceedings now pending by or against the Transferor Company shall be continued by or against the Transferee Company; and

- (iv) That all the employees/workmen of the Transferor Company in service on the date immediately preceding the date on which the Scheme finally takes effect shall become the employees of the Transferee Company without any break or interruption in their service with all the benefits, as existing on the date.
- (v) The 'Appointed date' shall be 01st April, 2023.
- (vi) The 'Effective date' shall have the meaning assigned to such term in clause 4.8 Part II of the Scheme.
- (vii) That the Transferee Company do without further application allot to such members of the Transferor Company, as have not given such notice of dissent, as is required by the Scheme of Amalgamation herein the shares in the Transferee Company to which they are entitled under the said Scheme of Amalgamation in terms of **Clause 16 of Part III** of the Scheme.
- (viii) That the Transferee Company shall file the revised Memorandum and Articles of Association with the Registrar of Companies, concerned and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company after setting off the fees paid by the Transferor Company.

- (ix) That the Petitioner Companies, shall within thirty days of the date of receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without winding up and the Registrar of Companies shall place all documents relating to the Transferor Company on the file kept by him in relation to the Transferee Company and the files relating to all the said companies shall be consolidated accordingly.
- (x) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

10. Accordingly, the Scheme annexed with the petition stands sanctioned and **CP(CAA)/49(CHE)/2023** stands **allowed**.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond