



NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-III

COMPANY PETITION NO. (CAA)- 70 (ND)/2022

CONNECTED WITH

COMPANY APPLICATION NO. CA (CAA)-48 (ND)/2022

IN THE MATTER OF SCHEME OF AMALGAMATION:

AMONGST

JASMINE ISPAT PRIVATE LIMITED

... Petitioner No. 1 /Transferor Company 1

AND

LUSH TRADERS PRIVATE LIMITED

... Petitioner No. 2 /Transferor Company 2

WITH

JUST RIGHT LIFE LIMITED

... Petitioner No. 3/ Transferee Company

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

ORDER DELIVERED ON: 01.03.2023

SECTION: 230 and 232 of the Companies Act, 2013

Coram:

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SH. ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)



Present:

For the Petitioners : Mr. S. Shiva and Mr. Suman Kumar Jha, Advocates

For the RD : Mr. Shankari Mishra

For the OL : Mrs. Hemlata Rawat

For the IT Department : Mr. Utkarsh Tiwari

ORDER

PER: SH. BACHU VENKAT BALARAM DAS, MEMBER – JUDICIAL

This Petition is preferred jointly by the Transferor Company 1, Transferor Company 2 and Transferee Company under Section 230 to 232 of Companies Act, 2013 read with the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 for the purpose of the approval of the Scheme of Amalgamation (hereinafter referred to as ‘Scheme’ for brevity), as contemplated between the Companies, its Shareholders and Creditors. The copy of the Scheme has been placed on record. The Appointed date as fixed for the Proposed Scheme of Amalgamation is 01.04.2022. The details of the Companies proposed to be amalgamated, as placed on record, are given in the following paragraphs.

2. Jasmine Ispat Private Limited, (hereinafter referred to as “Petitioner-1 / Transferor Company-1”) was incorporated on 22.02.1994 under the provisions of the erstwhile Companies Act, 1956 as a private company having its registered office presently situated at H. No. A -28, Amanpuri, Nangloi, New Delhi-110041. The Authorized Share Capital of Company is Rs. 1,75,00,000/- divided into 17,50,000 equity shares of Rs. 10/- each and the issued, subscribed and paid-up share capital of the Company is Rs. 1,53,43,000/- divided into 15,34,300 Equity shares of Rs. 10/- each. Presently, the Transferor Company 1 is engaged in carrying on the business of manufacturers, processors, refiners, makers, fabricators,



convertors, importers, exporters, agents, merchants, buyers, sellers and dealers in all kinds and forms of steels including rolls, shafts, alloy steels, special steels and other metals and alloys, and also the business of iron masters, steel and Metal converters, ferrow alloy manufacturers, miners, smelters and engineers in all their respective branches, and to search for, get work, raise, take on lease, make merchantable, manufacture, process, buy, sell, and otherwise deal in or on steel and other metals, iron ores, coals, minerals and mineral substances, alloys and metal scrap of all kinds and such other allied services.

3. Lush Traders Private Limited, (hereinafter referred to as “Petitioner-2 / Transferor Company-2”) was incorporated on 07.04.1994 under the provisions of the erstwhile Companies Act, 1956 as a private company having its registered office presently situated at Building No. 55-56, Block A3, Kunwar Singh Nagar, Nangloi, New Delhi-110041. The Authorized Share Capital of Company is Rs. 2,50,00,000/- divided into 25,00,000 equity shares of Rs. 10/- each and the issued, subscribed and paid-up share capital of the Company is Rs. 2,30,36,020/- divided into 23,03,602 Equity shares of Rs. 10/- each. Presently, the Transferor Company is engaged in carrying on the business of traders, importers, exporters, buyers, sellers and dealers in goods of all description including electrical goods.

4. Just Right Life Limited, (hereinafter referred to as “Petitioner-3 / Transferee Company”) was incorporated on the 30.07.2015 under the provisions of the Companies Act, 2013 as a Private Limited Company with the name & style of Stepping Stone Construction Private Limited with is registered office situated at 4/97, First Floor, Subhash Nagar, New Delhi-110027. The registered office of the Transferee Company was shifted within the local limits and jurisdiction of Registrar of Companies, NCT of Delhi and Haryana (‘RoC’) and the registered office is presently situated at F-4, 34/1, Vikas House, East Punjabi Bagh, New



Delhi – 110026. The Transferee Company has further submitted that its name was changed from Stepping Stone Construction Private Limited to Just Right Life Private Limited for which the RoC issued a Certificate of Incorporation pursuant to change of name on 19.05.2022. It is further submitted by the Transferee Company that it was converted into a Public Limited Company viz. Just Right Life Limited and the approval of the RoC was given to the Transferee Company on 31.05.2022. The Authorized Capital of the Transferee Company is Rs. 6,00,00,000/- divided into 60,00,000 equity shares of Rs. 10/- each. The issued, subscribed and paid up share capital is Rs. 4,73,72,920/- divided into 47,37,292 equity shares of Rs. 10/- each. Presently, the company is engaged in carrying on the business of owning, construct, managing and carrying on the business of hotels, holiday, resorts, restaurants, café etc. and related activities thereto.

5. The present Petition has been filed jointly by the Transferor Company 1, Transferor Company 2 and Transferee Company. The ‘Transferor Company 1’, ‘Transferor Company 2’ and ‘Transferee Company’ together are called ‘Petitioner Companies’ hereinafter. Since the Registered offices of all the Companies are situated in Delhi, the jurisdiction lies with this Bench.

6. From the records, it is seen that the First Motion petition was filed by the Petitioner Companies for seeking directions for dispensing with the meeting of Equity Shareholders and Unsecured Creditors of all the Petitioner Companies. It was submitted by the Petitioner Companies that they have no Secured Creditors and hence, there was no requirement for convening the meeting in respect of the Secured Creditors of either of the Petitioner Companies. This Tribunal, in the First Motion Application bearing No. CA (CAA) No. 48



(ND) 2022, vide Order dated 02.06.2022 dispensed with the requirement of convening the meetings of the equity shareholders and unsecured creditors of all the Petitioner Companies.

7. This Tribunal vide Order dated 02.06.2022 had further directed the Petitioner Companies to serve the notice of the first motion application on the Regional Director, Ministry of Corporate Affairs, Registrar of Companies, Official Liquidator and Income Tax Department. It is observed that the Petitioner Companies have duly filed their respective affidavit of service in compliance of the said order dated 02.06.2022.

8. Subsequent to the order of dispensation of meetings in relation to the Transferor Company 1, Transferor Company 2 and Transferee Company, the Second Motion petition was moved by the Petitioner Companies in connection with the Scheme of Amalgamation for issuance of notices to the Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi, Registrar of Companies (NCT of Delhi & Haryana), Official Liquidator (Attached to High Court of New Delhi) and to the respective wards of the Income Tax Department and also for publication of notice in respect of the said Scheme. The said petition was admitted and directions were issued vide Order dated 03.08.2022 of this Tribunal, requiring the Petitioner Companies to serve notices to the Regional Director (Northern Region), Registrar of Companies (NCT of Delhi and Haryana), Official Liquidator (Attached to High Court of New Delhi) and to the respective wards of the Income Tax Department and also to carry out necessary publication in English and Hindi newspapers with respect to the said Scheme.

9. It is submitted by the Petitioner companies that in compliance of the above stated directions, the Petitioner Companies duly filed Affidavit of Service by confirming that the aforesaid Notices of the present Company Petition were published on 10.09.2022 in Financial



Express (English) and Jansatta (Hindi) newspapers Delhi edition. It is further submitted that the Petitioner Companies also served the Notices of the present Company Petition to all the statutory authorities.

10. It is submitted by the Petitioner Companies that the compliance with respect to accounting treatment has been made as certified by the Statutory Auditor of the respective Petitioner Companies. The Statutory Auditors vide their certificates dated 23.03.2022, 23.03.2022 and 24.03.2022 have certified that the proposed accounting treatment included in the Scheme of Amalgamation of the petitioner companies is in compliance with the applicable Accounting Standards specified under the Section 133 of the Act.

11. It is submitted by the Petitioner Companies that the Official Liquidator has filed its report dated 01.11.2022 in which it has been stated that on the basis of the information submitted by the Petitioner Companies, the Official Liquidator 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 the public interest in terms of the provisions of the Companies Act, 2013.

12. The Income Tax Department vide its report dated 02.12.2022 have stated that they have no objection to the sanction of amalgamation scheme proposed by the petitioner companies.

13. The Regional Director vide his report dated 08.12.2022 has not objected to the proposed scheme but has made certain observations. The petitioner companies filed an affidavit dated 13.01.2023 in response to the observations made by the Regional Director, the details of which are given below:



Observations of the Regional Director	Reply of the Petitioner Companies
Refer to clause 2 (2.2) of Part III of the scheme, the Transferee company may kindly be directed to comply with the provision of section 232(3)(i) of the Companies Act, 2013 in regard to fee payable on its revised authorized share capital, if applicable.	The transferee company will comply with the provisions of section 232(3)(i) of the Companies Act, 2013 with respect to the fee payable on its revised authorized share capital.
The Transferor Company 1 and 2 and Transferee Company are dormant companies having no revenue from operations in the past two financial years. However, they have not made any application for obtaining such status in this regard with this office.	There is no mandatory requirement on the part of the Petitioner Companies to make an application to obtain any dormant status in view of the provisions of Section 455 of the Companies Act, 2013. Petitioner Companies were impacted by the COVID-19 pandemic outbreak and were unable to generate income from business operations. The Petitioner Companies in support of their contention had relied upon the Order passed by the Hon'ble National Company Law Tribunal, Delhi bench in the matter of <i>Mochiko Footwear Private Limited</i> [CP(CAA) No. 22/ND/2022 in CA(CAA) No. 06/ND/2022] wherein the Hon'ble NCLT had held that no sustainable objections were made by the Regional Director.



14. In view of the foregoing facts and discussion and also in the view of the fact that no sustainable objections have been raised by the Office of the Regional Director, Registrar of Companies, Official Liquidator, Income Tax Department or any other interested party, there does not appear to be any impediment in granting sanction to the Scheme proposed of amalgamation.

15. **Accordingly, in sequel to the above facts and circumstances, sanction is hereby granted to the Scheme of Amalgamation proposed by the Petitioner Companies under Section 230 to 232 of the Companies Act, 2013.**

16. The sanctioned Scheme of Amalgamation shall be binding on the Transferor Company 1, Transferor Company 2 and Transferee Company (Petitioner Companies) and their Shareholders and Creditors. The Petitioner Companies shall remain bound to comply with the statutory requirements in accordance with law.

17. Notwithstanding the above, if at any stage any deficiency is found or violation committed qua any enactment, statutory rule or regulation is found to be committed, the sanction granted by this Tribunal to the Scheme will not come in the way of action to be taken, albeit, in accordance with law, against the concerned persons, Directors and Officials of the Petitioner Companies.

18. 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 other statutory dues, if any, and payment in accordance with law or in respect to any



permission/compliance with any other requirement, which may be specifically required under any law will be made. Further the approval of the Scheme would in no manner affect the tax treatment of the transactions under the Income Tax Act, 1961 or serve as any exemption or defense for the Petitioner Companies against tax treatment in accordance with the provisions of Income Tax Act, 1961.

19. **THIS TRIBUNAL FURTHER DIRECTS** with respect to Transferor Company 1, Transferor Company 2 and Transferee company, that:

- (i) Upon the sanction becoming effective from the appointed date of amalgamation and arrangement i.e., 1st April, 2022, the Transferor Company 1 and Transferor Company 2 shall stand dissolved without undergoing the process of winding up.
- (ii) All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Company 1 and Transferor Company 2 are entitled to including under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives and concessions;
- (iii) All contracts of the Transferor Company 1 and Transferor Company 2, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favor of the Transferee Company and may be enforced by or against it as fully



and effectually as if, instead of the Transferor Companies, the Transferee Company had been a party or beneficiary or obliged thereto;

- (iv) All the employees of the Transferor Company 1 and Transferor Company 2 shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favorable than those on which they are engaged by the respective Transferor Companies, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;
- (v) All liabilities of the Transferor Company 1 and Transferor Company 2, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Companies Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company, as if it had incurred such liabilities.
- (vi) All proceedings now pending by or against the Transferor Company 1 and Transferor Company 2 be continued by or against the Transferee Company.
- (vii) Any person interested or effected shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

20. Further, the Petitioner Companies shall within thirty days of the date of the receipt of this Order, cause a Certified Copy of this Order to be delivered to the Registrar of Companies



for registration and on such Certified Copy being so delivered, the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company 1 and Transferor Company 2 on the file kept by him in relation to the Transferee Company and the files relating to all the Petitioner Companies shall be consolidated accordingly.

The Company Petition bearing (CAA) 70 (ND)/2022 is ALLOWED in the above terms.

SD/-

(ATUL CHATURVEDI)

MEMBER (T)

SD/-

(BACHU VENKAT BALARAM DAS)

MEMBER (J)