

(202) 08 NCLT CK 0003

National Company Law Tribunal, Allahabad Bench Prayagraj

Case No: CA (CAA) No. 12/ALD Of 2022

Blooming Jewellery Private
Limited Vs

APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 1, 0202

Acts Referred:

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

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

Bench: Division Bench

Advocate: Rajeev K Goel, Kartikeya Goel, Ankit Singh

Final Decision: Allowed

Judgement

.....

Subrata Kumar Dash, Member (Technical)".....

1. This is a joint first motion Application filed by the Applicant Companies namely-Blooming Jewellery Private Limited (Transferor).....

Company/Applicant Company No. 1) and Lalji Sarraf Private Limited (Transferee Company/Applicant Company No. 2) under Sections 230 & 232.....

of the Companies Act, 2013 (the Act), the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, the National Company Law".....

Tribunal Rules, 2016, and other applicable provisions, if any, in relation to the Scheme of Amalgamation of Blooming Jewellery Pvt Ltd with Lalji".....

Sarraf Pvt Ltd. The said Scheme is attached as Annexure-A-4 of the Application.....

2. The Applicant Companies have prayed for dispensation of the requirement of the convening meetings of the Equity Shareholders, Secured Creditors".....

and Unsecured Creditors of both the Applicant Companies.,,,,,,

3. The Applicant Company No. 1 is presently engaged in purchase, sale and trading of gold, diamond and other precious and semi-precious metals;" ,,,,,,
manufacturing of jewellery on Job work for trading purposes.,,,,,,

4. The Applicant Company No. 2 is presently engaged in purchase, sale and trading of gold, diamond and other precious and semi-precious metals;" ,,,,,,
manufacturing of diamond, gold and silver ornaments." ,,,,,,

5. It is submitted that the registered offices of both the applicant companies are situated in the State of Uttar Pradesh. Hence, the jurisdiction of" ,,,,,,
applicant companies lie with this Bench.,,,,,,

6. The rationale of the Scheme is given below:,,,,,,

a. The Transferor Company and the Transferee Company are closely held private limited Group Companies under common management and control. Both the,,,,,,
Companies are engaged in similar business activities. The proposed amalgamation of the Transferor Company with the Transferee Company would result in,,,,,,
consolidation of both these Companies and pooling of their resources into a single entity.,,,,,,

b. The proposed Amalgamation would result in optimising and leveraging existing resources of these Companies for the most beneficial utilization of these factors in,,,,,,
the combined entity. It would be advantageous to combine the activities and operations of these Companies in a single entity and build strong capability to,,,,,,
effectively meet future challenges in a competitive business environment.,,,,,,

c. The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in" ,,,,,,
overheads, better and more productive utilization of financial, human and other resources and enhancement of overall business efficiency. The proposed Scheme will" ,,,,,,

enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth." ,,,,,,

d. The amalgamation will result in significant reduction in multiplicity of legal and regulatory compliances which at present is required to be made separately by

the,,,,,,

Transferor Company and the Transferee Company.

e. The proposed amalgamation will provide greater efficiency in fund management and unfettered access to fund flow generated by the combined business which can,,,,,,

be deployed more efficiently to fund organic and inorganic growth opportunities. The proposed amalgamation would enhance the shareholders' value of the,,,,,,

Transferor and the Transferee Companies.

f. The proposed Scheme of Amalgamation will have a beneficial impact on the Transferor and the Transferee Companies, their shareholders, employees and other"

stakeholders and all concerned.

7. It is stated that the Board of Directors of the Applicant Companies in their respective meetings held on 18.04.2022 have considered and,,,,,,

unanimously approved the proposed Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The copy of the board resolutions,,,,,,

of both the Applicant Companies are annexed with the Application as Annexure: A-1/5 and Annexure: A-2/5, respectively, with the application."

8. The appointed date of the Scheme is 01.04.2022 as mentioned in the Para 1.1.iv of Scheme of Amalgamation which is annexed as Annexure-A-4,,,,,,

with the application.

9. It is stated that both the Applicant Companies have filed their Audited Financial Statements as on 31.03.2021 and the same are annexed as,,,,,,

Annexure: A-1/2 and Annexure: A-2/2 respectively, with the Application. Both the Applicant Companies have also filed their Un-Audited Financial"

Statements (provisional) as on 31.12.2021 and the same are annexed as Annexure: A-1/3 and Annexure: A-2/3 respectively, with the Application."

10. It is submitted that in terms of the provisions of Section 230(7) and Section 232(3) of the Act, the Applicant Companies have filed Certificates"

dated 19.05.2022 issued by their respective Statutory Auditors, certifying that the Scheme is in compliance with the Accounting Standards prescribed"

under Section 133 of the Act and the same are annexed as Annexure: A-5 with Application.

11. It is further submitted that the Report on Valuation of Shares and Share Exchange Ratio for the proposed Scheme of Amalgamation has been,,,,,,

issued by Mr Sandeep Kumar Agrawal, a Chartered Accountant and the Registered Valuer in respect of Securities or Financial Assets, registered",,,,,,

with the Insolvency and Bankruptcy Board of India (IBBI) vide registration No. IBBI/RV/06/2019/10705 and the same is annexed as Annexure: A-3,,,,,,

with the Application. The following Fair Exchange Ratio has been proposed in the aforesaid Report:,,,,,,

a. The Transferee Company will issue 33 (thirty-three) Equity Shares of ₹10 each, credited as fully paid-up, to the Shareholders of the Transferor Company for",,,,,,

every 1,000 (one thousand) Equity Shares of ₹10 each held in the Transferor Company-Blooming Jewellery Pvt Ltd.",,,,,,

12. It is submitted that the Scheme [Annexure: A-4 of the Application] also takes care of the interests of the workmen and staff (employees) of the,,,,,,

Companies, by virtue of Clause 7 of the Scheme.",,,,,,

13. It is deposed by the Applicants that there is no sectoral regulator in any of the Applicant Companies whose approval may be required for the,,,,,,

sanction of the Scheme of Amalgamation except the statutory authorities i.e. (a) the Central Government through the office of the Regional Director,",,,,,

Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, Uttar Pradesh, Kanpur; and (c) The Official Liquidator,",,,,,

Uttar Pradesh, Allahabad; and (d) the Income Tax Department. It is also deposed that the proposed Scheme of Amalgamation will not attract the",,,,,,

provisions of the Competition Act, 2002. Hence, no intimation to/approval from the Competition Commission of India (CCI) is required for the present",,,,,,

Scheme of Amalgamation. The aforesaid affidavit has been filed by Dairy No. 0902109/00417/2022 dated 14.06.2022. There are no legal proceedings",,,,,,

inquiry, inspection, investigation, prosecution, litigation pending before any court of law or Tribunal against any of the Applicant Companies.The same",,,,,,

has been furnished by the applicant in Para 1.15 at Pg No. 15 of the application.,,,,,,

14. The applicant companies have furnished the following documents: -,,,,,,

i) Proposed Scheme of Amalgamation (Annexure â€" A-4 of the application),,,,,,

ii) List of Equity Shareholders of applicant companies duly certified by the Chartered Accountant (Annexure- A-1/6 and A-2/6 respectively of the application),,,,,,

- iii) List of Secured and Unsecured creditors of the applicant companies duly certified by the Chartered Accountant (Annexure- A-1/7, A-1/8, A-2/7 and A-1/8" ,,,,,, respectively of the application).,,,,,,
- iv) Audited Financial Statement as on 31.03.2021 and Unaudited Financial Statement (Provisional) as on 31.12.2021 of the applicant companies (Annexure- A-1/2, A-" ,,,,,, 1/3, A -2/2, A-2/3 respectively of the application)." ,,,,,,
- v) Valuation Report specifying the proposed Share Exchange Ratio and indicating the fair value of equity share (Annexure- A-3 of the application).,,,,,,
- vi) Certificates of Statutory Auditors to the effect that accounting treatment proposed in the Scheme is in conformity with Section 133 of Companies Act, 2013" ,,,,,, (Annexure- A-5 of the application).,,,,,,
- vii) Certified true copy of extract of the minutes of the board resolution of the applicant companies approving the Scheme (Annexure- A-1/5, A-2/5 respectively of the" ,,,,,, application).,,,,,,
- viii) List of equity shareholders of the applicant companies along with respective consent affidavits of equity shareholders approving the Scheme and dispensing ,,,,,, with the requirement to convene the meeting. (Annexure- A-1/6 and A-2/6 respectively of the application).,,,,,,
- ix) List of Unsecured Creditors of the applicant companies along with respective consent affidavits of Unsecured Creditors approving the Scheme and dispensing ,,,,,, with the requirement to convene the meeting duly certified by the Chartered Accountant. (Annexure- A-1/8 and A-2/8 respectively of the application).,,,,,,
- NameÂ Â Â
- ofÂ Â Â the
- Applicant
- Companies","EquityÂ Â Â Â Â
- Shareholders along with
- their consent on affidavits" ,,"CreditorsÂ alongÂ withÂ theirÂ consentÂ on
- affidavits" ,,,
- ,"Equity

Shareholders","Consent

submitted on

Affidavit","Secured

Creditors","Consent

submitted on

Affidavit","Unsecured

Creditors","Consent

submitted on

affidavit

Applicant Company

No.1/Transferor

Company","3Â (Three)

Equity

Shareholders","100%

in value",Nil,N/A,7,"94.73%

ofÂ Â Â Â

total value

Applicant

CompanyÂ Â Â

No.2/ Transferee

Company","2 (Two) Equity

Shareholders","100%

in value",Nil,N/A,31,"97.67%

of total value