



**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-II**

CA (CAA) No. 62(AHM) /2022

IN THE MATTER OF COMPANIES ACT,2013;

[Sections 230-232 and read with other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016]

In the matter of Scheme of Amalgamation

OF

M/s Nakoda Cotton Industries Private Limited
(Applicant Company No.1/Transferor Company)

WITH

M/s MGN Agro Properties Private Limited
(Applicant Company No.2/Transferee Company)
And

Their Respective Shareholders and Creditors

Order Pronounced on: 22/12/2022

CORAM:

DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)

AJAI DAS MEHROTRA
HON'BLE MEMBER (TECHNICAL)



MEMO OF PARTIES

Nakoda Cotton Industries Private Limited

(CIN: U17110GJ2004PTC045194)

Registered office at;

Survey No. 650, Welspun City, Village Versamedi,
Taluka Anjar, Dist. Kutch,
Gujarat – 370110.

...Applicant Company No.1/
Transferor Company

MGN Agro Properties Private Limited

(CIN: U51100GJ1999PTC081436)

Registered office at;

Survey No. 650, Welspun City, Village Versamedi,
Taluka Anjar, Dist. Kutch,
Gujarat – 370110.

... Applicant Company No.2/
Transferee Company

For the Applicant: Ms. Dharmishta N. Raval, Advocate

ORDER

1. The present joint application is filed under Sections 230-232 alongwith other applicable provisions of the Companies Act, 2013 (hereinafter referred to as “**the Act**”) read with Companies (Compromise, Arrangement and Amalgamations) Rules, 2016 (hereinafter referred to as “**Companies (CAA) Rules, 2016**”) seeking holding/dispensation of the meetings of memebbers and creditors of both the applicant companies. The proposed Scheme of Amalgamation is of M/s Nakoda Cotton Industries Private Limited (hereinafter referred to as the “Transferor Company”) with MGN Agro Properties Private Limited (hereinafter referred to as the “Transferee Company”) and their respective shareholders and creditors.



2. Affidavit in support of the above application sworn by Mr. Akhil Pillai on behalf of both the Applicant Companies, authorized vide Board resolutions dated 31.10.2022 respectively of both the Applicant Companies is placed on record. It is also represented that the registered office of both the Applicant Companies is under the domain of Registrar of Companies, Ahmedabad and within the territorial jurisdiction of this Tribunal.
3. It is submitted that the Transferor Company having CIN: U17110GJ2004PTC045194 was incorporated under the Companies Act, 1956 in the State of Gujarat in the name of Nakoda Cotton Industries Private Limited on 22nd December 2004. The registered office of the Transferor Company is situated at Survey No. 650, Welspun City, Village Versamedi, Taluka Anjar, Dist. Kutch, Gujarat – 370110. The Authorised Share Capital of the Transferor Company is Rs. 1,00,00,000/- which is divided into 10,00,000 equity shares of Rs. 10/- each and Issued, Subscribed and Paid-up Share Capital is Rs. 2,50,000/- which is divided into 25,000/- equity shares of Rs. 10/- each. It is submitted that the entire issued, subscribed and paid-up capital of the Transferor Company is held by Welspun Realty Private Limited, a wholly owned subsidiary of the Transferee Company. Accordingly, the Transferor Company is a wholly owned step down subsidiary of the Transferee Company.
4. It is submitted that the Transferee Company having CIN: U51100GJ1999PTC081436 was incorporated under the Companies Act, 1956 in the State of Maharashtra in the name of MGN Builders and Developers Private Limited on 26th May 1999. Pursuant to issue of



fresh certificate of incorporation consequent upon change of name dated 19th July 2010, the name of MGN Builders and Developers Private Limited was changed to MGN Agro Properties Private Limited. Subsequently, the company changed its registered office from the State of Maharashtra to the State of Gujarat and Certificate for change of the State is issued by Regional Director dated 19.12.2014. The registered office of the Transferor Company is situated at Survey No. 650, Welspun City, Village Versamedi, Taluka Anjar, Dist. Kutch, Gujarat – 370110. The Authorised Share Capital of the Transferee Company is Rs. 10,20,00,00,000/- which is divided into 35,20,00,000 equity shares of Rs. 10/- each, 2,55,00,000 preference shares of Rs. 100/- each, 37,50,00,000 preference shares of Rs. 10/- each, 26,00,00,000 preference shares of Re. 1/- each, 1,20,00,000 unclassified shares of Rs. 10/- each and Issued, Subscribed and Paid-up Share Capital is Rs. 3,07,11,95,280/- which is divided into 80,02,000 Equity Shares of Rs. 10/- each and 29,91,17,528 6% Non-Cumulative Redeemable Preference Shares of Rs. 10/- each.

5. Applicant Companies are empowered by their respective Memoranda of Association and Articles of Association to enter into a Scheme of Amalgamation. Copies of Memoranda and Articles of Association of both the Applicant Companies are placed on record. The audited financial statements of both the Applicant Companies as on 31.03.2022 are placed on record.
6. The Board of Directors of both the Applicant Companies have approved the Scheme of Amalgamation at their respective Board Meetings held on 31.10.2022. Copies of respective Board Resolutions



passed on 31.10.2022 of both the Applicant Companies are placed on record.

7. Both the Applicant Companies have placed on record the certificates from Statutory Auditors respectively confirming that the proposed accounting treatment conforms to the applicable Accounting Standards under section 133 of the Companies Act, 2013.
8. The Applicant Companies have submitted that no investigation or proceedings against the Applicant Companies under Section 210 to 226 of the Companies Act, 2013 as well as Section 235 to 251 of the Companies Act, 1956, or the like, are pending and no winding up / Liquidation Proceedings / Corporate Insolvency Resolution Process is pending against the Applicant Companies.
9. The Applicant Companies have further submitted that the provisions of the Competition Act, 2002 are not applicable in the present case and no notice is required to be served to the Competition Commission of India.
10. It is further submitted that there is no foreign shareholder in the Applicant Companies. Further there will be no in-flow or out-flow of capital on approval of the Scheme of Amalgamation. Hence, no notice is required to be issued to Reserve Bank of India.
11. It is further submitted that notice to Securities and Exchange Board of India and stock exchanges is not required as the Applicant Companies are not listed entities.



12. It is further submitted that the Applicant Companies are not engaged in real estate business and does not have any RERA registration. Hence, no notice is required to be issued to RERA authority.
13. With respect to the **Transferor Company**, it is stated that:
- a) There are 2 equity shareholders and a certificate from Chartered Accountant certifying the list of shareholders is annexed. The copy of the consent affidavits from both the equity shareholders is placed on record. Hence, the Transferor Company is seeking dispensation for holding the meeting of equity shareholders.
 - b) There are no secured creditors and a certificate from Chartered Accountant to that effect is annexed.
 - c) There is 1 unsecured creditor and a certificate from Chartered Accountant certifying the list of unsecured creditors is annexed. The copy of the consent affidavit from sole unsecured creditor is placed on record. Hence, the Transferor Company is seeking dispensation for holding the meeting of unsecured creditors.
14. With respect to the **Transferee Company**, it is stated that:
- a) There are 2 equity shareholders and a certificate from Chartered Accountant certifying the list of equity shareholders is annexed. The copy of the consent affidavits from both the equity shareholders are placed on record. Hence, the Transferee Company is seeking dispensation for holding the meeting of equity shareholders.
 - b) There are 4 preference shareholders and a certificate from Chartered Accountant certifying the list of the preference shareholders is annexed. The copy of the consent affidavits from all the preference shareholders are placed on record. Hence, the Transferee Company



is seeking dispensation for holding the meeting of preference shareholders.

- c) There are no secured creditors and a certificate from Chartered Accountant to that effect is annexed.
- d) There are no unsecured creditors and a certificate from Chartered Accountant to that effect is annexed.

15. The appointed date as specified in the Scheme is 1st April 2022 subject to the directions of this Tribunal.

16. Taking into consideration the submissions and the documents filed therewith, we issue the following directions:

i) In relation to the Transferor Company:

a) With respect to Equity Shareholders:

Convening of the meeting of equity shareholders of the Transferor Company is hereby dispensed with in view of the consent affidavits of 100% shareholders placed on record.

b) With respect to Secured Creditors:

Holding the meeting of the secured creditors is obviated as there are no secured creditors.

c) With respect to Unsecured Creditors:

Convening of the meeting of unsecured creditors of the Transferee Company is hereby dispensed with in view of the consent affidavits of placed on record.

ii) In relation to the Transferee Company:

a) With respect to Equity Shareholders:

Convening of the meeting of equity shareholders of the Transferee Company is hereby dispensed with in view of the consent affidavits of both shareholders placed on record.



b) With respect to Preference Shareholders:

Convening of the meeting of preference shareholders of the Transferee Company is hereby dispensed with in view of the consent affidavits of all preference shareholders placed on record.

c) With respect to Secured Creditors:

Convening the meeting of the secured creditors is obviated as there are no secured creditors.

d) With respect to Unsecured Creditors:

Convening the meeting of unsecured creditor of the company is obviated as there are no unsecured creditors.

17. In compliance of sub-section (5) of Section 230 of the Act and Rule 8 of the Companies (CAA) Rules, 2016, the Applicant Companies shall send a notice in Form No.CAA.3 with a copy of the Scheme of Arrangements, the Explanatory Statement and the disclosures mentioned under Rule 6, to (1) the Central Government through the Regional Director, North Western Region, (2) the Registrar of Companies, Gujarat, (3) to the Income Tax Department along with full details of assessing officer and PAN numbers of all the applicant companies with the copy also to the Chief Commissioner of Income Tax Office; (iv) the Official Liquidator (only by the Transferor Company) stating that representations, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed Scheme. The said notices shall be sent forthwith by registered post or by speed post or by courier or by hand delivery at the office of the authority as required by sub-rule (2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid authorities, who desire



to make any representation under sub-section (5) of Section 230 of the Act, shall send the same to this Tribunal with a copy of the same to be supplied to the Applicant Company.

18. The Application is allowed and disposed of in terms of the above directions.

-Sd-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-

DEEPTI MUKESH
MEMBER (JUDICIAL)

RAHUL/LRA