

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA**

**C.P. (CAA) No.593/KB of 2020
connected with
C.A. (CAA) No.18/KB of 2020**

In the matter of :

The Companies Act, 2013 ;

And

In the matter of :

An application under Section 230-232 of the Companies Act, 2013 read with Rule 15 of the Compromise (Compromise, Arrangements and Amalgamations) Rules 2016.

And

In the matter of :

ACHAL COMMERCIAL PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and being a company within the meaning of the Companies Act, 2013, having Corporate Identification No. U72100WB2010PTC151329 and its Registered Office at 226/1, A. J. C. Bose Road, 'Trinity', Suite No.3E, 3rd Floor, Kolkata – 700 020 in the state of West Bengal;

And

In the matter of :

ORIENT VINIMAY PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and being a company within the meaning of the Companies Act, 2013, having Corporate Identification No. U51109WB2006PTC107887 and its registered office at 226/1, A. J. C. Bose Road,

C.P. (CAA) No.593/KB of 2020
connected with
C.A. (CAA) No.18/KB of 2020
ACHAL COMMERCIAL PRIVATE LIMITED & Anr.
‘Trinity’, Suite No.3E, 3rd Floor, Kolkata –
700 020 in the state of West Bengal;

And

In the matter of :

1. ACHAL COMMERCIAL PRIVATE LIMITED
(Transferor Company)
2. ORIENT VINIMAY PRIVATE LIMITED.
(Transferee Company)

.....Petitioners

Date of Hearing : 06.07.2021

Date of pronouncement of order :13.07.2021

Coram :

Shri Rajasekhar VK, Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Counsel on Record for the Petitioners

Mr. Pallav Samajdar, Advocate

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The court convened video conference today.
2. The instant petition has been filed under Section 230-232 read with Rule 15 of the Compromise (Compromise, Arrangements and Amalgamations) Rules 2016 of the Companies Act, 2013 (“**Act**”) for sanction of the Scheme of Amalgamation of Achal Commercial Private Limited, the Transferor Company or Petitioner Company No.1 with Orient Vinimay Private Limited, the Transferee Company or Petitioner Company No.2, whereby and whereunder the Transferor Company is proposed to be amalgamated with the Transferee Company from the Appointed Date, viz, 1st day of October, 2019 in the manner and on the

terms and conditions stated in the said Scheme of Amalgamation (“**Scheme**”).

3. The Petition has now come up for final hearing. Counsel for the Applicants submits as follows:-
- (a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Nos.1 and 2 at their meetings held on 18.11.2019 & 15.11.2019 respectively.
 - (b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-
 - (i) The Amalgamation will consolidate the business and simplify the group structure. Further, the Amalgamation will provide a high level of synergistic integration to the Amalgamated Company’s operations, better operational management and provide value addition to existing and future projects of the Amalgamating Company and Amalgamated Company by integrating the respective financial and other expertise & resources.
 - (ii) The Amalgamated Company would be able to better leverage on its large capital base, extensive corporate relationships, strong brand and Goodwill. The Amalgamated Company would have enhanced businesses potential and increased capability to make new Investments.
 - (iii) The proposed Amalgamation would result in financial resources of the Amalgamating Company and Amalgamated Company being efficiently merged and pooled leading to more effective and centralised management of funds, greater economies of scale, stronger base for future growth and reduction of administrative and manpower expenses and overheads (i.e. cost rationalization),

which are presently being multiplied, being separate entities. Amalgamation shall lead to greater efficiency in management of the businesses, simplicity and reduction in regulatory compliances, cost and operational efficiencies as well as optimum utilization of resources which will help the Amalgamated Company in keeping its business competitive in the long run.

- (iv) Synergies arising out of consolidation of business will lead to enhancement of net worth of the combined business and reflection of true net-worth in the financial statements, improved alignment of debt and enhancement in earnings and cash flow.
 - (v) If there is any requirement for debt restructuring in that event the Amalgamation will facilitate debt consolidation of Amalgamating Company in the Amalgamated Company, which will improve the debt servicing abilities through improved cash flows and simplified administration of debt both for the Amalgamated Company and Amalgamating Company and for the lenders.
 - (vi) Synergies across the group as well as tie-ups/alliances with companies, etc, and niche expertise within the individual business can be utilized to capture greater share of market.
 - (vii) The proposed Amalgamation would enhance the value of stakeholders through seamless access of the Amalgamated Company to strong corporate relationships and other intangible benefits of Amalgamating Company, enhanced scale of operations and sharper focus.
- (c) The Statutory Auditors of the Petitioner Nos.1 and 2 have by their certificates dated 11.11.2019 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(s).
- (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 CA Vidhi Chandak, Registered Valuer (Securities or Financial Assets), have also confirmed that the said ratio is fair and proper by their fairness opinion thereon.
- (f) By an order dated 05.02.2020 made in the Company Application being C.A. (CAA) No.18/KB/2020 this Tribunal dispensed of the meetings of equity shareholders and creditors of both the Petitioner Companies.
- (g) Consequently, the Petitioners presented the instant petition for sanction of the Scheme. By an order dated 30.12.2020 the instant petition was admitted by this Tribunal and fixed for hearing on 05.02.2021 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 30.12.2020, the Petitioners have duly served such notices upon the (i) Central Government through the Regional Director, Eastern Region, Ministry of Corporate Affairs, (ii) Registrar of Companies, West Bengal, (iii) Official Liquidator, High Court Calcutta, (iv) Reserve Bank of India and the (v) Income Tax Department along with Chief Commissioner of Income Tax having jurisdiction over the Transferee and the Transferor Companies and (vi) Competition Commission of India. All the aforesaid services were made on 05.01.2021. The Petitioners have also published such advertisements once in Business Standard in English and other in Aajkal in Bengali news papers both dated 06.01.2021 in their

respective issues. An affidavit of compliance in this regard has also been filed by them on 12.01.2021.

4. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (“**RD**”), Official Liquidator, High Court, Calcutta have filed their representations before this Tribunal.
5. The Official Liquidator attached to the High Court, Calcutta submitted its Report on 01.02.2021 wherein he has stated that on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the Transferor Company 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.
6. The RD has filed his reply affidavit dated 04/02/2021 (“**RD affidavit**”) which has been dealt with by the Petitioner Companies by their Rejoinder affidavit dated 01/03/2021 (“**Rejoinder**”). The observations of the RD and responses of the Petitioners are summarized as under :-

***(a) Paragraph No.2 (a) of RD Affidavit** - That it is submitted that on examination of the report of the Registrar of Companies, West Bengal it appears that no complaint and/or representation has been received against the proposed scheme of Amalgamation. The petitioner companies are also up-dated in filing their statutory returns.*

***Paragraph No.3 of Rejoinder** - With regard to the observation made in Paragraph No.2(a) of the said Affidavit it transpires that no complaint and/or representation has been received by the Regional Director, Eastern Region against the proposed Scheme of Amalgamation and also it has stated therein that the petitioner companies are upto date in filing their statutory returns.*

(b) Paragraph No.2 (b) of RD Affidavit - *The Transferee Company namely Orient Vinimay Private Limited is a NBFC Company registered with RBI. However, no 'No Objection' from the RBI has been provided. The Company in its reply against query raised by this Deponent submitted that no NOC is required by the Transferee Company from RBI but neither anything has been specified nor any supporting documents has been provided in the matter.*

Paragraph No.4 of Rejoinder - *With regard to the statement made in Paragraph No.2(b) of the said Affidavit, your petitioners state that before moving the company application on 26.11.2019 the Transferee Company, being registered as NBFC has given necessary intimation to RBI and till date the said Authority has not given any objection in the matter but subsequent to the last hearing dated 05.02.2021, by their mail dated 12.02.2021 has raised some queries and said queries has been replied vide applicant's mail dated 19.02.2021 and till date no further query or any objection has been received from RBI.*

The transferee company, being registered as NBFC, had inter alia stated in its first intimation letter dated 26.11.2019 to RBI that –

“In this context it is pertinent to State that the Notification No. DNBS.(PD)275/GM(AM)-2014 dated May 26, 2014 is not applicable to the applicant, M/s. Orient Vinimay Private Limited, as well as to the proposed Scheme, hence prior approval of RBI may not be required since in the aforesaid proposed amalgamation there is –”

- (i) no takeover or acquisition of control of an NBFC, whether by acquisition of shares or otherwise ;*
- (ii) no merger / amalgamation of an NBFC with another entity or any merger/amalgamation of an entity with an NBFC that would give the acquire /another entity control of the NBFC ;*

(iii) *no merger/amalgamation of an NBFC with another entity or any merger/amalgamation of an entity with an NBFC which would result in acquisition /transfer of shareholding in excess of 10 percent of the paid up capital of the NBFC.”*

An acknowledgement copy of the aforesaid letter dated 26.11.2019 was enclosed with the said Rejoinder and marked therein as Annexure “A”.

(c) Paragraph No.2 (c) of RD Affidavit - *In the balance sheet as at 31.03.2020 of the Transferor Company, Achal Commercial Pvt. Ltd. It is shown that it was holding 5500 nos. Bonds of Power Finance Corporation Limited (L65910DL986GOI024862) for Rs.56.10 lakhs as on 31.03.2020 (out of total assets Rs.68.04 lakhs as on 31.03.2020). But in the Annual Return of Power Finance Corporation Limited as on 31.03.2020 no Bondholder by the name “Achal Commercial Pvt. Ltd.” was shown. Therefore, the predominant asset reported in its financial statement by the Transferor Company is questionable.*

Paragraph No.5 of Rejoinder - *With regard to the statement made in Paragraph No.2(c) of the said Affidavit, your petitioners state that in the requisite Holding Statement provided by the depository, M/s. Aum Capital Market Private Limited, as at 31.03.2020 by which it appears that Achal Commercial Private Limited is holding 5500 Bonds of Power Finance Corporation as on 31.03.2020. Therefore, the financial statement of Achal Commercial Private Limited has correctly reported and at any stretch of imagination it is not questionable at all. Thus, there is no question of wrong reporting of predominant assets in the Financial Statement of Achal Commercial Private Limited as at 31.03.2020.*

A copy of the said Holding Statement provided by the depository, M/s. Aum Capital Market Private Limited, was annexed with the said Rejoinder and marked therein as Annexure "B".

(d) Paragraph No.2 (d) of RD Affidavit - Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.

Paragraph No.6 of Rejoinder - With regard to the statement made in Paragraph No.2(d) of the said Affidavit, your petitioners hereby undertake to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013, if applicable.

(e) Paragraph No.2 (e) of RD Affidavit - In compliance of Accounting Standard -14 or IND-AS 103, as maybe applicable, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 or IND-AS-8 etc.

Paragraph No.7 of Rejoinder - With regard to the statement made in Paragraph No.2(e) of the said Affidavit, your petitioners undertake to comply the Accounting Standard -14 or IND-AS 103, as may be applicable, the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 or IND-AS-8 etc.

(f) Paragraph No.2 (f) of RD Affidavit - The Hon'ble Tribunal may kindly seek the undertaking that this scheme is approved by the requisite majority of members and creditors as section 230(6) of the Companies Act 2013 in meeting duly held in terms of section 230(I) read with sub-sections (3) to (5) of section 230 of the said Act and the minutes thereof are duly placed on record.

Paragraph No.8 of Rejoinder - With regard to the statement made in Paragraph No.2(f) of the said Affidavit, your petitioners states that all the shareholders and creditors of the petitioner companies has given their no objection and/or consent by way of an affidavit to the proposed scheme and the Hon'ble Tribunal vide its order dated 05.02.2020 inter alia passed order for dispensation of meeting of shareholders and creditors of the petitioner companies. Therefore, the question of minutes of the meeting thereof does not arise. A copy of the said order dated 05.02.2020 has already been served upon the Regional Director, Eastern Region, Ministry of Corporate Affairs twice once with aforesaid Company Application and again along with instant Company Petition.

(g) Paragraph No.2 (g) of 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 changes is made.

Paragraph No.9 of Rejoinder - With regard to the statement made in Paragraph No.2(g) of the said Affidavit, your petitioners state that the Scheme enclosed in the Company Application and Company Petition is the one and same and there is no discrepancy or no changes in the said Scheme.

(h) Paragraph No.2 (h) of RD Affidavit - The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the petitioner company(s) concerned.

Paragraph No.10 of Rejoinder - With regard to the statement made in Paragraph No.2(h) of the said Affidavit, your petitioners state that pursuant to the orders dated 05.02.2020 and 30.12.2020 your petitioners has served the copy of notice along with scheme and petition to all the concerned sectoral authorities and complied all the formalities by the petitioner companies. Affidavit of Compliance of the aforesaid order has already been filed before the Hon'ble NCLT, Kolkata. Hon'ble Tribunal may pass order as may deem fit and proper.

(i) Paragraph No.2 (i) of RD Affidavit - It is submitted that the Income Tax Department by letter dated 02.03.2020 with a request to forward their comments/observations/objections, if any. However, the said authority has not forwarded their report to this Directorate till date.

Paragraph No.11 of the Rejoinder - That your petitioners submit that, in spite of serving copy of Application as well as Petition to all the concerned Authorities and moreover after publication of notice of hearing of petition once in English daily the "Business Standard" and other in Bengali the "Aajkal" daily news papers on 6th day of January, 2021, till dated your petitioner has not received any objection from any person or company and/or any authority or authorities.

Paragraph No.12 of the Rejoinder - Under the aforesaid facts and circumstances, as stated in the foregoing paragraphs, we submit that the Hon'ble Tribunal may kindly to consider and approve the proposed Scheme of Amalgamation.

7. In response to the aforesaid **Rejoinder** dated 01.03.2021, RD has filed further **Affidavit** dated 23/03/2021 and it appears from the said **Affidavit** that neither RD has raised any objection nor raised any additional observation.

8. We have heard the learned Counsel for the Petitioner and the Joint Director in the Office of R.D.(E.R), MCA, Kolkata.
9. The violations pointed out by the Regional Director(ER) in his Report are all technical in nature and are compoundable. The regulatory authorities have not found the Scheme itself to be violative of any statute. Technical violations such as the ones pointed out by the Regional Director (ER) would not be enough to withhold sanction of Scheme itself. Therefore, while we are inclined to accord sanction to the Scheme, such sanction shall not stand in the way of any action to which the Petitioner Companies may be liable in accordance with law. We leave it to the authorities concerned to see if there has been any violation of provisions of law by the Petitioner Companies and to take action as may be deemed appropriate under the law against the Transferee/Resulting Company.
10. The undertakings and clarifications given by the Petitioners are hereby accepted. The Petitioners shall act in accordance with the undertakings given before the Tribunal.
11. Therefore, we allow the petition and make the following orders:-
 - (a) The Scheme of Amalgamation mentioned in paragraph 1 of the petition, being Annexure "A" is hereby sanctioned by this Tribunal to be binding with effect from 1st October, 2019 ("**Appointed Date**") on Achal Commercial Private Limited ("**Transferor Company**") and Orient Vinimay Private Limited ("**Transferee Company**"), their respective shareholders and creditors and all concerned;
 - (b) All the property, rights and powers of the Transferor Company, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without further act or deed, to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and vest in the Transferee Company for all the estate and interest of the

Transferor Company therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme;

- (c) All the debts, liabilities, duties and obligations of the Transferor Company be transferred from the said Appointed Date, without further act or deed to the Transferee Company 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 the Transferee Company;
- (d) The employees of the Transferor Company shall be engaged by the Transferee Company, as provided in the Scheme;
- (e) All proceedings and/or suits and/or appeals now pending by or against the Transferor Company be continued by or against the Transferee Company, as provided in the Scheme;
- (f) The Transferee Company do without further application issue and allot to the shareholders of the Transferor Company, the shares in the Transferee Company to which they are entitled in terms of the Scheme;
- (g) Leave is granted to the Petitioners to file the Schedule of Assets of the Transferor Company in the form as prescribed in the Schedule to Form No.CAA7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of receiving a copy of this order;
- (h) The Transferor Company and the Transferee Company shall each within thirty days of the date of the receipt of this order, cause a certified copy thereof to be delivered to the Registrar of Companies for registration and on such certified copies being so delivered, the Transferor Company shall be dissolved with effect from the date or last of the dates of filing of the certified copies of the order, as aforesaid (Effective Date) and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with

him on the file kept by him in relation to the Transferee Company and the files relating to the said companies shall be consolidated accordingly.

12. The Petitioners shall supply legible print out of the Scheme and Schedule of Assets in acceptable form to the department and the department will append such printout, upon verification to the certified copy of the order.
13. Company Petition being C.P. (CAA) No.593/KB/2020 connected with C.A. (CAA) No.18/KB/2020 is disposed of accordingly.
14. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rajasekhar V.K.)
Member (Judicial)

Signed on this, the 13th day of July, 2021