

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

IN THE MAIN MATTER OF:

Company Petition

CP(CAA)91/ND/2022

Connected with

Company Application No. CA-CAA-61/ND/2021

In the matter of Companies Act, 2013 (Section 230 and 232 of Companies Act,
2013)

And

In the matter of Scheme of Amalgamation of:

SHREE DURGA HOME APPLIANCES PRIVATE LIMITED

...TRANSFEROR/PETITIONER NO. 1 COMPANY

With

SUMMER COOL HOME APPLIANCES LIMITED

...TRANSFeree/ PETITIONER NO.2 COMPANY

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Order Delivered on 08.06.2026

PRESENT:

<u>For the Applicant</u>	: PCS Amitabh
For the IT Deptt.	: Mr. Ruchir Bhatia SSC Mr. Pratyaksh Gupta Mr. Punit Singhal for JSCs Adv Himanshu Dutt
For the OL	: Mr. Kartikeya Asthana, Ms. Urvashi Raj(Advocates)
For the RD	: Mr. P. Ganguly, Deputy Director

ORDER

Per: Atul Chaturvedi (Member Technical)

CP(CAA)91/ND/2022
Connected with
CA(CAA)/61/ND/2021
Date of Order 08.06.2026

1. The present Second Motion Petition is filed jointly by SHREE DURGA HOME APPLIANCES PRIVATE LIMITED (Petitioner Company No. 1/ Transferor Company No. 1), and M/s. SUMMER COOL HOME APPLIANCES LIMITED (Petitioner Company No. 2/ Transferee Company) under Sections 230-232 of the Companies Act, 2013 (Act) read with the Rules 3 and 5 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (Rules) for the Sanction of the proposed Scheme of Amalgamation wherein the entire entity of the Transferor / Petitioner No 1 company along with all of its assets and liabilities will be merged into the Transferee / Petitioner No 2 company in accordance with the provisions of the Scheme with effect from the Appointed Date, along with their respective shareholders and creditors.

The Registered office address of each Petitioner Company is situated in the NCT of Delhi and therefore, it is under the jurisdiction of the National Company Law Tribunal, New Delhi.

2. The Transferor/Petitioner No. 1 Company Shree Durga Home Appliances Private Limited was incorporated on 1st of September, 2008 under the Companies Act, 1956/2013. The CIN of the Petitioner No 1 company is U51505DL2008PTC182712 and the registered office is situated at 3/101, Gali No.-3, Main Seva Dham Road Mandoli Extn., Near MandoliChungi, Mandoli, Delhi-110093.
3. The Petitioner No.1 Company is currently engaged in the business of manufacturing of home appliances. The Authorized Share Capital of the Company is Rs. 5,00,00,000/- divided into 50,00,000 equity shares of Rs. 10 each and the issued, subscribed and paid-up share capital of the Company is Rs. 3,98,16,670.00 /- divided into 39,81,667 equity shares of Rs. 10 each.
4. The Transferee/Petitioner No. 2 Company, Summer Cool Home Appliances Limited was incorporated on 13th January, 2003 under the Companies Act, 1956/2013. The Petitioner No 2 Company was incorporated as a private limited company having name Summer Cool Home Appliances Private Limited and was later converted into a limited company. A fresh certificate of incorporation was issued by the Registrar of Companies having SRN C52034238 dated 18/05/2015. After conversion, the name of the company has become as Summer Cool Home Appliances Limited. The CIN of the Petitioner No 2 company is U51909DL2003PLC118431) and the registered office is situated at 3/101, Gali No.-3, Main Seva Dham Road Mandoli Extn., Near MandoliChungi, Mandoli, Delhi- 110093. The Petitioner No. 2 Company is engaged in the business of manufacturing and trading of home appliances. The Authorized Share Capital of the Company is Rs. 10,00,00,000/- divided into 100,00,000 equity shares of Rs. 10 each and the issued, subscribed and paid-up share capital of the Company is Rs. 1,39,24,000 /- divided into 13,92,400 equity shares of Rs. 10 each.

5. That this Tribunal vide order dated 30.11.2021 in the CA (CAA)-61/ND/2021 had dispensed with the requirement of the meeting of Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Company and of Transferee Company and directed the Applicant Companies to serve notice of application on Statutory Authorities.
6. That Sanjeev Kumar Gupta, Director and authorized signatory of the Transferor company has signed and duly verified the petition by affidavit.
7. That Abhishek Gupta, Director and authorized signatory of the Transferee company has signed and duly verified the petition by affidavit.
8. The Board of Directors of all the Petitioner Companies in their separate meetings approved and adopted the Scheme of Arrangement of the petitioner companies in accordance with the terms of the Scheme of Arrangement.
9. The rationale for Amalgamation of the Transferor Company with the Transferee Company is as follows:
 - a) The management of both the companies as one unit will result in streamlining of the group structure, better management of the resources, reduction of multiplicity of regulatory and compliance functions, reduction of costs.
 - b) The amalgamation will enable the Transferee Company to consolidate the resources of the Transferor Companies, which will lead to synergies of operations, reduction in overheads including administrative, managerial and other expenditure, operational and organizational efficiency and optimal utilization of resources.
 - c) The combined entity will have a bigger portfolio of products and assets which will strengthen its competitive position in the home appliances market. This will also enable the Transferee Company to increase its network of dealers and enhance its marketing capabilities.
 - d) Significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Company and the Transferee Company.
 - e) The proposed arrangement will simplify and strengthen the asset base of the Transferee Company.
10. The Second Motion petition was moved by the Petitioner Companies in connection with the Scheme of Arrangement. This Tribunal vide order 30th November 2021 directed to issue notice to the Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies, NCT of Delhi and Haryana, Ministry of Corporate Affairs, Income Tax Department, Official Liquidator and other such Sectoral Regulatory Authorities who shall be affected by the proposed Scheme.

11. It is submitted by the Petitioner Companies that in compliance of the above-stated directions, the Petitioners duly filed an Affidavit of Service by confirming that the notices were served to all the statutory authorities as per the direction given by this Tribunal dated 30th November 2021.

12. That the petitioner companies have highlighted certain material provisions of the scheme of amalgamation:

All assets and liabilities including reserves and undertaking of the Transferor Company shall without further act, instrument or deed be and vested in and/ or be deemed to have been transferred to and vested in the Transferee Company.

The amalgamation shall take effect from 1st April, 2020 (Appointed Date) but shall come into operation from the Effective Date as mentioned in the Scheme of Amalgamation

All employees of the Transferor company, if any in service on the Effective Date shall become the employees of the Transferee Company on such date without any break or interruption in services and on terms and condition not in any way less favourable to them than those subsisting with the Transferor Company, as the case may be on the said date.

The Transferee Company shall, in consideration of the transfer and vesting of all the assets and liabilities of the Transferor Company to the Transferee Company in terms of the Scheme, without any further application or deed, issue and allot 15 (fifteen) Equity Shares of Rs 10 each, credited as fully paid up, for every 59 (fifty-nine) Equity Shares of Rs. 10 each held in the Transferor Company.

13. That the regional director in his report did not raise any objection to the scheme of amalgamation yet they raised following issues:

a) *As per the financial statements for year ended 31.03.2023 of Transferor Company, the company has Nil revenue from its operations since last two financial years. Therefore, the company appears to be dormant u/s 455 of the Companies Act, 2013.*

b) *In the Auditors Report for year ended 31.03.2023 of Transferor Company, Auditor has made emphasis of matter as under:*

"Note 1.4 to the financial statements describing that the company is under merger proceedings since 01.04.2020, hence seizing its operations and going concern assumption of accounting. The balance of Rs.1626.56 lakh is outstanding as merger under process under other loans & advances in the balance sheet."

c) *As per the Annual Return filed by Transferor Company for year ended 31.03.2023, there is body corporate holding more than 10% of shares. However, no BEN-2 form has been filed by the company.*

- d) *In the Financial statements for the year ended 31.03.2023 of Transferor Company, the company has shown other loans & advances of Rs.167779772.9/-. However, the company has not made proper disclosure for the same.*
- e) *As per the master data of the Transferee Company the Registered office address of the company is "C-17, Meerut Road Industrial Area site - 3, Ghaziabad, Uttar Pradesh, India 201003". However, in the petition the Registered office of the Trnasferee is mentioned "3/101, Gali No. 3, Main Seva Dham Road Mandoli Extn., Near Mandoli Chungi, Mandoli, Delhi 110093". Further, on perusal of list of shareholder of the company as on 31.03.2023 as attached with MGT-7 the registered office printed is also of Ghaziabad.*
- f) *No provisions have been made for gratuity during the year as well during the previous year in compliance of As-15 "Employee Benefits relating to the provision of Gratuity and Leave Encashment if any and the same is being recognised only when it is actually paid, its effect of profit of the company could not be ascertained."*
- g) *The auditors report for the year ended 31.03.2023 of Transferee Company the Auditor has stated that "Quarterly return or statements of current assets filed by the company with bank/financial institutions are not in agreement with the books of accounts as the figures of inventories, are given to bank on estimated basis and provisional figures of Trade Receivables & Trade payables are given to bank net of advances and net of balances with group companies.*
- h) *The Transferee Company may kindly be directed to comply with the provision of section 232(3)(i) of the Companies Act, 2013 in regard to fee payable on its revised authorized share capital.*
14. That Mr. Abhishek Gupta director for both the petitioner company has filed a rejoinder to the report submitted by the RD by way of affidavit and made following submissions:
- a) *The petitioners have submitted that the business of the Transferor Company has already been integrated into the Transferee Company therefore the revenue is reflecting as 'NIL'.*
- b) *On the issue of the Auditors Report for year ended 31.03.2023 of Transferor Company and Auditor's emphasis reproduced below, the petitioners have stated that the observation is matter of facts and need no comments:*
"Note 1.4 to the financial statements describing that the company is under merger proceedings since 01.04.2020, hence seizing its operations and going concern assumption of accounting. The balance of Rs.1626.56lakh is outstanding as merger under process under other loans & advances in the balance sheet.

- c) That the petitioners have submitted that they have rectified their mistake and submitted the BEN-2 form.
- d) The petitioners have submitted that they have provided the break-wise components of the loan and advancements mentioned in the Auditor's report annexed in the RD's reply.
- e) That on the matter of different registered address, the petitioners have submitted that they have raised ticket with the MCA, but no correction was done.
- f) That on the issue of Gratuity, the petitioners have submitted the following:

In this matter this is to state that the Company is practicing the payment of Gratuity as and when the instance of the payment thereof arises. Provisions of the Gratuity as per AS 15 are being implemented by the company.

- g) On the issue Quarterly return or statements of current assets filed by the company with bank/financial institutions are not in agreement with the books of accounts, the petitioner company has made following submission

In this matter it is being stated that the comment of the auditor is re-iteration of the acceptable practice with the Banks where Quarterly Data is given on estimated basis and provisional figures of Trade Receivables & Trade payables are given net of advances and net of balances with group companies.

- h) On the issue of fee payable for the increase in the authorize share capital of the company, the petitioners have submitted that they will obey the order of this tribunal.
15. That the Income Tax Authority has in its submission dated 27.08.2024 stated that there stands total outstanding demand of Rs. 1,04,70,221.00 as on 04.06.2024 against the transferee company.
16. The transferee company in its reply through affidavit have claimed that they have already resolved the tax claim through Vivad Se Vishwas Tak scheme and an order of the Income Tax Authority dated 11.10.2021 for full and final settlement of the demand under the Direct Tax Vivad Se Vishwas Act, 2020 has been issued by the Principal Commissioner of Income Tax -07, New Delhi.
17. That both the petitioner companies in their joint affidavit of undertaking in compliance with the order of this tribunal dated 03.06.2025 have stated that there are no outstanding demands/dues towards Income Tax Department.
18. That the transferor company in their affidavit have stated the following:

That as on date, the Transferor Company, namely Shree Durga Home Appliances Private Limited, does not have any outstanding demands or dues towards the Income Tax Department except a pending proceeding under section 147 of the Income Tax Act 1961 pertaining to the assessment year 2018-19.

That it is categorically declared that the accounts of transferor company shall be maintained separately after the merger as well till the proceedings under the Section 147 of the Income Tax Act is pending against the transferor company so that any demand raised by the Income Tax Department, subsequent to proceedings under Section 147 is identified accordingly.

Transferee Company undertake to duly comply with all statutory obligations relating to any outstanding or contingent income tax liabilities, and the same shall be discharged or provided for as per the provisions of the Income Tax Act, 1961, and in accordance with the directions of the Hon'ble Tribunal.

19. That the official liquidator in its report has submitted that it has no objection to this scheme of amalgamation and have made following submission:

That the Official Liquidator has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner till the date of filing of this Report.

20. The Petitioner Companies shall maintain account in accordance with and as per the method of Arrangement prescribed in the applicable Indian Accounting Standard as notified under Section 133 of Companies Act, 2013 read together with Paragraph 3 of the Companies (Indian Accounting Standard) Rules, 2016 and other accounting principles generally accepted in India. In this regard, certified true copies of Certificates obtained from the Statutory Auditors of both the Transferor Company and Transferee Company confirming the accounting treatment proposed in the Scheme of Arrangement are filed along with the Petition.
21. No investigation proceedings have been instituted and are pending in relation to either of the Petitioner Companies under Sections 235 to 251 of the Act or under Sections 206 to 229 (Chapter XIV) of the Act. To the knowledge of each of the Petitioner Companies, no winding-up petition (including under Section 433 read with Section 434 of the Companies Act, 1956) and/or insolvency proceedings have been filed/instituted and are pending against either of the Petitioner Companies.
22. None of the directors of the Petitioner Companies have any material interest in the Scheme except to the extent of their directorships and

shareholding in the Petitioner Companies. This Joint Second Motion Petition is made bona fide and in the interest of justice and no one will be prejudiced if orders are made/or directions are given as prayed for.

23. Analysis and Finding
- a) After considering the reports, we are of the considered view that the Scheme is not prejudicial to the interest of the equity shareholders and creditors of the Transferor Companies and the Transferee Company and the Scheme will be beneficial to the Transferor Companies, Transferee Company and their respective shareholders and creditors.
 - b) The shareholders of the petitioner company are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by this Tribunal for the reason that it is not a part of the judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme, of which sanction is sought under Section 230-232 of the Companies Act of 2013, will not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors.
 - c) It has also been affirmed in the petition that the Scheme is in the interest of both the Transferor Companies, Transferee Company, their respective shareholders, creditors, employees and all concerned. In view of the foregoing discussions and upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, there appears to be no impediment in sanctioning the present Scheme.
24. Consequently, the sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.
- a) The Petitioners shall however remain bound to comply with the statutory requirements in accordance with the law.
 - b) Notwithstanding the above, if there is any deficiency found or, the violation committed, qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal to the scheme will not come in the way of action being taken in accordance with the law, against the concerned persons, directors and officials of the petitioners.
 - c) While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges 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.

- d) In compliance with the requirement of Section 230 (7) of the Act, the transferee company until the full implementation of the Scheme of Arrangement shall file a statement every year as stated in Form CAA 8 along with the required fee as prescribed in the Companies (Registration offices and fees) Rules 2014 within 210 days from the end of each financial year.
 - e) The proposed Appointed date for the proposed scheme of amalgamation is 1st April 2020. Having considered the time already elapsed and the fact that Accounts must have already been drawn for intervening period, we prescribe 1st April, 2026 as the 'Appointed Date' for the proposed Scheme.
25. This Tribunal does further order:
- a) That the Transferor Companies shall stand dissolved without following the process of winding-up; and
 - b) That all properties, rights and powers of the Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly, the same shall pursuant to Section 230-232 of the Companies Act, 2013 be transferred to and vested in the Transferee Company for all intents, purposes and interest of the Transferor Companies subject nevertheless to all changes now affecting the same; and
 - c) That all the liabilities, (if any) and powers, engagements, obligations and duties of the Transferor Companies 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; and
 - d) That all proceedings now pending by or against the Transferor Company shall be continued by or against the Transferee Company; and
 - e) That all the employees of the Transferor Companies in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date, shall become the employees of the Transferee Company on such date, without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the concerned Transferor Companies on the said date; and
 - f) That the Petitioner Companies, shall within thirty days of the date of the receipt of this order cause certified copy of this Order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferee Company shall be deemed to be transferred; and
 - g) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

26. In compliance with the requirement of Section 232 (7) of the Act, the Transferee Companies shall until the full implementation of the Scheme of Amalgamation shall file a statement every year in the Form CAA 8 along with the required fees with the Registrar of Companies as prescribed in the Companies (Registration offices and fees) Rules 2014 within 210 days from the end of each financial year.
27. Accordingly, the Scheme stands sanctioned and CP(CAA)/91(ND)/2022 stands disposed of in the above terms.
28. Let copy of the order be served to the parties.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (JUDICIAL)**