

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT - II)

Item No.2
(CAA)-62/ND/2021

IN THE MATTER OF:

M/s.Ritesh Spinning Mills And M/s.Ritesh ... Applicant/Petitioner
Properties and Industries

Under Section: 230-232 of the Companies Act, 2013

Order delivered on 16.08.2021

CORAM:

SHRI. ABNI RANJAN KUMAR SINHA,
HON'BLE MEMBER (J)

SHRI. L. N. GUPTA,
HON'BLE MEMBER (T)

PRESENT:

Order

Order is pronounced in the Open Court today.



(L.N. GUPTA)
MEMBER (T)



(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT- II)

(CAA)-62/ND/2021

IN THE MATTER OF SCHEME OF AMALGAMATION :

AMONGST

Ritesh Spinning Mills Limited

...Petitioner No. 1/Transferor Company 1

AND

Ritesh Impex Private Limited

...Petitioner No. 2/ Transferor Company 2

AND

H B Fibres Limited

...Petitioner No. 3/ Transferor Company 3

WITH

Ritesh Properties and Industries Limited

...Petitioner No. 4/Transferee Company

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

Order Delivered on: 16.08.2021

Section: 230 to 232 of the Companies Act, 2013

CORAM

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Petitioners : Mr. Satwinder Singh, Advocate

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

This Petition is preferred jointly by the Transferor Companies and the 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 details of the Companies proposed to be amalgamated, as placed on record, are given in the following paragraphs.

2. That Ritesh Spinning Mills Limited, (hereinafter referred to as "Petitioner-1/Transferor Company-1") was incorporated on the 31.05.1994 under the provisions of the erstwhile Companies Act, 1956 as a public company having its registered office at 11/5B, First Floor, Pusa Road, New Delhi-110 060 with CIN number U74899DL1994 PLC146637.

3. That Ritesh Impex Private Limited, (hereinafter referred to as "Petitioner-2"/"Transferor Company-2") was incorporated on the 27.04.1994 under the provisions of the erstwhile Company Act, 1956 as a private company having its registered office at 11/5B, Pusa Road, New Delhi-110 060 with CIN number U51311DL1994PTC269851.

4. That H B Fibres Limited, (hereinafter referred to as "Petitioner-3"/"Transferor Company-3") was incorporated on the 17.09.1986 under the provisions of the erstwhile Companies Act, 1956 as Public company having its registered office at 11/5B, Pusa Road, New Delhi-110060 with CIN number U51497DL1986PLC269074.

5. That Ritesh Properties and Industries Limited, (hereinafter referred to as "Petitioner-4"/"Transferee Company") was incorporated on the 19.02.1987 under the provisions of the erstwhile Companies Act, 1956 as a Public company, which is listed on Bombay Stock Exchange, having its registered office at 11/5B, Pusa Road, New Delhi-110060 with CIN number L74899DL1987PLC027050.

6. That the present Petition has been filed jointly by all the Transferor Companies and Transferee Company. **All the 'Transferor' and 'Transferee' Companies together are called 'Petitioner Companies' hereinafter.** That the Registered offices of all the Companies being in Delhi, the jurisdiction lies with this Bench.

7. From the records, it is seen that the First Motion Petition was filed by the Petitioner Companies for- (i) seeking directions for dispensing with the requirement of convening the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Companies along with dispensation from convening meeting of Debenture Holders of Transferor Company-I; and (ii) convening the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferee Company. This Tribunal, in the First Motion

Application bearing No. CA (CAA)-17/ND/2021, vide order dated 24.02.2021 dispensed with the requirement of convening meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Companies. Further the order was passed in relation to dispensation from convening the meeting of Debenture Holder of the Transferor Company-1. Furthermore, in pursuance of the order dated 24.02.2021, directions with respect to convening meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferee Company on 03.04.2021 were passed by this Tribunal.

8. The Appointed date as fixed for the Proposed Scheme of Amalgamation is 01st April, 2018.

9. Subsequent to the order of dispensation of meetings in relation to the Transferor Companies and holding of meetings of Equity Shareholders, Secured and Unsecured Creditors of the Transferee Company on 03.04.2021, 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, Registrar of Companies NCT of Delhi & Haryana, Regional Director (Northern Region) MCA, Income Tax Authorities, Official Liquidator, Real Estate Regulation Authority, Punjab at Chandigarh and to such other Objector(s), if any, and also for publication of the said Scheme. The said petition was admitted and directions were issued, vide Order dated 11.06.2021 of this Tribunal, requiring the Petitioner Companies to serve notices to the Central Government through Registrar of

Companies NCT of Delhi & Haryana, Regional Director (Northern Region) MCA, Income Tax Authorities, Official Liquidator, Bombay Stock exchange Limited, Real Estate Regulation Authority, Punjab at Chandigarh and also to carry out necessary publication in English and Hindi newspapers with respect to the said Scheme.

10. It is submitted by the Petitioners that in compliance of the above stated directions, the Petitioners have filed the Affidavit of Service dated 20.07.2021 confirming that the aforesaid Notices of the present Company Petition were published on 17.06.2021 in Business Standard (English) and Jansatta (Hindi) newspapers. It is further submitted that the Petitioner Companies have served the Notices of the present Company Petition to all the Statutory Authorities by e-mails.

11. That further the Petitioner Companies in the Affidavit of Service have also averred that :

“5. That the Petitioner Companies have neither received any objection from any person as contemplated under Section 230(4) of the Act nor any person who has desired to make their representation before this Hon’ble Tribunal. Therefore, the question of service of notice of Company Petition to the Objector(s) or their representative (s) or to any other person does not arise in the instant case.”

12. It is submitted by the Petitioner Companies that the Official Liquidator has filed its report dated 27.07.2021, in which it has stated that it has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any



manner and that the affairs of the Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public.

13. The Regional Director has filed its Affidavit on 04.08.2021 stating that it has no objection if the Scheme of Amalgamation is approved by this Tribunal. The scanned copy of the RD's Report is reproduced below :

**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-II, AT NEW DELHI
COMPANY PETITION NO. CP(CAA)-62/ND/2021
CONNECTED WITH
COMPANY APPLICATION NO. CA(CAA)-17/ND/2021
IN THE MATTER OF SECTIONS 230 TO 232 OF
THE COMPANIES ACT, 2013
AND
IN THE MATTER OF SCHEME OF AMALAGAMATION
BETWEEN**

RITESH SPINNING PRIVATE LIMITED
11/5B, FIRST FLOOR, PUSA ROAD, NEW DELHI-110060
.....TRANSFEROR COMPANY 1/
PETITIONER COMPANY NO. 1

AND

RITESH IMPEX PRIVATE LIMITED
11/5B, FIRST FLOOR, PUSA ROAD, NEW DELHI-110060
.....TRANSFEROR COMPANY 2/
PETITIONER COMPANY NO. 2

AND

HB FIBRES LIMITED
11/5B, FIRST FLOOR, PUSA ROAD, NEW DELHI-110060
.....TRANSFEROR COMPANY 3/
PETITIONER COMPANY NO. 3

AND

RITESH PROPERTIES AND INDUSTRIES LIMITED

11/5B, FIRST FLOOR, PUSA ROAD, NEW DELHI-110060

.....TRANSFEREE COMPANY/

PETITIONER COMPANY NO. 4

**ADDITIONAL AFFIDAVIT OF REGIONAL DIRECTOR
NORTHERN REGION, MINISTRY OF CORPORATE AFFAIRS,
NEW DELHI.**

I, Dr. Raj Singh, Regional Director (NR) having my office at B-2 Wing, 2nd Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, New Delhi-110003, do hereby solemnly affirm and sincerely state as follows:-

1. I am the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi and in pursuance of the notification of the Ministry of Corporate Affairs dated 19.12.2016 in S.O. 4090 (E), I am authorized to swear this Affidavit on behalf of the Central Government.

2. That after examining the Scheme of amalgamation and related documents, the deponent filed an affidavit dated 27.07.2021 before the Hon'ble Tribunal stating the following at para 11 and 12 of the abovementioned affidavit:

"11. That as per Clause 33 of the ROC Report dated 07.06.2021, following observation was raised:

1. —

- *Refer to Clause 26 of the scheme, the Transferee Company shall comply with section 232 (3)(i) of the Companies Act, 2013 and pay the difference fee on consolidated authorized share capital of Transferee company, after setting off the fee already paid by the Transferor Companies on their respective capital.*

- *As per record, the inquiry u/s 234 (3A) of the Companies Act, 1956 of Transferee Company was initiated and report was sent to RD(NR) on 25.02.2016 in the matter.*

12. *That report of ROC, Delhi and Haryana dated 25.02.2016 pointed out the violation u/s 211 (3A) r/w AS-1 & AS-13 and u/s 217(3) of the Companies Act, 1956 noticed in B/S as at 31.03.2010 against the transferee company i.e. Ritesh Properties & Industries Limited. However, no prosecution has been filed against the transferee company. The violation as pointed, out is against the transferee company, which shall remain in existence post-amalgamation and has no bearing under proposed scheme of amalgamation.*

The above submissions are made in para 1 to 12 above after having examined the scheme, reply of Petitioner companies and Registrar of Companies for kind consideration of Hon'ble NCLT for approval of the scheme or for passing of orders as may be deemed fit and proper in the facts and circumstances of the case."

3. That this Hon'ble Tribunal vide order dated 28.07.2021 directed the office of deponent to file a clear NOC or comments, if any. Hence, this additional affidavit is been filed before this Hon'ble Tribunal.



4. That the office of deponent examined the point raised by ROC, Delhi in its report regarding status of inquiry u/s 235(3A) of the Companies Act, 1956 of the Transferee Company. It was observed from the report obtained from Inquiry section that no sanction of prosecution has been issued so far on the transferee company on the basis of Inquiry Report and hence the inquiry report has no bearing on the status of transferee company as on the date of filing of this affidavit. Besides, the violations in the inquiry report are against the Transferee company, which shall remain in existence even after approval of the present scheme of amalgamation. Hence, the deponent has no objection, if the scheme of amalgamation is approved by this Hon'ble Tribunal.

The above submissions are made in para 1 to 4 above after having examined the Scheme, reply of the Petitioner Companies and Registrar of Companies for kind consideration of the Hon'ble Tribunal for passing of necessary orders in the facts and circumstances of the case.

14. That the Income Tax Department has filed its report dated 20.07.2021 and has given following remarks :

22. Remarks about objection to the scheme or any representation to NCLT to protect the interest of Revenue.	The Hon'ble Tribunal shall be apprised of the fact that the proposal of scheme of arrangement may be accepted only after protecting the rights of the revenue to examine the tax implication of all the companies with regard to scheme of amalgamation, at the time of their respective assessment re-assessment proceedings.
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15. In view of the foregoing facts and discussion and upon considering the approval accorded by the Members and Creditors of all Companies to the proposed Scheme of Amalgamation and no sustainable objections having been raised by the Office of the Regional Director, Income Tax Department or any other interested party, there does not appear to be any impediment in granting sanction to the Scheme. **Accordingly, in sequel to the above, sanction is hereby granted to the Scheme of Amalgamation proposed by the Petitioner Companies under Section 230 to 232 of the Companies Act, 2013.** The sanctioned Scheme of Amalgamation shall be binding on the Transferor Companies and Transferee Company (the Petitioner Companies) and their Shareholders and Creditors. The Petitioner Companies shall remain bound to comply with the statutory requirements in accordance with law.

16. Notwithstanding the above, if there is any deficiency found or violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Authority 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.

17. 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.



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.

18. **THIS TRIBUNAL FURTHER DIRECTS** with respect to Transferor Companies and Transferee Company, that:

- (i) Upon the sanction becoming effective from the appointed date of amalgamation i.e., 1st April, 2018, the Transferor Companies No.1 to 3 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 Companies 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 Companies, 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 Companies 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 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 Companies, 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 Companies be continued by or against the Transferee company.

(vii) That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary

19. That 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 Companies 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.

20. The Company Petition is **ALLOWED** in the above terms.



(L.N. GUPTA)
MEMBER (T)



(ABNI RANJAN KUMAR SINHA)
MEMBER (J)