



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CA(CAA) No. 05/ALD/2025

(First Motion)

(Under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016)

IN THE MATTER OF SCHEME OF ARRANGEMENT BETWEEN:

SBW UDYOG LIMITED,

44, Thornhill Road, Prayagraj,
Uttar Pradesh - 211002

..... Demerged/Transferor Company

SBW UNITY PRIVATE LIMITED

44, Thornhill Road, Prayagraj,
Uttar Pradesh - 211002

..... Resulting/Transferee Company

AND

Their respective Shareholders and Creditors

Order Pronounced on 25.03.2025

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Mr. R.P. Agarwal, Senior Adv. : *For the Applicant Companies*
assisted by Mr. Abhishek Tripathi, Adv.

CA(CAA) No. 05/ALD/2025 (First Motion)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**



ORDER

1. This is a joint First Motion Application filed by the Applicant Companies namely, **SBW Udyog Limited**, Applicant Company-1, (Demerged/Transferor Company) and **SBW Unity Private Limited**, Applicant Company-2, (Resulting/Transferee Company), (together referred to as '**Applicant Companies**') under sections 230-232 of the Companies Act, 2013 (the '**Act**') and other applicable provisions of the Act read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the '**Rules**') in relation to the Scheme of Arrangement amongst the Applicant Companies and their respective Shareholders and Creditors (the '**Scheme**' / '**Scheme of Arrangement**'). The Scheme is attached as **Annexure- 1** to the Company Application.
2. The Scheme of Arrangement as proposed in the Company Application, provides that with effect from the **Appointed Date** i.e. **01.04.2024** and upon this Scheme coming into effect, the **Demerged Undertakings** (as defined in **Clause 2.01(e)** of the Scheme), shall stand demerged from the Demerged/Transferor Company (**SBW Udyog Limited**) and the same shall simultaneously stand transferred to and vested in the Resulting/Transferee Company (**SBW Unity Private Limited**), as going concerns pursuant to the provisions of Sections 230-232 of the Act.

CA(CAA) No. 05/ALD/2025 (First Motion)

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ



Detailed provisions relating to transfer and vesting of demerged undertakings are made in Part IV of the Scheme.

3. In consideration for the above-referred transfer of Demerged Undertakings, the Resulting/Transferee Company shall issue and allot to the shareholders of the Demerged/Transferor Company, ONE equity shares of Rs. 10/- (Ten) each fully paid up in the Resulting/ Transferee Company for every ONE equity share of Rs. 10/- (Ten) each fully paid up held in the Demerged/ Transferor Company.
4. The Applicant Companies have prayed for:
 - (i) Dispensing with the meetings of equity shareholders, secured creditors and unsecured creditors of the Demerged/ Transferor Company;
 - (ii) Dispensing with the meetings of equity shareholders, secured creditors and unsecured creditors of the Resulting/ Transferee Company;
 - (iii) Direction for service of this Application on:
 - (a) Regional Director, Northern Region, Pt. Deendayal Antyodaya Bhawan, CGO Complex, New Delhi;
 - (b) Registrar of Companies, UP., West Cott. Building the Mall, Kanpur.
 - (c) Principal Commissioner of Income Tax, Aaykar Bhawan Prayagraj. (U.P.), being the jurisdictional PCIT where the Applicant Companies are being assessed to tax, and

CA(CAA) No. 05/ALD/2025 (First Motion)

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ



- (iv) Since all the meetings are sought to be dispensed with, the Applicants have prayed that they may be permitted to file second motion petition for sanction of the proposed Scheme of Arrangement within the prescribed period.
5. It is submitted that the Applicant Companies are closely held and their shares are not listed on any stock exchange. There is only one class of shares i.e. Equity Shares in both the Companies. The shareholders of the both the Applicant Companies are members of the same family and they hold shares in these two Companies in the same ratio.
6. It is stated that the business of the Demerged/Transferor Company comprises of and managed through different Divisions as under –
- (i) Biri Division which manages the business of manufacture and marketing of Biris (manufacturing Units are located in the States of Bihar, Jharkhand and West Bengal);
 - (ii) Resort Division which manages the business of “Tendu Leaf Jungle Resort” situated near Panna Tiger Reserve, Panna in Chhatarpur District, Madhya Pradesh;
 - (iii) SSA Division which handles distribution of lubricants and greases manufactured by Indian Oil Corporation Ltd under the brand name SERVO in certain specified districts of Uttar Pradesh;
 - (iv) Marketing Division which handles business of marketing of products;
 - (v) Hotel Division which manages the operations of Hotel Kanha Shyam located at Prayagraj; and

CA(CAA) No. 05/ALD/2025 (First Motion)

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ



(vi) SBW Hotels Division (Hotel under construction) at Anjuna, North Goa, Goa.

7. The Demerged Company/Transferor Company is also a partner with 40% share in a Partnership Firm known as Shyam Enterprises, which is mainly carrying on the business of production and marketing of Dairy Products.
8. The proposed Scheme of Arrangement provides for demerger of (i) Biri Division (ii) Resort Division (iii) SSA Division and (iv) Marketing Division with all assets and liabilities pertaining to such business from SBW Udyog Limited and their transfer to and vesting in the SBW Unity Private Limited, as going concern on a slump exchange basis as per detailed provisions made in this Scheme and pursuant to the provisions of sections 230-232 of the Companies Act, 2013. The remaining business (presently Hotel Division and SBW Hotels Division) will continue to remain under the management and control of SBW Udyog Limited.
9. The Hotel Division which manages the operations of Hotel Kanha Shyam located at Prayagraj and SBW Hotels Division (Hotel under construction at Anjuna, North Goa, Goa), and 40% share in Partnership Firm known as Shyam Enterprises will continue to remain with the

CA(CAA) No. 05/ALD/2025 (First Motion)

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ



Demerged/Transferor Company as “Remaining Business” as provided in Clause 4.17 of the Scheme.

10. The Resulting/Transferee Company is primarily engaged in trading of dairy products.
11. It is submitted that the Registered Offices of both the Applicant Companies are situated in the State of Uttar Pradesh, therefore, the territorial jurisdiction of the Applicant Companies lies with this Bench.
12. It is submitted that the object and rationale of the Scheme is stated in Clause 1.06 of the Scheme as under:

“The object of the Scheme is to create independently managed profit centers under separate legal identities, fix responsibility for proper management and accountability for performance of operations, focused attention to business, avoid conflict in administration and decision making, etc. which will result in more efficient and coherent management, faster expansion and improvement of overall profitability of all the Divisions. The Scheme will benefit both the Companies and their shareholders. The Scheme adequately protects the interest of secured creditors, unsecured creditors and employees. The Scheme will not adversely affect any class of creditors or shareholders of either Company.”

CA(CAA) No. 05/ALD/2025 (First Motion)

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ



13. It is also submitted that that the exchange ratio for allotment of shares of the Resulting/ Transferee Company to the shareholders of the Demerged/ Transferor Company as consideration for the aforesaid transfer, was approved by the respective Board of Directors of the Applicant Companies after considering the Valuation Report dated 22.07.2024 submitted by Mr. Subodh Kumar, Registered Valuer (Securities & Financial Assets) Reg. No. IBBI/RV/05/2019/11705. The Valuers have disclosed the basis of valuation in Para 6 of the Report. A copy of the Valuation Report has been annexed as **Annexure – 15** with the Application. It is also stated that the Board of Directors of both the Companies have recorded their satisfaction as to the fairness of the method of valuation and the exchange ratio recommended by the Valuers.
14. It is submitted that the Applicant Companies have filed audited Annual Accounts for FY 2023-24 along with Independent Auditors' Report and also Provisional Accounts for the period of six months ended on 30.09.2024. The Accounts of Demerged Company-1 and Resulting/ Transferee Company are annexed as **Annexures 10 and 11** and **Annexures 13 and 14** respectively with the Application.

CA(CAA) No. 05/ALD/2025 (First Motion)

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ



15. It is further submitted that in pursuance of the proviso to Section 230(7) and Section 232 (3) of the Act, the Statutory Auditors of both the Companies have certified vide their Certificate dated 24.12.2024 that the accounting treatment provided in Part VI of the proposed Scheme of Arrangement for giving effect to the demerger in the books of accounts of the Applicant Companies is in conformity with all the applicable Accounting Standards prescribed under Section 133 of the Companies Act, 2013. The above-referred Certificate (Original) issued by the Statutory Auditors has been annexed as ***Annexure -18*** with the Application.
16. The Ld. Senior Counsel highlighted the salient features of the Scheme by referring to various clauses of the Scheme. It was submitted that in Clause 4.11 of the Scheme detailed provisions have been made to protect the interests of employees.
17. It is submitted that the Scheme does not affect the material interests of key managerial personnel, directors, promoters, non-promoter members, creditors and the employees of the Applicant Companies and none of these persons have any material interest in the Scheme except that those who might be shareholders in the Demerged/ Transferor Company will



get shares in the Resulting/ Transferee Company as consideration for transfer of demerged undertakings in terms of Clause 5.01 of the Scheme.

18. It is submitted that in Para 19 of the Company Application, the Applicant Companies have declared that no investigation or proceedings under the Companies Act, 2013 are pending against them. The details of other pending legal cases in Applicant Company-1 has been annexed as ***Annexure-21*** with the instant Application. It is submitted that there are no legal cases pending of Resulting/Transferee Company.
19. This matter was listed for clarification on 06.03.2025 with respect to the three unsecured creditors with the name & style of M/s Shyam Dairy Products at Sr. 09, 56, & 60 have been given apparently by another entity with the name & style of M/s Shyam Enterprises placed at Sr. 10.
20. There was an apparent inconsistency for which a clarification was required to be given by way of an affidavit as to depict that all these entities are one and the same only and M/s Shyam Enterprises would have an authority to give consent on behalf of three other units namely Shyam Dairy Products, Shyam Dairy (Milk Purchase) and Shyam Dairy Products (Ghee SMP).
21. Similar, clarification was also sought required to be furnished for the consent given by the M/s Shyam Enterprises with respect to the

CA(CAA) No. 05/ALD/2025 (First Motion)

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ



unsecured creditor namely, Shyam Dairy Products at Sr. No. 207, 208 & 209 also.

- 22.** Further, w.r.t to the unsecured creditor Shyam Agro Products at Sr. No. 206. The consent affidavit has been given by M/s New Mount Trading & Investment Co. Ltd but there was no authorization given for the same. Even further, it was found that M/s New Mount Trading & Investment Co. Ltd has given consent affidavit for a total outstanding of Rs. 4,20,24,505. While examining, it was further found that the said consent includes the consent of unsecured creditor namely, Shyam Agro Products for a value of Rs. 107,643/-. However, no authorization was annexed nor any ownership has been shown.
- 23.** M/s Shyam Agro Products is a part and parcel of M/s New Mount Trading & Investment Co. Ltd. therefore, clarification was sought that the authorized representative of M/s New Mount Trading & Investment Co. Ltd can also act as an authorized representative to give consent for M/s Shyam Agro Products or M/s Shyam Agro Products is a unit of M/s New Mount Trading & Investment Co. Ltd., if so in what manner.
- 24.** In compliance of the aforesaid order dated 06.03.2025, a supplementary affidavit has been filed vide dairy no. 417 dated 11.03.2025. It has been stated there that M/s New Mount Trading an Investment Company Ltd.

CA(CAA) No. 05/ALD/2025 (First Motion)

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ



is also engaged in the business of supplying agro-products via its unit named Shyam Agro Products, formed vide Board Resolution dated 19.01.2025.

25. With regard to Shyam Enterprises, it has been submitted that the firm is engaged in the business of dairy products by the name & Style “Shyam Dairy Products” constituting a unit of the said partnership firm as mentioned in clause 2 of the Partnership Deed.
26. Further, with regard to M/s Bhawan Décor, an additional affidavit has been submitted stating that outstanding sum of Rs. 3,68,273 is an aggregate amount occurred on account of business transaction with SBW Udyog Ltd.
27. The relevant extract of the aforesaid affidavit is reproduced below: -
“ ...
5. New Mount Trading and Investment Company Ltd in its above Additional Affidavit (Annexure- SA-2), has confirmed that it is carrying on the business of supplies of agro-products in the name of “Shyam Agro Products” which is a unit of New Mount Trading & Investment Co. Ltd. and it does not have any independent legal entity. The said Company has supported this fact by annexing copies of their BOD Resolution dated 19.01.2015 by which Board decided to carry on the business of agro-products in the name and style "Shyam Agro Products" and Licence dated 23.12.2023 issued by Food Safety

CA(CAA) No. 05/ALD/2025 (First Motion)

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ



and Standards Authority of India under FSS Act, 2006 in which Shyam Agro Products has been clearly shown as Unit of New Mount Trading and Investment Company Ltd.

The above Creditor has also submitted a Copy of the resolution dated 07.03.2025 of the Board of Directors approving the consent Affidavit dated 10.01.2025 submitted by Mr. Vibhav Agrahari, Director, for the aggregate outstanding dues amounting to Rs.4,20,24,505 (including the dues of its unit Shyam Agro Products, amounting to Rs. 1,07,643) and further authorising him to file Additional Affidavit clarifying the points raised by this Hon'ble Tribunal in its Order dated 06.03.2025.

The above Creditor has also reaffirmed that the approval to the Scheme of Arrangement given vide the earlier Affidavit dated 10.01.2025 applies to the outstanding dues shown in all the accounts as per details given in Para 3 of the Additional Affidavit which are owed by SBW Udyog Ltd to M/s New Mount Trading & Investment Co. Ltd (including its Unit - Shyam Agro Products).

6. That similarly M/s Shyam Enterprises (A Partnership Firm) in their Additional Affidavits (SA-3 & SA-4) have confirmed that they are carrying on the business of Dairy Products in the name of "Shyam Dairy Products" which is a unit of "M/s Shyam Enterprises" and does not have any independent legal entity. In support of this fact, M/s Shyam Enterprises have filed Copy of their registered Partnership Deed dated 18.02.2020 In Clause-2-of-the-Partnership-Deed, Shyam Dairy Products is clearly shown as a unit of the said Firm. They have also filed of Licence

CA(CAA) No. 05/ALD/2025 (First Motion)

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ



dated 23.09.2024 issued by Food Safety and Standards Authority of India under FSS Act, 2006 in which Shyam Dairy Products has been shown as Unit of Shyam Enterprises.

In the two Additional Affidavits submitted by the above Creditor, it is reaffirmed that the approval to the Scheme of Arrangement given vide the earlier Consent Affidavits dated 10.01.2025 & 30.01.2025 apply to the outstanding dues as per details given in Para 3 of the Additional Affidavits, which are owed by SBW Shyam Dairy Udyog Ltd to M/s Shyam Enterprises (including its Unit Products).

7. M/s Bhawan Décor in their Additional Affidavit (SA-5) have reaffirmed that approval to the Scheme of Arrangement given by them vide their earlier Affidavit dated 31.01.2025 applies to the dues mentioned in Para 3 of the Additional Affidavit.

... ”

28. The Ld. Senior Counsel referred to Para 4 of the Company Application in which grounds for seeking dispensation of meetings are elaborately explained and summarized in Para 5 -Table-2 and Table-3. The grounds are-

- (i) For dispensation of Shareholders’ Meetings of both the Companies:** Applicant Companies are closely held. Each Company has only nine shareholders and all are members of the same family. Same persons hold shares in the both the Companies and in the same ratio. All of them have submitted duly notarized affidavits approving the Scheme and giving their consent for dispensation of

CA(CAA) No. 05/ALD/2025 (First Motion)

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ



formal meetings. Certified lists of shareholders with all the original affidavits are annexed *as Annexures-3 and 6 respectively* with the Application.

- (ii) **For dispensation of meeting of Secured Creditors of Demerged /Transferor Company:** There is only ONE secured creditor, namely State Bank of India-SME, which has submitted notarized Affidavit approving the Scheme. Original affidavit has been annexed as *Annexure-4* with the Application.
- (iii) **For dispensation of meeting of Unsecured Creditors of Applicant Company-1:** 414 Unsecured Creditors representing aggregate debt of Rs. 24,14,45,769 which constitute 91.61% of the total outstanding dues, have submitted duly notarized Affidavits approving the Scheme and giving their consent for dispensation of formal meeting. This percentage will rise to 98.05% if the “**Advances received from Guests for Hotel Bookings**”, which are not really trade creditors, are excluded. Certified list of Unsecured Creditors with all the original Affidavits has been annexed as *Annexure- 5* with the Application.
- (iv) **For dispensation of meeting of Secured Creditors of Applicant Company-2:** There are no secured creditors in Applicant Company-2 Statutory Auditors’ Certificate to that effect is at *Annexure-7*.
- (v) **For dispensation of meeting of Unsecured Creditors of Applicant Company-2:** There is only ONE unsecured creditor namely, SBW Udyog Ltd- Demerged/ Transferor Company, which has submitted duly notarized Affidavit approving the Scheme and



giving its consent for dispensation of meeting. Certified list of Unsecured Creditors with original Affidavit is at ***Annexure-8***.

29. It is also submitted that the Statutory Auditors of the Applicant Companies have certified vide their Certificates dated 24.12.2024 (***Annexures-19 and 20***), that after demerger and transfer of the demerged undertakings to the Resulting/ Transferee Company, the assets of the Applicant Companies will be sufficient to meet their respective liabilities.
30. It is submitted that copies of this Application are required to be served only on Regional Director, Registrar of Companies, UP, and Principal Commissioner of Income Tax, Prayagraj. (U.P.), being the jurisdictional PCIT where both the Applicant Companies are being assessed to tax. There are no other sectoral regulator or authority, hence, copies of the Application are not required to be served on any other regulator or authority. An affidavit affirming this fact has been annexed as ***Annexure-23*** with the Application.
31. It is also submitted that since the proposed Scheme provides for demerger of Demerged Undertakings from the Demerged/ Transferor Company to the Resulting/ Transferee Company and does not contemplate dissolution of either Company, the copy of the instant



Application is not required to be served on the Official Liquidator and no report is required to be obtained from him.

32. It was also pointed out that the Applicant Companies have filed a copy of the proposed Scheme of Arrangement with the Registrar of Companies, Kanpur (Copies of acknowledgements dated 31.01.2025 has been annexed as ***Annexure- 22*** with the Application).

Directions:

33. We have considered the submissions made by the Ld. Senior Counsel, and perused the documents filed with the instant Application. We are of the view that the dispensation of the meetings prayed for by the Applicant Companies deserve to be allowed. We accordingly give the following directions:

I. In relation to Applicant Company-1 (SBW Udyog Ltd):

- i. In view of the shareholding and ownership pattern and the fact that all the Equity Shareholders of the Applicant Company-1 have submitted duly notarized affidavits approving the Scheme and giving their consent for dispensation of meetings, no formal meeting of the Equity Shareholders is required to be convened for approval of the Scheme. The meeting of the Equity Shareholders of the Applicant Company-1 and the requirement of issuance and publication of notices is dispensed with.

CA(CAA) No. 05/ALD/2025 (First Motion)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

-Sd-

-Sd-



- ii. In view of the fact that the sole secured creditor namely State Bank of India has submitted duly notarized affidavit approving the Scheme, no formal meeting is required to be convened for approval to the Scheme. The meeting of the Secured Creditors of the Applicant Company-1 and the requirement of issuance and publication of notices is dispensed with.
- iii. In view of the fact that the Unsecured Creditors representing 91.61% of the unsecured debts owed by the Company have submitted duly notarized Affidavits approving the Scheme and giving their consent for dispensation of meeting. Therefore, no formal meeting of the Unsecured Creditors is required to be convened for approval to the Scheme. The meeting of Unsecured Creditors of the Demerged/Transferee Company and the requirement of issuance and publication of notices is dispensed with.

II. In relation to Applicant Company- 2 (SBW Unity Private Ltd):

- i. In view of the shareholding and ownership pattern and the fact that all the Equity Shareholders of the Applicant Company-2 have submitted duly notarized affidavits approving the Scheme and giving their consent for dispensation of meetings, no formal meeting of the Equity Shareholders is required to be convened for approval of the Scheme. The meeting of the Equity Shareholders of the Applicant Company-2 and the requirement of issuance and publication of notices is dispensed with.
- ii. In view of the fact that the Applicant Company-2 does not have any secured creditors the question of issuing directions for

CA(CAA) No. 05/ALD/2025 (First Motion)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**



convening / dispensing the meeting of the Secured Creditors of the Company does not arise.

iii. In view of the fact that the Company has only one Unsecured Creditor namely SBW Udyog Ltd which itself is Applicant - 1 herein and which has submitted duly notarized Affidavit approving the Scheme and giving their consent for dispensation of meetings, no formal meeting of the Unsecured Creditor is required to be convened for approval of the Scheme. The meeting of the Unsecured Creditors of the Applicant Company-2 and the requirement of issuance and publication of notices is dispensed with.

III. 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 direction that the Applicant Companies shall make specific prayer for sending notices to the (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; having email id – rd.north@mca.gov.in (ii) Jurisdictional Registrar of Companies-Kanpur; having email id – roc.kanpur@mca.gov.in (iii) Income-Tax Department having jurisdiction over the Applicant Companies by mentioning the PAN number of the Applicant Companies and to the Principal Chief Commissioner of Income Tax (PCCIT), Lucknow being the nodal officer, having email id – lucknow.pccit@incometax.gov.in. The applicant companies shall also file separate affidavits stating the Sectoral regulators governing the respective companies while filing second motion petition.

CA(CAA) No. 05/ALD/2025 (First Motion)

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ



34. The Company Petition for confirmation of the Scheme is to be filed within the time period prescribed under the provisions of the Act and corresponding rules made thereunder.
35. The appropriate prayer would also be made in the second motion petition for publication in newspaper.
36. With the aforesaid directions, the First Motion Application bearing **CA (CAA) No.5/ALD/2025** is disposed off accordingly.
37. Certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

Date: 25.03.2025