



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- IV, MUMBAI BENCH**

**C.P.(CAA)/242(MB)2024
IN
C.A.(CAA)/67(MB)-IV2024**

*In the matter of
the Companies Act, 2013;*

AND

In the Matter of

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

AND

*In the Scheme of Amalgamation
Between*

EVER ELECTRONICS PRIVATE LIMITED

("Transferor Company")

And

***IL JIN ELECTRONICS (INDIA) PRIVATE
LIMITED***

("Transferee Company")

EVER ELECTRONICS PRIVATE LIMITED
[CIN: U32109PN2004PTC136895]

...First Applicant Company

IL JIN ELECTRONICS (INDIA) PRIVATE LIMITED
[CIN: U31909PN2001PTC224946]

...Second Applicant Company

Pronounced: **30.05.2025**

CORAM

SHRI ANIL RAJ CHELLAN

HON'BLE MEMBER (TECHNICAL)

SHRI. K. R. SAJI KUMAR,

HON'BLE MEMBER (JUDICIAL)



Appearance: (Hybrid)

For the Applicant Companies: Adv. Lovesh Dhyani a/w Adv. Ahmed Chunawala, Adv. Rajesh Shah, Adv. Karshil Shah and Adv. Mahadev Parab i/b Rajesh Shah & Co.

For Regional Director (WR): Mr. Bhagwati Prasad, Authorised Representative of the Regional Director Western Region.

ORDER

1. This Application seeks sanction of the Tribunal under Sections 230 to 232 of the Companies Act, 2013 (Act) to the Scheme of Amalgamation between **Ever Electronics Private Limited** (Transferor Company), with **IL JIN Electronics (India) Private Limited** (Transferee Company), and their respective Shareholders and Creditors (Scheme). Both the Transferor Company and the Transferee Company are collectively referred to as the “Applicant Companies”.
2. Heard the Counsel for the Applicant Companies and the Regional Director (RD), Western Region. No objection has been received by the Tribunal opposing the Company Scheme Application and or has any party controverted any averments made in the Company Scheme Application.
3. The registered office of the First Applicant Company and the Second Applicant Company is situated in the State of Maharashtra and hence the subject matter of the Application is within the jurisdiction of the National Company Law Tribunal, Mumbai Bench.



4. It is submitted that the Applicant Companies are primarily engaged in the business of manufacturing, assembling, selling, exporting, distributing and otherwise dealing in all kinds of printed board circuit boards and electronic components of air conditioners, washing machines, electric fans, room and other kind of coolers and electrical appliances including irons, toasters, geysers, storage water heater, mixer, water filter, and all other consumer electronic goods and appliances run by electricity and its spare parts & accessories components. In addition to the above, the Second Applicant Company is also authorized to carry on the business of manufacturers, assemblers, purchasers, sellers, exporters, importers, commission agents, distributors or otherwise, deal in all kind of wearable products - including but not limited to Smart Watches, Smart Band etc.; wearable products - including but not limited to TWS, Neckband etc.; telecom products - including but not limited to RRH, ONT, OLT, Setup Box etc.; IT product including but not limited to laptop, tablets, charger, power bank etc.; audio products - including but not limited to bar speaker, trolley speaker etc.; electric vehicles including but not limited to EV Charger, EV Controller, etc.
5. It is observed that the Board of Directors of the Applicant Companies in their respective Board meetings held on 08.02.2024 and 10.02.2024 have approved the Scheme and the relevant Board Resolutions are annexed to the Company Scheme Application.
6. The rationale for the Scheme is as under:
“In order to capitalize on the potential synergies between the businesses and streamline operations, it is proposed to merge both the Companies by merging Transferor Company with and into Transferee Company. The



Scheme between the companies ultimately held by common promoters, is expected to result in the following benefits:

- a. The amalgamation would result in significant reduction in the multiplicity of legal and regulatory compliances, multiple record-keeping and cost saving by way of reduction of overheads, administrative, managerial and other expenditure.*
- b. The amalgamation will lead to synergies of operations and will help the merged entity reap the economies of scale, improving organizational capability to enable the entity to compete in an increasingly competitive industry.*
- c. Greater efficiency in management of the merged entity and deployment of funds for organic and inorganic growth opportunities, to maximize shareholder value.*

Further, there is no adverse effect of this Scheme on the directors, key management personnel, promoters, non-promoter members, creditors and employees of the Petitioner Companies and the same would be in the best interest of all stakeholders.”

7. The Application is filed in consonance with Section 230 to 232 of the Act and the order passed on 11.06.2024, in the C.A.(CAA)/67/MB/2024 by this Tribunal.
8. It is submitted that the Applicant Companies have complied with all the requirements as per the directions of this Tribunal. Moreover, the Applicant Companies undertake to comply with all statutory requirements, if any, as required under the Act and the rules and regulations made thereunder. The said undertaking is taken on record.



9. The Regional Director, Western Region on behalf of the Central Government has filed its Report dated 12.03.2025, *inter-alia*, stating its observations on the Scheme in Paragraphs 2 (a) to (l) of the Report. In response to the observation made by the Regional Director, the Applicant Companies have filed an affidavit in rejoinder dated 17.03.2025 and have given necessary clarifications and undertakings as shown in the table below:

Sr. no	Observations by Regional Director	Reply of the Applicant Companies/Rejoinder
2(a)	<i>That on examination of the report of the Registrar of Companies, Pune dated 19.12.2024 for the Petitioner Companies falls within the jurisdiction of ROC, Pune (Copy enclosed as Annexure - A1). It is submitted that no representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Companies. Further, the Petitioner Companies has filed Financial Statements up to 31.03.2024.</i> <i>i. That the ROC Pune in its report dated 19.12.2024</i>	The averments mentioned above are factual statements and does not require a reply.



	<i>has also stated that No Inquiry, Inspection, Investigations, Prosecutions and complaint under CA, 2013 have been pending against the Petitioner Companies.</i> ii. <i>May be decided on its merit.</i>	
2(b)	<i>Transferee company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transfer of companies.</i>	1. In respect of the aforesaid observation, it is submitted that in terms of clause 19 of the Scheme and provisions of section 232(3)(i) of the Act, the authorised share capital of the Transferor Company shall be clubbed with the authorised share capital of the Transferee Company upon the effectiveness of the Scheme. Further, the Transferee Company shall be eligible to claim the set-off against any fees and the stamp duty already paid by the Transferor Company. 2. The Transferee Company



		undertakes to pay the excess fees and the stamp duty, if required, on the increase of share capital pursuant to the proposed amalgamation.
2(c)	<i>In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the resultant company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.</i>	In respect of the aforesaid observation, it is submitted that in terms of clause 20 of the Scheme and upon the scheme becoming effective, the Transferee Company shall be accounted as per the “polling of Interest” method provided under Indian Accounting standard (Ind-As)- 103 for “Business Combination” prescribed under section 133 of the Act.
2(d)	<i>The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.</i>	In respect of the aforesaid observation, an affidavit confirming that the scheme filed with the company application and company petition is one and the same and there is no discrepancy is attached herewith and marked as Annexure- B.



2(e)	<i>The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the petitioner companies concerned.</i>	1. in respect of the aforesaid query, it is hereby submitted that the Tribunal <i>vide</i> its order dated June 11, 2024, passed in company Application and January 01, 2025, passed in Company Petition, had directed to serve the notices of Company Application/meetings and Company Petition upon jurisdictional Regional Director, Registrar of Companies, Official Liquidator, Income Tax Authorities, GST authorities and nodal offices on the Income Tax Department. 2. Pursuant to the said orders, the counsel of the Petitioner Companies had served notices of Company Application and Company Petition upon the aforesaid statutory authorities on August 22, 2024 and January, 20, 2025. The



		aforesaid jurisdictional authorities namely, Registrar of Companies, Official Liquidator and Income Tax Authorities have already submitted their approval to the said scheme. 3. It is hereby further submitted that pursuant to such service of notices, no response has been received from GST authorities or their nodal officers, hence, in terms of the provisions of section 230(5) of the Companies Act, 2013, it should be presumed that they do not have any objection to the proposed scheme of amalgamation. 4. Further, it is hereby submitted that apart from the aforesaid statutory authorities, the Petitioner Companies are not governed by any other statutory authority. 5. Needless to mention, that in terms of the clause 8 the
--	--	---



		Scheme, upon the effectiveness of the Scheme, all liabilities (<i>including any liabilities pertaining to taxes direct or indirect</i>) of the Transferor Company shall become liabilities of the Transferee Company and the Transferee Company hereby further undertakes to honour the tax liabilities of Transferor Companies which may arise after the sanctioning the Scheme, subject to the right to appeal available under applicable act and laws.
2(f)	<i>As per Definition of the Scheme,</i> <i>"Appointed Date" for the purpose of this Scheme means 1st April 2023.</i> <i>"Effective Date" Shall be the last of the dates on which certified copies of the order of Tribunal (as defined hereinafter) under Section 230 to 232 of the Act, sanctioning</i>	In respect of the aforesaid observation, it is hereby submitted that the Appointed Date of the Scheme is April 01, 2023 and the Company Application was filed by the Applicant Companies on March 24, 2024, i.e., the proposed appointed date is not more than one year prior to the date of filing of the Company Application before this



<i>this scheme, is filed by the respective Companies with their respective jurisdictional Registrar of companies (as defined hereinafter).</i> <i>Provided that any reference in this Scheme to the date of "upon coming into effect of the Scheme" or "upon the scheme becoming effective" or "effectiveness of the Scheme" shall mean the Effective Date.</i> <i>In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal, taking into account its inherent powers.</i> <i>The Petitioners may be asked to comply with the</i>	Tribunal. Accordingly, it can be construed that the scheme confirms and complies with the circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.
---	---



	<i>requirements as clarified vide circular no. F. No. 7/12/2019/CLI dated 21.08.2019 issued by the Ministry of Corporate Affairs</i>	
2(g)	<i>The petitioner Company states that the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this regard, the petitioner company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder.</i>	In respect of the aforesaid observation, clause 10 of the Scheme already discloses that the Scheme complies with the relevant provisions of section 2(1B) and section 47 of the Income-tax Act, 1961. In any case, the Applicant Companies hereby undertakes to comply with the provisions of the Income-tax Act, 1961 and rules made thereunder.
2(h)	<i>Petitioner Companies shall undertake to comply with the directions of the Income Tax Department & GST Department, if any.</i>	That in terms of the clause 8 the Scheme, upon the effectiveness of the Scheme, all liabilities (including any liabilities pertaining to Income Tax Department & GST Department) of the Transferor Company shall become liabilities of the Transferee Company and the Transferee Company hereby



		further undertakes to honour the tax liabilities of Transferor Companies which may arise after the sanctioning the Scheme, subject to the right to appeal available under applicable Act and laws.
2(i)	<i>Petitioner Companies may satisfy the Hon'ble NCLT that the interest of creditors shall be protected on implementation of the scheme.</i>	In respect of the aforesaid observation, it is hereby submitted that as per clause 8 of the Scheme, upon the effectiveness of the Scheme, all secured and unsecured liabilities of the Transferor Company shall become secure and unsecured liabilities of the Transferee Company, i.e. all the creditors of the Transferor Company shall become creditors of the Transferee Company.
2(j)	<i>Petitioner company may be directed to submit an undertaking stating the name of Sectorial regulator of the petitioner company and also undertake that prior notice</i>	It is reiterated that apart from the aforesaid statutory authorities, the Petitioner Companies are not governed by any other statutory authority. Hence, serving the notice upon



	<i>has been served to sectorial regulator and all requirements of the concern regulator, if any has been complied with.</i>	additional authorities does not arise.
--	---	--

10. The Authorised Representative of RD, Western Region, Mumbai submitted that the above explanations and clarifications given by the Applicant Companies in reply are satisfactory and that they have no further objection to the Scheme.
11. The Official Liquidator has filed its Report dated 29.01.2025 (OL Report), before this Tribunal for consideration. The observations of the Official Liquidator are submitted in paragraph 5 and 6 of the OL Report. In response to the observation made by the Official Liquidator, the Applicant Companies have also given necessary responses/clarification vide their affidavit in rejoinder dated 05.03.2025. The observations made by the Official Liquidator and the responses/clarifications given by the Applicant Companies are summarised in the table below:

Para	Observation in the OL Report filed by the Official Liquidator	Reply of the Applicant Companies
5	<i>“5. With reference to clause No. 19 of the scheme it is stated that such clauses override the provision of Companies Act,</i>	In accordance with Clause 19 of the Scheme and relevant provisions of the Companies Act, 2013, upon the effectiveness of the Scheme, the



<i>2013 namely Section 232(3)(i) which inter-alia provides that, 'if a company is dissolved, the fees paid by such company on its Authorised Capital shall be set off against any fees payable by the transferee company on its Authorised Capital. Hon'ble Tribunal may be pleased to direct Transferee Company to pay differential amount, if any, after setting off fees already paid by the Transferor Company.'"</i>	authorised share capital of the Transferor Company shall be clubbed with the authorised share capital of the Transferee Company. The fees already paid by the Transferor Company on its authorised share capital before the effective date shall be set-off against any fees payable by the Transferee Company on the increase in authorised share capital. <u>Moreover, the Transferee Company hereby undertakes to pay any differential fees required after setting off the fees already paid by the Transferor Company.</u>
<i>"6. It has been noticed from the Financial Statement as at 31.03.2024 of Transferor Company that the company owes Rs.26.08 Lakhs to MSME. In this respect it is stated that under MSMED Act, 2006 the buyer is to make payment within 45 days of it becoming due. In case of failure to pay to the MSME supplier the company is</i>	In response to the aforesaid query, it is submitted that, as per the balance sheet of the Transferor Company as of March 31, 2024, the outstanding amount payable to MSME creditors stood at Rs. 26.08 lakh, namely, Shree Mahaganpati Travels and Hardev. These dues were paid within the due timelines with the payment conditions and MSME guidelines.



<i>liable to pay compound interest rate. Hon'ble Tribunal may require the Transferor Company to clarify whether they have paid the said amount to the MSME creditor or whether there is any dispute with respect to payment of such amount. In case of dispute with regard to amount due whether the reference has been made to the MSME facilitation council constituted by the respective Government or not. Company may also be required to produce form MSME-1 filed with the ROC for the above said dues.</i>	Copy of letters from the vendors confirming receipt of payment from the Transferor Company on timely basis and NO DISPUTE with respect to payment of such amounts is attached herewith and marked as Annexure B. Further, a certificate from Mr. NGAM and CO., Chartered Accountant confirming disbursement of payment within specific timelines is attached herewith and marked as Annexure-C. Needless to mention, the Transferee Company undertakes to settle all statutory dues (including income tax dues) as and when they occur, subject to right to appeal available under applicable laws read with rules and regulation.
--	---

12. We observe that no adverse comments have been made regarding the state of affairs of the Transferor Company. Accordingly, the reply filed by the Applicant Companies to the aforementioned report is taken on record. In view of the above, we conclude that the objections/observations to the Scheme raised by the RD, ROC, and OL have been adequately replied.



-
13. It is Submitted by the Applicant Companies vide affidavit dated 10.03.2025, submitted that the concerned Income-tax authorities of Applicant Companies had given their respective non-objection to the Scheme.
14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
15. The Applicant Companies are directed to file a certified copy of this Order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy within 30 days from the date of receipt of the Order from the Registry of this Tribunal.
16. The Applicant Companies are further directed to provide a copy of this Order along with the Scheme duly certified by the Designated Registrar of this Tribunal, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, within a period of 60 working days from the date of receipt of the certified Order from the Registry of this Tribunal.
17. All concerned regulatory authorities to act on a copy of this Order along with the Scheme duly certified by the Designated Registrar of this Tribunal.
18. Any person interested shall be at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.



19. The Appointed Date of the Scheme is **01.04.2023**.

20. Accordingly, the above **C.P.(CAA)242/MB/2024 is allowed** and **disposed of**.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)
Sanika, LRA

Sd/-

K. R. SAJI KUMAR
MEMBER (JUDICIAL)