IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI

CP(CAA)/1(CHE)/2022
In
CA/736/CAA/2020

(Under Section 230 -232 of the Companies Act, 2013)

In the matter of **THE SCHEME OF AMALGAMATION**

OF

NEELAMANGALA INVESTMENTS AND HOLDINGS PRIVATE LIMITED
CIN: U51909KA2006PTC038777
Reg. off:-
775, 17th B Cross, 37th Main,
JP Nagar 6th Phase,
Bangalore – 560 078.

... Transferor Company

With

AIKYAM HOLDINGS PRIVATE LIMITED
CIN: U70101TN2005PTC055782
Reg. off:-
5/82, Blue Beach Road,
Neelankarai,
Chennai – 600 041.

... Petitioner Company / Transferee Company

And

THEIR RESPECTIVE SHAREHOLDERS

Order Pronounced on ***01st February, 2023***

CORAM

DR. DEEPTI MUKESH, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Petitioner: V. Mahesh, PCS

ORDER

CP(CAA)/1(CHE)/2022 is a Company Petition filed by **AIKYAM HOLDINGS PRIVATE LIMITED** (for brevity "*Petitioner Company*") which is the Transferee Company in the proposed Scheme of Amalgamation (herein after referred as "SCHEME"), under section 230-232 of Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The said Scheme is also annexed as '*Annexure – E'* at Page No. 87 – 114 of the Company Petition. The Transferor Company is subject to the jurisdiction of the Bengaluru Bench of this Tribunal.

2. With respect to the Transferor Company which is falling under the Jurisdiction of the Bengaluru Bench, it is appraised that the Company Application filed before the Bengaluru Bench is pending to be numbered. Proof of filing the same is placed on record.

3. 1ST MOTION APPLICATION

3.1 The Petitioner Company filed the First Motion Application vide CA/736/CAA/2020 under Sections 230-232 of the Companies Act, 2013 seeking dispensation of the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors with respect to the Petitioner Company. This Tribunal vide order dated 15.12.2021 allowed the said application, thereafter present Petition came to be filed on 30.12.2021 before this Tribunal.

3.2 On 13.07.2022, this Tribunal passed an order fixing the date of hearing of the Petition and consequently directing issuance of notice to the Statutory Authorities concerned and had also directed issuance of publication in one 'Business Standard' (All India Edition) and 'Dina Mani' (Tamil Nadu Edition).

3.3 Pursuant to the said directions, notices dated 22.07.2022 were duly served on the statutory authorities and publications were also duly made on 03.08.2022. Affidavit of service dated 29.08.2022 confirming the service and publication is also placed on record.

4. RATIONALE OF THE SCHEME

4.1 It is stated that the Transferor and the Transferee Company are engaged in the same business and are commonly controlled by the same set of directors and shareholders. It is further stated that integration of the companies would bring enormous benefits and will pave way for creating a large enterprise and the resources could be substantially streamlined and integrated. The benefits of the proposed scheme are stated as under:

I. Amalgamation enables the combined pooling of operational, financial and other resources of the companies together for deriving optimum benefits. There would therefore, be better operational efficiency in utilization of the administrative, managerial, financial and other resources by one large Company leading to

higher profitability and optimum utilization of resources.

II. The amalgamation will result in increased financial strength, flexibility and enhance the ability of the amalgamated entity to expand its activities, thereby contributing to enhancement of future business potential,

III. Operational integration, co-ordination, synchronization, and planning will improve the overall performance. Operational synergy will lead to time and cost saving. The cost savings improve cash inflows providing valuable financial resources for modernization, expansion etc., which make a Company remain competitive at all times in this technologically advanced World.

IV. The integration of administrative systems, centralized control over operational facilities, implementation of uniform management practices, accounting and financial systems as well as integration of employees of the Companies will resulting a strong and versatile organization, with necessary size, capabilities and resources that would make it a globally competitive enterprise.

V. The Scheme does not provide for any compromise with creditors of any of the Companies (NIHPL and AHPL) and also does not affect the interests and rights of the creditors of the concerned Transferor Company and Transferee Company in any manner whatsoever.

VI. The Scheme will not thus be prejudicial to the interest of the Creditors of the Transferor Company or the Transferee Company, since NO compromise is entered into between them and all the said Liabilities would stand vested unto the Transferee Company without any compromise. Since the shareholding of the Transferor Company and Transferee Company are held by common shareholders, NO prejudice will be caused to any of the shareholders of the Transferor Company/ Transferee Company.

VII. As a whole, the amalgamation will be in the best interests of all the stakeholders, ie. shareholders, creditors, employee's et al."

5. REGIONAL DIRECTOR

5.1 The Regional Director, *(hereinafter referred to as 'RD')* Southern Region, to whom the notice was issued, has filed his Report dated 09.11.2022 before this Tribunal. Under Clause 2(ii) of Part A of the proposed Scheme, the 'Appointed Date' is fixed as 01.04.2019, however, the RD points out that the same is antedated and is beyond a year, consequently sought this Tribunal to determine the 'Appointed Date'. However, it can be seen that the 'First Motion Application' was filed before this Tribunal in the year 2020 and numbered as 'CA/736/CAA/2020', therefore, as on the date of filing the Application, the question of antedate could not have arisen. Therefore, we do not find any merit in the said objection.

5.2 Apart from the above, the RD has stated that they do not have any objection to the proposed scheme. It is further observed that as per the report of RoC, Chennai, the Petitioner Company has filed its statutory returns up to 31.03.2021 and has reported that there is no prosecution / complaint / inspection / investigation is pending against the Petitioner Company.

6. INCOME TAX DEPARTMENT

6.1 The letter of the Deputy Commissioner of Income Tax, Corporate Circle - 1(1) (hereinafter referred to as the 'DCIT') vide

letter dated 29.07.2022 is placed on record. In connection to the proposed scheme, it is brought to the notice of this Tribunal that the Petitioner Company has an outstanding demand as under:

S. No.	AY	Demand u/s.	Order date	Amount
1.	2018-19	154 rws 143(3)	27.01.2022	1,32,57,426
Total				**1,32,57,426**

6.2 Against the above demand, the reply letter dated 08.08.2022 served on the DCIT is placed on record. The Petitioner has categorically stated that the above demand is paid by the Petitioner Company vide challan dated 22.02.2022. The said challan is placed on record. That apart, the Petitioner Company is only the Transferee Company with respect to the proposed scheme, therefore, the interest of the revenue with respect to the Petitioner Company is not obstructed in any manner.

7. VALUATION REPORT:

7.1 Since that proposed scheme contemplate issuance on shares of the Transferee Company to the shareholders of the Transferor Company, the Petitioner Company has obtained 'Recommendation of Fair Share Exchange Ratio' / 'Valuation Report' from a Registered Valuer and the same is placed on record as 'Annexure –

G'. The recommendation is extracted as below:

> *"1 (One) equity share of Aikyam Holdings Private Limited (of INR 10/-each fully paid up) for every 1 (One) equity share of Neelamangala Investments and Holdings Private Limited (of IN 10/- each fully paid up) for the proposed amalgamation of Neelamangala Investments and Holdings Private Limited with Aikyam Holdings Private Limited."*

8. ACCOUNTING TREATMENT

8.1 It is stated that the Statutory Auditor of the Petitioner Company has examined the Scheme and has certified that the Petitioner Companies has complied with proviso to Section 230 - 232 and the Accounting Treatment contained in the proposed Scheme of Arrangement 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 Certificate issued by the Statutory Auditor certifying the Accounting Treatment of the Petitioner Company is placed on record along with the present Petition as 'Annexure – F'.

9. OBSERVATIONS OF THIS TRIBUNAL

9.1. This Tribunal is of the considered view that the scheme as contemplated amongst the companies including the Petitioner Company seems to be *prima facie* not, in any way detrimental to the interest of the shareholders of the

Petitioner Company. In view of the absence of any material objections from any statutory authorities and since all the requisite statutory compliances have been fulfilled, subject to the outcome of the proceedings before the Bengaluru Bench with respect to the Transferor Company, this Tribunal sanctions the Scheme of Arrangement appended as "Annexure - E" with the Petition as well as the prayer made therein.

9.2 Notwithstanding the above, if there is any deficiency found or, the violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with the law, against the concerned persons, directors and officials of the petitioner company.

9.3 While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

10. THIS TRIBUNAL DO FURTHER ORDER:

i. Subject to the change if any sought before the 'Bengaluru Bench' and outcome of the proceedings before the 'Bengaluru Bench' with respect to the Transferor Company, 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 Petitioner Company in terms of the Scheme.

ii. Subject to the outcome of the proceedings before the 'Bengaluru Bench' with respect to the Transferor Company, 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 Petitioner Company in terms of the Scheme.

iii. Subject to change if any, being sought before the 'Bengaluru Bench' with respect to the Transferor Company, the Appointed date for the Scheme shall be **01.04.2019** as mentioned in clause 2.2 of Part - A of the Scheme.

iv. Subject to the outcome of the proceedings before the 'Bengaluru Bench' with respect to the Transferor Company, the 'Effective date' shall mean the last date on which the

certified copies of the orders of the Hon'ble National Company Law Tribunals, at Chennai and at Bengaluru are filed with the jurisdictional Registrar of the Companies respectively.

v. Subject to the outcome of the proceedings before the 'Bengaluru Bench' with respect to the Transferor Company, that all proceedings now pending by or against the Transferor Company be continued by or against the Petitioner Company.

vi. Subject to the outcome of the proceedings before the 'Bengaluru Bench' with respect to the Transferor Company, 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 Petitioner Company without any break or interruption in their service with all the benefits as existing on the date.

vii. Subject to the outcome of the proceedings before the 'Bengaluru Bench' with respect to the Transferor Company, the Transferee Company do without further application allot fully paid-up equity shares to such members of the Transferor Company, as have not given such notice of dissent, as is required by Clause 13 of Part - C of the Scheme to which they are entitled, in the ratio as mentioned in valuation report as under:

"1 (One) equity share of Aikyam Holdings Private Limited (of INR 10/-each fully paid up) for every 1 (One) equity share of Neelamangala Investments and Holdings Private Limited (of IN 10/- each fully paid up) for the proposed amalgamation of Neelamangala Investments and Holdings Private Limited with Aikyam Holdings Private Limited."

viii. Subject to the outcome of the proceedings before the 'Bengaluru Bench' with respect to the Transferor Company, the Petitioner Company shall file the revised Memorandum and Articles of Association with the jurisdictional Registrar of Companies.

ix. Subject to the outcome of the proceedings before the 'Bengaluru Bench' with respect to the Transferor Company, the Transferor Company shall stand dissolved without winding up. Consequently, the Registrar of Companies shall place / forward all documents relating to the Transferor Company on the file kept by the jurisdictional Registrar of Companies of the Petitioner 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.

11. Accordingly, the Company Petition stands **allowed** on the aforementioned terms and is disposed of.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

V.Shreekumar