

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

COMPANY PETITION NO. (CAA)-43 (PB) 2018

Under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

In the matter of:

Scheme of Amalgamation

of

Dilli Karigari Limited

Transferor Company No. 1

AND

Desert Artisans Handicrafts Jodhpur Limited

Transferor Company No. 2

AND

Delhi Artisans Limited

Transferor Company No. 3

AND

Deccan Crafts & Weavers Limited

Transferor Company No. 4



AND

Dah Chanderi Limited

Transferor Company No. 5

WITH

Krishna Weavers Limited

Transferee Company

Judgment delivered on: 20.09.2018

CORAM:

CHIEF JUSTICE (Rtd.) M.M. KUMAR, Hon'ble President

Mr. S. K. MOHAPATRA, Hon'ble Member (T)

For Petitioners

: Mr. Ashutosh Gupta, Advocate

For Regional Director, (NR), Delhi : Ms. Kamini Mehta, Advocate

: Ms. Sonam Sharma, CP



ORDER

S. K. Mohapatra, Member

1. This Joint application has been filed by the Petitioner Companies under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation of all the transferor companies into the Transferee Company. The copy of the Scheme has been placed on record.
2. The “Transferor Company No.1”, Dilli Karigari Private Limited was incorporated on 8th February, 2008 under the provisions of companies Act 1956, having its registered office E-42/4, Okhla Industrial Area, Phase-II, New Delhi – 110020.
3. The “Transferor Company No.2”, Desert Artisans Handicrafts Jodhpur Private Limited was incorporated on 8th January 2007, under the provisions of companies Act 1956, having its registered office E-42/4, Okhla Industrial Area, Phase – II, New Delhi -110020.



4. The “Transferor Company No.3”, Delhi Artisans Limited was incorporated on 21st August, 2007, under the provisions of companies Act 1956, having its registered office E-42/4, Okhla Industrial Area, Phase – II, New Delhi -110020.
5. The “Transferor Company No.4”, Deccan Crafts & Weavers Limited was incorporated on 15th February, 2008, under the provisions of companies Act 1956, having its registered office E-42/4, Okhla Industrial Area, Phase – II, New Delhi -110020.
6. The “Transferor Company No.5” DAH Chanderi Limited was originally incorporated on 1st March 2007 under the companies Act, 1956 having its registered office at E-42/4, Okhla Industrial Area, Phase-II, New Delhi – 110020.
7. The “Transferee Company”, Krishna Weavers Limited was incorporated on 30th May, 2008 under the companies Act, 1956, having its registered office at E-42/4, Okhla Industrial Area, Phase-II, New Delhi – 110020.
8. A perusal of the petition discloses that initially the First Motion application seeking direction for convening the meeting of Shareholders and Creditors was filed before this Bench bearing number CA (CAA) No. 09 (PB) 2018 and based on such joint application moved under Sections 230-232 of the



Companies Act, 2013, the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of all the Petitioner Companies were dispensed with, vide order dated 10.04.2018 passed by this Bench.

9. On 04.05.2018 the Petitioners were directed to carry out publication in the newspapers 'Business Standard' English Delhi edition as well as in 'Business standard' Hindi Delhi edition. In addition to the public notice, notices were directed to be served on to the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other relevant sectoral regulators.

10. It is seen from the records that the Petitioners have filed an affidavit dated 08.06.2018 affirming compliance of the order passed by the Tribunal dated 04.05.2018. A perusal of the affidavit discloses that the petitioners have affected the newspaper publication as directed in one issue of the 'Business Standard' English edition on 02.05.2018 as well as in 'Business Standard' Hindi edition again on 02.05.2018 in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of petition have been duly served to the



Registrar of Companies, Regional Director, Northern Region, official liquidator and Income Tax Department in compliance of the order and in proof of the same acknowledgement made by the respective offices have also been placed on record.

11. The Regional Director has filed its representation dated 18.06.2018 in which it is submitted that as per the report of Registrar of Companies, the transferor companies and the transferee company are up-to date in filing statutory returns and no prosecution has been filed, inspection or investigation has been conducted in respect of petitioner companies.
12. The regional director had also observed that the petitioner companies may be directed to file verified statement regarding fee payable for addition of capital of transferor companies into Transferee Company and regarding compliance of Section 232(3) of the Act. In this regard the Scheme provides that upon sanction of the Scheme the transferee company is entitled to set off the fee paid by the transferor companies on its authorized share capital against any fee payable by the transferee company on its authorized share capital subsequent to the amalgamation. There is thus no limitation on the Registrar of Companies to

recover any fee payable by the applicant companies in accordance with law.

13. The Official Liquidator has filed its report dated 06.06.2018 wherein no material objection has been raised against the approval of the Scheme. It is submitted in the report that the official liquidator has not received any complaint against the proposed Scheme 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 or to public interest.
14. Despite due opportunity the Department of Income tax has not filed any response or observation in respect of the proposed Scheme. A last chance was afforded to Income Tax Department to file its objection, if any, on 26.07.2018. However, as no objection/report was filed by the department and as no one appeared on 04.09.2018 on behalf of the Income Tax Department, the matter was fixed for orders.
15. It is pertinent to state here that the petitioner companies have filed affidavit dated 24.07.2018 affirming that no investigation is initiated nor any proceeding is pending against the petitioner companies under the Income Tax Act, 1961. Additionally it has

been confirmed that all statutory requirements have been complied with by the applicant companies and there is no pending obligation of any company under the Income Tax Act, 1961.

16. In the joint petition it has also been affirmed that no proceedings under Section 210 to 227 of the Companies Act, 2013 are pending against the Petitioner Companies.

17. Certificates of respective Statutory auditors of all the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.

18. The share exchange ratio as provided in the Scheme is as under:

(a) One Equity Share of face value of Rs. 100/- each of Transferee Company for every 0.36 Equity share of the face value of Rs. 100/- each held by shareholders in Transferor Company No. 1. For the purpose of minimizing



the payments for the fractional shares, the ratio of 11 Equity Shares fully paid of Transferee Company against 4 Equity Shares fully paid of Transferor Company No. 1 may be used.

(b) Equity Share of face value of Rs. 100/- each of Transferee Company for every 1.01 Equity shares of the face value of Rs. 100/- each held by shareholders in Transferor Company No. 2. For the purpose of minimizing the payments for the fractional shares, the ratio of 93 Equity Shares fully paid of Transferee Company against 94 Equity Shares fully paid of Transferor Company No. 2 may be used.

(c) 1 Equity Share of face value of Rs. 100/- each of Transferee Company for every 143.67 Equity shares of the face value of Rs. 100/-



each held by shareholders in Transferor Company No. 3. For the purpose of minimizing the payments for the fractional shares, the ratio of 3 Equity Shares fully paid of Transferee Company against 431 Equity Shares fully paid of Transferor Company No. 3 may be used.

(d) 1 Equity Share of face value of Rs. 100/- each of Transferee Company for every 1.49 Equity shares of the face value of Rs. 100/- each held by shareholders in Transferor Company No. 4. For the purpose of minimizing the payments for the fractional shares, the ratio of 67 Equity Shares fully paid of Transferee Company against 100 Equity Shares fully paid of Transferor Company No. 4 may be used.



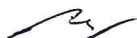
(e) 1 Equity Share of face value of Rs. 100/- each of Transferee Company for every 1.40 Equity shares of the face value of Rs. 100/- each held by Shareholders in Transferor Company No. 5. For the purpose of minimizing the payments for the fractional shares, the ratio of 91 Equity Shares fully paid of Transferee Company against 127 Equity Shares Fully Paid of Transferor Company No. 5 may be used.

19. The shareholders of the applicant companies are the best Judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by Court for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme of which sanction is sought under Section 230-232 of the Companies Act of 2013 will not ordinarily interfere with the



corporate decisions of companies approved by shareholders and creditors.

20. In the case of Hindustan Lever Employees Union Vs. Hindustan Lever Limited (1995) 5 SCC 491 the three judges bench of Hon'ble Supreme Court held that *a company court does not exercise appellate jurisdiction over a scheme and its jurisdiction is limited to ascertaining fairness, justness and reasonableness of the Scheme and to ensure that neither any law has been violated or public interest compromised in the process.*
21. Right to apply for the sanction of the Scheme has been statutorily provided under Section 230-234 of the Companies Act, 2013 and therefore, it is open to the applicant companies to avail the benefits extended by statutory provisions and the Rules.
22. The petitioner companies have filed an affidavit dated 08.06.2018 confirming that no objection has been received against the Scheme from any party or from any person interested in the Scheme in any manner.
23. It has also been affirmed in the petition that Scheme is in the interest of all the transferor companies and the transferee



company including their shareholders, creditors, employees and all concerned.

24. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and the report of official liquidator, there appears to be no impediment in sanctioning the present Scheme. Consequently, sanction is hereby granted to the Scheme under Section 230 & 232 of the Companies Act, 2013.

25. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

26. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

27. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any



other charges, 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.

28. **THIS TRIBUNAL DO FURTHER ORDER**

1. That all the Transferor Companies shall stand dissolved without following the process of winding-up; and
2. That all the property, rights and powers of all the transferor companies, be transferred without further act or deed, to the transferee company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and vest in the transferee company for all the estate and interests of the transferor companies therein but subject nevertheless to all charges now affecting the same; and
3. That all the liabilities and duties of all the transferor companies, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232



of the Act, be transferred to and become the liabilities and duties of the transferee company; and

4. That all proceedings now pending by or against all the transferor companies, be continued by or against the transferee company; and
5. That all the employees of all the transferor companies in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date shall become the employees of the transferee company on such date without any break or interruption in service and upon terms and condition not less favorable than those subsisting in concerned transferor companies on the said date.
6. That 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 Company for registration and on such certified copy being so delivered all the transferor companies shall be dissolved and the Registrar of Company shall place all documents relating to the transferor companies registered with him on the file

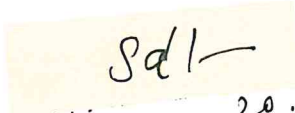


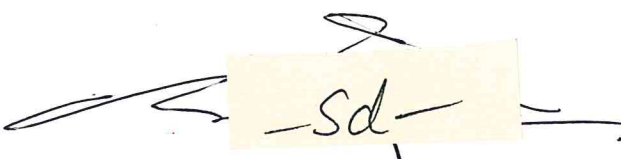
kept by him in relation to the transferee company and the files relating to all the petitioner companies shall be consolidated accordingly; and

7. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

The petition stands disposed of in the above terms.

Let copy of the order be served to the parties.


20.09.26
(M.M. KUMAR)
PRESIDENT


(S. K. MOHAPATRA)
MEMBER (T)