



SPECIAL BENCH
COURT – I

M-3

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

C.P.(CAA)/126(KB)2022
IN
C.A.(CAA)/57(KB)2022

**CORAM: 1. HON'BLE MEMBER(J), Smt. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), Shri D. Arvind**

IN THE MATTER OF	AMABEL VITRAN PRIVATE LIMITED
UNDER SECTION	SEC. 230-232

CORRIGENDUM

1. This matter was not on board today and was taken up upon mentioning.
2. In the order dated 3rd of December, 2024, At page 26, para (b), some typographical errors have been occurred as under:-
 - i. It is mentioned as '*All the debts, liabilities, duties and obligations of the Prudential Tradelink Private Limited, Puja Shoppers Private Limied, Goodluck Suppliers Private Limited, Monifa Len Den Private Limited and Ayodele Distributers Private*'.
 - ii. It should be read as "*all the debts, liabilities, duties and obligations of the Amabel Vitran Private Limited, Suhana Marketing Private limited, Druth Vyasaya Private Limited, Sadabahar Investment Private Limited, Heaven Suppliers Private Limited, Panchmukhi Management Services Private Limited*".
3. Rest of the contents of the order shall remain unchanged.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Corrigendum signed on 9/12/2024.

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

C.P.(CAA) NO.126/KB/2022
Connected with
C.A.(CAA) NO. 57/KB/2022

An application under Section 230(6) read with Section 232(3) of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions of the law.

In the Matter of:

AMABEL VITRAN PRIVATE LIMITED, PAN AADCT1964E, a Company within the meaning of the Companies Act, 2013, having its Registered Office at 159, Rabindra Sarani, 3rd Floor, Room No 3C, Kolkata-700 007;

..... Transferor Company No. 1 / Petitioner No. 1

-And-

SUHANA MARKETING PRIVATE LIMITED, PAN AAMCS7271A, a Company within the meaning of the Companies Act, 2013, having its Registered Office at 159, Rabindra Sarani, 3rd Floor, Room No 3C, Kolkata-700 007

..... Transferor Company No. 2 / Petitioner No. 2

-And-

DRUTH VYASAYA PRIVATE LIMITED, PAN- AABCF5312N, a Company within the meaning of the Companies Act, 2013, having its Registered Office at 159, Rabindra Sarani, 3rd Floor, Room No 3C, Kolkata-700 007;

..... Transferor Company No. 3/ Petitioner No. 3

-And-

SADABAHAR INVESTMENT PRIVATE CONSULTANTS PRIVATE LIMITED, PAN AAOCS7127B, a Company within the meaning of the Companies Act, 2013, having its Registered Office at 159, Rabindra Sarani, 3rd Floor, Room No 3C, Kolkata-700 007;

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I
KOLKATA



C.P.(CAA) NO.126/KB/2022
Connected with
C.A.(CAA) NO. 57/KB/2022

..... Transferor Company No. 4 / Petitioner No. 4

-And-

HEAVEN SUPPLIERS PRIVATE LIMITED, PAN AADCP7635E, a Company within the meaning of the Companies Act, 2013, having its Registered Office at 159, Rabindra Sarani, 3rd Floor, Room No 3C, Kolkata-700 007;

..... Transferor Company No. 5 / Petitioner No. 5

-And-

PANCHMUKHI MANAGEMENT SERVICES PRIVATE LIMITED, PAN AADCP7635E, a Company within the meaning of the Companies Act, 2013, having its Registered Office at 159, Rabindra Sarani, 3rd Floor, Room No 3C, Kolkata-700007;

..... Transferor Company No. 6 / Petitioner No. 6

-And-

ARISTRO FINCORP PRIVATE LIMITED, PAN AAECs0680H, a Company within the meaning of the Companies Act, 2013, having its Registered Office at 159, Rabindra Sarani, 3rd Floor, Room No 3C, Kolkata-700 007;

..... Transferee Company / Petitioner No.7

-And-

In the Matter of:

- 1) Amabel Vitran Private Limited
- 2) Suhana Marketing Private Limited
- 3) Druth Vyasya Private Limited
- 4) Sadabahar Investment Consultants Private Limited
- 5) Heaven Suppliers Private Limited
- 6) Panchmukhi Management Services Private Limited
- 7) Aristro Fincorp Private Limited

..... Petitioners

Date of pronouncing the Order:03/12/2024



Coram:

Bidisha Banerjee : **Member (Judicial)**
Balraj Joshi : **Member (Technical)**

Counsel on Record for the Applicant(s):

1. Mr. Ratnanko Banerjee, Sr. Advocate
2. Mr. Shaunak Mitra, Advocate
3. Ms. Joveria Sabbah, Advocate
4. Mr. Akash Agarwal, Advocate
5. Mr. Saptarshi Kar, Advocate

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (“Act”) for sanction of Scheme of Amalgamation of Amabel Vitran Private Limited ("Transferor Company No.1" or “Petitioner No.1”), Suhana Marketing Private Limited ("Transferor Company No.2" or “Petitioner No.2”), Druth Vyasya Private Limited ("Transferor Company No.3" or “Petitioner No.3”), Sadabahar Investment Consultants Private Limited ("Transferor Company No.4" or “Petitioner No.4”), Heaven Suppliers Private Limited ("Transferor Company No.5" or “Petitioner No.5”) and Panchmukhi Management Services Private Limited ("Transferor Company No.6" or “Petitioner No.6”) with Aristro Fincorp Private Limited ("Transferee Company" or “Petitioner No.7”) whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the **Appointed Date, viz. April 1, 2021** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”).

2. The Petition has now come up for final hearing. Counsel for the Petitioner submits as follows:

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- a) The Scheme was approved unanimously by the respective Board of Directors of the Transferor Companies and the Transferee Company on March 14, 2022.
- b) The circumstances which substantiate and justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows :-

“i. The Transferor Companies and the Transferee Company are engaged in the business of trading and investing in shares and securities.

ii. For the optimum running, growth and development of the business and undertakings of the Transferor Companies and the Transferee Company with their combined resources and a larger capital and asset base, it is considered desirable and expedient to amalgamate the Transferor Companies with the Transferee Company in the manner and the terms and conditions stated in this Scheme of Amalgamation.

iii. The amalgamation will enable appropriate consolidation and integration of the activities of the Transferor Companies and the Transferee Company with pooling and more efficient utilization of their resources, reduction in overheads and other expenses and improvement in various other operating parameters. The amalgamation will result in the formation of a larger and stronger entity having greater capacity for conducting its operations more efficiently and competitively. The Scheme is proposed accordingly and will have beneficial results for the said Companies, their shareholders, employees and all concerned.

- c) The Statutory Auditors of all the Petitioner Companies have by their certificates dated March 28, 2022 and March 29, 2022 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.



- d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner Companies.
- e) The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report thereon of Mr. Ritesh Kumar Gupta, Registered Valuer dated February 28, 2022.
- f) The shares of the Petitioner Companies are **not** listed with any Stock Exchange.
- g) By an order dated June 16, 2022 in C.A.(CAA) No.57/KB/2022, this Tribunal made the following directions with regard to meetings of shareholders and creditors of the Petitioner Companies under Section 230(1) [read with Section 232(1) of the Act]:-
 - i) Meetings dispensed: Meetings of the Equity Shareholders of all the Petitioner Companies and Unsecured Creditors Nos. 1 and 3 to 5 are dispensed with under Section 230(1) read with Section 232(1) of the Act.
 - (ii) No requirement of Meetings: No Unsecured Creditors in Petitioner Nos. 2, 6 and 7 and no Secured Creditors in any of the Petitioners as verified by auditor's certificate.
 - (iii) Meetings to be held: No meeting is required to be held.
- h) Consequently, the Petitioners presented the instant petition for sanction of the Scheme. By an order dated September 9, 2022, the instant petition was admitted by this Tribunal and fixed for hearing on October 20, 2022 upon issuance of notices to the Statutory/Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated September 9, 2022, the Petitioners have duly served such notices on the Central



Government through the Regional Director; Registrar of Companies, West Bengal, Official Liquidator, High Court, Calcutta, Reserve Bank of India and Income Tax Authorities having jurisdiction over the Petitioner Company No. 1 to 5 and 7 on September 19, 2022 by hand when the receiving clerk of all the said offices accepted such service and affixed their respective office seal and signature on the office copy of the said Notice. The Petitioners have served such notice on the Income Tax Authority having its jurisdiction over Petitioner Company No.6 through speed post on September 17, 2022 and the same was delivered on September 19, 2022. The Petitioners have also published advertisements once each in the "**Business Standard**" and "**Dainik Statesmen**" in their respective issues both dated October 1, 2022. An affidavit of compliance in this regard has also been filed by them on October 13, 2022.

- i) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.

3. Pursuant to the said advertisements and notices, the Regional Director, Ministry of Corporate Affairs, Kolkata, the Official Liquidator, High Court at Calcutta and the Income Tax Authority having jurisdiction over Petitioner No.2 have filed their representations before this Tribunal. However, no representation has been filed by the Reserve Bank of India despite service of Notices dated July 8, 2022 (at page 485 of the petition) and September 16, 2022 by hand (at page 10 of the Affidavit of Service filed on October 13, 2022) and the Income Tax Authority having jurisdiction over the Petitioner Nos. 1 and 3 to 7 despite service of the Notice dated June 27, 2022 (at pages 451 of the petition) and Notice dated September 16, 2022 (Affidavit of Service filed on October 12, 2022).

4. Since thirty days have passed since service of Notices dated June 17, 2022 and October 13, 2022 and no representation has been received by this Tribunal or the petitioner from the Reserve Bank of India, it is presumed that they have nothing to say in the matter.



5. In the representation filed by Income Tax Authority having jurisdiction over the Petitioner No. 2, it has been stated that a demand of Rs.24,49,96,680/- for the Assessment Year 2013-2014 is outstanding by the Petitioner No.2. However, from the said representation it appears that assessment proceeding is pending with respect to the said demand under Section 147 of the Income Tax Act, 1961. Since assessment proceeding is pending against such demand, it is submitted by the petitioners that the said assessment proceeding can be carried out against the Transferee Company even after sanction of the Scheme of Amalgamation.

6. The Official Liquidator has filed his report dated March 26, 2023 and concluded as under:-

“9. That the Official Liquidator has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner till the date of filing of this Report.

10. That the report of Official Liquidator is based upon the documents/reply submitted by the petitioner companies. Balance sheet, Memorandum and Article of Association and other documents furnished by the petitioner companies has not been enclosed with the report as the same are already on records of the National Company Law Tribunal.

11. That the Official Liquidator on the basis of the information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is applicable.

12. That in View of the submission made above the Hon'ble National Company Law Tribunal may like to pass such order/orders as deemed fit and proper in the facts and circumstance of the case.”



7. The Regional Director has filed his affidavit dated October 18, 2022 (“**RD affidavit**”) which has been dealt with by the Petitioners by their Affidavit in response dated January 14, 2022. The observations of the Regional Director and response of the Petitioner are summarized as under:-

(a) Observation of the Regional Director contained in Paragraph No.2(a) of RD Affidavit:

“It is submitted that as per available record, it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. Further, all the petitioner companies are also up-dated in filing their Financial Statements and Annual Returns for the financial year 31/03/2021. The Petitioner Companies should be directed to provide list/details of Assets, if any, to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the proposed Scheme.”

Response of the Petitioner contained in Paragraph 4 (a) of the Affidavit in Response:

“The statements contained in paragraph 2(a) of the said Affidavit are matters of record and does not require any response from the Petitioners.”

(b) Observation of the Regional Director contained in paragraph 2(b) of the RD affidavit.

“The Petitioner Companies should be directed to provide list/details of Assets, if any, to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the proposed Scheme.”

Response of the petitioner contained in paragraph 4(b) of the Affidavit in Response :

“With reference to the statements contained in paragraph 2(b) of the said Affidavit, the assets of the Transferor Companies as recorded in their respective Financial Statements for the year ended March 31, 2021

shall be transferred from the Transferor Companies and vest with the Transferee Company upon sanctioning of the proposed Scheme”.

(c) Observation of the Regional Director contained in paragraph 2(c) of RD Affidavit:

“That the Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.”

Response of the petitioners contained in paragraph 4(c) of the Affidavit in Response:

“With reference to the statements contained in paragraph 2(c) of the said Affidavit, the Petitioners undertake to comply with the provisions of 232(3)(i) of the Companies Act, 2013 through appropriate affirmation”.

(d) Observation of the Regional Director contained in paragraph 2(d) of the RD affidavit.

“That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it”.

Response of the petitioners contained in paragraph 4(d) of the Affidavit in Response:

“With reference to the statements contained in paragraph 2(d) of the said Affidavit, the Transferee Company undertakes to pay the applicable stamp duty, if applicable, on the transfer of immovable properties from the Transferor Companies to the Transferee Company C”.



(e) Observation of the Regional Director contained in paragraph 2(e) of the RD affidavit

“The Hon'ble Tribunal may kindly direct the Petitioners 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”.

Response of the petitioners contained in paragraph 4(e) of the Affidavit in Response:

“With reference to the statements contained in paragraph 2(e) of the said Affidavit, it is stated that the Scheme of Amalgamation filed with the Company Application (CAA) No. 57/ KB/ 2022 and the Scheme of Amalgamation filed with the Company Petition No. 126/ KB/ 2022 is one and same and there is no discrepancy”.

(f) Observation of the Regional Director contained in paragraph 2(f) of the RD affidavit.

“It is submitted that the Transferee Company namely M/s Aristro Fincorp Private Limited is registered with RBI as NBFC Company. However, no NOC' from RBI has been provided yet in the matter”.

Response of the petitioners contained in paragraph 4(f) of the Affidavit in Response:

“With reference to the statements contained in paragraph 2(e) of the said Affidavit, it is stated that Notices dated July 8, 2022 and September 16, 2022 were issued by the Advocates of the Petitioners to the Reserve Bank of India pursuant to the orders passed by this Hon'ble Tribunal on June 16, 2022 and September 9, 2022. However, till date, the Petitioners have not received any no-objection from the Reserve Bank of India”.

(g) Observation of the Regional Director contained in paragraph 2(g) of the RD affidavit.

“The Transferor company, Sadabahar Investment Consultants Private Limited was having negative net worth of Rs.) 77,935/- as on 31.3.2021, as per its balance sheet. Its major asset was Investments in shares of Rs7,91,624. The gap was funded by "other non-current financial liabilities" of Rs.8,74,340. But nature of the said financial liabilities was not at all specified, while it is a mandatory requirement under the Companies Act 2013, vide schedule III to the Act, to make such disclosure. As a result the financial state of affairs of the company is not adequately and comprehensively disclosed in the financial statement of the company”.

Response of the petitioners contained in paragraph 4(g) of the Affidavit in Response:

“With reference to the statements contained in paragraph 2(g) of the said Affidavit, it is submitted that the nature of “other current financial liabilities” in the Financial Statement of Sadabahar Investment Consultants Private Limited has been properly specified and classified as per the requirements of Clause 6.F of Part I of Division II of Schedule III relating to the “general instructions for preparation of Balance Sheet in Note No. 7 of Notes forming part of Financial Statements and the same is set out hereunder:

Other Financial Liabilities	As at 31 st March 2021
Payable for Expense	Rs.21,000
Payable to a related party	Rs.1,33,000
Payable to other body corporate	Rs.7,20,000
Total	Rs.8,74,000



Hence, it is humbly submitted that the said Company has not suppressed any material facts and has adequately and comprehensively disclosed the affairs in its Financial Statements.”.

(h) Observation of the Regional Director contained in paragraph 2(h) of the RD affidavit.

“The Transferor company, Druth Vyasaya Private Limited was having negative net worth of Rs.(-) 1,22,052 as on 31.3.2021, as per its balance sheet. Its major asset was funded by "other current financial liabilities" of Rs.10,07,320/-. But nature of the said financial liabilities was not at all specified, while it is a mandatory requirement under the Companies Act 2013, vide schedule III to the Act, to make such disclosure. As a result the financial state of affairs of the company is not adequately and comprehensively disclosed in the financial statement of the company.”.

Response of the petitioners contained in paragraph 4(h) of the Affidavit in Response:

“With reference to the statements contained in paragraph 2(h) of the said Affidavit, it is submitted that the nature of “other current financial liabilities” in the Financial Statements of Druth Vyasaya Private Limited has been properly specified and classified as per the requirements of Clause 6.F of Part I of Division II of Schedule III relating to the “general instructions for preparation of Balance Sheet in Note No. 7 of Notes forming part of financial statements and the same is shown as under:

Other Financial Liabilities	As at 31 st March 2021
Payable for Expense	Rs.39,000
Payable to a related party	Rs.1,68,000
Payable to other body corporate	Rs.8,00,000
Total	Rs.10,07,000

Hence, it is humbly submitted that the said Company has not suppressed any material facts and has adequately and comprehensively disclosed the affairs in its Financial Statements

(i) Observation of the Regional Director contained in paragraph 2(i) of the RD affidavit.

“It is submitted that the Income Tax Department vide its letter dated 22/07/2022 stated that as per their system record, outstanding demand of total Rs.1,30,05,499/-exists against the Assessee Company, Aristro Fincorp Private Limited (Transferee Company) for the Assessment years from 2010-11 to 2015-16 and also stated that unless and until the above demand is paid by the Assessee, the Income Tax Department has objection for the proposed Amalgamation of the above Company. (Copy of the said letter of income Tax Department marked as Annexure- 1 is enclosed herewith for perusal and ready reference.)”.

Response of the petitioners contained in paragraph 4(i) of the Affidavit in Response:

“With reference to the statements contained in paragraph 2(i) of the said Affidavit, it is stated that since the assessee company, Aristro Fincorp Private Limited is the Transferee Company in the instant Scheme of Amalgamation under Section 230 to 232 of the Companies Act, 2013, the outstanding demand as per the records of the Income Tax Department shall continue to exist against the Transferee Company and shall not be affected by the approval of the Scheme, as the Company will continue to carry on its business. Moreover, the Company has also challenged such Income Tax demand under proceedings which is pending adjudication before the Appellate Authority.

8. The Regional Director has again filed a second affidavit dated December 13, 2023 (“**RD affidavit**”) which has been dealt with by the Petitioners by their Affidavit in



response dated January 01, 2024. The observations of the Regional Director and response of the Petitioner are summarized as under:-

(a) Observation of the Regional Director contained in Paragraph No.2(a) of RD Affidavit:

“That upon receipt of notice and in terms of the provision of section 230(5) of the Companies Act, 2013, the Income Tax Department in letter dated 10/03/2023 made its representation to the Hon'ble NCLT, Kolkata Bench stating therein their observations and record of facts in respect of two Transferor Companies namely M/s Heaven Suppliers Private Limited and M/s Panchmukhi Management Services Private Limited gathered and found during the course of search and seizure operation u/s 132(1) of the Income Tax Act carried out in JP Minda Group of Cases on 20/09/2013.”

Response of the petitioners contained in paragraph 4(a) of the Affidavit in Response:

“With reference to the statements contained in paragraph 2(a) of the said Affidavit, the Petitioners deny the allegations made by the Income Tax Department in the letter dated March 10, 2023 observing that the Petitioner Company Nos. 5 and 6, namely Heaven Suppliers Private Limited and Panchmukhi Management Services Private Limited. It is denied that the Petitioner Company Nos. 5 and 6 do not have any worthwhile business or profits to account for huge investments shown to have been made in Share Capital and premium of JPM Group of Companies or that the said Petitioner Companies do not exist at the address given in the documents filed with MCA or that the said Petitioner Companies have merely lent their names and acted as conduits for introduction of own unaccounted funds of Minda Group or that the said Petitioner Companies are paper or shell companies, which do not have any business or that the identity, creditworthiness and genuineness of the transaction conducted by these Companies have not been proved. We state that the allegations made by the Income Tax Department, on the basis of the search



and seizure operations carried on September 20, 2013 or otherwise is completely erroneous, baseless and without any merit. We further state that the Income Tax Department, by their letter dated March 10, 2023 is seeking to rake up issues that have already been settled in favour of the Petitioner Company Nos. 5 and 6 by the Hon'ble High Court of Delhi by composite order dated September 26, 2022 passed in ITA Nos. 319, 321 and 326 of 2022 [Pr. Commissioner of Income Tax (Central-2) -vs- Panchmukhi Management Services Pvt Ltd] and Learned Income Tax Appellate Tribunal, Delhi Bench by composite order dated December 2, 2022 passed in ITA Nos. 775, 776 and 777/Del/2018 [ACIT, Central Circle13, New Delhi -vs- Heaven Suppliers Pvt. Ltd.].” Copies of the order dated September 26, 2022 passed by Hon'ble High Court of Delhi and the order dated December 2, 2022 passed by the Learned Income Tax Appellate Tribunal, Delhi Bench are annexed hereto and marked as “Annexure A”.

(b) Observation of the Regional Director contained in Paragraph No.2(b) of RD Affidavit:

“That it is pertinent to mention here that upon receipt of communication from the Income Tax Department vide its letter dated 22/07/2022, the Central Government had already reported in its earlier representation to Hon'ble NCLT, Kolkata Bench regarding outstanding demand of total Rs.1,30,05,499/- against the Assessee Company, Aristro Fincorp Private Limited (Transferee Company) for the Assessment years from 2010-11 to 2015-16 and also stated that unless and until the above demand of Income Tax Department is paid by the Assessee, the Income Tax Department has objection for the proposed Amalgamation of the above Company (Copy of the said letter of Income Tax Department marked as Annexure- I is enclosed herewith for perusal and ready reference.)

Response of the petitioners contained in paragraph 4(b) of the Affidavit in Response:

IN THE NATIONAL COMPANY LAW TRIBUNAL
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“With reference to the statements contained in paragraph 2(b) of the said Affidavit, it is stated that since the Assessee Company, Aristro Fincorp Private Limited is the Transferee Company in the instant Scheme of Amalgamation under Section 230 to 232 of the Companies Act, 2013. The outstanding demand as per the records of the Income Tax Department shall continue to exist against the Transferee Company and shall not be affected by the approval of the Scheme, as the Company will continue to carry on its business. Moreover, the Company has also challenged the Income Tax demand which is currently pending before the Appellate Authority. A detailed response to the chart forming part of the letter dated July 22, 2022 issued by the Income Tax Department is as under:

Sl. No	A.Y.	Demand section	Demand Outstanding as indicated in the letter (in Rs.)	Response by the Petitioners
1.	2010-11	147	6,57,572	No demand is outstanding as the Petitioner No. 7 has availed the benefit under ‘Vivad se Vishwas Scheme’
2.	2012-13	143(3)	33,710	No appeal is made
3.	2013-14	147	7,98,640	Appeal is pending before the Appellate Authority Acknowledgement No of the appeal is: 23118719018022
4.	2013-14	147	87,60,150	
5.	2013-14	234D	3,67,374	
6.	2014-15	147	9,84,540	Appeal is pending before the Appellate Authority Acknowledgement No of the appeal is: 599401300270422
7.	2014-15	234D	3,21,153	
8.	2014-15	147	7,92,970	
9.	2015-16	143(3)	2,89,390	Appeal is pending before the Appellate Authority under CIT Appeal Nos. CIT (A), Kolkata - 2/10315 /2019-20



It is further submitted that the concerned Income Tax Department by stating that unless and until the demand is paid by the assessee, it has objection for the proposed Amalgamation of the Company is seeking to foreclose the legal rights of the said Petitioner Company which are pending adjudication under the Appeals filed before the Appellate Authority.”

(c) Observation of the Regional Director contained in Paragraph No.2(c) of RD Affidavit:

“However, in respect of Companies Act, 2013 is concerned, consequent upon order of the Hon'ble NCLT Kolkata Bench, this Deponent directed the Registrar of Companies, West Bengal to examine the matter and conduct non-invasive inquiry and also physical verification of the registered office of all the petitioner companies and submit report thereon on priority basis. The Registrar of Companies, West Bengal vide its letter dated 04/09/2023 submitted its report which is self-explanatory, a copy of the said report marked as Annexure-II is enclosed herewith for perusal and ready reference.

Response of the petitioners contained in paragraph 4(c) of the Affidavit in Response:

“With reference to the statements contained in paragraph 2(c) of the said Affidavit, it is stated that all the Petitioner Companies function normally at their office premises as per prevalent office working norms in the city. Since the premises was inhabitable, on the day of the survey, the premises was closed for renovation and repair and the name plates were temporarily removed. It is affirmed that the petitioner companies maintain their registered office at the address given in the documents filed with MCA. The following evidences are enclosed to substantiate the functionality of the Petitioner Companies at their registered address:

- a. Letter from Income-tax with respect to the PAN Card.



- b. Copy of envelop of a letter from the Ministry of Corporate Affairs delivered at our address.

It is further submitted that various letters and notices including communications from the statutory authorities are regularly delivered to the Registered Office address of the Companies. Hence, it can be inferred that registered address is the genuine address from where the Companies carries out its business activities. Copies of all relevant documents are annexed hereto and marked as “Annexure B.”

(d) Observation of the Regional Director contained in Paragraph No.2(d) of RD Affidavit:

“That it is submitted that upon perusal of report of the Registrar of Companies, West Bengal, it is submitted that M/s Suhana Marketing Private Limited and M/s Heaven Suppliers Private Limited were under inquiry under section 206 of the Companies Act, 2013. The Registrar of Companies, West Bengal submitted his Inquiry reports of both the above companies, stating therein various violation and non-compliances of the provisions of the Companies Act, 2013. In the Inquiry report of Suhana Marketing Private Limited, the concerned I.O. has made serious observations and stated that the main motive behind the formation of this company was to route unaccounted money by way of investment in the unquoted shares of the Private Limited Companies and the company has been utilized as a vehicle for money laundering activities and channelized fund into the business activities of the investee companies and funnel money through it and to siphon funds to bring back the unaccounted money as a beneficiaries in order to evade payment of legitimate tax. Accordingly, as regards violations stated in Part-B for which sanction of this Deponent has been sought by ROC, WB, the same had already been issued for taking necessary action against the Company concern and its directors in default. Further, proposal for examination of the applicability of fraud under section 447 of the Companies Act, 2013 followed by winding up action u/s 271(c) of the Companies Act, 2013 against the Transferor Company,



Suhana Marketing Private Limited has been submitted to Ministry for issuance of necessary instruction to ROC, WB in the matter. However, in respect of violations stated a Part-A of the said report and certain other observations, the matter has already been reported to Ministry, further instruction of which is awaited.”

Response of the petitioners contained in paragraph 4(d) of the Affidavit in Response:

With reference to the statements contained in paragraph 2(d) of the said Affidavit, it is denied that there are any violations or non-compliances of the provision of the Companies Act, 2013 by the Petitioner Company No. 2 or that the motive behind the formation of the said Petitioner Company was to route unaccounted money by way of investment in the unquoted shares of the Private Limited Companies or that the company has been utilized as a vehicle for money laundering activities and channelized fund into the business activities of the investee companies or funnel money through it and to siphon funds to bring back the unaccounted money as a beneficiaries in order to evade payment of legitimate taxes, as alleged or at all. It is stated that the Petitioner Company No.2, Suhana Marketing Private Limited has issued a letter dated May 16, 2022 in reply to the notice received by the said Petitioner Company under Section 206(4) of the Companies Act, 2013. On perusal of the Inquiry Report annexed to the said Affidavit, it appears that the concerned I.O. provided comments with respect to issuance of shares of the said Company at a huge premium and utilization of such premium for which the detailed explanation along with all the requisite documents was provided by the Petitioner Company in its letter dated May 16, 2022, a copy whereof has also been annexed at page 502 of the Company Petition. A plain reading of the conclusion given in the said Inquiry Report would evidence that the concerned I.O. has not dealt with the averments and documents provided by the said Petitioner Company in its letter dated May 16, 2022 and has proceeded to conclude the response of the Petitioner Company as ‘not justifiable’ without



providing any reasons for such conclusion. Further, a reading of the Inquiry Report would evidence that the concerned I.O. has failed to fully assess or comprehend the documents provided by the said Petitioner Company in its letter dated May 16, 2022. The I.O. without taking the same into consideration, has proceeded to draw a mechanical conclusion. Resultantly, such unreasonable approach without considering the merits of the said Petitioner Company's response is absolutely unwarranted. Further, shares issued by the said Petitioner Company were in compliance with the applicable provisions of the Companies Act, 1956. The Company has invested the premium amount in the reputed Companies with a view to earn revenues. However, due to the market conditions it could not gain sufficient revenue from its investments, which is beyond the company's control and an associated business risk. Hence, it can be inferred that neither the Company has violated any provisions of the Act nor purposely omitted any facts. Additionally, it may also be noted that, under similar grounds, the Hon'ble High Court, Delhi has passed an order of accepting the genuineness of the share capital in the case of JP Minda Group of Companies in the matter of one of the transferor company, Panchmukhi Management Services Private Limited and similarly the ITAT has rejected and dismissed all three appeals considering that they do not find any substance in the appeals of the Revenue in the matter of another transferor company, Heaven Supplies Private Limited. It is further submitted that the proposed Scheme of Amalgamation shall have no impact on the ongoing proceedings or inquiries, if any, being conducted by the Registrar of Companies (ROC) and the Petitioners undertake that proposed Scheme shall not hinder or obstruct any ongoing investigations. Upon sanction of the proposed Scheme, the Transferee Company will inherit all responsibilities and liabilities, past and future, associated with the Transferor Companies including any inquiry, investigation and proceedings initiated against the said Petitioner Company.

(e) Observation of the Regional Director contained in Paragraph No.2(e) of RD Affidavit:



“In the Inquiry report of Heaven Suppliers Private Limited, the ROC,WB, inter alia, stated that the company has deeply involved in accommodation entries and circuitous fund rotation as it has been collected money by way of share capital at premium and also given money to the same entities by way of investment made in the same private companies and at the same time when the company was not doing any manor business activity and earning no income, no employment generated, no fixed assets/tangible assets, no major establishment operational expensed were incurred to run the company and also recommended Inspection of the said Company. Accordingly, the said report is under the process of examination of this Directorate.”

Response of the petitioners contained in paragraph 4(e) of the Affidavit in Response:

“With reference to the statements contained in paragraph 2(e) of the said Affidavit, it is denied that the Petitioner Company No.5, i.e, Heaven Suppliers Private Limited is involved in accommodation entries or circuitous fund rotation, as alleged or at all. It is denied that the said Petitioner Company has collected money by way of share capital at premium and also given money to the same entities by way of investment made in the same private companies, as alleged or at all. It is stated that the said Petitioner Company has issued a letter dated May 16, 2022 in reply to the notice received by the said Petitioner Company under Section 206(4) of the Companies Act 2013, a copy whereof has also been annexed at page 552 of the Company Petition. It is further stated that the allegations being made against the said Petitioner Company was similarly made by the Income Tax Department after the search and seizure operation under Section 132(1) of the Income Tax Act and such allegations and contentions of the Income Tax Department was dismissed by an order dated December 2, 2022 by the Learned Income Tax Appellate Tribunal, Delhi Bench, a copy whereof is already annexed as ‘Annexure A’ to this instant Rejoinder .”



(f) Observation of the Regional Director contained in Paragraph No.2(f) of RD Affidavit:

“Further, the Registrar of Companies, West Bengal has also conducted physical verification of the registered office of each of all seven Petitioner Companies. As per said report, none of the companies were found to be maintaining their Registered Office in terms of the requirement of the provision of section 12 of the Companies Act, 2013, attracting the penal provision of section 12(8) or section 12(9) of the Companies Act, 2013.”

Response of the petitioners contained in paragraph 4(f) of the Affidavit in Response:

“With reference to the statements contained in paragraph 2(f) of the said Affidavit, the Petitioner Company repeats and reiterates the submissions made by the in paragraph 4(c) of this instant affidavit.”

(g) Observation of the Regional Director contained in Paragraph No.2(g) of RD Affidavit:

“That it is further submitted that Prosecution vide Case No. C/9491/13 under section 234 of the Companies Act, 1956 is pending against M/s Suhana Marketing Private Limited and Prosecutions vide Case No. C/ 142581 14, C14529, C/82867/16 and C/9487/13 under section 159, 69244 and 234 of the Companies Act, 1956 are pending against M/s Heaven Suppliers Private Limited.”

Response of the petitioners contained in paragraph 4(g) of the Affidavit in Response:

“With reference to the statements contained in paragraph 2(g) of the said Affidavit, it is stated that the Petitioners are unaware of any Prosecution Cases [being Prosecution Case No. C/9491/13 against the Petitioner Company No. 2 and Prosecution Case Nos. C/14258/14, C/14529, C/82867/16 and C/9487/13 against the Petitioner Company No.5], purportedly pending against the



Petitioner Company Nos. 2 and 5 and the said Petitioner Companies have not received any communication with respect to such Petitioner Companies. Hence, we are unable to provide any response in relation to the purported Prosecution Cases for want of knowledge. We, however, submit that the proposed Scheme of Amalgamation shall have no impact on the ongoing proceedings or inquiries and the Petitioners undertake that proposed Scheme shall not hinder or obstruct any ongoing investigations. Upon sanction of the proposed Scheme, the Transferee Company will inherit all responsibilities and liabilities, past and future, associated with the Transferor Companies including any inquiry, investigation and proceedings initiated against the said Petitioner Company and shall be responsible to defend the interest of the Petitioner Company Nos. 2 and 5 in such pending Prosecution Cases.”

Analysis and findings

9. Heard submissions made by the Ld. Counsel appearing for the Petitioners and Regional Director and perused the pleadings.

10. It is seen that RD has recorded its strong objection to the approval of the scheme on the pretext that the constituent companies have been used as agents in round tripping of the money and prosecution of criminal proceedings is also underway where these companies have performed the role of a conduit. Apart from the above, the Income tax department has also raised objections to the scheme in view of the pending demands of Income tax. On the other hand the Petitioners have contended that they remain liable for all the liabilities as provided in the scheme itself. This is beside the fact that completion of the investigations and resorting to the prosecution mechanism provided in the companies act 2013, in itself is a long drawn process and that in anticipation of the same the business decisions can not be made to wait eternally.

11. There are two issues involved here. The criminal angle for which even the prosecution is underway as mentioned in sub para (g) above, and the issue of income tax evasion or avoidance which have resulted or may result in the loss to the exchequer. We rely on the Judgment of Hon’ble Supreme Court in the matter of



RELIGARE FINVEST LIMITED Vs. State of NCT of Delhi & Anr., wherein following has been held and found relevant to the facts of the case in question :

26. In *M/s. General Radio & Appliances Co. Ltd. vs. M.A. Khader (dead)* by LR's²⁹, the effect of amalgamation of two companies was considered by the Supreme Court. It was held that after the amalgamation of two companies, the transferor company ceases to have any entity, and the amalgamated company acquires a new status, and it is not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets.

27. In the context of income tax liability, this court, in *Saraswati Industrial Syndicate Ltd. vs. CIT, Haryana, H.P. & Delhi*, observed that: "**The true effect and character of the amalgamation largely depends on the terms and scheme of merger but there cannot be any doubt that *when two companies amalgamate and merge into one the transferor company loses its entity as it ceases to have its business. However, their respective rights or liabilities are determined under the scheme of amalgamation but the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective.***"

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32. **Every scheme of amalgamation is statutory and sanctioned under the Banking Act. Such amalgamation is to ensure that the interests of the depositors, the creditors and others who had invested, or given credit to in the erstwhile bank, before its sickness, and that the general public are protected. It aims at securing larger public interest and health of the banking industry. Late intervention into the affairs of a bank can result in a "run" on it, resulting in serious loss of confidence in the intricately woven banking and financial system. If one sees this and the overall objective of the scheme, it is to ensure recovery of what are the bank's dues and ensuring protection of the creditors. Clause 3 (3) of the scheme, therefore, has to be considered from this backdrop. In this context, the express mention of**

directors and such other individuals in the proviso means that it is to that extent only that prosecutions or other criminal proceedings can continue; in the ordinary sense, criminal liability can neither be attributed to DBS nor its directors, brought in after the amalgamation, whose appointments were approved by the RBI.”

(Emphasis applied)

Thus is clear that any financial liability of the companies in regard to the Govt. taxes shall have to be borne by the Transferee company and this therefore cannot be a reason for not sanctioning the scheme. As regards the criminal proceedings against the individuals including the Directors, that may result as a consequence of the ongoing investigations, these do not abate by virtue of the amalgamation and this liability as and when established shall be faced by the concerned individuals, notwithstanding anything to the contrary provided in the scheme, which is the subject of this Petition. Here it would be useful to cite the provisions of the companies act in regard to the preservation and maintenance of the records of the Amalgamating companies. Section 239 of the Companies Act 2013, reads as under:

239. Preservation of books and papers of amalgamated companies.— The books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter **shall not be disposed of without the prior permission of the Central Government** and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

Thus, it is not logical to assume that once the companies get amalgamated, there won't be any basis on which the investigation or prosecution could be continued as the entire record of the **transferor companies is to be preserved by the Transferee company**. Upon perusing the records and documents in the instant proceedings and



considering the submissions and on being satisfied with the clarifications provided by the Petitioners, we allow the petition and make the following orders:-

- (a) the Scheme of Amalgamation mentioned in paragraph 1 of this petition being Annexure "A" hereto be sanctioned by this Hon'ble Court to be binding with income effect from April 1, 2024 and the same shall be binding on Amabel Vitran Private Limited, Suhana Marketing Private Limited, Druth Vyasaya Private Limited, Sadabahar Investment Consultants Private Limited, Heaven Suppliers Private Limited, Panchmukhi Management Services Private Limited and Aristro Fincorp Private Limited and all concerned;
- (b) all the debts, liabilities, duties and obligations of the Prudential Tradelink Private Limited, Puja Shoppers Private Limited, Goodluck Suppliers Private Limited, Monifa Len Den Private Limited and Ayodele Distributors Private be transferred from the said Appointed Date, without further act or deed to the Aristro Fincorp Private Limited and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of Aristro Fincorp Private Limited;
- (c) the employees of the Amabel Vitran Private Limited, Suhana Marketing Private Limited, Druth Vyasaya Private Limited, Sadabahar Investment Consultants Private Limited, Heaven Suppliers Private Limited and Panchmukhi Management Services Private Limited shall be engaged by Aristro Fincorp Private Limited, as provided in the Scheme;
- (d) all proceedings and/or suits and/or appeals now pending by or against the Amabel Vitran Private Limited, Suhana Marketing Private Limited, Druth Vyasaya Private Limited, Sadabahar Investment Consultants Private Limited, Heaven Suppliers Private Limited and Panchmukhi Management Services Private Limited be continued by or against the Aristro Fincorp Private Limited, as provided in the Scheme, for which the Transferee

company shall preserve the records and documents alongwith the tally data and other such data as may be required for aiding the ongoing or contemplated proceedings in respect of the petitioner companies, strictly in accordance with Section 239 of the Companies Act 2013 read with relevant rules.

- (e) The Transferor Companies namely Amabel Vitran Private Limited, Suhana Marketing Private Limited, Druth Vyasaya Private Limited, Sadabahr Investment Consultants Private Limited, Heaven Suppliers Private Limited and Panchmukhi Management Services Private Limited be dissolved without winding up from the date of the filing of the certified copy of this order upon the Registrar of Companies, West Bengal by Amabel Vitran Private Limited, Suhana Marketing Private Limited, Druth Vyasaya Private Limited, Sadabahr Investment Consultants Private Limited, Heaven Suppliers Private Limited, Panchmukhi Management Services Private Limited and Aristro Fincorp Private Limited ;
- (f) Leave is granted to the Petitioners to file the Schedule of assets of the Amabel Vitran Private Limited, Suhana Marketing Private Limited, Druth Vyasaya Private Limited, Sadabahr Investment Consultants Private Limited, Heaven Suppliers Private Limited and Panchmukhi Management Services Private Limited as stated in paragraph 23 of the petition within three weeks from the date of the order to be made herein;
- (g) Amabel Vitran Private Limited, Suhana Marketing Private Limited, Druth Vyasaya Private Limited, Sadabahr Investment Consultants Private Limited, Heaven Suppliers Private Limited, Panchmukhi Management Services Private Limited and Aristro Fincorp Private within 30 days from the date of receipt of copy of the order to be made herein cause a certified copy thereof to be delivered to the Registrar of Companies, West Bengal;

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I
KOLKATA



C.P.(CAA) NO.126/KB/2022
Connected with
C.A.(CAA) NO. 57/KB/2022

- (h) Any person/authority aggrieved shall be at liberty to apply to this Hon'ble Tribunal in the above matter for such directions so may be necessary;
- (i) Such further order or orders be made and/or directions be given as to this Hon'ble Tribunal may deem fit and proper.

12. The Petitioners shall supply legible print out of the scheme and schedule of assets in acceptable form to the Registry and the Registry will append such printout, upon verification to the certified copy of the order.

13. Company Petition (CAA) No.126/KB/2022 connected with C.A.(CAA) No. 57/KB/2022 is disposed of accordingly.

14. Urgent Photostat certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

This order signed on 03.12.2024.

BD