

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

**COMPANY PETITION NO. (CAA)-19 (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

Sabre Technet Private Limited

....Petitioner Transferor Company No. 3

AND

Adcom Services Private Limited

....Petitioner Transferee Company

AND

M Bros Infotech Private Limited

....Non-Petitioner Transferor Company No. 1

AND

Sabre Construction Private Limited

....Non-Petitioner Transferor Company No. 2

***Judgment delivered on: 08.10.2018***

**CORAM:**

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

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

For Petitioners : Mr. Sougat Sinha, Adv.  
For Income Tax : Mr. Divey Kant, Adv.  
For Regional Director, (NR), Delhi : Mr. C. Balooni, CP  
For Official Liquidator : Mr. Shubham Pandey Adv.



## 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 the petitioner transferor company no.3 into the Petitioner Transferee Company. The copy of the Scheme has been placed on record.
  
2. The “Petitioner Transferor Company No. 3”, Sabre Technet Private Limited (CIN No. U72900 DL2006 PTC 152737) was incorporated on 30.08.2006 under the provisions of companies Act 1956, having its registered office at MCT House, Block-A, Okhla Centre Opposite Holy Family Hospital New elhi-110025.



3. The "Petitioner Transferee Company", Adcom Services Private Limited (CIN No. U74899DL1973PTC006984) was incorporated on 05.12.1973 under the Companies Act, 1956, having its registered office at 56/1 Friends Colony, East, New Delhi -110065.
4. It is pertinent to mention here that the registered offices of non-petitioner companies i.e transferor company no.1 and transferor company no. 2 are situated at Gurgaon, Haryana within the territorial jurisdiction of Chandigarh Bench. Therefore Non-Respondent Transferor company no. 1 and 2 have filed separate joint petition before National Company Law Tribunal at Chandigarh. The present joint application has been filed by the petitioner transferor company no. 3 and the transferee company as their registered offices are situation in New Delhi, within the territorial jurisdiction of this Tribunal.



5. 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 vide CA (CAA) No. 7(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 both the Petitioner Companies were dispensed with, vide order dated 02.02.2018 passed by this Bench.
6. On 07.03.2018 the Petitioners were directed to carry out publication in the newspapers 'Business Standard' English Delhi edition as well as in 'Jansatta' 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.



7. It is seen from the records that the Petitioners have filed an affidavit dated 14.04.2018 affirming compliance of the order passed by the Tribunal dated 07.03.2018. 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 08.04.2018 as well as in 'Jansatta' Hindi edition again on 08.04.2018 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.

8. The Regional Director has filed its representation dated 02.07.2018 in which it is submitted that as per the report of Registrar of



Companies, the petitioner transferor company and the transferee company are up-to date in filing statutory returns and no prosecution has been filed nor any inspection or investigation has been conducted in respect of the petitioner companies.

9. 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) (i) of the Act along with undertaking of payment of fee payable.

10. In reply to the observations of the Regional Director, the petitioner companies have filed an affidavit dated 19.07.2018 in which following submissions have been made:

*“that I on behalf of the petitioner companies, hereby, undertake to comply with the provisions of Section 232(3(i) of the Companies Act, 2013 and pay additional*



*fees, if any, applicable, for addition of the authorized share capital of the transferor company with that of the transferee company as per Section 232(3)(i) of the Companies Act, 2013 or any other applicable provisions of law”*

11. The Official Liquidator has filed its report dated 27.06.2018 wherein no specific 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 company no.3 do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

12. The Department of Income Tax has also filed its report on 30.08.2018 in respect of both the petitioner companies stating that there is no



pending outstanding demand due against the petitioner companies.

13. In this regard it is clarified that there shall be no limitation on the power of the Income tax Department for recovery of pending Income Tax dues, if any, including imposition of penalties etc. in accordance with law.

14. It is pertinent to mention here that at the time of hearing on 28.09.2018, it has been recorded that the objections of Regional Director have been answered by petitioners. It is seen that the petitioners have filed undertaking in respect of filing of relevant fee and compliance of Section 232(3)(i) of the Act. Petitioners have also undertaken to comply with the provisions of Income Tax Act and Rules. Ld. Counsels for the Income Tax Department and Official Liquidator have also submitted that they have no objection to the Scheme. The no objection of the respective departments has been noted in the order dated 28.09.2018.



15. In the joint petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.

16. Certificates of respective statutory auditors of both 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.

17. It is submitted in the petition that as per clause 2 of the Scheme and Share Valuation Report submitted by M/s Kapur & Uberai, Chartered Accountant, the share exchange ratio is as follows:



- i) For every twenty three (23) share held in Transferor company No. 1 as on record date of Rs. 10 each, every equity shareholder of the Transferor Company No. 1 shall be entitled to receive Ten (10) equity share of face value of Rs. 100 each of the transferee Company.
- ii) For every two Hundred Eleven (211) share held in Transferor company No. 2 as on record date of Rs. 10 each, every Equity shareholder of the Transferor Company No. 2 shall be entitled to receive Ten (10) equity share of face value of Rs. 100 each of the transferee Company.
- iii) For every One hundred Eighty One (181) share held in Transferor company No. 3 as on record date of Rs. 10 each, every Equity shareholder of the Transferor Company No. 3 shall be entitled to receive Ten (10) equity share of face value of Rs. 100 each of the transferee Company.

18. The shareholders of the petitioner companies are the best Judges to protect their interest, and to take commercial decisions and therefore, their decision should not be interfered with by the Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and commercial decisions of the members of the company. 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.

19. 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*

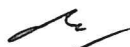
*to ensure that neither any law has been violated or public interest compromised in the process.*

20. 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.

21. The petitioner companies have filed an affidavit dated 23.07.2018 confirming that no objection has been received against the Scheme from any party or from any person interested in the Scheme in any manner.

22. 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.

23. 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, the report of official liquidator and the Income Tax department, there appears to be no impediment in sanctioning the present Scheme.

24. *Consequently, sanction is hereby granted to the Scheme under Section 230 & 232 of the Companies Act, 2013 in respect of petitioner companies.*

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 the Transferor Company no. 3 shall stand dissolved without following the process of winding-up; and*
2. *That all the property, rights and powers of the transferor company no. 3, be transferred without further act or deed, to the transferee company and accordingly the same shall pursuant to Section 232 of the Companies Act,*



2013, be transferred to and vest in the transferee company.

3. That all the liabilities and duties of the transferor company no. 3, 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 the transferor company no. 3, be continued by or against the transferee company; and
5. That all the employees of the transferor company no. 3 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 the transferor company no. 3 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 the transferor company no. 3 shall be dissolved and the Registrar of Company shall place all documents relating to the transferor company no. 3 registered with him on the file kept by him in relation to the transferee company and the files relating to both 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.

Sd/-

**(M.M. KUMAR)**  
**PRESIDENT**

Sd/-

**(S. K. MOHAPATRA)**  
**MEMBER (T)**