

**In the National Company Law tribunal
Single Bench, Chennai**

**TP (HC)/120/CAA/2017
TP (HC)/121/CAA/2017
TP (HC)/123/CAA/2017
TP (HC)/124/CAA/2017**

**In the matter of Scheme of Amalgamation of
Sindya Infrastructure Development Company Private Limited
(Transferor Company 1)
And
Sindya Properties Private Limited
(Transferor Company 2)
And
Sindya Aqua Minerale Private Limited
(Transferor Company 3)
With
Kalpatharu Enterprises Private Limited
(Transferee Company)**

Order delivered on: 07.09.2017

For the Petitioners: Lakshmmi Subramanian, PCS

Per: K. Anantha Padmanabha Swamy, Member (J)

ORDER

1. Under consideration are four Company Petitions which have been transferred from the Hon'ble High Court of Madras to this Tribunal pursuant to the Companies (Transfer of proceedings) Rules, 2016 and renumbered as TP(HC)/120&121&123&124/CAA/2017. The Petitioner Companies have prayed for the sanction to the Scheme of Arrangement & Amalgamation (hereinafter referred to as '**Scheme**') by virtue of which Sindya Infrastructure Development Company Private Limited (hereinafter referred as '**Transferor Company 1**'), Sindya Properties Private Limited ('**Transferor Company 2**') and Sindya Aqua Minerale

Private Limited (**‘Transferor Company 3’**) are proposed to be merged, amalgamated and vested **with** Kalpatharu Enterprises Private Limited (hereinafter referred as **‘Transferee Company’**) as a going concern. All the companies are within the jurisdiction of RoC, Chennai and having registered office at 4th Floor, Lakshmi Bhawan, 609, Mount Road, Chennai- 600006. Since all companies pertain to the same scheme of amalgamation, I take them together to pass a common final order.

2. Before proceeding with the matter, it is pertinent to mention herein that the Board of Directors of Kalpatharu Infrastructure Development Company Private Limited vide resolution dated 19.05.2017 have unanimously decided to withdraw from the proposed amalgamation due to delay in the process and changed circumstances, consequently the advantage of the merger no longer exists. The Transferee Company thus, filed a leave application before this tribunal to consider the withdrawal of Kalpatharu Infrastructure Development Company Private Limited from the scheme of amalgamation as to enable the company to file the amended application and a modified scheme of amalgamation with the revised cause title. This bench granted leave to the applicant company and directed the company to file the amended application and a modified scheme of amalgamation with the revised cause title. The company complied with the directions given by this bench.

3. The details of the Share Capitals, equity shareholders and creditors of the Petitioner Companies are as under:

Particulars	Authorized Capital	Subscribed & paid-up Capital	Equity Share-holders	Secured creditors	Unsecured Creditors
Transferor Company 1	Rs. 5,00,00,000	Rs. 2,94,00,000	3	1	1
Transferor Company 2	Rs. 1,00,00,000	Rs. 41,00,000	4	Nil	Nil
Transferor Company 3	Rs. 10,00,000	Rs. 1,00,000	2	Nil	Nil
Transferee Company	Rs. 6,00,00,000	Rs. 1,00,000	2	Nil	Nil

4. At the outset, it is necessary to know the details of the scheme which needs determination. All three Transferor Companies and the Transferee Company are Private Limited Companies and the Board of Directors of the Transferor Companies and the Transferee Company in their board resolutions dated 30th May 2016 have approved the said Scheme of Amalgamation. The Hon'ble Madras High court vide its order dated 24.10.2016 dispensed with the convening and holding the meeting of equity shareholders of all the petitioner companies. The Transferor Company 1 has produced the consent affidavits of its only secured and unsecured creditors. The petitioner companies complied with all the orders passed by the Hon'ble Madras High Court and this bench.
5. Ms. Lakshmmi Subramanian, the learned PCS appearing for the Petitioner Companies submitted that the Transferor Companies are

together engaged in the business of construction business, dealing in properties and production, selling & buying water bottles whereas the Transferee Company is engaged in the business of purchase, sale and deal in properties, lands, houses and buildings.

6. Learned PCS further submitted that the said scheme expected to enable better realisation of potential of the business which will yield beneficial results and enhanced value creation for their respective shareholders and better security and protection for their lenders and employees. The companies would benefit from the said Scheme due to the administrative and operational costs that will considerably be reduced; also it will strengthen, consolidate and stabilize the business of these companies and will facilitate further expansion and growth of their business. These combined resources will enhance its capability to expand and improve its efficiency of operations. The learned counsel further submits that no investigation proceedings are pending against the Petitioner Companies under section 235 to 251 or any other provisions of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.
7. To dispose of this petition as per the provisions of the Companies Act, 2013, notices were issued to the statutory authorities as per the procedure prescribed. However, there were no objection to the scheme under reference except a few observations by the RD.

8. The Regional Director, Southern Region (In short, 'RD') in its report affidavit dated 10.07.2017 submitted that the Transferor Companies are regular in filing its statutory returns and no investigation is pending against them. It further submitted that clause 13 of the scheme provides for protection of the employees of the transferor companies. However, Para 9 of the report pointed out that as per clause 4 of the scheme, it is proposed to merge the authorised capital of the transferor companies with that of the transferee company, Therefore the transferee company may be directed to file the amended MoA and AoA with RoC, Chennai for records. The RD decided not to make any objection to the Scheme and submitted that the petition may be disposed of on merits.
9. With regard to the above observation made by the RD, the learned PCS submitted that the Transferee Company undertakes to file the amended MoA and AoA with RoC, Chennai.
10. The Official Liquidator (In short, 'OL') in its two separate reports dated 09.08.2017 submitted that M/s. Chaturvedi & Company, Chartered accountants and M/s. Dwaraka & Associates, Chartered Accountants, the Auditors appointed on the order of this Tribunal, have scrutinized the books and accounts of the Transferor company 1 & 2 and Transferor Company 3 respectively. The Auditors have observed that the said three Transferor Companies have maintained and written up all the statutory books in accordance with normally accepted accounting principle and

policies in accordance with the requirements of the Companies Act, 2013 and also the affairs of the company have not been conducted in a manner prejudicial to the interest of its members, creditors or to public interest and submitted that the petition may be decided appropriately.

11. The OL further submits that as per Clause 13.1 of Part- C of the proposed scheme, the interests of all the employees in the services of the Transferor Companies are safeguarded. As per clause 5 of Part- C of the proposed scheme, the Transferee Company shall, without any further application or deed, issue and allot equity shares of the face value of Rs. 10/- each in the Transferee company, credited as fully paid up, to the entitled shareholders of the Transferor companies, whose name appears on the register of members as on Record date.
12. Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of amalgamation will not cost any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed date of the said Scheme is 1st January, 2015.
13. This Bench does not feel that any modification is required in the said Scheme as the same appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. All the

statutory compliances have been made. Taking into consideration all the above, the Company Petition is allowed and the scheme of arrangement and amalgamation annexed with the petition is hereby sanctioned which shall be binding on the Transferor Companies, the Transferee Company and all creditors.

14. While approving the scheme as above, it is further clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.
15. The Transferee Company is directed to file the amended MoA and AoA with RoC, Chennai.
16. The Transferor Companies shall be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies, Chennai.
17. Upon receiving the certified copy of this order, the RoC, Chennai is directed to place all documents relating to the Transferor Companies with that of the Transferee Company and the files relating to the

Transferor Company shall be consolidated with the files and records of the Transferee Company

18. The Petitioner Companies to the said Scheme or other person interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.
19. The Petitioner Companies do file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.
20. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 as has been notified on 14th December, 2016.
21. Accordingly, the scheme annexed with the petitions is sanctioned and the Company Petitions stand disposed of.



K. Anantha Padmanabha Swamy, Member (J)

RLS