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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH - I, CHENNAI
CP(CAA)/99(CHE)2022 in CA (CAA)/35(CHE)2022**

Under Sections 230 to 232 of the Companies Act, 2013
In the matter of *Scheme of Amalgamation*
of

SRI HARINI TEXTILES LIMITED.

CIN: U17111TN2005PLC057807.

A COMPANY INCORPORATED UNDER COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT. NO. 102,
SRI BHAVANAM, P.S.K.NAGAR, RAJAPALAYAM,
TAMIL NADU, 626108.

.. .. Applicant/ Transferor Company

Along with

THE RAMARAJU SURGICAL COTTON MILLS LIMITED.

CIN: L17111TN1939PLC002302,

A COMPANY INCORPORATED UNDER COMPANIES ACT, 1913,
HAVING ITS REGISTERED OFFICE AT,
No. 2, 119/120, PAC RAMASAMY RAJA SALAI,
RAJAPALAYAM
TAMIL NADU-626117.

.. .. Applicant/Transferee Company

And

Their Respective Shareholders and Creditors

Order pronounced 31st May 2023

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**SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant(s): Pawan Jhabakh, Advocate.

ORDER

Per: SANJIV JAIN, MEMBER (JUDICIAL)

The hearing of this Petition has been conducted through video
conferencing platform.

2. The present Company Petition has been filed by the Applicant Companies above named for the purpose of the approval of the Scheme of Amalgamation of **SRI HARINI TEXTILES LIMITED** (for brevity "Transferor Company"), **THE RAMARAJU SURGICAL COTTON MILLS LIMITED** (for brevity "Transferee Company) under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'the Rules') (hereinafter referred to as the 'SCHEME') pursuant to the Scheme proposed by the Applicant Companies and the said Scheme is also annexed as 'Annexure – A1' to the typed set filed along with the Application.

3. **1ST MOTION APPLICATION – IN BRIEF**

3.1. The Transferor Company and Transferee Company had filed the First Motion Application vide CA(CAA)/35(CHE)/2022 seeking the following directions

	EQUITY SHAREHOLDERS	SECURED CREDITORS	UNSECURED CREDITORS
TRANSFEROR COMPANY	To order for meeting	To dispense with	To dispense with
TRANSFEEEE COMPANY	To order for meeting	To order for meeting	To order for meeting

3.2 Based on such application moved under Sections 230-232 of the Companies Act, 2013; directions were issued by this Tribunal, vide

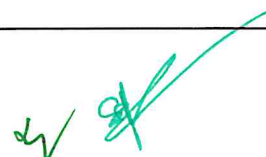
order dated 13.07.2022 in which the meetings of the secured and unsecured creditors of the Transferor company were dispensed with and meetings were ordered for the Equity shareholders of the Applicant Companies, secured creditors and unsecured creditors of the Transferee Company at the Registered office of the Transferee Company.

3.3 In compliance with the said order meetings were conducted and the chairman appointed for the said meetings have filed the report before this Tribunal. The said report is marked as Annexure A16 of the Application typeset. Subsequently, second motion petition was filed before this Tribunal by the Applicant Companies on 16.09.2022 for sanction of the Scheme of Amalgamation by this Tribunal.

4. RATIONALE OF THE SCHEME

The Rational for the Scheme as envisaged under the Scheme of Amalgamation appended as "Annexure A1" of the Application typeset is extracted hereunder,

"The directors of the Transferor Company and the Transferee Company have decided to amalgamate the Transferor Company with the Transferee Company in order to ensure better management of the Company as a single unit with focused management capabilities. The directors of the Transferor Company and the Transferee Company are of the opinion that the Transferor Company and the Transferee Company are part of the same group and are having common promoters and accordingly, the amalgamation of the



Transferor Company into the Transferee Company pursuant to the Scheme would result in streamlining the group corporate structure. The amalgamation will further enable to reduce the number of entities within the group that require to be administered and also help realize operational synergies which would also result in simplification of structure and operations and would benefit both the Transferor Company and the Transferee Company in the following manner:

- (i) Reduction in operative and administrative cost*
- (ii) Economies of scale, improved capital allocation, optimum utilization of resources and operational efficiency etc.*
- (iii) Elimination of inter-company holdings and layering of investments and business operations.*
- (iv) Simplification of management structure.*
- (v) Stronger asset base and infrastructure for future growth"*

5. In the second motion application filed by the Applicant Companies, this Tribunal vide order dated 26.10.2022 directed the Applicant Companies to issue notice to the Statutory / Regulatory Authorities viz. (i) Regional Director (Southern Region), Ministry of Corporate Affairs (MCA) (ii) Registrar of Companies, Chennai, MCA (iii) Official Liquidator (iv) Securities and Exchange Board of India (v) Jurisdictional Income Tax office, and other sectoral regulators, who govern the working of the respective companies, as well as for paper publication to be made in "Business Standard", English (All India Edition) and "Makkal Kural" Tamil (Tamil Nadu Edition).




6. In compliance to the said directions issued by this Tribunal, the Applicant Companies have filed an affidavit of service before the Registry of this Tribunal on 13.12.2022 vide SR No. 6482 and a perusal of the same discloses that the Applicant Companies had effected paper publications as directed by the Tribunal in the "Business Standard" (All India Edition) in English and "Makkal Kural" (Tamil Nadu Edition) in Tamil on 30.11.2022. It is also seen that notices had been also served to (i) Regional Director, Southern Region, Chennai on 28.11.2022, (ii) Registrar of Companies Chennai on 28.11.2022, (iii) Official Liquidator on 28.11.2022 (iv) SEBI and MSE (Metropolitan Stock Exchange) on 28.11.2022 and (v) Jurisdictional Income Tax Office on 28.11.2022 and the proof of the same by way of affidavits have been enclosed with the separate typed set. Pursuant to the service of notice of the petition the following statutory authorities have responded as follows:-

STATUTORY AUTHORITIES

7. REGIONAL DIRECTOR

The Regional Director, Southern Region (*hereinafter referred to as 'RD'*) Chennai to whom the notice was issued in the first motion itself, has filed his Report before this Tribunal on 10.10.2022 vide SR.No.5536 and has stated in para 7 of the report that Clause 6 of Part II of the Scheme provides for the protection of employees of the Transferor Company.



All staff and employees of the Transferor Company, in service on the Appointed date shall be deemed to have become permanent employees of the Transferee Company with effect from the Effective Date, without any break in their service and other benefits.

7.1. It is further averred in para 8 of the RD Report that as per Clause 10 of Part II of the Scheme, the Transferee Company shall issue and allot to the Shareholders of Transferor Company 34 fully paid up equity share of Rs. 10 each at the premium of Rs. 1449 per share for every 1,000 fully paid up equity shares of Rs. 10 each held by them in the Transferor Company, as consideration upon effectiveness of the Scheme of Amalgamation.

7.2 It is further averred in para 9 of the RD report that Clause 10.1.1 of Part II of the Scheme provides that the Transferee Company is holding 14,90,000 Equity Shares of Rs. 10 each in the Transferor Company. Upon effectiveness of the Scheme, the Equity Shares held by the Transferee Company in the Transferor Company shall stand extinguished and cancelled without further act or deed.

7.3 It is further averred in para 11 of the RD Report that Clause 11 part II of the scheme provides for clubbing of Authorized Share Capital of the Companies, as such the Authorized Share Capital of the



Transferor Company shall stand altered and merged with the Authorized Share Capital of the Transferee Company. Clause V of the MOA of the Transferee Company shall be altered as the Authorized Share Capital of the Company shall be Rs. 10,00,00,000 divided into 1,00,00,000 equity shares of Rs. 10 each. It is prayed that this Tribunal may direct the Transferee Company to pay the difference in fee / stamp duty and also to file the amended MOA and AOA with the Registrar of Companies in connection with the altered authorized share capital and the object clause.

7.4 Further it is averred in para 12 of the RD report that Clause 15 Part III of the scheme provides for dissolution of the Transferor Company, without being wound up.

7.5 It is further averred in para 13 of the RD report that as per the Report of the jurisdictional ROC, the Transferor Company and Transferee Company are regular in filing their statutory returns up to 31.03.2021 and there are no prosecution / complaint/ inspection or Investigation pending against the Applicant Companies.

7.6 Thus, after examining the Scheme, except the observations made in para 11 of the RD Report, the Regional Director in his Report



has stated that they have decided not to make any objection to the Scheme.

8. OFFICIAL LIQUIDATOR

The Official Liquidator, (*hereinafter referred to as 'OL'*) to whom the notice was issued has filed the Report before this Tribunal on 26.10.2022 vide SR No.5790 and stated that they had appointed *M/s.Sunderasan Lakshmanan & Co.*, Chartered Accountants from the panel maintained by their office to verify into the affairs of the Transferor Companies. The Chartered Accountants in their report submitted before the Official Liquidator have observed as follows;

"d) The Secured and Unsecured Creditors of the Transferor Company have approved the Scheme with requisite majority as per the affidavit dated 12th September, 2022.

e) The affairs of the Transferor Company are not prejudicial to any stakeholder.

f) As per clause 10 of the scheme, upon the scheme becoming effective, in consideration of the transfer and vesting of the undertaking of the Transferor Company in the Transferee Company in terms of the scheme, the consideration shall be discharged by the Transferor Company in the following manner:-

"The equity shareholders of the Transferor Company as on the record date shall be allotted 34 (Thirty Four) equity shares of Rs.10/- each at a price of Rs.1,459/- (Rupees One Thousand Four Hundred and Fifty Nine Only) per equity share



(including share premium of Rs. 1,449/- per equity share) credited as fully paid up shares of the Transferee Company in respect of every 1,000 (One Thousand) equity shares of Rs.10/- each fully paid up held by them in the Transferor Company." The Transferee Company holds 14,90,000/- equity shares of Rs.10/- each in the Transferor Company. Upon the Scheme of Amalgamation coming into effect, the equity shares held by the Transferee Company in the Transferor Company shall stand cancelled without any further act or deed. It is further clarified that in consequence of this cancellation which is incidental to the Scheme of Amalgamation, no equity shares shall be issued by the Transferee Company in respect of equity shares of the Transferor Company held by the Transferee Company."

8.1 Further it is averred in para 5 of the OL Report that based upon the examination of the books and papers and books of accounts of the Transferor Company to the best of their knowledge and relying on the information and explanations given to them, the Chartered Accountants have further reported that they have not come across any misfeasance by the Directors which would attract the provisions of Sections 339 and / or 340 of the Companies Act, 2013. The Chartered Accountants are also of the opinion that the affairs of the Transferor Company were not being conducted in a manner prejudicial to the interest of its members or public interest.

8.2 From the above observations made by the Chartered Accountant, the Official Liquidator has sought to take on record and consider the report of the

Chartered Accountant and fix the remuneration payable to the Auditor who has investigated into the affairs of Transferor Company.

8.3 In this regard, this Tribunal hereby directs the Transferor Company to pay a sum of *Rs. 50,000/- + GST (Rupees Fifty Thousand Plus GST)* to the Official Liquidator for the payment of fees payable towards the Auditor who has investigated into the affairs of the Transferor Company.

9. OTHER STATUTORY AUTHORITIES

9.1 Despite public notice being made in Business Standard (All India Edition) and Makkal Kural (Tamil Nadu Edition) vide order dated 26.10.2022, there is no representation or response from Securities and Exchange Board of India. In terms of Section 230(5) of the Companies Act, 2013 it is to be presumed that the Securities and Exchange Board of India does not have any objection to the sanction of the Scheme. (Deemed consent.)

9.2 Despite public notice being made in Business Standard (All India Edition) and Makkal Kural (Tamil Nadu Edition) vide order dated 26.10.2022, there is no representation or response from Metropolitan Stock Exchange (MSE). In terms of Section 230(5) of the Companies Act, 2013 it is to be presumed that the Metropolitan Stock Exchange (MSE) does not have any objection to the sanction of the Scheme. (Deemed consent.)



9.3 Despite notice having been served on the IT Department and public notice being made in Business Standard (All India Edition) and Makkal Kural (Tamil Nadu Edition) vide order dated 26.10.2022, there is no representation or response from the Department of Income Tax. In terms of Section 230(5) of the Companies Act, 2013 it is to be presumed that the Department of Income Tax does not have any objection to the sanction of the Scheme. (Deemed consent.)

9.4 Further it becomes relevant to discuss that in Company Petition CAA-284/ND/2018 vide Order dated 12.11.2018, the NCLT New Delhi has made the following observations with regard to the right of the IT Department in the Scheme of Amalgamation,

“taking into consideration the clauses contained in the Scheme in relation to liability to tax and also as insisted upon by the Income Tax and in terms of the decision in RE: Vodafone Essar Gujarat Limited v. Department of Income Tax (2013)353 ITR 222 (Guj) and the same being also affirmed by the Hon'ble Supreme Court and as reported in (2016) 66 taxmann.com.374(SC) from which it is seen that at the time of declining the SLPs filed by the revenue, however stating to the following effect vide its order dated April 15,2015 that the Department is entitled to take out appropriate proceedings for recovery of any statutory dues from the transferor or transferee or any other person who is liable for payment of such tax dues, the said protection be afforded is granted. With the above observations, the petition stands allowed and the scheme of amalgamation is sanctioned.”



10. VALUATION REPORT

The Learned Authorized Representative for the Petitioner Companies invited the attention of this Tribunal to the Valuation Report obtained from *Den Valuation OPC Private Limited*, and the same is placed as "Annexure A7" of the Application typeset, wherein it has been recommended by the independent Registered Valuer as follows:

"In view of application of relevant approach and methodology and arriving fair value of both Companies viz. TRSCM and SHTL, we recommend the share exchange ratio of 34 (Thirty Four) equity share of ₹10/- each fully paid up in the share capital of TRSCM to issue for every 1,000 (One Thousand) equity shares of 10/- each held to the shareholder of SHTL"

Note:

TRSCM is "The Ramaraju Surgical Cotton Mills Limited"

SHTL is "Sri Harini Textiles Limited"

11. ACCOUNTING TREATMENT

11.1. The Learned Counsel for the Petitioner Companies has stated that the Statutory Auditors of the Petitioner Companies have examined the Scheme and certified that the Petitioner Companies have complied with proviso to Section 230 (7) / Section 232 (3) and the Accounting Treatment contained in the proposed Scheme of Arrangement is in compliance with the Applicable Indian Accounting



Standards. The Certificates issued by the Statutory Auditors certifying the Accounting Treatment of the Petitioner Companies are placed as 'Annexure N' of the Application typeset.

12. OBSERVATIONS OF THIS TRIBUNAL

12.1. The Learned Counsel for the Petitioner companies submitted that no investigation proceedings are pending against the Transferor or Transferee Companies under the provisions of the Companies Act, 1956 or the Companies Act, 2013 and no proceedings against the petitioner companies for oppression or mismanagement have been filed before this Tribunal or erstwhile Company Law Board.

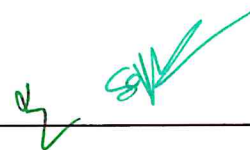
12.2. After analyzing the Scheme in detail, this Tribunal is of the considered view that the scheme as contemplated amongst the petitioner companies seems to be *prima facie* beneficial to the Company and will not be in any way detrimental to the interest of the shareholders of the Company. Considering the record placed before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the Scheme of Arrangement appended as "Annexure A14A" with the Company Petition as well as the prayer made therein.

12.3. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

12.4 It is made clear that the Income Tax Department or any other department is entitled to take out appropriate proceedings as per law and for recovery of any statutory dues from the Petitioner Companies or any other person who is liable for payment of such tax dues. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting approval of the said loan assignments and exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

13. THIS TRIBUNAL DO FURTHER ORDER:

- (i) That all properties, right and interest of the Transferor Company shall, pursuant to section 232(3) of the Companies Act, 1956 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the Transferee Company.



- (ii) That all the liabilities, powers, engagements, obligations and duties of the Transferor Company shall pursuant to Section 232(3) of the Companies Act,2013 without further act or deed be transferred to the Transferee Company and accordingly the same become the liabilities and duties of the Transferee Company.
- (iii) That the Appointed date mentioned in the Scheme in *Clause 1.4 of Part-I* shall be namely **01.04.2021**.
- (iv) The 'Effective date' shall be the last of the dates on which the certified copies of this order of sanctioning the scheme is filled with Jurisdictional ROC as mentioned in *Clause 1.6 of Part-I* of the SCHEME .
- (iv) That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company.
- (v) That all the employees of the Transferor Company in service on date immediately preceding the date on which the Scheme finally takes effect shall become the employees of the Transferee Company without any break or interruption in their service.
- (vi) That the Transferee Company do without further application allot to such members of the Transferor Company, as have not given such notice of dissent, as is required by *Clause 10 Part II* of the Scheme herein, the shares in the Transferee Company to which they are entitled under the said Scheme.
- (vii) That the Transferee Company shall file the revised Memorandum and Articles of Association with the



Jurisdictional ROC and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company after setting off the fees paid by the Transferor Company.

- (ix) That the Transferor Company and the Transferee Company, shall within thirty days of the date of 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 Company shall be dissolved without winding up and the Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file kept by him in relation to all the Transferee Company and the files relating to all the said companies shall be consolidated accordingly.
- (x) That any person or statutory or other authority interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

14. Accordingly, the Company Petitions stands **allowed** on the aforementioned terms.



SAMEER KAKAR
MEMBER (TECHNICAL)



SANJIV JAIN
MEMBER (JUDICIAL)