

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI**

C.A. No. 258/2021 In C.P. 201/2016

In the matter of:

M/s. SKYWAY VENTURES LTD.

.... **Applicant No. 1**

/Transferor Company

Vs.

M/s. SAI INDUSTRIES LTD.

.... **Applicant No. 2**

/ Transferee Company

Order delivered on: 20.07.2021

CORAM

**SH. BHASKARA PANTULA MOHAN
HON'BLE ACTG. PRESIDENT
SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)**

PRESENT

For the Applicant : Mr. Rajeev K. Goel, Advocate

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— sd —

— sd —

ORDER
PER- SH. HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

1. The present application is being filed by the joint Applicants. By way of the present Application they seek withdrawal of the Scheme of Amalgamation of M/s. Sky Ventures Ltd. with M/s. Sai Industries Ltd. and recall of the order dated 8th June, 2020, sanctioning the aforesaid Scheme of Amalgamation.
2. The Applicants state that a joint Company Petition No. 210 of 2016, connected with the Company Application (M) No. 129 of 2015, was filed by the Petitioner Transferor Company and the Transferee Company under sections 391 & 392 of the Companies Act, 1956, to obtain sanction of this Tribunal to the Scheme of Amalgamation. The Tribunal was pleased to sanction the aforesaid Scheme of Amalgamation vide its order dated 8th June, 2020.
3. The Applicant further states that due to the Covid-19 pandemic and the subsequent lockdown imposed by the Government of India, the Petitioner Transferor Company and the Transferee Company could not take any further steps to implement the aforesaid Scheme of Amalgamation. Business activities of these companies have been adversely affected. The Board of Directors of Applicant Companies in the respective Board meetings held on 5th June, 2021 and 21st April, 2021 respectively, reviewed the Scheme of Amalgamation. The Board of Directors of these Companies were of the opinion that in view of the substantial

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— sd —

— sd —

losses suffered by the Transferor Company and the Transferee Company, implementation of the present Scheme of Amalgamation would no longer be in the interest of these Companies and their stakeholders.

4. This bench after looking into the facts and circumstances of this case observes that the said Scheme of Amalgamation was passed by this bench vide its order dated 08.06.2020. As per the order passed by the bench the Scheme was passed in accordance with law. It is a well settled principle of law that the order passed is a decree which had been drawn up and had become operative, thus it becomes a final order. Further, this tribunal has no jurisdiction thereafter to alter or amend the Scheme, except by sanctioning a fresh scheme.
5. The inherent power of the Court to recall an order can be exercised only in certain cases. In *Budhia Swain and others vs. Gopinath Deb and others reported in (1999) 4 SCC 396* it was held that a Tribunal or Court may recall an order passed by it earlier if (i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent; (ii) there exists fraud or collusion in obtaining the judgment; (iii) there has been a mistake committed by the Court prejudicing a party; or (iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented. The prayer made in this C.A. therefore cannot be granted.

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— sd —

— sd —

sd —

6. C.A. 258/2021 stands disposed of in terms of the above order.

Let a copy of order be served to parties.

— sd —

(BHASKARA PANTULA MOHAN)

ACTG. PRESIDENT

— sd —

(HEMANT KUMAR SARANGI)

MEMBER (Technical)

20.07.2021

SIDDHANT, LRA