



S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
29-03-2023 AT 10:30 AM**

CP (CAA) 18/230/HDB/2022
u/s. 230 of Companies Act, 2013

IN THE MATTER OF:

M/s. Aradhana Dealer Pvt Ltd (Trnsfror Co., 1) & M/s. Dhankuber Tie Up Pvt Ltd (Transfror Co., 2) & M V Tradecom Pvt Ltd (Trnsferor Co., 3) & M/s. Blaji Infraconclave Pvt Ltd (Transferee Co.,) **...Petitioner**

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

O R D E R

Order in Company Petition 18/2022 pronounced. Recorded vide separate sheets.

In the result, the scheme of amalgamation is here by sanctioned. Accordingly,

Petition is allowed subject to the terms and conditions mentioned in the order.

SD/-

MEMBER (T)

SD/-

MEMBER (J)



IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD-1

CP (CAA) No. 18 /230/HDB / 2022

Connected with

CA (CAA) NO. 41/230/HDB/2021

U/s 230-232 and other applicable provisions of the Companies Act, 2013

IN THE MATTER OF

SCHEME OF AMALGAMATION BETWEEN

BALAJI INFRACONCLAVE PRIVATE LIMITED

(Transferee Company)

ARADHANA DEALER PRIVATE LIMITED

(Transferor Company No.1)

DHANKUBAR TIE-UP PRIVATE LIMITED

(Transferor Company No.2)

M V TRADECOM PRIVATE LIMITED

(Transferor Company No.3)

M V TRADECOM PRIVATE LIMITED,

Registered Office Vijay Narayan,
C,T Venkata Krishnaiah Plot No 502 201,
2nd Floor, Street 9, Madhavpuri Hills,
PJR Layout, Miyapur, Hyderabad – 500 049,
State of Telangana.

Petitioner/
Transferor Company.3

ARADHANA DEALER PRIVATE LIMITED,

Registered Office at P.C. Mittal Bus Stand,



CP (CAA) No.18/230/HDB/2022
Connected with
CA (CAA) NO. 41/230/HDB/2021
Date of Order: 29.03.2023

Shop No. E/6, Ground Floor, Sevoke Road,
Siliguri, Jalpaiguri – 734001, State of West Bengal.

Non Petitioner/
Transferor Company.1

DHANKUBER TIE-UP PRIVATE LIMITED,

Registered Office at P.C. Mittal Bus Stand,
Shop No. E/6, Ground Floor, Sevoke Road,
Siliguri, Jalpaiguri – 734001, State of West Bengal.

Non Petitioner/
Transferor Company.2

BALAJI INFRACONCLAVE PRIVATE LIMITED,

Registered Office at Metro Heights,
4th Floor, 2nd Mile, Sevoke Road,
Opp Club Town Apartment, Siliguri,
Darjeeling – 734 001 in the State of West Bengal.

Non Petitioner/
Transferee Company

DATE OF ORDER: 29.03.2023

Coram:

Hon'ble Dr. Venkata Ramakrishna Badarinath Nandula, Member
(Judicial)

Hon'ble Shri Charan Singh, Member (Technical)

Counsels / Parties Present

For the Petitioner : Mr. Madan Kumar Maroti , FCA
Ms. Aisha Amin , Adv



Mr. N.Gurumurthy , FCA

For Regional Director : Mr.Shashi Raj Dara,Joint Director.

For SFIO: Mr.Sujan Kumar Reddy

For Official Liquidator : Mr.RK.Sahu, Deputy Official Liquidator

PER BENCH

1. This is a joint Company Petition filed by the Transferor Companies and Transferee Company, filed under Section 232 r/w Section 230 and other applicable provisions of the Companies Act, 2013 and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, praying for the sanction of Scheme of Amalgamation whereby **Aradhana Dealer Private Limited** (“Transferor Company No 1” / “ Non Petitioner”) and **Dhankuber Tie-Up Private Limited** (“Transferor Company No 2” / “Non Petitioner ”) and **M V TRADECOM Private Limited** the Petitioner above named (“Transferor Company No 3” / “ Petitioner ”) will be amalgamated with **Balaji Infraconclave Private Limited** (“Transferee Company” / “ Non Petitioner”) with Transfer Date or Appointed Date being 01ST April,2020 pursuant to Section 230 to 232 of the Companies Act, 2013 and Rules made there under in the manner and on the terms and conditions stated in the said Scheme of Amalgamation(“Scheme”). A copy of the Scheme of Amalgamation



is annexed to the Company Petition and marked as – **Annexure A** in Volume- I at page No 39 to 72.

2. The averments made in the application are briefly described as under:

a. **M V TRADECOM PRIVATE LIMITED** (hereinafter referred to as the '**M V TRADECOM**'/TRANSFEROR COMPANY NO.3) was incorporated on 17th day of September, 2007 (CIN: U51909TG2007PTC074604) as a Private Company Limited by shares under the provisions of the Companies Act, 1956 in the State of Telangana. The Company was previously situated in the State of West Bengal. A copy of the Memorandum and Articles of Association of '**M V TRADECOM**'/TRANSFEROR COMPANY NO.3 is annexed to the Application at **Annexure–'G'**; The Registered Office of the '**M V TRADECOM**'/TRANSFEROR COMPANY NO.3 is situated at Vijay Narayan, C.T Venkata Krishnaiah Plot No 502 201, 2nd Floor, Street 9, Madhavpuri Hills, Pjr Layout, Miyapur, Hyderabad – 500 049 in the State of Telangana within the aforesaid jurisdiction.

b. The '**M V TRADECOM**'/TRANSFEROR COMPANY NO.3 is currently engaged in the Trading activities. The Present Share Capital Structure of the '**M V TRADECOM**'/TRANSFEROR COMPANY NO.3 as on 31st March, 2020 is as under:

SHARE CAPITAL	AMOUNT(in Rs.)
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AUTHORIZED SHARE CAPITAL	
6,50,000 Equity Shares of Rs.10/- each	65,00,000/-
TOTAL:	65,00,000/-
ISSUED, SUBSCRIBED AND PAID- UP SHARE CAPITAL	
6,17,500** Equity Shares of Rs.10/- each fully paid up	61,75,000/-
TOTAL:	61,75,000/-

As on the date of approval of the Scheme by the Board of Directors of the ‘**M V TRADECOM**’/TRANSFEROR COMPANY NO.3, there is no change in the authorised, issued, subscribed and paid-up share capital of the ‘**M V TRADECOM**’/TRANSFEROR COMPANY NO.3.

3. It is submitted that the Registered Office of the Non Petitioner Transferor Companies and the Non Petitioner Transferee Company are situated in the State of West Bengal and are outside the jurisdiction of this Bench. The Ld. Counsel for the Petitioner submits that the Hon’ble National Company Law Tribunal , Kolkata Bench vide order dated 17-06-2022 passed in Company Petition C.P(CAA) NO 175 / KB / 2021 connected with Company Application C.A(CAA) NO 95 / KB/2021 have sanctioned the Scheme of Amalgamation .



4. The Board of Directors of the Transferor Companies and Transferee Company at their respective meetings held on 15th February, 2021 has passed resolution approving the Scheme of Amalgamation with Appointed Date 01st April, 2020. A copy of the Resolution passed by the Board of Directors of the Transferor Companies and Transferee Company is annexed as “Annexure-R” in VOL III at page No 414 to 417.

5. **RATIONALE FOR THE SCHEME**

The amalgamation of the Transferor Companies with the Transferee Company would have the following benefits:

- a) The amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources;
- b) The business of the Transferor Companies can be conveniently and advantageously combined together and in general with the business of the Transferee Company concerned and will be carried on more economically and profitably under the said Scheme;
- c) The said Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business of the company concerned. The said scheme will also enable the undertakings and business of the said Petitioner company to obtain greater facilities possessed and enjoyed by one large company compared with a



number of small Company for raising capital, securing and conducting trade on favourable terms and other benefits;

- d) The said scheme will contribute in furthering and fulfilling the objects of the Company concerned and in the growth and development of these businesses;
- e) The said scheme will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability;
- f) The said scheme will enable the undertakings concerned to pool their resources and to expand their activities;
- g) The said scheme will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages;
- h) The scheme will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.

6. **COMPLIANCE OF ACCOUNTING STANDARD**

The accounting treatment proposed in the Scheme of Amalgamation between Transferor Companies and Transferee Company and their respective Shareholders and Creditors is in conformity with the accounting standards as prescribed under the provisions of Section 133 of the Companies Act, 2013. The certificate issued by the statutory Auditors is annexed to the Application as **Annexure –‘S’** in VOL III at page No 418 to 425.



7. **CONSIDERATION**

It is submitted that 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 dated 10th February, 2021 thereon of Mukesh Banka, IBBI, Registered Valuer. Copy of the said report is annexed to the Company Petition marked – **Annexure Q** in VOL III at page No 397 to 413.

8. **DECLARATION BY THE PETITIONER COMPANIES**

No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s). It is further submitted that proceedings Section 206 of the Companies Act, 2013 have been initiated against the Petitioner Transferor Company and the same will continue and will be represented by the Transferee Company.

8. It has been submitted that the Petitioner Companies had jointly filed an application CA (CAA) No. 41/230/HDB/2021 wherein this Hon'ble Tribunal vide order dated 13.04.2022 dispensed with the meeting of equity shareholders of the Petitioner Company and has recorded that there is no requirement of meeting of Secured Creditors and Unsecured Creditors in view of Nil Creditors duly verified by auditors certificate. Copy of Order of Hon'ble Tribunal is annexed to the petition as **Annexure P** at page no.385-396.
9. It is submitted that the Tribunal vide order dated 26.10.2022 ordered notices as per Rule 16 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. Subsequently notices were issued on all



the statutory Authorities. It has been submitted that the Petitioner Company as per the order of this Hon'ble Tribunal, had been carried publication in English Newspaper i.e. Financial Express and Telugu Newspaper i.e. Nava Telangana on 10.11.2022. The proof of publication and proof of service of notice of hearing was filed by an Affidavit dated 26.12.2022.

10. It is submitted that the Tribunal vide order dated 14.02.2023 ordered fresh notice as per Rule 16 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. Subsequently notices were issued on all the statutory Authorities. It has been submitted that the Petitioner Company as per the order of this Hon'ble Tribunal, had been carried publication in English Newspaper i.e. Financial Express and Telugu Newspaper i.e. Nava Telangana on 22.02.2023. The proof of publication and proof of service of notice of hearing was filed by an Affidavit dated 07.03.2023.
11. The Regional Director vide his report dated 07.03.2023 has made certain observations. The Petitioner Company have filed affidavit dated 06.03.2023, in response to the observations made by the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad where under the Petitioner Companies gave undertaking to appropriately comply with the observations made by R.D. The details are given below:

Observations of Regional Director	Reply of the Petitioner Companies by way of affidavit
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PARA 3(e-g) Hon'ble Tribunal may please to direct the Petitioner Companies to preserve the books, comply with statutory laws, file Inc-28 with the Registrar of Companies.	The Petitioner Company vide this affidavit undertakes to comply with all the Applicable provisions and rules under the Companies Act, 2013.
PARA 4 Hon'ble Tribunal may please to direct the petitioner company to comply with the observations pointed out by the official liquidator.	It is submitted by the petitioner companies that reply affidavit with respect to the observations of Official Liquidator has been filed
PARA 5 Hon'ble Tribunal may note the appointed date given as 01.04.2020.	Petitioner Companies submitted that Petitioner Company has not filed its due Annual Return and Balance Sheet for the year 2021-2022. However, appointed date as per Scheme is 01.04.2020.
PARA 6 It is submitted that Directorate's letter dated 25.11.2022, issued to the Addl. Commissioner of Income Tax, Income Tax Officer, Circle 16(2) Aayakar Bhavan, Hyderabad seeking their objection/comments as the jurisdiction of the Transferor Company No.3 vests with the said office However, letter No	Petitioner Company hereby undertakes that upon coming into effect of the Scheme the Income Tax demand for the Assessment Year(s) under dispute will be discharged by the Transferee Company by making payment



AAFCM/3582R/WD-4(1) Amalgamation KOL/2022-23/332 dated 01.12.2022 copy enclosed) received from Sandip Kumar, Income Tax Officer Ward-4(1), Kolkata, stating that as per Income Tax Database, as on date there are outstanding demands of Rs 1,05,380 for the Assessment Year 2014-15 (under section 147), Rs 15,53,420/- for the Assessment Year 2016-17 under section 143(3) and Rs 6,22,192/ for the Assessment Year 2016-17 (under section 271(1)(c) in the name of MV Tradecom Private Limited (Transferor Company No. 3 of Telangana , Assessment proceedings is pending in the case for the Assessment Year 2013-14 and 2015-16 which may entail likelihood of raising of demand on finalization of the assessment and requested to fix the ability to the Company consequent to amalgamation for payment of the departmental demand. Further, stated that Income Tax Officer has objection to the proposed scheme of amalgamation with respect to MV <u>Tradecom</u> Private Limited.	upon its final resolution by the ultimate adjudicating authority.
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9. The Regional Director filed further report dated 07.03.2023 stating that the Hon'ble Tribunal may please to consider the facts along with the affidavit dated 13.02.2023 filed before Hon'ble NCLT on



14.02.2023 and observations of Income Tax Department and pass such order as deemed fit and proper.

10. **OFFICIAL LIQUIDATOR'S REPORT:**

The Official Liquidator has filed his report, vide OLR No. 11/2023 dated 09.02.2023 stating certain observations at point no.22 of his report. The observations pointed out has been replied by the petitioner companies vide affidavit dated 09.02.2023 are mentioned against each. Further Official Liquidator vide O.L.R.No.19/2023, dated 03.03.2023 filed the final report which is stated below as remarks.

Observations of OL	Reply by way of Affidavit	Remarks
PARA 22(C) Hon'ble Tribunal may be pleased to direct the Transferor Company-3 to submit an undertaking to the effect that the Record Date would be decided and fixed mutually by the Board of Directors of Transferor & Transferee Companies immediately after sanction of the Scheme and before	The Transferee Company has undertaken that the Record Date shall be fixed mutually by the Board of Directors of Transferor and Transferee Companies immediately after sanction of the Scheme and before dissolution of the Transferor Companies on effective date.	Observation complied.



dissolution of the Transferor Companies on effective date.		
PARA 22(d) Hon'ble Tribunal may be pleased to direct the Transferor Company-3 to submit an undertaking that effect that there would no retrenchment of any employee who were in service as on Appointed Date [i.e.01-04-2020) as well.	 It is stated that there are no employees in the company as on 31-03-2020; 31-03-2021 & 31-03-2022. Hence, no undertaking is furnished by the Transferor Company in this regard.	 Clarification given.

11. **OBSERVATION**

We have heard the Learned FCA appearing for the Petitioner Company and perused the material papers on record. As regards to the observations pointed out by the Regional Director and compliance filed by the petitioner company, it appears that Petitioner Company under take to comply the necessary observations whenever required. The Official liquidator had also raised certain observations for which the Petitioner Company filed its reply by way of Affidavit. After hearing the FCA for the Petitioner Company and considering the material on record, we are of the view that scheme is not opposed to public interest and the proposed Scheme is in the interests of the



Transferor Companies, the Transferee Company and their respective shareholders, employees, creditors and all persons concerned. Hence the scheme can be approved with Appointed date as 01.04.2020.

All the statutory compliances have been made under Section 230 to 232 of the Companies Act, 2013. Hence ordered.

12. **ORDER**

After hearing the Counsel for the Petitioner Company and after considering the material on record, this Tribunal passed the following order:

- A. The Scheme of Amalgamation (**Annexure “A”**) is hereby sanctioned with appointed date as 01.04.2020 and shall be binding on all the members, employees, creditors and all other stakeholders of the Petitioner Companies.
- B. While Approving the Scheme, we made it clear that this order should not be construed as an order in anyway granting exemption from payment of Stamp Duty, taxes or any other charges, if any, payable in accordance with law or in respect of any permission/compliance with any other requirement which may be specially required under any law.
- C. The whole of the assets, property, rights and Liabilities of the Petitioner Company shall be transferred without the requirement of any further act or deed to the Transferee Company.
- D. We direct the Petitioner company to comply with all the observations pointed out by the Regional Director.



- E. We direct the Petitioner company to comply with all the observations pointed out by the Official Liquidator.
- F. We direct the Petitioner Company to preserve the books of accounts and papers and records and the same shall not be disposed of without the prior permission of the Central Government in terms of provisions of Section 239 of the Companies Act, 2013.
- G. We direct the Petitioner Company to ensure statutory compliance of all applicable laws and also on sanctioning of the present Scheme the Petitioner Company shall not be absolved for any of their statutory liability in any manner.
- H. All the legal proceedings pending by or against the petitioner Company shall be continued by or against the Transferee Company.
- I. Though no representation has been received from the Income Tax Authorities despite service of notice by the Petitioner Company. We direct the petitioner Company to comply with the observations pointed out by the Income Tax Authorities as per law.
- J. The Petitioner Company is directed to strictly comply with the Accounting Treatment Standards prescribed under Section 133 of the Companies Act, 2013.
- K. The sanction of the Scheme by this Tribunal shall not forbid the revenue authority from taking appropriate recourse for recovering the existing and previous tax liabilities of the Transferor and Transferee Companies.
- L. We direct the Transferee Company to comply with the provisions of Section 2 (41) of the Companies Act, 2013.



- M. The Transferor Company of M V Tradecom Private Limited shall stand dissolved from the appointed date; M V Tradecom Private Limited shall within 30 days after the date of obtaining the Certified Copy of the order to be made herein cause certified copies of this order to be delivered to the Registrar of Companies, West Bengal for registration respectively;
- N. The Petitioner Company shall until the completion of the Scheme of Amalgamation, file a statement in such form and within such time as prescribed with the Registrar every year duly certified by a Chartered Accountant or a Cost Accountant or a Company Secretary to the effect that the Scheme of Amalgamation is being complied with in accordance with the orders of the Tribunal as required under Section 232 (7) of the Companies Act, 2013.
- O. We direct the Petitioner Company involved in the Scheme to comply with Rule 17 (2) of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2013. The Petitioner Companies within 30 days after the date of receipt of certified copy of the order, shall cause certified copy to be delivered in Form INC-28 to the Registrar of Companies concerned for registration and on such certified copy being delivered, Registrar of Companies concerned shall take all necessary consequential action in respect of the Petitioner Companies.
- P. The Petitioner Company is further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of merger under the provisions of the Companies Act, 2013 and submit



necessary compliance and undertaking relating to the objections raised by the Regional Director (SER), MCA, GoI, Hyderabad.

- Q. Any person shall be at the liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
- R. Accordingly the CP (CAA) **18/230/HDB/2022** is hereby allowed and disposed of.

SD

Charan Singh
Member Technical

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Pavani