

**(202) 08 NCLT CK 0001**

**National Company Law Tribunal, Allahabad Bench Prayagraj**

**Case No:** Company Application CA (CAA) NO.15/ALD/2022

Navjyoti Residency Private  
Limited Vs

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** Aug. 1, 0202

**Acts Referred:**

- Companies Act, 2013 - Section 133, 230, 230(7), 231, 232, 232(3)

**Hon'ble Judges:** Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

**Bench:** Division Bench

**Advocate:** Anil Kumar

**Final Decision:** Allowed

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### **Judgement**

\*\*\*\*\*

Harnam Singh Thakur, Member (Judicial)"\*\*\*\*\*

1. This is a joint first motion application filed by applicant companies namely: Navjyoti Residency Private Limited (Transferor Company-I/ Applicant,\*\*\*\*\*

Company-I), ALD Land & Property Management Private Limited (Transferor Company-II/ Applicant Company-II), Laxmi Mart Private Limited",\*\*\*\*\*

(Transferor Company-III/ Applicant Company-III) and Amrit Banaspati Company Private Limited (Transferee Company/ Applicant Company-IV),\*\*\*\*\*

under sections 230 to 232 and applicable provisions of the Companies Act, 2013 (â€œActâ€) read with Companies (Compromises, Arrangements and",\*\*\*\*\*

Amalgamation) Rules, 2016 (â€œRulesâ€) in relation to the Scheme of Amalgamation of Applicant Company-I, Applicant Company-II, Applicant",\*\*\*\*\*

Company-III with Applicant Company-IV. The said scheme is attached as Annexure  
â€" I of the Application.,,,,,,

2. The Applicant Companies have prayed for dispensing with the requirement of  
convening the meeting of the Equity Shareholders, Secured and",,,,,,

Unsecured Creditors of all the Applicant Companies.,,,,,,

3. The main objects of Applicant Company No.1 are to carry on the business of  
buying, selling and dealing in properties, land, construction of houses," ,,,,,,

factory, buildings and to act as builder, contractor and agent for purchasing, selling  
and letting on hire land, houses, commercial and/or residential" ,,,,,,

buildings on commission basis.,,,,,,

4. The main objects of Applicant Company No. 2 are carry on the business of  
builders, engineers and contractors and to purchase, lease, acquire land" ,,,,,,

and any estate and to form a colony, society with or without sanitary water, roads  
and lights, convenience for residential, commercial and/or public" ,,,,,,

utilities and by constructing, reconstructing, altering, decorating, furnishing and  
improving buildings, offices, flats, houses, factories, warehouses, shops," ,,,,,,

schools, colleges, roads, drains and by entering into contracts and arrangements  
with builders, tenants and others." ,,,,,,

5. The main objects of Applicant Company No. 3 are to carry on businesses as  
buyers, sellers, import traders, distributors, agents, stockiest," ,,,,,,

commission agents, and dealers of all kinds of consumer, industrial or engineering  
goods, commodities, products and to carry on the business of real" ,,,,,,

estate & property, to purchase, lease, acquire land and to develop and construct and  
operate shopping malls, complexes, retailing outlets, shopping" ,,,,,,

centers, residential and commercial township, and other real estate activities." ,,,,,,

6. The main objects of Applicant Company No.4 are to carry on the business of  
development construction and operation of shopping malls," ,,,,,,

multiplexes, retailing outlets, shopping centers, residential/commercial townships,  
group housing buildings/flats and other construction/real estate" ,,,,,,

activity individually or in combination formats comprising flats, buildings, shops,  
offices and/or units for residential commercial, retail or shopping" ,,,,,,

purposes convention centers, recreation centers, amusement parks, running and  
managing hotels, motels, restaurants, resorts, inns, holiday houses," ,,,,,,

amusement parks, guest houses, rest houses, villas, castles, cottages, service apartments, banquets halls, restaurants, canteens, caterers, cafes, health",,,,,,

clubs, spas, yoga/physio/gymnastic centers, baths, dressing rooms, health center, conference center, catering and hospitality services, massage and",,,,,,

beauty parlors and all other types of accommodations of all description including consultancy services to manage, run and operate hospitality business.",,,,,,

7. It is submitted that the registered offices of Applicant Companies are situated in the State of Uttar Pradesh. Therefore, the territorial jurisdiction of",,,,,,

all the Applicant Companies fall with this bench.,,,,,,

8. The rationale of the scheme is given below: -,,,,,,

The Transferee Company is engaged in the business of trading of agri-commodities & other products and holding investments in group companies as,,,,,

well as other financial instruments. All the Transferor Companies are non-operating Companies and have no business operations. The Transferor,,,,,

Company " I is a wholly owned subsidiary of Transferee Company and is holding investment in one of the Group Company. All the three Transferor,,,,,

Companies as well as the Transferee Company have been promoted by the same promoters and belong to the same group. The amalgamation of the,,,,,

Transferor Companies with the Transferee Company would result in the following benefits:,,,,,

a) The consolidation of the Group Companies as a single entity will lead to efficient utilization of the capital and financial resources and will provide several benefits,,,,,

including streamlined group structure by reducing number of entities, reducing the multiplicity of legal and regulatory compliances and rationalization of cost;" ,,,,,,

b) Result in improved shareholder's value for all the companies by way of improved financial structure and cash flows;,,,,,

c) Result in reduction in fixed expenses, overheads, administrative and other expenditure of the group companies and eliminate multi-layer structure, managerial",,,,,,

overlaps and cost duplication;,,,,,

d) The amalgamation would result in better economic control, increased financial strength and flexibility and enhance the ability of the amalgamated entity and its",,,,,,

future business potential;,,,,,

e) The amalgamation will be beneficial and in the interest of all the stakeholders, including shareholders and employees of the Transferor as well as the Transferee",,,,,,

companies.,,,,,,

9. It is stated that the Board of Directors of the Applicant Companies in their meetings held on 17.06.2022 have considered and unanimously approved,,,,,

the Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The copy of the Board Resolutions dated 17.06.2022 of the,,,,,

Applicant Companies are attached at Annexure 31, Annexure 32, Annexure 33 and Annexure 34 respectively of the application." ,,,,,,

10. The appointed date of the Scheme is 01.04.2022 as mentioned in the Part A, Para 1.1 (b) of the Scheme of Amalgamation which is attached as" ,,,,,,

Annexure - 1 of the application.,,,,,,

11. It is stated that Applicant Companies have filed the audited financial statements as on 31.03.2022 and 31.03.2021 which are attached as Annexure,,,,,

â€" 7, Annexure â€" 13, Annexure â€" 19 and Annexure â€" 25 respectively of the application." ,,,,,,

12. It is submitted that in pursuance of the proviso to Sec. 230 (7) and Section 232 (3) of the Act, the applicant companies have filed the certificates" ,,,,,,

dated 11.07.2022 issued by statutory auditors of applicant companies certifying that the Scheme is in compliance with the Accounting Standards under,,,,,

Section 133 of the Act and the same are attached as Annexure â€" 27, Annexure â€" 28, Annexure â€" 29 and Annexure â€" 30 respectively of the" ,,,,,,

application.,,,,,,

13. It is further submitted by the counsel for applicant companies that as per Valuation Report dated 17.06.2022 obtained from SSPA & Co.," ,,,,,,

Chartered Accountants, [Firm Regn. No. 128851W] [Registered valuer No. :IBBI/RV-E/06/2020/126] which is attached as Annexure â€" 26 of the" ,,,,,,

Application, the following share exchange ratio is proposed:" ,,,,,,

(i) issue and allot 10 (ten) equity shares of Rs. 10/- each fully paid up of the Transferee Company for every 343 (three hundred forty three) equity shares of Rs.,,,,,,

10/- each fully paid up of the Transferor Company - II held by the equity shareholders, whose names appear in the Register of Members of the

Transferor" ,,,,,,

Company-II as on the Record Date fixed for the purpose; and ,,,,,,

(ii) issue and allot 5 (five) equity shares of Rs. 10/- each fully paid up of the Transferee Company for every 659 (six hundred and fifty nine) equity shares of Rs. ,,,,,,

10/- each fully paid up of the Transferor Company - III held by the equity shareholders, whose names appear in the Register of Members of the Transferor" ,,,,,,

Company-III as on the Record Date fixed for the purpose; and ,,,,,,

(iii) Transferor Company-I is a wholly-owned subsidiary of the Transferee Company and its entire share capital is held by the Transferee Company and its ,,,,,,

nominees. Accordingly, upon the Scheme becoming effective, the entire share capital of the Transferor Company-I shall stand canceled without any further" ,,,,,,

obligation, acts or deeds and there will be no issue of shares of the Transferee Company to the shareholders of Transferor Company-I." ,,,,,,

14. It is submitted by the learned counsel that the Scheme (Annexure 1 of the application) also takes care of the interests of the staff/workers and ,,,,,,

employees of the Transferor Companies. By virtue of clause 3.15 of the Scheme, all the employees in the service of the Transferor Companies, if any" ,,,,,,

immediately preceding the Effective Date shall become employees of the Transferee Company on the basis that: ,,,,,,

(i) their services shall be deemed to have been continuous and not have been interrupted by reasons of the said transfer. ,,,,,,

(ii) the terms and conditions of service applicable to employees after such transfer shall not in any way be less favorable to them than those applicable to them ,,,,,,

Name of the

Applicant

Companies", "Equity Shareholders along

with their consent on affidavits", "Creditors along with their consent on affidavits,,,

, "Equity

Shareholders", "Consent

submitted on

Affidavit","Secured

Creditors","Consent

submitted

on

Affidavit","Unsecured

Creditors","Consent

submitte d

on affidavit

Applicant

Company

No.1/Transferor

Company","3 (Three) Equity

Shareholders","100%

in value",Nil,N/A,Nil,N/A

Applicant

Company No.2/

Transferor

Company","3 (Three) Equity

Shareholders","100%

in value",Nil,N/A,Nil,N/A

Applicant

Company No.3/

Transferor

Company","3 (Three)

Equity

Shareholders","100%

in value",Nil,N/A,Nil,N/A

Applicant

Company No.4/

Transferee

Company", "16 (Sixteen)

Equity

Shareholders", "100%

in value", "2(Two)

Secured

Creditors", "100%

in value", Nil, N/A

consent by way of affidavits have been received;,,,,,,

b) The meeting of the Secured Creditors of the Applicant Company No. IV/Transferee Company is dispensed with as it has 2 (Two) secured creditor and the consent,,,,,,

of both the secured creditor by way of No Objection certificate and Directors affidavit have been received. ....

c) Since, there are NIL Unsecured Creditors in the Applicant Company/Transferor Company No. IV. Therefore, there is no scope for any meeting." ....

21. In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition with" ....

a prayer that the Applicant Companies shall make specific prayer for sending notices to the (a) Central Government through Regional Director," ....

Northern Region, Ministry of Corporate Affairs, New Delhi, (b) concerned Registrar of Companies (c) Official Liquidator and (d) Income Tax" ....

Authorities by disclosing the PAN numbers of all the Applicant Companies in the title of the Second Motion Petition. The applicant companies shall, ....

also file separate affidavits stating the Sectoral regulators governing the respective companies while filing second motion petition. ....