

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT III

C.A.(CAA)/252/MB/C-III/2023

In the matter of the Companies Act, 2013
(18 of 2013);

AND

In the matter of Sections 230 to 232 and
other applicable provisions of the
Companies Act, 2013 and Rules framed
thereunder;

AND

In the matter of Scheme of Amalgamation
between Royal Spinwell and Developers
Private Ltd. (“Transferor Company” /
“First Applicant Company”) and Royal
Cushion Vinyl Products Limited
(“Transferee Company” / “Second
Applicant Company”) and their respective
Shareholders and Creditors (“Scheme”)

Royal Spinwell and Developers)

Private Limited)

CIN: U17120MH1991PTC062262)

a company incorporated under the)

Companies Act, 1956 having its)

registered office at 60CD, “Shlok”,)

Government Industrial Estate,)

Charkop, Kandivali (west), Mumbai -)

400067

... *First Applicant Company/*

Transferor Company

Royal Cushion Vinyl Products)

Limited)

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT III C.A.(CAA)/252/MB/C-III/2023

CIN: L24110MH1983PLC031395)
a company incorporated under the)
Companies Act, 1956 having its)
registered office at 60CD, “Shlok”,)
Government Industrial Estate,) ... *Second Applicant Company/*
Charkop, Kandivali (west), Mumbai -) *Transferee Company*
400067

(Hereinafter First Applicant Company and Second Applicant Company shall be collectively known as Applicant Companies)

Order pronounced on: 15th December 2023

Coram:

Hon’ble Ms. Lakshmi Gurung, Member (Judicial)

Hon’ble Sh. Charanjeet Singh Gulati, Member (Technical)

Appearances:

For the Applicant Companies: Bathiya Legal

Per: Sh. Charanjeet Singh Gulati, Member (Technical)

ORDER

1. The present Scheme is a Scheme of Arrangement in the nature of Amalgamation of Royal Spinwell and Developers Private Limited (**“Transferor Company” or “First Applicant Company”**) and Royal Cushion Vinyl Products Limited (**“Transferee Company” or “Second Applicant Company”**) and their respective shareholders and creditors (**“the Scheme”**), under the provisions of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and Rules framed thereunder.

2. The Boards of the Applicant Companies approved the said Scheme of Amalgamation by passing their respective Resolutions on **4th January 2022** which are annexed to the Company Scheme Application.
3. The Appointed Date of the Scheme is **1st October 2021**.
4. Learned Counsel submits that the Applicant Companies form part of the same management and controlling shareholders.

5. **The Applicant Companies**

- 5.1 The First Applicant Company which was incorporated on 28.06.1991 having registered office at Mumbai, Maharashtra is engaged in the business of manufacturing and trading in yarns, fibres and textiles and also in the business of development and sale of its land/properties/real estate assets.
- 5.2 The Second Applicant Company was incorporated on 21.11.1983 having registered office at Mumbai and is primarily engaged in the business of manufacturing and supplying of PVC floor covering, PVC sheets and PVC leathercloth.
- 5.3 As both the Applicant Companies have registered offices at Mumbai, Maharashtra, this Bench has jurisdiction to entertain the present application.

6. **Rationale of the Scheme:**

The Learned Counsel submits the introduction and rationale for the Scheme: -

- i) *The Transferor Company was incorporated with an object to primarily engage in the business of manufacturing and trading in yarn, fibres and textiles. The Transferee Company is engaged in the business of manufacture and supplying of PVC floor covering, PVC sheets and PVC*

leathercloth. Both the Companies are held by the same controlling shareholders group.

- ii) RCVPL has a manufacturing plant/factory located at Garadhiya, Taluka Savli, District Vadodara, Gujarat on a part of the larger piece and parcel of land (referred to as the “**RCVPL Larger Land**”). The said manufacturing plant/factory is set-up on a small part of the said Larger Land (referred to as the “**RCVPL Larger Land in Use**”) and the balance area of the said RCVPL Larger Land apart from the RCVPL Larger Land in Use is vacant and surplus (referred to as the “**RCVPL Surplus Land**”).*
- iii) The management of RCVPL has been exploring and evaluating to sell and monetise the surplus assets of RCVPL which includes RCVPL Surplus Land, which are not being used for its core business operations with an intent to generate funds which can be better deployed in its core business operations. In this regard, RCVPL has recently entered into a Memorandum of Understanding (MOU) with a party (‘Other Party to the MOU’) who has expertise to sell and market industrial land parcels/ plots whereby certain common minimum arrangement was agreed upon in relation to sell of RCVPL Surplus Land to ultimate interested buyers, who may be introduced by the Other Party to the MOU.*
- iv) RSDPL is a group company of RCVPL and is related to the promoter and promoter group of RCVPL. RSDPL also owns and possesses a vacant piece and parcel of land at Garadhiya, Taluka Savli, District Vadodara, Gujarat which is adjoining to and adjacent to RCVPL Larger Land (referred to as the ‘**RSDPL Land**’). RSDPL has also been exploring and looking to find suitable buyers/ interested parties who are willing to purchase the RSDPL Land either in entirety or in parts at attractive market rates to maximize the monetisation from the surplus assets.*
- v) In the stated background and in order to consolidate the adjoining land parcels, namely RCVPL Surplus Land and RSDPL Land, owned by both the companies, viz. RCVPL and RSDPL, with an objective to be in a better position to negotiate, market and monetise the consolidated larger land parcels to realise its full potential in an efficient and optimum manner including by way of joint-development, co-development, industrial pointing, outright sales, etc., the management of RCVPL and RSDPL has proposed a scheme of arrangement under the provisions of the section 230 to*

232 of the Companies Act, 2013 to provide for the merger of RSDPL into RCVPL.

- vi) The Scheme provides an opportunity to RCVPL to acquire and aggregate the RSDPL Land along with RCVPL Surplus Land to create a larger pool of land which can be monetised and marketed at better commercial considerations and at the same time, discharge the consideration for acquisition/ aggregation of RSDPL Land through merger of RSDPL into RCVPL in non-monetary form by issue of its securities to the shareholders of RSDPL.*
- vii) Further, merger of RSDPL with RCVPL will lead to a more efficient utilisation, exploitation and monetisation of larger land parcels, better realisation of cash / funds which would be generated from such monetisation of assets and larger pool of funds which can be better deployed for further business operations.*
- viii) The merger of Companies will also provide ancillary benefits in the form of administrative and operational rationalisation and promote organisational efficiencies with the achievement of greater economies of scale, reduction in overheads and improvement in various other operating parameters including administrative, managerial and other expenditure, and optimal utilisation of resources by elimination of duplication of activities and related costs.*
- ix) Thus, with an intent to achieve the aforesaid objectives and further in order to consolidate, streamline and effectively merge the Transferor Company and the Transferee Company in a single entity it is intended that the Transferor Company be merged/ amalgamated with the Transferee Company.*
- x) In view of the aforesaid objectives, the Board of Directors of the Transferor Company and the Transferee Company have considered and proposed the amalgamation for the transfer and vesting of the Undertaking of the Transferor Company (as defined in the Scheme) and business of the Transferor Company with and into the Transferee Company and other ancillary and incidental matters stated herein, with an opinion that the amalgamation and other provisions of the Scheme would benefit the shareholders, employees and other stakeholders of the Transferor Company and the Transferee Company.*

xi) The amalgamation of the Transferor Company with the Transferee Company will combine the business, activities and operations of the Transferor Company and the Transferee Company into a single company with effect from the Appointed Date and shall be in compliance with the provisions of the IT Act including section 2(1B) thereof or any amendments thereto.

7. The **Authorized, Issued, Subscribed and Paid Up Capital** of the Applicant Companies are as under: -

7.1 The Authorized, Issued, Subscribed and Paid Up Capital of the **Transferor Company “Royal Spinwell and Developers Private Limited”** as on 31.03.2021 is as under:

Particulars	Amount (in Rs.)
Authorised Capital	
1,00,000 Equity Shares of Rs. 10/- each	10,00,000
TOTAL	10,00,000
Issued Subscribed and Paid-up Capital	
10,020 Equity Shares of Rs. 10/- each fully paid up	1,00,200
TOTAL	1,00,200

7.2 The Authorized, Issued, Subscribed and Paid Up Capital of the **Transferee Company “Royal Cushion Vinyl Products Limited”** as on 31.03.2021 is as under:

Particulars	Amount (in Rs.)
Authorised Capital	
3,00,00,000 Equity Shares of Rs. 10/- each	30,00,00,000
TOTAL	30,00,00,000

Issued Subscribed and Paid-up Capital	
1,20,67,212 Equity Shares of Rs. 10/- each fully paid up	12,06,72,120
TOTAL	12,06,72,120

8. Learned Counsel submits that subsequent to 3103.2021, there has been no change in the Issued, subscribed and paid-up share capital of the Applicant Companies.
9. Upon perusal of the Scheme, it is observed that pursuant to the Scheme becoming effective, the Authorised Share Capital of the Transferee Company would be increased and reclassified as under: -

Particulars	Amount (in Rs.)
Authorised Capital	
2,16,00,000 Equity Shares of Rs. 10/- each	21,60,00,000
85,00,000 Preference Shares of Rs. 10/- each	8,50,00,000
TOTAL	30,10,00,000

10. **Consideration** for the Scheme, as determined by the Valuation Report dated 31.12.2021 issued by Mr. Mayur Popat, Registered Valuer, which was affirmed by Khambatta Securities Limited, Category-I Merchant Banker in its Fairness Opinion Report dated 04.01.2022, is as follows:

“7,807 equity share of face value of Rs.10/- each of the Transferee Company and 16,117 Non-Convertible Redeemable Preference Shares of face value of Rs.10 each of the Transferee Company for every 19 fully paid

*up equity share of face value of Rs.10 each of the
Transferor Company (**Share Entitlement Ratio**).*”

11. The equity shares of the Transferee Company are listed on the Bombay Stock Exchange Limited (BSE). In compliance with the applicable SEBI Regulations, the Transferee Company had submitted to BSE a copy of the Scheme along with the other required documents for seeking its no-objection letter as envisaged under Regulation 37 of the SEBI (Listing Regulations and Disclosure Requirements) Regulations, 2015 read with SEBI Master Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021/0000000665 dated 23.11.2021. In response to the same, a ‘No Adverse Observation’ letter dated 06.04.2023 was received from BSE which is annexed to the present Application.
12. **Meetings of Shareholders and Creditors of First Applicant Company**
 - 12.1 There are **10** (ten) Equity Shareholders as on 30.06.2023 in the **First Applicant Company** certified by the statutory auditors. All Equity Shareholders have given their consent for approval of the Scheme by way of affidavits which are annexed to the Application.
 - 12.2 In view of the consent affidavits given by all Equity shareholders of the First Applicant Company, the meeting of the Equity shareholders of the First Applicant Company for approving the Scheme is hereby **dispensed with**.
 - 12.3 There are **no** Secured Creditors as on 31.07.2023 in the **First Applicant Company** certified by the Statutory Auditors. In view of the fact that there are no Secured Creditors, the question of convening and holding the meeting of the Secured Creditors of the First Applicant Company **does not arise**.

12.4 There is **1** (one) Unsecured Creditor as on 31.07.2023 in the **First Applicant Company** having value of Rs. 11,800 (Rupees Eleven Thousand and Eight Hundred Rupees) certified by the statutory auditors. Consent Affidavit has been procured from the said unsecured creditor. In view of the same, the meeting of the unsecured creditor of the First Applicant Company for approval of Scheme is hereby **dispensed with**.

13. **Meetings of Shareholders and Creditors of Second Applicant Company**

13.1 There are **3742**(Three Thousand Seven Hundred and Forty-two) **Equity Shareholders** as on 30.06.2023 in the **Second Applicant Company** certified by the statutory auditors.

13.2 There is **1** (one) **Secured Creditor** as on 31.07.2023 in the **Second Applicant Company** having value of Rs. 30,35,03,256 (Rupees Thirty Crores Thirty-five Lakhs Three thousand and Two hundred and Fifty-six) certified by statutory authorities. Consent Affidavit has been procured from the said secured creditor. In view of the same, the meeting of the secured creditor of the Second Applicant Company for approval of Scheme is hereby **dispensed with**.

13.3 There are 285 **Unsecured Creditors** as on 31.07.2023 in the **Second Applicant Company** aggregating to an amount of Rs. 1,12,25,11,739. Consent Affidavits have been procured from unsecured creditors having total value of 77.79%.

14. The Tribunal directs the meetings of the Shareholders and Unsecured Creditors of the Second Applicant Company to be convened and held at a date and time as may be decided by the Chairperson in consultation with the Counsel for Applicant Companies for approving the proposed

Scheme, through physical means or video conferencing and/ or other audio visual means in accordance with the Ministry of Corporate Affairs Circulars issued from time to time, subject to giving 30 days' notice as per the provisions of the Companies Act, 2013 and the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

15. The e-voting facility, in case of meeting through video conferencing or other audio-visual means, for the Shareholders and Unsecured Creditors of the Second Applicant Company shall be provided in compliance with the applicable circulars issued by Ministry of Corporate Affairs and the Securities and Exchange of India (SEBI) from time to time as permissible under the law.
16. **Mr. Anmol Jha**, Membership No. F5962, (mobile: 8928119580, email: jha_anmol@yahoo.com) is hereby appointed as the Chairperson for the meetings and **Ms. Pooja Singhal**, Membership No. A19094 (mobile: 8451954808, email: poojaguptacs@gmail.com) is appointed as Alternate Chairperson. The Scrutinizer for the meetings shall be **Ms. Rachana Shanbhag**, Membership No. F8227, (mobile: 7738161169, email: rhs@csdakamat.com).
17. The Second Applicant Company shall pay an amount of Rs. 1,00,000/- to the Chairperson and Rs. 75,000/- to the Alternate Chairperson as remuneration, and the Scrutinizer shall be paid Rs. 75,000/- as remuneration by the Second Applicant Company.
18. The notice of the aforesaid meetings of the shareholders and unsecured creditors of the Second Applicant Company shall be advertised in Form No. CAA.2 as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in two newspapers viz. "**Business Standard**" in English circulated in India and translation thereof in "**Navshakti**" in Marathi circulated in the State in which

registered office of the Companies are situated, not less than 30 days before the date fixed for the meetings.

19. The Chairperson appointed for the aforesaid meetings to issue the advertisement and send out the notices of the meetings referred to above. The said Chairperson of the meetings shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meetings, including for deciding procedural questions that may arise at the aforesaid meetings or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meetings by any person(s).
20. The quorum for the meeting of the shareholders of Second Applicant Company shall be minimum 300 in number and the quorum for meeting of unsecured creditors of the Second Applicant Company shall be minimum 30 in number.
21. The value of each shareholder and creditor of the Second Applicant Company shall be in accordance with the books/register of the Second Applicant Company or depository records and where the entries in the books/register/ depository records are disputed, the Chairperson of the meetings shall determine the value for the aforesaid meetings and his decision in that behalf would be final.
22. The Chairperson appointed for the meetings shall file an Affidavit not less than 7 (seven) days before the date fixed for the holding of meetings of shareholders and unsecured creditors of the Second Applicant Company and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

23. The voting by authorized representative in case of body corporate be permitted, provided that authorization duly signed by the person entitled to attend and vote at the meetings is filed with the Second Applicant Company at its Registered Office at 60CD, "Shlok", Government Industrial Estate, Charkop, Kandivali (West), Mumbai – 400067, not later than 48 hours before the aforesaid meetings.
24. The Chairperson of the meetings of the Second Applicant Company to report to this Tribunal, the result of the aforesaid meetings within 7 (Seven) days of the conclusion of the meetings of the shareholders and unsecured creditors and the said report shall be verified by his Affidavit.
25. The Applicant Companies are directed to serve notices along with copy of scheme upon: -
- (i) Concerned Income Tax Authorities within whose jurisdiction the Applicant Companies' assessments are made, and also to the Nodal Officer at Pr. CCIT Mumbai, 3rd floor, Aayakar Bhavan, Maharashtra Karve Road, Mumbai 400020;
 - (ii) the Central Government through the office of Regional Director, Western Region, Mumbai;
 - (iii) Registrar of Companies, Mumbai;
 - (iv) Securities and Exchange Board of India (For Transferee Company);
 - (v) Bombay Stock Exchange Limited (For Transferee Company);
 - (vi) Official Liquidator, High Court, Bombay (For Transferor Company);

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with a direction that they may submit their representations, if any, within a period of 30 (thirty) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the respective Applicant Companies.

26. The Applicant Companies to file affidavit of service in the Registry proving dispatch of notices to the Regulatory Authorities and dispatch of notices to Shareholders and Unsecured Creditors, as may be applicable, and to report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

27. Ordered accordingly.

Sd/-

Sh. Charanjeet Singh Gulati
Member (Technical)

Sd/-

Ms. Lakshmi Gurung
Member (Judicial)