

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**  
**COURT-IV**

**COMPANY PETITION NO. (CAA)- 21(ND)/2022**  
**IN**  
**COMPANY APPLICATION NO. CA (CAA)-107(ND)/2021**

**IN THE MATTER OF:**

**SECTION 230 to 232 OF THE COMPANIES ACT, 2013**

**AND**

**IN THE MATTER OF SCHEME OF AMALGAMATION**  
**AMONGST**

**Shri Lakshmi Metal Udyog Limited**

... Petitioner No.01 /Transferor Company

AND

**Apollo Tricoat Tubes Limited**

...Petitioner No.02/ Transferor Company

AND

**APL Apollo Tubes Limited**

...Petitioner No.03/ Transferee Company

**ORDER DELIVERED ON : 14.10.2022**

**Coram:**

**SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**PER: DR. BINOD KUMAR SINHA, MEMBER- TECHNICAL**

This Petition is preferred jointly by the Transferor Companies and Transferee Company under Section 230 to 232 of Companies Act, 2013 read with the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 for the purpose of the

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approval of the Scheme of Amalgamation and Arrangement (hereinafter referred to as '**Scheme**' for brevity), as contemplated between the Companies, its Shareholders and Creditors. The copy of the Scheme has been placed on record. The details of the Companies proposed to be amalgamated, as placed on record, are given in the following paragraphs.

2. Shri Lakshmi Metal Udyog Limited, (hereinafter referred to as "Petitioner-01/Transferor Company-1") was incorporated on the 25.04.1994 under the provisions of the erstwhile Companies Act, 1956 as a private company having its registered office at 37, Hargobind Enclave, Vikas Marg, Delhi-110092.
3. Apollo Tricoat Tubes Limited, (hereinafter referred to as "Petitioner-02"/"Transferor Company-2") was incorporated on the 12.01.1983 under the provisions of the erstwhile Companies Act, 1956 as a public company having its registered office at 37, Hargobind Enclave, Vikas Marg, Delhi-110092.
4. APL Apollo Tubes Limited, (hereinafter referred to as "Petitioner-03"/"Transferee Company") was incorporated on the 24.12.1986 under the provisions of the erstwhile Companies Act, 1956 as a public limited company having its registered office at 37, Hargobind Enclave, Vikas Marg, Delhi-110092
5. The present Petition has been filed jointly by all the Transferor Companies and Transferee Company. Both the 'Transferors' and 'Transferee' Companies together are called 'Petitioner Companies' hereinafter. That the Registered offices of both the Companies being in Delhi, the jurisdiction lies with this Bench.
6. From the records, it is seen that the First Motion petition was filed by the Petitioner Companies for seeking directions for dispensing with the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of all the Companies. This Tribunal, in the First Motion Application bearing No. CA(CAA) No. 107(ND) 2021, vide

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Order dated 30.11.2021 dispensed with the requirement of convening the meetings of the equity shareholders and unsecured creditors of all applicant companies.

7. The Appointed date as fixed for the Proposed Scheme of Amalgamation and Arrangement is 01.04.2021.
8. Subsequent to the order of dispensation of meetings in relation to both the Transferor Companies and Transferee Company, the Second Motion petition was moved by the Petitioner Companies in connection with the scheme of Amalgamation and Arrangement for issuance of notices to the Central Government, Registrar of Companies NCT of Delhi & Haryana, Regional Director (Northern Region) MCA, Income Tax Authorities, Official Liquidator, Reserve Bank of India and to such other Objector(s), if any, and also for publication of the said Scheme. The said petition was admitted and directions were issued, vide Order dated 22.02.2022 of this Tribunal, requiring the Applicant Companies to serve notices to the Central Government, Registrar of Companies NCT of Delhi & Haryana, Regional Director (Northern Region) MCA, Income Tax Authorities, Official Liquidator, and also to carry out necessary publication in English and Hindi newspapers with respect to the said Scheme.
9. It is submitted by the Petitioners that in compliance of the above stated directions, the Petitioners duly filed an Affidavit of Service by confirming that the aforesaid Notices of the present Company Petition were published on 08.01.2022 in Business Standard (English) and (Hindi) newspapers along with that in Jansatta (Hindi, Delhi edition). It is further submitted that the Petitioner Companies also served the Notices of the present Company Petition to all the statutory authorities.
10. It is submitted by the Petitioner Companies that the Compliance with respect to Accounting statement has been done by the Independent Auditor's Certificate certifying the proposed accounting treatment included in the Scheme of Amalgamation

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and Arrangement of the petitioner companies is in compliance with the Applicable accounting standards specified under the Section 133 of the Act.

11. It is submitted by the Petitioner Companies that the Official Liquidator has filed its report dated 25.03.2022 in which it has stated that in view of the foregoing, upon considering the approval accorded by the members and creditors of all companies to the proposed Scheme, and no objections being raised by the office of the Regional Director or the Income Tax Dept., there appears to be no impediment in granting sanction to the Scheme. .
12. The Regional Director vide his report dated 09.05.2022 has not objected to the proposed scheme but has made certain observations. The petitioner companies had filed affidavit dated 09.05.2022 in response to the observations made by the Regional Director, where under the petitioner companies gave undertaking to appropriately comply with the observations made by the Regional Director. The details are given below:

Observations , of the Regional Director	Reply of the Petitioner Companies
As per the Clause 18 of the Scheme, the Authorized share capital of the Transferor company 2 and transferee company shall stand combined together.	The transferee company undertakes that if any fee arising in accordance with the provisions of the Companies Act 2013 on account of increase in authorized share capital as per Clause 18 of the scheme shall be paid by the transferee company only
The Applicant companies did not filed the order of SEBI 23.06.2020 restraining APL infrastructure private	The said SEBI order was stayed by the Hon'ble Securities Appellate Tribunal vide order dated

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<p>limited and Sanjay Gupta and promoter of APL Apollo Tubes Limited from accessing the securities market for a period of two years from the date of order for alleged contravention of provision of SEBI.</p>	<p>14.07.2020.</p>
<p>With respect to the valuation report furnished by the registered valuer's, the valuation is based upon the average of the market price of share quoted in NSE and BSE and Income Approach. However, the detailed calculation of the Income approach was not attached.</p>	<ul style="list-style-type: none"> <li>Valuation report of three months daily volume weighted price for the period from 27.11.20 to 26.02.21 has been considered which is prior to the board meeting date. And also the detailed worksheet showing calculation of per share price under different approaches has been mentioned by the petitioner companies in para 7.2 of the valuation report.</li> <li>It is also submitted by the Petitioner Companies that No objection certificate has been issued from BSE and NSE.</li> </ul>
<p>Clarity was sought over the point whether the company i.e. Applicant No. 1 is liable to pay any PF dues?</p>	<p>The Applicant submitted detail reply vide letter dated 02.05.2022</p>

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Further, vide order dated 29.08.2022 Regional Director was directed to file Supplementary Report in response to the petitioner companies reply to the observations raised by the Regional Director in its report dated 09.05.2022, to which the Regional Director submitted additional affidavit dated 12.09.2022 stating therein,

*“that on examination of the contents of the reply submitted by the petitioner companies as stated supra in response to the observation of the Deponent, it is to submit that the petitioner companies have explained/replied to the observations as given in the affidavit affirmed on 09.05.2022 which seems to be satisfactory. In view of the above it is prayed before the Hon’ble Tribunal to consider sanction of the scheme on its merit.*

*The Submissions made in para 1 to 4 above after having examined the reply of the petitioner Transferee company, placed for kind consideration of the Hon’ble Tribunal and for passing of orders as may be deemed fit and proper in the facts and circumstances of the case.”*

13. Income Tax Department has submitted its report via affidavit 04.5.2022 wherein, it has been stated that they have no objection to the present scheme of arrangement.
14. In view of the foregoing facts and discussion and upon considering the approval accorded by the Members and Creditors of all Companies to the proposed Scheme and no sustainable objections having been raised by the Office of the Regional Director, Income Tax Department or any other interested party, there does not appear to be any impediment in granting sanction to the Scheme.
15. Accordingly, in sequel to the above facts and circumstances, sanction is hereby granted to the Scheme of Amalgamation proposed by the Applicant Companies under Section 230 to 232 of the Companies Act, 2013.

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16. The sanctioned Scheme of Amalgamation and Arrangement shall be binding on the Transferor Companies and Transferee Company (the Applicants / Petitioner Companies) and their Shareholders and Creditors. The Petitioner Companies shall remain bound to comply with the statutory requirements in accordance with law.
17. Notwithstanding the above, at any stage any deficiency is found or violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Authority to the Scheme will not come in the way of action to be taken, albeit, in accordance with law, against the concerned persons, Directors and Officials of the Petitioner Companies.
18. While approving the Scheme as above, it is clarified that this Order should not be construed as an order in any way granting exemption from payment of Stamp Duty, Taxes or other statutory dues, 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. Further the approval of the Scheme would in no manner affect the tax treatment of the transactions under the Income Tax Act, 1961 or serve as any exemption or defense for the Petitioner Company against tax treatment in accordance with the provisions of Income Tax Act, 1961.
19. This tribunal further directs with respect to Transferor companies and Transferee company, that:
- (i) Upon the sanction becoming effective from the appointed date of amalgamation and arrangement i.e., 1st April, 2021, the Transferor Companies No.1 and 2 shall stand dissolved without undergoing the process of winding up.

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(ii) All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Company is entitled to including under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives and concessions;

(iii) All contracts of the Transferor Companies 1 and 2, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favor of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto;

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(iv) All the employees of the Transferor Company no. 1 and 2 shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favorable than those on which they are engaged by the Transferor Companies, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;

(v) All liabilities of the Transferor Companies, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Companies Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company, as if it had incurred such liabilities.

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(vi) All proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company.

(vii) Any person interested or effected shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary

Further, the 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 Companies for registration and on such Certified Copy being so delivered, the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies 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.

The Company Petition is allowed in the above terms.

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**(BINOD KUMAR SINHA)**  
**MEMBER (T)**

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**(DHARMINDER SINGH)**  
**MEMBER (J)**