

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT No. V, MUMBAI BENCH**

CA (CAA)/92/(MB)/2021

CONNECTED WITH

CP (CAA)/211/(MB)/2021

In the matter of the Companies Act, 2013
(18 of 2013)

AND

In the matter of Sections 230 to 232 and
other applicable provisions of the
Companies Act, 2013 and Rules framed
thereunder as in force from time to time;

AND

In the matter of Scheme of Amalgamation
of ANJANEYA CONSTRUCTION
PRIVATE LIMITED, the First Transferor
Company; ANUKAVI
CONSTRUCTIONS PRIVATE
LIMITED, the Second Transferor
Company; with SHRIGOPAL
RAMESHKUMAR SALES PRIVATE
LIMITED, the Transferee Company.

**ANJANEYA CONSTRUCTION
PRIVATE LIMITED,**

A Company incorporated under the Companies Act, 1956 having its registered office at C/o Ramesh Rander, Sarvodaya Cloth Market, Gandhibagh, Nagpur – 440002.

.... Petitioner Company 1/ First Transferor Company.

**ANUKAVI CONSTRUCTIONS
PRIVATE LIMITED,**

A Company incorporated under the Companies Act, 1956 having its registered office at C/o Ramesh Rander, Sarvodaya Cloth Market, Gandhibagh Nagpur – 440002

...Petitioner Company 2/ Second Transferor Company.

**SHRIGOPAL RAMESHKUMAR
SALES PRIVATE LIMITED,**

A company incorporated under the Companies Act, 1956 and having its registered office at Sarvodaya Cloth Market Gandhibag Nagpur 440002.

...Petitioner Company 3/ Transferee Company.

Order Delivered On: 11.03.2022

Coram:

Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Anuradha Sanjay Bhatia, Member (Technical)

Appearance (via video conference):

For the Petitioner(s): Mr. Ashish O. Lalpuria, PCS a/w. Mr. Kamal Lahoty, PCS.

For the Regional Director: Ms. Rupa Sutar, Deputy Director Office of the Regional Director, WR, MCA.

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

The sanction of the Tribunal is sought under sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (the Act) to the Scheme of Amalgamation of Anjaneya Constructions Private Limited, the First Transferor Company; Anukavi Constructions Private Limited, the Second Transferor Company with Shrigopal Rameshkumar Sales Private Limited, the Transferee Company and their respective Shareholders.

1. The Scheme envisages Amalgamation of Anjaneya Constructions Private Limited, the First Transferor Company; Anukavi Constructions Private Limited, the Second Transferor Company with Shrigopal Rameshkumar Sales Private Limited, the Transferee Company

2. We have heard the Learned Authorised Representative for the Petitioner Companies and the Deputy Director, WR, MCA. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition
3. Learned Authorised Representative for the Petitioner Companies further submits that Transferor Companies are not currently engaged in any material business activity and the Transferee Company is engaged in the Business of trading and dealing in cotton, cotton yarn, man-made fibers and all types of synthetic yarn and to sale all type of fibrous products.
4. The Board of Directors of Petitioner Companies have approved the scheme at their respective Board Meetings conducted on 19th March, 2021 respectively. The appointed date of the scheme is 1st April, 2020.
5. The learned Counsel for the Petitioner Companies further submitted the following rationale for the Scheme:
 - a. The Transferor and Transferee Companies are closely held and are owned, managed, controlled and promoted by the same family.
 - b. The Transferor Companies owns land parcels and wishes to develop and create real estate for sale. However due to lack sufficient resources, the Transferor Companies are

unable to execute the real estate projects. Pursuant to various negotiations and discussions between the Transferor Companies and the Transferee Company, it was felt that amalgamation of the Transferor Companies with the Transferee Company would result into integration of diverse business under one umbrella and thereby achieving the synergistic benefits of consolidation of finances and operational efficiencies as the Transferee Company has sufficient financial and human resource. The proposed amalgamation would enable the combined entity to utilise the combined resources more efficiently and effectively, resulting into perfect synergy and diversification of business under one roof.

- c. The proposed amalgamation shall lead to a single company with rationalized structure, greater integration, financial strength and flexibility aiding in achieving economies of scale, sourcing benefits, vendor rationalization, more focused operational efforts, standardization and simplification of business processes and productivity improvements.
- d. Creation of a single ‘go-to-market’ strategy, benefit of scale, enhanced depth and breadth of capabilities to result in increased business opportunities and reduced administration and management expenses.

- e. Combined Company shall be better positioned to serve the market.
 - f. Strengthening the financial position and ability to raise resources for conducting the business.
 - g. Consolidation of the managerial expertise of the companies involved, thereby giving additional strength to the operations and management of the Transferee Company post-amalgamation.
 - h. Elimination of duplication in administrative cost and multiple records keeping thus resulting in cost savings for the Companies.
6. The Company Petition is filed in consonance with Sections 230 to 232 of the Act along with the order dated 05th August, 2021 passed in CA (CAA) No. 92/(MB)/2021 of this Tribunal.
7. The Learned Authorised Representative appearing on behalf of the Petitioner Companies submits that Upon this Scheme becoming effective, the Transferee Company shall, issue and allot equity shares to the extent indicated below, to the members of the Transferor Companies holding fully paid up equity shares in the following ratio:

To the shareholders of Transferor Company 1:

27 (twenty Seven) Equity Shares of INR 10/- each fully paid up of the Transferee Company in respect of 1 (one) Equity Share held

in the First Transferor Company.

To the shareholders of Transferor Company 2:

1(One) Equity Share of INR 10/- each fully paid up of the Transferee Company in respect of 4 (Four) Equity Share held in the Second Transferor Company.

8. The Learned Authorised Representative appearing on behalf of the Petitioner Companies stated that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and have filed necessary affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory/regulatory requirements, if any, as required under the Act and the Rules made thereunder. The undertaking given by the Petitioner Companies is accepted.
9. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed its Report dated 8th November 2021 inter alia stating therein its observations on the Scheme as stated in para IV (a) to (g) of the Report. In response to the observations made by the Regional Director, the Petitioner Companies filed an Affidavit in Rejoinder and have given necessary clarifications and undertakings. The observations made by the table below:

Sr. No. Para (IV)	RD Report / Observation Dated 8th November,2021.	Response of the Petitioner Companies
a)	<i>In compliance of AS-14 (IND AS-103) the Transferee company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.;</i>	Apropos observation made in paragraph IV (a) of the report of Regional Director is concerned, the Petitioners undertake to comply with AS-14 (IND AS-103) and such applicable accounting standards for Amalgamation and as per other applicable provisions of the Companies Act, 2013 while passing necessary entries in connection with the Scheme.
b)	<i>The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Compromise or Arrangement. Further, the approval of the scheme by this Hon'ble Tribunal may not deter</i>	Apropos observation made in paragraph IV (b) of the report of Regional Director is concerned, the Petitioner Companies submits that notices were served upon the concerned regulatory authorities in accordance with the provisions of section

	<i>such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).</i>	230(5) of the Companies Act, 2013. The Petitioners further submits that approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities shall be binding on the Petitioner Companies subject to right of appeal, if available.
c)	<i>Hon'ble NCLT may kindly direct the Petitioners to file an undertaking to the extent that the Scheme enclosed to Company Application & the Scheme enclosed to Company Petition, are one and same and there is no discrepancy or deviation.</i>	Apropos observation made in paragraph IV (c) of the Report of the Regional Director is concerned, the Petitioner Companies submits that Scheme enclosed to the Company Application and the Scheme enclosed to the Company Petition are one and the same and there is no discrepancy or deviation.
d)	<i>As per Definitions of the Scheme. "Appointed Date" means 01st day</i>	Apropos observation of the Regional Director, Western

<i>of April, 2020 or such other date as may be fixed or approved by the National Company Law Tribunal at Mumbai or such other competent authority;</i> <i>"The Effective Date" means the last of the dates on which the certified or authenticated copies of the order sanctioning this Scheme passed by the Mumbai bench of the National Company Law Tribunal is filed with the Registrar of Companies, Mumbai, Maharashtra by the Transferor Companies and the Transferee Company as required under the provisions of the Companies Act. Any reference in this Scheme to the date of "coming into effect of this Scheme" or "the Scheme coming into effect" or "Scheme becoming effective" shall mean the Effective Date;</i> <i>The appointed date is 1 April 2020 which is antedated more than one year hence the petitioner</i>	Region, Mumbai, as stated in paragraph IV (d) of his report concerned, the Petitioners confirms that the definition "Appointed Date" means 01st day of April, 2020. Further, the "Appointed Date" is in compliance with the MCA vide its General Circular No. 09/2019 dated 21st August, 2019 which provides that the Appointed date can be within one year from the date of filing of Application i.e, 30th March, 2021. Further, the Petitioners confirms that the "Effective Date" shall be the date on which the certified or authenticated copies of the order sanctioning this Scheme passed by the Mumbai bench of the National Company Law Tribunal is filed with the Registrar of Companies, Mumbai, Maharashtra by the Transferor Companies and the Transferee Company as
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	<i>company shall be directed to amend its appointed date.</i> <i>Further, the Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i>	required under the provisions of the Companies Act. Any reference in this Scheme to the date of "coming into effect of this Scheme" or "the Scheme coming into effect" or "Scheme becoming effective" shall mean the Effective Date;. The Petitioner Companies further undertakes to comply with the circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs. The Petitioner Companies clarify that the amalgamation as embodied in the Scheme shall take effect from the Appointed Date i.e. 1st April 2020.
e)	<i>As per Clause 10 of the Scheme,</i> <i>ACCOUNTING TREATMENT</i> <i>On the Scheme becoming effective, the Transferee Company shall account for the amalgamation of the Transferor</i>	Apropos observation made in paragraph IV (e) of the report of Regional Director is concerned, the Petitioner Companies undertakes that the surplus if any arising out of

<i>Companies in its books of account with effect from the Appointed Date as under:</i> <i>Amalgamation of the Transferor Companies with the Transferee Company shall be accounted for in accordance with Accounting Standard 14 (AS-14) as applicable.</i> <i>Upon the Scheme becoming effective, all assets and liabilities, including reserves and surplus, recorded in the books of the Transferor Companies as on the Appointed Date, shall be transferred to and vested in the Transferee Company pursuant to the Scheme and shall be recorded by the Transferee Company at their existing carrying book values and in the same form.</i> <i>If and to the extent there are inter-corporate loans, deposits or balances as between the Transferor Companies and the Transferee Company, the obligations in respect thereof</i>	Amalgamation shall be credited to “Capital Reserve arising out of Amalgamation” and deficits, if any shall be debited to Goodwill Account and the reserves shall not be available for distribution of dividend and other similar purposes.
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	<i>shall, on and from the Appointed Date, come to an end and corresponding suitable effect shall be given in the books of account and records of the Transferee Company.</i> <i>The Transferee Company shall credit its share capital account, the aggregate face value of the New Equity Shares issued to the shareholders of Transferor Companies pursuant to clause 8 of the Scheme,</i> <i>The Shares held by the First Transferor Company in the Transferee Company shall stand cancelled as per Clause 9 of the Scheme.</i> <i>With regard to the investment by First Transferor Company, in the paid-up capital of the Transferee Company, an amount equal to the face value of investment shall be adjusted against the paid-up capital of the Transferee Company. Any excess of cost of investment shall be adjusted</i>	
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	<i>against reserves of the Transferee Company.</i> <i>Upon the amalgamation of Transferor Companies with the Transferee Company, the difference between the face value of New Equity Shares and the paid-up capital of Transferor Companies after adjusting the inter-company balances and inter-company investments shall be adjusted against the reserves of the Transferee Company.</i> <i>The difference, if any, between the amount of share capital issued by the Transferee Company and the amount of share capital of the Transferor Companies shall be adjusted against reserves, credited to capital reserve/ debited to the amalgamation adjustment reserve account, of the Transferee Company.</i> <i>In case of any difference in accounting policy between the Transferor Companies and the</i>	
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	<i>Transferee Company, the accounting policies, as may be directed by the Board of Directors of the Transferee Company will prevail and the impact of the same till the Appointed Date will be quantified and adjusted in the balance lying in the Capital Reserve Account arising upon amalgamation or other reserves as the case may be to ensure that the financial statements of the Transferee Company reflect the Financial position on the basis of consistent accounting policy.</i> <i>Petitioner Companies have to undertake that the surplus/ deficit shall be adjusted to Capital Reserve Account arising out of amalgamation.</i> <i>Further Petitioner companies have to undertake that reserves shall not be available for distribution of dividend.</i>	
f)	STATUS OF ROC REPORT: ROC, Mumbai Report dated	Apropos observation made in paragraph IV (f) of the report

	<i>09.12.2021 has interalia mentioned that there are no prosecution, no technical scrutiny, no inquiry, no inspection and no complaints pending against Petitioner Companies. Further mentioned that:- Interest of the Creditors should be protected. Hon'ble Tribunal may consider the observations pointed out by ROC Mumbai in their report and decide the matter on merits.</i>	of Regional Director is concerned, the petitioners states that as far as the observation of Registrar of Companies, Mumbai with respect to protection of interest of creditors, the Petitioners undertakes to protect the interest of creditors at all times.
g)	<i>The main object of the transferor companies is to carry on the activities as a construction company. The Hon'ble NCLT May kindly direct the petitioner companies to obtain no objection certificate from RERA authorities, as applicable.</i>	Apropos observation made in paragraph IV (g) of the report of Regional Director is concerned, the Petitioner Companies states that the Second Transferor Company has an ongoing project registered with RERA. However, the said company is not required to obtain NOC from RERA since 75% of the shareholders remain same in the resultant Company/Transferee

		Company and also the Company is in compliance with Section 47 of the Income Tax Act, 1961 as required by the MahaRERA circular dated 8 th November, 2017.
<i>h)</i>	<i>The transferee company is engaged in the business of trading and dealing in the Cotton. The transferee company is not taking over the real estate business of the transferor companies. Therefore the petitioner companies to file the undertaking that no projects/building or real estate activities are under construction or pending.</i>	Apropos observation made in paragraph IV (h) of the report of Regional Director is concerned, the Petitioner Companies states that both the Transferor Company 1 and Transferor Company 2 are getting amalgamated with the transferee Company and will take over the entire business and the assets and liabilities of both the Transferor Companies.

10.The Official Liquidator has filed his report on 29th November 2021, inter alia stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that his representation may be taken on record.

11.From the material on record, the Scheme appears to be fair,

reasonable and is not in violation to any provisions of law nor is contrary to public interest/policy.

12. Since all the requisite statutory compliances have been fulfilled, CP (CAA)/211/(MB)/2021 is made absolute in terms of prayer clauses 46(a) to 46(d) of the Company Petition.

13. The Scheme, with the Appointed Date fixed as 1st April 2020 placed as **Exhibit – A** of the Company Petition, is hereby sanctioned. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Unsecured Creditors/Trade Creditors and Employees.

14. The Registrar of this Tribunal shall issue the certified copy of this Order along with the Scheme forthwith. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme with the Registrar of Companies concerned, electronically in E-form INC-28 within 30 days from the date of receipt of the Order from the Registry.

15. The Petitioner Companies shall lodge a copy of this Order and the Scheme duly authenticated by the Registrar of this Tribunal with the Superintendent of Stamps concerned, within 60 working days from the date of the receipt of the Order, for the purpose of adjudication of stamp duty, if any, payable.

16.The Petitioner Companies shall comply with all the undertakings given by them. The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme. The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.

17.All concerned shall act on a copy of this Order along with the Scheme duly authenticated by the Registrar of this Tribunal.

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

19.Ordered Accordingly.

Sd/-

Anuradha Sanjay Bhatia
Member (Technical)

Sd/-

Suchitra Kanuparthi
Member (Judicial)