

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH**

Company Petition No.02/2016  
Company Application No.1/2015  
(Under Section 391/394 of Companies Act, 1956)

**IN THE MATTER OF:**

**Shanti Coils & Refrigeration Equipment's Pvt.Ltd.**

*(A Company incorporated under the companies  
Act, 1956 having its Registered Office at  
Plot No. 57-A, Sector-7, Sidecul, Pant Nagar  
Udham Singh Nagar, Uttarakhand  
(CIN: U32204UR2006PTC032304)*

*.....Transferor Company/Applicant No.1*

**WITH**

**Shanti Refrigeration Industries Private Limited**

*(A Company incorporated under the Companies  
Act, 1956 having its Registered Office at  
Plot No- 27-28, Sector-7, Sidecul, Pant Nagar  
Udham Singh Nagar, Uttarakhand  
(CIN: U74991UR2007PTC032487)*

*.....Transferee Company/Applicant No.2*

**JUDGMENT/ORDER DELIVERED ON 31.01.2018**

**CORAM** : Sh. Harihar Prakash Chaturvedi, Member(Judicial)  
**For the Petitioner** : Sh. Dhananjay Awasthi, Adv.  
**For the Central Govt.** : Sh. Krishna Dev Vyas, C.G.S.C.

**AS PER: SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)**

**Order/Judgment**

1. The Applicant Companies have filed the Present Company Petition under Section 391/394 of Companies Act, 1956 seeking prayer for sanctioning of a Company Scheme of Amalgamation as proposed between **Shanti Coils & Refrigeration Equipment's Pvt.Ltd.** (*hereinafter referred to as Transferor Company*), with **Shanti Refrigeration Industries Private Limited** (*Transferee Company*).




2. It is submitted that the Proposed Company Scheme of Amalgamation has been approved in the meetings of the respective Board of Directors of the applicant's companies which previously were held on **01/04/2015**.
3. As per the Proposed Company Scheme of Amalgamation the Appointed date fixed is **31<sup>st</sup> March, 2013**.
4. The Applicants Companies through present petition proposes the Amalgamation of the Transferor Company i.e. *Shanti Coils & Refrigeration Equipment's Private Limited* with *Shanti Refrigeration Industries Private Limited* (Transferee Company).
5. The main objects to and rationale of the Proposed Company Scheme as described in the present company are: -
  - (i) *To, consolidate the businesses presently being carried on by the Transferor Company and the Transferee Company, which shall be beneficial to the interests of the shareholders, creditors and employees of both the companies and to the interest of public at large, as such amalgamation would create greater synergies between the businesses of both the companies and would enable them to manage their business more efficiently by effectively pooling the technical and marketing skills of both the Companies as an integrated entity and also enable effective management and unified control of operations;*
  - (ii) *For creating better synergies and optimal utilisation of resources built by the Transferor Company;*
  - (iii) *For better administration and cost reduction (including reduction in administrative and other common costs; and*
  - (iv) *For better utilisation of professional expertise and other manpower resources.*
6. The Applicants submits that the Proposed Company Scheme (of Amalgamation) is neither intended in any manner to have any beneficial effect on the managerial interest, of Directors of the Applicants Company, except to the extent of their shareholdings. Beside, this the Proposed



Company Scheme does not adversely affect either to rights, or interest of any creditors and debenture holders or to its respective shareholders of the applicant's company in any manner.

7. It is further contended before us that the Proposed Company Scheme of Amalgamation does not make any compromise with the Interest of its creditors, debenture holders of the Applicant Company as due provisions have been made in the Proposed Company Scheme to make payments of all its liabilities as and when the same may arise and fall due in its usual course.
8. It is further informed that the Auditors of the *Shanti Coils & Refrigeration Equipments Private Limited* and *Shanti Refrigeration Industries Private Limited* didn't find any miss-management in the affairs of Transferor Company and the Transferee Company in their respective auditor's report.

It is further informed that the Transferee Company has duly complied with all the accounting standards applicable to it. In support of this, the Applicants have also obtained necessary certificate from the auditor of the Transferee Company certifying that the accounting treatment for such Company Scheme has been found to be in order and in conformity with the Accounting Standards. Necessary certificate in this regard were annexed earlier by the applicants in **Company Application No. 01/2015**, which is now clubbed together with the Present Company Petition.

9. A perusal of the averments of the Present Company Petition, shows that the Petitioner Companies initially filed the First Stage Motion Application before the Hon'ble Uttarakhand High Court. Wherein, the Hon'ble Uttarakhand High court through its order dated **23.12.2015** passed in the First stage motion of the applicant companies has pleased to issue
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Uttarakhand High court through its order dated **23.12.2015** passed in the First stage motion of the applicant companies has pleased to issue necessary direction by **dispensing with the meeting of Equity Shareholders and Creditors of Transferee Company**. The Hon'ble High Court was pleased further to issue direction for convening the meeting of the Equity Shareholders and Creditors of the **Transferor Company on 23.12.2015** at its registered with prior publication to be made in newspaper specifically in **English "Times of India"** and in **Hindi "Dainik Jagran" Haldwani Edition** by prescribing 21 clear days before the day appointed for the said meeting under the chairmanship of **Shri Pulak Raj Mullick and Shri Mohit Maulekhi Advocates**.

10. As per the record of the case, as the management of company practically found it difficult to convene such meeting on the scheduled date, therefore, they filed **Misc. Application No. 2493/2016** praying for further directions for convening of such meeting on a rescheduled date, which was allowed by the Hon'ble Uttarakhand High court vide its order dated **06.04.2016** directing to convene such meeting on **25.05.2016** at registered office of the transferor company, which was accordingly held on the scheduled date.
11. Further, in compliance of Hon'ble Courts order dated **06.04. 2016**, the Chairman of the meetings further filed "Affidavit of Compliance" before the Hon'ble High Court. As per the compliance affidavit the Proposed scheme has been approved by Equity shareholders and Creditors (Secured and Unsecured) with absolute majority.
12. Thereafter, the Present Company Petition came to be transferred from the Registry of Uttarakhand High court to this (Bench of NCLT) by the

provision of section 434(1) of The Companies Act, 2013 at the stage of Second Motion for sanctioning of the Proposed Scheme of Amalgamation which was filed under section 391/394 of Companies, Act, 1956, as the Jurisdiction of applicant's company now lies before this bench.

13. This Bench during the course of hearing of the Present (Second Stage Motion) Petition issued further direction vide its order dated **21.03.2017** to the Petitioner Companies to issue a formal notice to the Central Government through the office of Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies, Kanpur and to The Official Liquidator Cum- ROC Uttarakhand in respect of the Present Companies.
14. The ROC-cum-OL Uttarakhand initially in its report dated 30.08.2017 made observation at Para 30, that Applicant Companies did not file a copy of the present petition to its office and no such form i.e. GNL-1 containing petition is filed by applicant company in MCA Portal. Therefore, rationale of the scheme was not made available. Considering such observation this court by its order dated 11.08.2017 granted further opportunity to the Central Government to file its Affidavit/Report and also directed orally to the petitioner counsel to provide spare copy of petition to CGSC and the ROC for the purpose of preparing its report, our such direction is reported to be complied with by filing an affidavit of the Director of Company dated 7<sup>th</sup> October, 2017.

Further, the authorised representative of the applicant companies also filed an affidavit of service by confirming the service of the Present Company Petition to the Central Government, Ministry of Corporate

Affairs, through the Office of Regional Director (Northern Region), New Delhi as well as to the Registrar of Companies, Kanpur / OL, Uttarakhand.

15. In response to the above referred notice issued, The Registrar of Companies cum OL Incharge filed a report before this Tribunal stating interalia that there is no prosecution, filed against Transferor and Transferee Company nor any proceedings under section 235 to 251 of the Act, 1956 is pending and no violation of section 383A/215 of the Companies Act, 1956 against the Transferor and Transferee Company is reported.

The Registrar of Companies in para 9 of its report has mentioned about the share exchange ratio that "The Transferor Company is a wholly owned subsidiary of the Transferee Company" and its share Exchange ratio can be described as under:

*"On the scheme becoming sanctioned and finally effective, in consideration of the transfer and vesting all the assets, liabilities and rights, duties, obligation e.t.c. of the undertaking of the Transferor companies in Transferee Company, in terms of the scheme the Transferee company shall, subject to the provisions of the scheme and without any further act or deed, issue and allot to each member of the Transferor companies whose name is recorded in the Register of Members of the Transferor Companies on the date/ Record Date (fixed by the Board of Directors of the Transferee Company equity shares in the transferee company in the ratio of 1(one)equity shares in the Transferee company of the face value of Rs. 10/- = each fully paid up held by such member in the Transferor Companies (the "Share Entitlement Ratio").*

*Upon coming into effect of this scheme, all the existing shares/share certificates of the Transferor Companies as on the Record Date shall stand cancelled and will become invalid and shall cease to be tradable thereafter. The Board of Directors of the Transferee Company may not require the shareholders, who might be holding the shares in physical form, to surrender their share certificates before issuing the new share certificates for the shares allotted in terms of clause 236(6). Cross holding of the shares between the Transferor Company and the Transferee Company, if nay shall stand cancelled.*

*The authorized share capital of all the transferor companies shall be added to and shall form part of the existing Authorized share Capital of the Transferee Company without any further act or deed.*

In addition to the above, the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, after receipt of a report from the Registrar of Companies, Kanpur filed his Representation Affidavit in this Tribunal expressing that his no objection against the Sanction of the Present Company scheme, as no prosecution/proceedings are reported pending against the Transferor and the Transferee Company or against its Directors on alleged breach of any provision of the Companies Act or other statutory provisions of FEMA, IPC, SEBI Act, RBI Act before any Court of law.

16. In addition to the above, the ROC-CUM-OL, Uttarakhand in his report has provided detail/particulars of Authorized, Issued, Subscribed and Paid up Capital of the Transferor and Transferee Company as on 31/03/2015.

The details/particulars of Authorized, issued, Subscribed and paid up share Capital of the **Petitioner/Transferor Company** as on **31.03.2015** are stated as under:

| Share Capital                                                                      | Amount (In Rupee) |
|------------------------------------------------------------------------------------|-------------------|
| <b>Authorized Capital</b><br>3,850,000 Equity Shares of Rs.10 each.                | 38,500,000/=      |
| <b>Issued Capital</b><br>3,850,000 Equity Shares of Rs.10 each.                    | 38,500,000/=      |
| <b>Subscribed and paid up share Capital</b> 3,850,000 Equity Shares of Rs.10 each. | 38,500,000/=      |

The detail/particulars of Authorized, issued, Subscribed and paid up share capital of the **Petitioner/Transferee Company** as on **31.03.2016** is as under:

| Share Capital                                                                        | Amount (In Rupees) |
|--------------------------------------------------------------------------------------|--------------------|
| Authorized Capital 12,000,000<br>Equity shares of Rs.10/- each.                      | 120,000,000/=      |
| Issued Capital 10,000,000<br>Equity shares of Rs.10/- each.                          | 100,000,000/=      |
| Subscribed and paid up share<br>Capital 10,000,000<br>Equity shares of Rs.10/- each. | 100,000,000/=      |

The ROC-Cum-OL, Uttarakhand in his report informed that **Shri Vikas Kumar Guglani, Adv.** Being Authorized representative of Transferor and Transferee Company produced necessary accounts and statutory records of companies, before him for his perusal. Having made a scrutiny thereof, The ROC-cum-OL expressed his office's opinion stating that "the affairs of the Transferor Company are not found to have been conducted in any manner prejudicial to the interest of its members or to the public at large. In para 6 of its report he further informed such that his office is having no objection for dissolution of the Transferor Company without being wound up pursuant to provisions of Section 394 of the Companies Act, 1956 and rules made there under".

We duly considered, the above stated averments of the Present Company Petition and perused the documents annexed therewith in order to examine the merits of the present case. We also went through the



Representation Affidavit of the RD (NR), read with report of the ROC-Cum- OL, Uttarakhand filed in the present case to consider the sanction of the Proposed Company Scheme of Amalgamation.

17. We in our earlier decision in the matter of *Auxin Engineering Limited with Oasis Grassland Private Limited (59/ALD/2017)*, came to an occasion to examine the criteria for the sanction of a company scheme, we got strength by placing reliance on a decision of the Hon'ble Gujrat High Court *In Re: (Kril Standard Products ... vs Unknown) dated 24 August, 1973 Reported in: (1976 46 CompCas 203 Guj, (1974) 0 GLR 810)* wherein Hon'ble Justice D.A. Desai (as then his Lordship was) pleased to made some observation, for sanction of the company scheme, which in our view are equally important in respect of sanction of the Proposed Scheme and relevant for disposal of the present company petition. Hence the observation (made in para no.36 to 37 of the above reference judgement) are being reproduced here below:-

36. "Last question is whether this court should accord sanction to the scheme of amalgamation. The matter is within the discretion of the court. In exercising this discretion, the court will examine the scheme as a man of business would reasonably evaluate it. I have been often told that the court should not try to substitute its judgment for the commercial judgment of those interested in the company as expressed in various meetings. That apart, the court still has discretion in the matter and the court is not a mere rubber stamp because the scheme has been approved by a statutory majority in various meetings". The zeal with which attempt is made to acquire controlling block of shares in companies, it is not difficult for the industrialists to push through the scheme with the majority at their back and call, but the court cannot abrogate the discretion in favour of such a majority. Therefore, the court must and should examine the scheme on its own merits. I would, however, not dilate upon this, for this reason that by the scheme of amalgamation, a wholly-owned subsidiary company merges into the holding company. The factual merger is now being converted into a legal and total merger. Further, both the companies are private limited companies, meaning thereby that they are something like a

*family concern. In this background, I need not examine the scheme in all its details.*

37. *Having given my anxious thought to the scheme, I would accord sanction to the scheme of arrangement for amalgamation of the transferor-company with the transferee-company, with this condition that the scheme shall not take effect and be operative until and unless it is sanctioned in an appropriate proceeding to be taken by the transferee-company in the High Court having jurisdiction to be invoked by the transferee-company. Subject however to this specific reservation, the consequential orders, as are required to be made under section 394 prayed for in prayers (i) to (iv) of paragraph 12 of the petition, including the one that on scheme of amalgamation becoming effective, the transferor-company should be deemed to have been dissolved without winding up, are hereby made.*
18. Thus, by relying on above stated judicial precedent, we dully considered the factual aspects of the Applicant's Company and of the Proposed Company Scheme, we feel that necessary statutory requirement seems to be complied with or undertaken by the Petitioner Companies, for its compliance in its affidavit of undertaking. Therefore, the Proposed Company Scheme, appears to be reasonable and fair and is found inconformity with statutory provisions. Hence, it deserves for approval.
19. Therefore, the present company petition is allowed in terms of its Prayer Clause. Accordingly, the Proposed Company Scheme of Amalgamation as annexed with the present Company Petition is hereby sanctioned and to be acted upon in terms of and condition contained therein by the applicant companies.
20. Consequent upon approval and sanction of the Present Company Scheme, all the property, rights and powers of the *transferor Company i.e. Shanti Coils & Refrigeration Equipment's Private Limited* be transferred without further act or deed to the *Transferee Company (Shanti Refrigeration Industries Private Limited)* and accordingly the same shall

pursuant to Section 232 of Act, be transferred to and vested in the Transferee Company for all intents and interest of the Transferor Company therein.

21. All the liabilities of the Transferor Company 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.
22. Notwithstanding the above, while sanctioning of the Present Company Scheme, we make it clear that our this order is not meant to grant any exemption from payment of stamp duty, taxes, statutory charges which are necessary to be paid in accordance with law or in relation to any, compliance with or any other requirement which may be specifically required under the law.
23. It is further directed that, the petitioner companies within thirty days of receipt of an authentic copy of this order, shall deliver it to the Registrar of Companies for the purpose of registration, and upon delivery of such certified copy to the ROC, Kanpur, The Transferor Company shall be deemed as dissolved.

The Registrar of Companies to place all documents relating to the Transferor Company and Transferee Company and accordingly to consolidate the files relating to the petitioner companies.

24. In the Present matter as per record a cost of **Rs. 25,000/ (Twenty-Five Thousand Only)** was earlier imposed to the Central Government by courts order dated **11.08.2017**, but later on the same has been waived. In

view of this we feel appropriate not to impose any cost on the applicants in respect of the Present Company Petition.

25. The Petitioner counsel is instructed to furnish a copy of the draft order of sanction of the Present Scheme in prescribed format under **Companies (Compromises, Arrangements and Amalgamations) Rules, 2016** read with other rules for the purpose of scrutiny and authentication by the Registry.
26. The Authentic copy of the present order, sanctioning the scheme annexed with the Present Company Scheme to be acted upon by the Regulatory Authorities and by all concern.
27. The Present Company Petition is accordingly disposed of.

**Dated- 31/01/2018**

Typed by:  
*Aman Kumar Dwivedi*  
(Law Research Associate)



**H.P. Chaturvedi**  
**Member (Judicial)**