

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

CP (CAA) No.53/230/HDB/2023
in
CA (CAA) No.20/230/HDB/2023

[Under Section 232 r/w Section 230 of the Companies Act, 2013]

In the matter of Scheme of Amalgamation of

M/s. Polimeraas Agros Private Limited
(Transferor Company)

And

M/s. GSS Infotech Limited
(Transferee Company)

And

Their Respective Shareholders and Creditors

M/s. Polimeraas Agros Private Limited
H.No. 3-6-661 and 662, Street No.9,
Himayatnagar, Hyderabad – 500029.
Represented by its Director, Mr. Bogha Ravi Kumar.

...1st Petitioner Company/Transferor Company

M/s. GSS Infotech Limited
Ground Floor, Wing-B, N heights,
Plot No.12, TSIIC Software Units Layout,
Madhapur, Serilingampally, Hyderabad-500081,
Rangareddy, Telangana.
Represented by its Managing Director, Mr. Bhargav Marepally.

...2nd Petitioner Company/Transferee Company

Date of order:02.02.2024

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OF THE ORIGINAL

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in
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CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Petitioner : Mr. Vinay Babu Gade, PCS
For Regional Director : Ms. Kusum Yadav, Assistant Director
For Official Liquidator : Mr. D. Vasantao Meshram, OL office
Representative

[PER: BENCH]

ORDER

1. This is a Joint Petition filed by the Transferor and Transferee companies, under Section 232 r/w Section 230 and other applicable provisions of the Companies Act, 2013 praying for the sanction of the Scheme of Amalgamation between M/s. Polimeraas Agros Private Limited (1st Petitioner Company/Transferor Company) with M/s. GSS Infotech Limited (2nd Petitioner Company/Transferee Company) and their respective shareholders and creditors in terms of the Scheme of Merger of Companies. (**Annexure-J- page Nos.349 to 381 of the Petition**).
2. The Registered Offices of the Transferor Company and the Transferee Company are situated in the State of Telangana.
3. Briefly, the facts are as follows:



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- 1.1 **M/s. Polimeraas Agros Private Limited (“1st Petitioner Company” or “Transferor Company”)**, was incorporated as a Private Limited Company on 30th March, 2022 with CIN: U01100TG2022PTC161108.
- 1.2 The Transferor Company, is engaged in the business of acquiring by purchase, lease, connection, grant, license or otherwise lands and cultivate, grow, produce or deal in any plantation, agricultural crops, vegetables fruits and fruit products, flower trees of all kinds and own manage and sell the same both in India and abroad.
(Copy of the Memorandum and Articles of Association of the Transferor Company is at Annexure – A - page Nos. 40-54 of the petition).
- 1.3 The authorized, issued, subscribed and paid-up share capital of the Transferor Company as on 31st March, 2023 is as follows:

Share Capital	Amount (in Rs.)
Authorized Capital	
1,01,00,000 Equity Shares of Rs.10 each (Rupees Ten only) each.	10,10,00,000
Total	10,10,00,000
Issued, Subscribed Capital and Paid-up Capital	
1,00,00,000 Equity shares of Rs.10 each (Rupees Ten only) each.	10,00,00,000
Total	10,00,00,000

There has been no change in the share capital of the Company post 31st March, 2023.



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(Copy of the Audited Statements of Accounts of the 1st Petitioner/
Transferor Company as on 31st March, 2022 and Provisional
Financial Statements as on 31st December, 2022 are at Annexure B -
page Nos. 55-87 of the petition).

2.1 M/s. GSS Infotech Limited (“2nd Petitioner Company” or
“GSS” or “Transferee Company”) was incorporated as a
public limited company, on 13.10.2003 bearing CIN:
L72200TG2003-PLC041860.

2.2 The Transferee Company is engaged in the business of:

- a. To establish and carry out provide, render, offer,
consultancy, development and maintenance services in the
areas relating to information technology systems, software
development, hardware, maintain databases, data
processing, IT Training, research in IT, software, hardware,
bioinformatics, business process outsourcing, Data-
warehousing, Data-mining, designing and maintenance of
Internet enabled services and quality control to any
individuals, proprietary concerns, firms, companies, bodies
corporate, govern bodies, banks, financial institutions,
charitable/religious institutions, schools, colleges, or any
other entity, either in and/or outside India.
- b. To carry out and engage in the business of purchasing,
procuring, selling, distributing, trading, retailing, acting as
agent, franchising, collaborating, exporting, importing,
merchandising, manufacturing, production processing,
designing, packaging, supply chain management, farming,
agricultural production and related activities through online,
offline and/or both including ecommerce relating, of all



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kinds of products, goods, commodities, merchandise, accessories and equipment's relating to, which includes but is not limited to, vegetables, fruits, foods, raw, semi or fully processed, FMCG Products, food supplements, healthcare and wellness Products etc using technology applications, on online portals or websites as well as through ecommerce, m-commerce, internet, intranet, stores, stalls or kiosks or similar formats that might emerge in the future which are set up across India or abroad or in any other manner. To establish, collect, procure, perform, maintain, conduct, provide, make available sell or purchase data pertaining to said activities and engage in Analysis, Opinions, segregate, organize and similar activities including but not limited to statistical, financial, management, processing, communication, technological social or other areas.

(Copy of the Memorandum and Articles of Association of the Transferee Company is at Annexure – C - page Nos. 88-117 of the petition).

- 2.3 The authorized, issued, subscribed and paid-up share capital of the Transferee Company as on 31st December, 2022 and 31st March, 2023 is as follows:

Share Capital	Amount (in Rs.)
Authorized Capital	
3,50,00,000 Equity Shares of Rs.10 (Rupees Ten only) each.	35,00,00,000
1,50,00,000 Preference Shares of Rs.10 (Rupees Ten only) each.	15,00,00,000
Total	50,00,00,000
Issued, Subscribed Capital and Paid-up Capital	



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1,69,36,843 Equity shares of Rs.10 (Rupees Ten only) each.	16,93,68,430
Total	16,93,68,430

(Copy of the Audited Statements of Accounts of the 2nd Petitioner/ Transferee Company as on 31st March, 2022 and 31st December, 2022 is at Annexure D - page nos. 118-264 of the petition).

4. Rationale for the Proposed Scheme are:

- i. The proposed scheme whereby M/s.Polimeraas Agros Pvt Ltd will be merged with GSS will result in M/s.Polimeraas Ltd becoming the wholly owned subsidiary of the Transferee Company. This will result in financial synergies since Polimeraas Ltd is an operating company with substantial revenue generating capability.
- ii. The Business of M/s.Polimeraas Ltd is being done currently through physical stores. Post Merger, GSS will add value by creating an Online platform resulting in synergies in operational process and creation of efficiencies by reducing time to market and benefiting customers as well as optimization of operation and capital expenditure. This will further result in considerable jump in Revenue both through Online sales and through physical stores.
- iii. The proposed scheme whereby M/s.Polimeraas Agros Pvt Ltd will be merged with GSS, will be beneficial, advantageous and not prejudicial to the interests of the shareholders, creditors and other stakeholders of Transferee Company since the said merger will result in M/s.Polimeraas Ltd becoming the wholly owned subsidiary of GSS and diversification of portfolio will further



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result in risk mitigation, economies of scale and synergic benefit both in terms of operations and financial.

5. In order to achieve the aforesaid objectives, the Board of Directors of the Petitioner Companies have proposed to consolidate the Transferor Company and the Transferee Company into a single Company, by assimilating the asset businesses carried on by the Transferor Company and the Transferee Company.
6. The Board of Directors of the respective Petitioner Companies at their respective board meetings held on 24.12.2021 and 09.07.2022, approved the Scheme of Amalgamation of M/s. Polimeraas Agros Private Limited (Transferor Company) with M/s. GSS Infotech Limited (Transferee Company) and their respective shareholders and creditors. The appointed date is 01.04.2022.

(Certified true copies of the Board Resolutions of the Petitioner Companies, approving the Scheme of Amalgamation are at Annexures E1, E2 & F- page Nos.265-267, 268-270 & 271-273 of the Petition).

7. The instant Company Application is filed in pursuance of the Order dated 22.05.2023 passed in CA(CAA)No.20/230/HDB/2023, in which, convening the meeting of the unsecured creditors of the Transferor Company was dispensed with and ordered convening the meetings of the Shareholders of the Transferor Company and the meetings of Shareholders and Unsecured Creditors of the Transferee Company.

(Copy of the Order dated 22.05.2023 is at Annexure-G- page nos.274 to 295 of the Petition).

8. As per the directions of this Tribunal vide order dated 22.05.2023, the Petitioner Companies issued notices to the Statutory Authorities.



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9. The Regional Director (South Eastern Region), Ministry of Corporate Affairs, Hyderabad has filed its Report on 06.12.2023.
10. In response to the observations made by the Regional Director filed on 06.12.2023, the Petitioner Companies have given necessary undertakings and clarifications through their reply affidavits which were filed on 11.12.2023. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Page & Para Nos.	Regional Director's Report filed on 06.12.2023/observations	Reply Affidavit filed on 11.12.2023 by the Transferor Company	Reply Affidavit filed on 11.12.2023 by the Transferee Company
Page 4 Para 6 (a)	Transferee Company is a listed company registered with NSE/BSE and the said authorities vide letter dated 2-2-2023 & 3-2-2023 conveyed their observations with regard to the present scheme of Amalgamation. In this regard, the Transferee Company shall take care of the observations given by the authorities and comply into and also the Rules made under SEBI (LODR) Rules, 2015 and shall furnish an undertaking in this regard.		Transferee Company hereby undertakes to comply observations given BSE & NSE vide letter dated 3-2-2023 & 2-2-2023 respectively and comply the Rules made under SEBI (LODR) Rules, 2015
Page 4 Para 6 (b)	Transferor company was incorporated on 30-03-2022 and the appointed date of the scheme is 01-04-2022		
Page 4 Para 6 (c)	As per Clause 2.8.1. of the Scheme, it is stated that upon coming into effect of this Scheme, the authorized share capital of the Transferee Company shall automatically stand increased, without any further act, instrument or deed on the part of the Transferee Company. In this regard, the transferee company shall furnish an undertaking with regard to compliance of the provisions of		Transferee Company hereby undertakes to comply the provisions of section 232(3)(i) of the Companies Act, 2013 and pay the differential fee, if any, after setting of the fee already paid by the Transferor Company.



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	section 232(3)(i) of the Companies Act, 2013 and pay the differential fee after setting of the fee already paid by the Transferor Company.		
Page 4 Para 6 (d)	As per Clause 2.9.1 and 2.9.2 of the Scheme, it is stated that the Transferee company shall account for the Amalgamation of the Transferor Company in its books of accounts with effect from the Effective Date in accordance with IND AS-103 under the provisions of section 133 of the Companies Act, 2013 and all the assets and liabilities of the Transferor Company are transferred and vested in the Transferee Company at their respective fair values.		
Page 4 Para 6 (e)	As per the share exchange ratio, apart from equity shares, the transferee company shall issue 1,32,61,927, 0.1% Compulsorily Redeemable Preference Shares ("CRPS") of face value of Rs. 10 each credited as fully paid aggregating to Rs. 132,61,92,700 shall be issued to the equity shareholders of the transferor company and such preference share shall be compulsorily redeemable within a period of 12 months extendable upto 18 months at the option of the transferee Company. Transferee company shall comply with the above time line.		
Page 5 Para 6 (f)	Both the parties have related party transactions during the last two years. The petitioner companies may be directed to furnish the compliance of the provisions of section 188 of the Companies Act, 2013 and also furnish an undertaking with regard to such compliance	Transferor Company hereby undertakes to comply the provisions of Section 188 of the Companies Act, 2013.	Transferee Company hereby undertakes to comply the provisions of section 188 of the Companies Act, 2013.
Page 5 Para 6 (g)	It is seen from the balance sheet of the transferor company that it has obtained a convertible loan from Related Party. In this regard, the transferor company may furnish the detailed clarification.	The Convertible Loan amounting to Rs.9.99 Crores has been converted into Equity by allotting Shares to the existing shareholders and the list of shareholders along with Return of Allotment in	



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Page 6 Para 9	Upon taking up the matter with the Company with regard to Balance Sheet as at 31.03.22 & 31.3.2021 of the WOS of the co. i.e. Polimeraas Limited, the accounting treatment in the books of transferee company for differential amount of net assets acquired against purchase consideration paid by them since para 2.9 of the Scheme is silent, it is replied that the balance, if any, in the Reserves account or credit or debit balance of profit and loss account of the Transferor Company, as the case may be shall be transferred to and aggregated with the corresponding reserves in the books of accounts of Transferee Company. The differential amount of net assets acquired purchase consideration paid by the Transferee Company will be treated in the books of Transferee Company as Goodwill.		
Page 6 Para 10	Upon taking up the matter with the Company with regard to Obtain the opinion of CA An. Gawade in respect of considering the value of the shares of the transferee company as on 24.12.2021 as Rs. 127.89, whereas as on the report date i.e. 8.7.2022, its price was Rs.216 as BSE, the petitioner company replied that Valuer has given valuation report on 24.12.2021. Based on the query raised by Exchange (BSE/NSE) Registered Valuer has given addendum to the valuation report on 08.07.2022 and the Relevant date was 24.12.2021. The Equity Shares of GSS valued based on the below mentioned parameters: the price of the equity shares to be allotted pursuant to the preferential issue shall be not less than higher of:		
Page 6	The average of the weekly high and low of the volume weighted average price of the related equity shares quoted on the recognised stock		



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Para 10 (a)	exchange during the 26 (twenty-six) weeks preceding the relevant date;		
Page 7 Para 10 (b)	The average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the 2 (two) weeks preceding the relevant date		
Page 7 Para 11	In the Balance Sheet as at 31-03-2022, the paid up capital of the Transferor Company is Rs.1,00,000/- and its Long Term Loan is stated as Rs. 1000 lakhs. Whereas, the Registered Valuer has valued it at Rs.250 crores and through Exchange Ratio, the scheme speaks to give Rs.250.53 crores (both Equity & CRPS). The above high consideration to be paid to the shareholders of the Transferor Company by following Discounted Cash Flow Method of share valuation which seems to be far from reality because there is no such net worth with the Transferor Company. In view of the above, it is prayed before the Tribunal to obtain specific view of SEBI in this matter and may also direct to obtain valuation report of shares of the Transferor Company from any valuer preferably from the Panel of IBC/ Official Liquidator to obtain reliance upon the exchange ratio recommended in the Scheme.	Valuation Report of shares of the Transferor Company from IBBI Registered Valuer Mr. Saurobh Kumar Barick (Reg. No. IBBI/RV/11/2019/12454) is enclosed as Annexure – 3.	Valuation Report of shares of the Transferor Company from IBBI Registered Valuer, Mr. Saurobh Kumar Barick (Reg. No. IBBI/RV/11/2019/12454) is enclosed as Annexure – 3.

11. The Regional Director (RD) filed additional affidavit on 09.01.2024. In response to the observations made by the Regional Director, the Petitioner Companies have given necessary undertakings and clarifications through their reply affidavit which was filed on 10.01.2024, 09.12.2023. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:



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Page & Para Nos.	Regional Director's Report filed on 09.01.2024/observations	Reply Affidavit filed on 10.01.2024, 09.12.2023 by the Transferor Company	Reply Affidavit filed on 10.01.2024, 09.12.2023 by the Transferee Company
Page 2 Para 3 (d)	Clause No.2.8.1 of Part II of the scheme provides for an automatic increase in the Authorized Capital of the Transferee Company by adding existing Authorized Capital of the Transferor Company. The Transferee Company shall pay differential and registration fee and stamp duty payable on such increase Authorized Capital after deducting such fees and duties already paid by the Transferor Company prior to merger.		To pay differential and registration fee and stamp duty payable on such increase Authorized Capital after deducting such fees and duties already paid by the Transferor Company prior to merger.
Page 2 Para 3 (e)	The Transferee Company is a listed Company and hence an affidavit on compliance with SEBI Regulations and approvals/intimation relating to stock exchanges may be called for.		To comply with SEBI Regulations and approvals/intimation relating to stock exchanges.
Page 2 Para 3 (g)	The Directorate may also request the Tribunal to direct the petitioner companies to ensure statutory compliance of all applicable laws and also on sanctioning of the present scheme the applicant company shall not be absolved for any of its statutory liability in any manner.	To ensure statutory compliance of all applicable laws and also on sanctioning of the present scheme the applicant company shall not be absolved for any of its statutory liability in any manner.	To ensure statutory compliance of all applicable laws and also on sanctioning of the present scheme the applicant company shall not be absolved for any of its statutory liability in any manner.
Page 2 Para 3 (h)	The Directorate may also request the Tribunal to direct the petitioner companies involved in the scheme to comply with rule 17(2) of "The companies (Compromise, Arrangement and Amalgamation) Rules 2013 with respect to filing of	To comply with rule 17(2) of "The Companies (Compromise, Arrangement and Amalgamation) Rules 2013 with respect to filing of order for confirmation of scheme to be filed in form No.INC-28 with the	To comply with rule 17(2) of "The Companies (Compromise, Arrangement and Amalgamation) Rules 2013 with respect to filing of order for confirmation of scheme to be filed in form



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	order for confirmation of scheme to be filed in form No. INC-28 with the Office of RoC by the petitioner company.	Office of RoC by the petitioner company.	No.INC-28 with the Office of RoC by the petitioner company.
Page 2 Para 3 (i)	The Directorate may request the Tribunal to direct the petitioner companies to preserve its books of Accounts and papers and records and shall not be disposed off without the prior permission of the Central Government in terms of provisions of Section 239 of the Companies Act, 2013.	To preserve books of Accounts and papers and records of the Company and shall not be disposed of without the prior permission of the Central Government in terms of provisions of Section 239 of the Companies Act, 2013.	To preserve books of Accounts and papers and records of the Company and shall not be disposed of without the prior permission of the Central Government in terms of provisions of Section 239 of the Companies Act, 2013.
Page 2 Para 4	The Directorate has received report OLR No.63/2023 dated 3-11-2023 from the Official Liquidator, Hyderabad by pointing out certain observations vide para 22(a) to (e) of its report. Tribunal may be pleased to direct the Petitioner Transferor Company to comply with the observations pointed out by the Official Liquidator, before the scheme is allowed.	We undertake to comply with the observations pointed out by the Official Liquidator, before the scheme is allowed.	We undertake to comply with the observations pointed out by the Official Liquidator, before the scheme is allowed.
Page 2 Para 5	With reference to this Directorate's letter dated 05-10-2023, issued to The Addl. Commissioner of I. Tax, Circle-2(2), Hyderabad, till date no reply/comments in the matter has been submitted to this Directorate. Tribunal may be pleased to direct the Petitioner Companies to furnish an undertaking that, if any demand arises from the Income Tax Department with respect to Transferor Company and Transferee Company, Transferee Company is ready to pay the said dues as per rules.		We undertake that if any demand arises from the Income Tax Department with respect to Transferor Company and Transferee Company, Transferee Company is ready to pay the said dues as per rules.



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Page 2 Para 6 (a)	Transferee Company is a listed company registered with NSE/BSE and the said authorities vide letter dated 2-2-2023 & 3-2-2023 conveyed their observations with regard to the present scheme of Amalgamation. In this regard, the Transferee Company shall take care of the observations given by the authorities and comply into and also the Rules made under SEBI (LODR) Rules, 2015 and shall furnish an undertaking in this regard.		Comply the observations given by the authorities and comply into and also the Rules made under SEBI (LODR) Rules, 2015.
Page 2 Para 6 (c)	As per Clause 2.8.1. of the Scheme, it is stated that upon coming into effect of this Scheme, the authorized share capital of the Transferee Company shall automatically stand increased, without any further act, instrument or deed on the part of the Transferee Company. In this regard, the transferee company shall furnish an undertaking with regard to compliance of the provisions of section 232(3)(i) of the Companies Act, 2013 and pay the differential fee after setting of the fee already paid by the Transferor Company.		Comply the provisions of section 232(3)(i) of the Companies Act, 2013 and pay the differential fee after setting of the fee already paid by the Transferor Company.
Page 2 Para 6 (f)	Both the parties have related party transactions during the last two years. The petitioner companies may be directed to furnish the compliance of the provisions of section 188 of the Companies Act, 2013 and also furnish an undertaking with regard to such compliance	Comply the provisions of Section 188 of the Companies Act, 2013.	Comply the provisions of section 188 of the Companies Act, 2013.



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Page 2 Para 6 (h)	The Transferee company owes statutory dues both disputed and undisputed. In this regard, the Transferee company shall furnish an undertaking stating that the dues will be settled as and when demand is made.	Settle statutory dues both disputed and undisputed as and when demand is made.
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Hence, from the above report of the RD, it can be understood that there are no tenable objections raised and that the queries posed to the companies were also answered. Hence, the direction as sought for by the Regional Director (RD) would stand complied.

12. The Official Liquidator (OL) made certain observations in his report filed on 03.11.2023. In response, the petitioner companies filed their reply affidavit on 19.12.2023 and 01.12.2023. The observations made by the Official Liquidator and the undertakings given by the Petitioner Companies are summarized in the table below:

Page & Para Nos.	Official Liquidator Report filed on 03.11.2023/observations	Reply Affidavit filed on 01.12.2023 by the Transferor Company	Reply Affidavit filed on 19.12.2023, 01.12.2023 by the Transferee Company
Page 8 Para 22 (a)	That, as per the unaudited provisional financials as at 31.12.2022, the authorized capital of the Transferor Company is Rs.10,10,00,000/- whereas per the Master data of the Transferor Company, the same was shown as Rs.20,20,00,000/- and there is difference in the authorized capital. In this regard, the Transferor Company vide letter dated 28.10.2023 has	The Contents are factual in nature and doesn't require specific reply.	The contents are factual in nature and is in the process of rectification by the Ministry of Corporate Affairs.



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	clarified that, there is a discrepancy in the online Company's master data with regard to its authorized share capital and hence the company brought the said fact to the notice of the RoC, Hyderabad for correction/rectification of autho-rized capital to Rs.10,10,00,000/- vide their letter dated 28.10.2023 and provided copy of the letter addressed to the RoC, Hyderabad.		
Page 8 Para 22 (b)	That, the Clause 2.2.6 of Part-II of the Scheme seeks to protect all employees of the Transferor Company, who are on its payroll shall be engaged by the Transferee Company. Hence, this Tribunal may be pleased to direct the Transferor and Transferee Companies to submit an undertaking to this Tribunal to the effect that there would be no retrenchment of any employee who were in service as on the Appointed Date (i.e., 01.04.2022) as well.	We, M/s. Polimeraas Agros Private Limited, (Transferor Company) represented by Mr. Ravi Kumar Bogha, Director do hereby undertake that 'No Employee of the M/s. Polimeraas Agros Private Limited (Transferor Company) will be retrenched who was/were in service as on the Appointed Date (i.e., 01.04.2022)'	We, M/s. GSS Infotech Limited, (Transferee Company) represented by Mr. Bhargav Marepally, Managing Director do hereby undertake that No Employee of the M/s. Polimeraas Agros Private Limited (Transferor Company) will be retrenched who was/were in service as on the Appointed Date (i.e., 01.04.2022)'
Page 8 Para 22 (c)	That, as per Note-3 of the Financial Statements of the Transferor Company for FY:2021-22, an amount of Rs.9.99 crores has been shown as unsecured loan taken from related parties – Convertible Loan under the head of "Long Term Borrowings" and further as per Note-5 of the said financials, an amount of Rs.10 crores has been shown as	The Contents are factual in nature and doesn't require specific reply.	The Contents are factual in nature and doesn't require specific reply.



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	Investment in Equity Instruments under the head of “Non-current Investments”. In this regard, the Transferor Company vide letter dated 28.10.2023 has clarified that the convertible loan amounting to Rs.9.99 crores has been converted into Equity by allotting respective shares and they provided copy of Form No.PAS-3- Return of allotment in this regard.		
Page 8 Para 22 (d)	That, as per the unaudited provisional financial statements as at 31.12.2022 of the Transferor Company, there is no Revenue from operations as at 31.03.2022 & 31.12.2022. However, there is other income of Rs.40,000/- & Rs.45,000/- as at 31.03.2022 & 31.12.2022 respectively.	The Contents are factual in nature and doesn't require specific reply.	The Contents are factual in nature and doesn't require specific reply.
Page 9 Para 22 (e)	That, the Transferee Company is a Listed Company and the NSE and BSE vide letter(s) dated 02.02.2023 & 03.02.2023 made certain observations on the scheme of Merger. In this regard, the Transferee Company vide letter dated 01.11.2023 has undertaken to fulfill/ being fulfilled/ will be fulfilled the applicable observations of the NSE & BSE at the earliest. However, this Tribunal may be pleased to direct the Transferee Company to submit an undertaking to this Tribunal to comply with the observations	It has been complied by the Transferee Company by giving an ‘Undertaking’ that the Transferee Company shall comply observations made by the NSE & BSE on the scheme of merger.	We, M/s. GSS Infotech Limited, (Transferee Company) represented by Mr. Bhargav Marepally, Managing Director do hereby undertake to comply the Observations made by the National Stock Exchange (NSE) and Bombay Stock Exchange (BSE) in their Observation Letters dated 02.02.2023 and 03.02.2023, respectively.



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made by the NSE & BSE on the scheme of merger. The petition may be decided on merits.		
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13. The Official Liquidator (OL) accepted the submissions made by the Petitioners and did not raise any objections for accepting the Scheme of Amalgamation of the Petitioner Companies.

14. **Accounting Treatment:**

- i. Upon the Scheme being Effective, Transferee Company shall account for the Amalgamation of the Transferor Company in its books of accounts with effect from the Effective Date in accordance applicable Indian Accounting Standards (Ind AS) 103 – “Business Combination” as issued by the Institute of Chartered Accountants of India and notified by Ministry of Corporate Affairs under the provisions of section 133 and other applicable provisions of Companies Act, 2013, read together with the Companies (Indian Accounting Standards) Rules, 2015.
- ii. All the assets and liabilities of Transferor Company are transferred to and vested in the Transferee Company shall be recorded at their respective fair values as appearing in the books of accounts of the Transferor Company in accordance with the requirement of Ind As.
- iii. The balance, if any, in the Reserves account or credit or debit balance of profit and loss account of Transferor Company, as the case may be, shall be transferred to and aggregated with



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the corresponding reserves in the books of accounts of Transferee Company.

15. **Consideration:**

- i. Upon sanction of this Scheme by the Tribunal and in consideration of transfer and vesting of the Amalgamating Undertaking of the Transferor Company to the Transferee Company in terms of provisions of the Scheme, the Transferee Company shall, without any further Petition or deed, issue and allot equity shares(s) to the members of the Transferor Company whose names appear in the Register of members as on Record Date, in the following ratio (“Share Exchange Ratio”):

01 (One) equity shares of Transferee Company of Rs.10/- each fully paid-up for every 04 (Four) equity shares of Transferor Company of Rs.10/- each fully paid-up;

- ii. Upon this Scheme becoming effective, and in consideration of Amalgamation of the Transferor Company with the Transferee Company the Transferee Company shall, without any further act or deed and without any further payment, basis the share entitlement report issued by Mr. A.N.Gawade, a Registered Valuer, shall issue and allot to the shareholders of Transferor Company as on the Record Date, New Equity Shares / Preference Shares being an aggregate sum equal to consideration of Rs.2,50,53,38,500 in the following manner:

1. 92,20,000 (Ninety Two Lakh Twenty Thousand only) fully paid- up equity share of Rs.10/- each credited as fully paid up equity shares of the Transferee Company



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shall be issued to the equity shareholders of the Transferor Company.

2. 1,32,61,927, 0.1% (Yearly Coupon) Compulsorily Redeemable Preference Shares (“CRPS”) of face value of Rs.10 each credited as fully paid aggregating to Rs. 132,61,92,700 shall be issued to the equity shareholders of the transferor company and such preference shares shall be compulsorily redeemable within a period of 12 months extendable upto 18 months at the option of the transferee company.

Terms of Issue of Compulsorily Redeemable Preference Shares are as follows:

S. No.	Particulars	Terms
1	Face Value	The CRPS issued pursuant to Clause 2.7.1 of the Scheme shall have the Face Value of Rs.10 (Rupees Ten) per CRPS and a premium of Rs. 90 (Ninety) per CRPS
2	Coupon	0.1% per annum payable annually subject to deduction of taxes at source if applicable
3	Accumulation of Dividend	CRPS shall be non-cumulative, non-convertible and non-participating in nature
4	Voting Rights	Non-voting except in accordance with Section 47 of the Companies Act, 2013
5	Tenure	12 months extendable upto 18 months



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6	Redemption	The Resulting Company shall have an option to redeem the CRPS at any time within 12 / 18 months from the date of allotment of CRPS, redeemable at Rs.100 (Face value of Rs.10 plus premium of Rs.90)
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- iii. The equity shares to be issued in terms of this clause shall be subject to the provisions of the Memorandum and Articles of Association of the Transferee Company. The new equity shares shall rank *pari-passu* in all respects, including dividend, with the existing equity shares of the Transferee Company.
- iv. The members of the Transferee Company, on approval of the Scheme, shall be deemed to have given their approval under section 62 of the Companies Act, 2013 and other applicable provisions of the Act, for issue of fresh equity shares to the members of the Transferor Companies and the Transferee Company will not be required to pass any further resolution for issue and allotment of shares to the shareholders of the Transferor Companies.
- v. In the event that the New Equity Shares/ Preference Shares entitled to be issued result in fractional entitlements, the Board of Directors of the Transferee Company shall be empowered to consolidate and/or round off such fractional entitlements into whole number of equity shares to an integer in a manner to ensure that only 92,20,000 equity shares & 1,32,61,927 CRPS to be issued to the shareholders of the Transferor Company.
16. Vide Memo dated 11.12.2023, the Share Exchange Ratio which was mistakenly given vide para 15 above was rectified. Actual/correct



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share exchange ratio, which was shown/reflected in the joint company application as per the scheme of Amalgamation, is as follows:

“Based on value of equity shares of GSS Infotech Limited and Polimeraas Agros Private Limited (after conversion), the share exchange ratio is arrived as hereunder:

Particulars	Polimeraas Agros Private Limited (after conversion)	GSS Infotech Limited
Value per share (INR)	250.53	127.89
Exchange Ratio	1	1.95895
No. of shares to be issued by GSS to the shareholders of Polimeraas Agros Private Limited (after conversion)		1. 92,20,000 fully paid-up equity share of Rs.10/- each of GSS (for 47,06,603 equity shares of Polimeraas Agros Pvt Ltd) 2. 1,32,61,927 – 0.1% (Yearly Coupon) Compulsorily Redeemable Preference Shares (“CRPS”) of face value of Rs.10 each at premium of Rs.90/-) for the balance consideration (which includes the fraction difference of Rs.550 against the above issuance of equity shares).



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17. According to Mrs. Mano Ranjani, Chairperson of the Members Meeting and Mrs. Putcha Sarada, Scrutinizer of the Transferor Company, had filed their individual Reports each dated 22.05.2023 reporting that the resolution proposed for the approval of the Scheme of Amalgamation between M/s.Polimeraas Agro Private Limited and M/s.GSS Infotech Limited was approved with requisite majority by the shareholders and unsecured Creditors of the Transferor Company without any modification.
18. According to Mr. G.V.Ambeswar, Chairman of the Members Meeting and Creditors Meeting and Mr. Srikant Kumar Puthi, Scrutinizer of the Transferee Company, had filed their individual Reports each dated 22.05.2023 reporting that the resolution proposed for the approval of the Scheme of Amalgamation between M/s. Polimeraas Agro Private Limited and M/s. GSS Infotech Limited was approved with requisite majority by the shareholders and unsecured Creditors of the Transferee Company without any modification.

(Copies of the Reports of the Chairperson and Scrutinisers of the Petitioner Companies are at Annexures – H1 & H2, 11 & 12 at page Nos.296-308, 309-318 & 319-331, 332-348 of the petition respectively).

19. We have heard the Learned PCS for the Petitioner Companies and perused the material papers on record. Considering the entire facts and circumstances of the case and on perusal of the Scheme, Report of the Regional Director, reply/undertaking of the Petitioner



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Companies thereon, report of the Official Liquidator, and the documents produced on record, we consider the Scheme of Amalgamation is fair and reasonable and not contrary to public policy and violative of any provisions of law. All the statutory compliances have been made under Section 230 to 232 of the Companies Act, 2013.

ORDER

20. After hearing the Learned PCS for the Petitioner Companies and after considering the material on record, we pass the following order:
- i. The Scheme of Merger, which is filed at Annexure-J-page nos. 349-381 of the petition is hereby sanctioned and confirmed with appointed date as 01.04.2022 and shall be binding on all the members, employees, creditors, concerned statutory, regulatory authorities and all other stakeholders of the Petitioner Companies.
 - ii. It is made clear that this order should not be construed as an order in anyway granting exemption from payment of stamp duty, taxes or any other charges, if any, payable, in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.
 - iii. The whole of the assets, property, rights and Liabilities of the Transferor Companies shall be transferred without the requirement of any further act or deed to the Petitioner/Transferee Company.
 - iv. The Petitioner companies to comply with all the observations pointed out by the Regional Director and Official Liquidator, if any.



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- v. The Petitioner Companies to preserve the books of accounts and papers and records and the same shall not be disposed of without the prior permission of the Central Government in terms of the provisions of Section 239 of the Companies Act, 2013.
- vi. The Petitioner Companies to ensure statutory compliance of all applicable laws and also on sanctioning of the present Scheme, the Petitioner Companies shall not be absolved from any of its statutory liabilities, in any manner.
- vii. The Petitioner Companies involved in the Scheme, to comply with Rule 17(2) of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2013. The Petitioner Companies within 30 days after the date of receipt of certified copy of the order, shall cause certified copy to be delivered in the Form INC-28 to the Registrar of Companies concerned for registration and on such certified copy being delivered, Registrar of Companies concerned shall take all necessary consequential action in respect of the Petitioner Companies.
- viii. The Petitioner Companies are further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Amalgamation under the provisions of the Companies Act, 2013 and submit necessary compliance and undertaking relating to the objections raised by the Regional Director (SER), MCA, Government of India, Hyderabad and Official Liquidator, Hyderabad.



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- ix. All the legal proceedings pending by/or against the Transferor Companies shall be continued by/or against the Transferee Company.
- x. The tax implications, if any, arising out of the Scheme is subject to final decision of the Tax Authorities concerned and the decision of the Tax Authorities concerned shall be binding on the Transferee Company.
- xi. The Transferee Company is directed to strictly comply with the Accounting Treatment Standards prescribed under Section 133 of the Companies Act, 2013.
- xii. The sanction of the Scheme by this Adjudicating Authority shall not forbid the Revenue Authority from taking appropriate recourse for recovering the existing and previous tax liabilities of the Transferor and Transferee Companies.
- xiii. The Transferee Company to comply with the provisions of Section 2(41) of the Companies Act, 2013.
- xiv. The Transferor Company shall be dissolved without going through the process of winding up.
- xv. The Petitioner Companies shall until the completion of the Scheme of Amalgamation, file a statement in such form and within such time as prescribed with the Registrar every year duly certified by the Chartered Accountant or a Cost Accountant or a Company Secretary to the effect that the Scheme of Amalgamation is being complied in accordance with the orders of the Adjudicating



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Authority as required under Section 232(7) of the Companies Act, 2013.

- xvi. All concerned shall act on a copy of this order along with Scheme duly authenticated by the Deputy/Assistant Registrar of this Adjudicating Authority.
- xvii. Any person shall be at liberty to apply to the Adjudicating Authority in the above matter for any directions that may be necessary.
- xviii. Accordingly, the Company Petition bearing CP(CAA) No. 53/230/HDB/2023 in CA(CAA) No.20/230/HDB/2023 is allowed and stands disposed of.

संजय पुरी

SANJAY PURI
MEMBER (TECHNICAL)

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

Apoorva



Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY

केस संख्या
CASE NUMBER... CP(CAA) No. 53/230/HDB/23
निर्णय का तारीख
DATE OF JUDGEMENT... 2/2/24
प्रति तैयार किया गया तारीख
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