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IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

CA (CAA) No. 09/KB/ 2018

In the matter of:

An application under Sections 230 to 232 of the
Companies Act, 2013 ;

And

In the matter of:

NOVEX TRADES & HOLDINGS PRIVATE LIMITED,
a company within the meaning of the Companies
Act, 2013, having its registered office at 219/C,
Old China Bazar Street, Room No. C-12, 2nd Floor,
Kolkata – 7000 01 in the State of West Bengal,
within the aforesaid jurisdiction ;

And

GLOREX BUSINESS PRIVATE LIMITED, a
company within the meaning of the Companies
Act, 2013, having its registered office at 219/C,
Old China Bazar Street, Room No. C-14/A, 2nd
Floor, Kolkata – 7000 01 in the State of West
Bengal, within the aforesaid jurisdiction ;

Sd

And

DIVINE VINTRADE PRIVATE LIMITED, a company within the meaning of the Companies Act, 2013, having its registered office at 219/C, Old China Bazar Street, Room No. B-8, 1st Floor, Kolkata – 7000 01 in the State of West Bengal within the aforesaid jurisdiction ;

And

SAGUN DEALTRADE PRIVATE LIMITED, a company within the meaning of the Companies Act, 2013, having its registered office at 219/C, Old China Bazar Street, Room No. C-14A, 2nd Floor, Kolkata – 7000 01 in the State of West Bengal ;

And

MONARCH BARTER PRIVATE LIMITED, a company within the meaning of the Companies Act, 2013, having its registered office at 219/C, Old China Bazar Street, Room No. C-14A, 2nd Floor, Kolkata – 7000 01 in the State of West Bengal ;

And

UMANG VINTRADE PRIVATE LIMITED, a company within the meaning of the Companies Act, 2013,

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having its registered office at 219/C, Old China Bazar Street, Room No. B-8, 1st Floor, Kolkata – 7000 01 in the State of West Bengal within the aforesaid jurisdiction ;

And

ANGEL COMMOTRADE PRIVATE LIMITED, a company within the meaning of the Companies Act, 2013, having its registered office at 219/C, Old China Bazar Street, Room No. C-14A, 2nd Floor, Kolkata – 7000 01 in the State of West Bengal, within the aforesaid jurisdiction ;

And

SATYAK TRADING PRIVATE LIMITED, a company within the meaning of the Companies Act, 2013, having its registered office at 219/C, Old China Bazar Street, Room No. C-14A, 2nd Floor, Kolkata – 7000 01 in the State of West Bengal, within the aforesaid jurisdiction ;

And

GAURAV AGENCIES PRIVATE LIMITED, a company within the meaning of the Companies Act, 2013, having its registered office at 5, S.R. Das Road, Flat No. 3C, 3rd Floor, Kolkata – 700 026 in the State of West Bengal, within the aforesaid jurisdiction ;

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And

1. Novex Trades & Holdings Private Limited
2. Glorex Business Private Limited
3. Divine Vintrade Private Limited
4. Sagun Dealtrade Private Limited
5. Monarch Barter Private Limited
6. Umang Vintrade Private Limited
7. Angel Commotrade Private Limited
8. Satyak Trading Private Limited
9. Gaurav Agencies Private Limited

... APPLICANTS

Coram : Mr. Jinan K.R., Member(Judicial)

For the Applicants:

Mr. Nirmalya Dasgupta, Advocate

Mr. Shaunak Sengupta, Advocate

Ms. Pritha Basu, Advocate

Date of pronouncement of the order:

14/03/2018

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ORDER

Per Jinan K.R.

1. The object of this application is to ultimately obtain sanction of this Tribunal for the Scheme of Amalgamation of Novex Trades & Holdings Private Limited, the Transferor Company No.1, Glorex Business Private Limited, the Transferor Company No.2, Divine Vintrade Private Limited, the Transferor Company No.3, Sagun Dealtrade Private Limited, the Transferor Company No. 4, Monarch Barter Private Limited, the Transferor Company No. 5, Umang Vintrade Private Limited, the Transferor Company No.6, Angel Commotrade Private Limited, the Transferor Company No. 7 and Satyak Trading Private Limited, the Transferor Company No. 8, with the Transferee Company, Gaurav Agencies Private Limited.

2. A copy of the Scheme of Amalgamation is annexed with the Application and marked with letter "S".

3. Nine separate Board resolutions all dated 02-11-2017 were passed by the respective Board of Directors of the Applicant Companies for the approval of the Scheme of Amalgamation.

4. It has been stated in the Application that all the Companies are part of the same group and have limited resources. The Amalgamation is aimed at consolidation of group structure and rationalization of resources for optimum results.

5. For the optimum running, growth and development of the business and undertakings of the Transferor Companies and the Transferee Company with their combined resources and a larger capital and asset base, it is considered desirable and expedient to amalgamate the Transferor Companies with the

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Transferee Company in the manner and on the terms and conditions stated in the Scheme of Amalgamation.

6. The Amalgamation will result in the formation of a larger and stronger entity having greater capacity for conducting its operations more efficiently and competitively.

7. The Scheme of Amalgamation is accordingly and will have beneficial results for the said Companies, their shareholders, employees and all concerned.

8. It is further stated in the Application that the assets of the Applicant Companies are sufficient to meet all their liabilities and the Scheme of Amalgamation will not adversely affect the rights of any of the Creditors of any of the Applicant Companies in any manner whatsoever.

9. The Applicant Companies have made due provisions for payment of all the liabilities as and when the same will fall due.

10. It is also stated in the Application that there are no proceedings pending under Section 235 to 251 of the Companies Act, 1956 and Section 217,219,221,224 and 225 of the Companies Act, 2013 against any of the Applicant Companies.

11. It has further been stated in the Application that the report determining the number and exchange ratio of the shares which, shall be issued and allotted to the Equity shareholders of the Transferor Companies by the Transferee Company for implementing the terms of the Scheme of Amalgamation has been prepared by the Chartered Accountants and such recommendation has been accepted by the Board of Directors of both the Applicant Companies.

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12. All the applicant companies are closely held companies and there is no outside shareholder or director in any of the Transferor Companies or the Transferee Company.

13. The paid up share capital of all the Applicant Companies is also small and entirely closely held.

14. It is also stated in the Application that the Applicant Company No.1 has 16 equity shareholders, the Applicant Company No.2 has 13 equity shareholders, the Applicant Company No.3 has 9 equity shareholders, the Applicant Company No.4 has 11 equity shareholders, the Applicant Company Nos. 5 and 7 have 7 equity shareholders each, the Applicant Company Nos. 6 and 8 have 8 equity shareholders each, and the Applicant Company No. 9 has 12 equity shareholders.

15. Each and every shareholder of all the Applicant Companies has considered the Scheme of Amalgamation and has given their consent and "no-objection" in writing agreeing to the Scheme of Amalgamation and also consenting to waive the holding of the meeting of the shareholders of the concerned Applicant Company.

16. Each of the shareholders of all the Applicant Companies have provided their respective affidavits enclosing their respective "No objection" letters.

17. The copies of the said affidavits along with the enclosures and the list of shareholders of all the applicant companies are collectively annexed with the Application and marked with letter "T".

18. As all the shareholders of the Applicant Companies have considered and agreed in writing to the proposed Scheme of Amalgamation and have also consented to waiving the holding of the meeting of the shareholders of the Applicant Companies concerned, the Applicant Companies have prayed

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that holding of the individual meetings of the shareholders of the Applicant Companies for considering and approving the Scheme of Amalgamation be dispensed with.

19. Further, it has been stated in the Application that all the Applicant Companies do not have any secured creditors.

20. The statutory auditors of each of the Applicant Companies have given their respective certificates confirming that there are no secured creditors in the respective companies as on 04-12-2017.

21. The copies of such certificates are collectively annexed with the Application and marked with letter "U".

22. There are no unsecured Creditors in all the Applicant Companies.

23. The statutory auditors of the respective applicant companies have given their respective certificates confirming that there are no unsecured creditors in the respective applicant companies as on 04-12-2017.

24. The copies of such certificates are collectively annexed with the Application and marked with letter "V".

25. The Statutory Auditors of each of the Applicant Companies by their respective certificates all dated 04-12-2017 certified that the accounting treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013.

26. The copies of the said certificates are collectively annexed with the Application and marked with letter "W".

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27. Heard the learned Counsel for the applicants, perused the records, documents annexed to the Application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants, the following orders are passed :

- i) In view of the fact that all the equity shareholders of the Applicant Companies duly consented in writing by way of affidavits, to the proposed Scheme of Amalgamation, the requirements of convening and holding of separate meetings of the shareholders of the Applicant Companies to ascertain the wishes of the equity shareholders of all the Applicant Companies for the Scheme of Amalgamation, are dispensed with ;
- ii) Since there are no Secured and Unsecured creditors of the Applicant Companies, as certified by the respective Statutory Auditors of the Applicant Companies, convening and holding of separate meetings of the Secured and the Unsecured creditors of the Applicant Companies, do not arise ;
- iii) Let the notice be served by the Applicant Companies, as per the requirements of sub-section (5) of Section 230 of the Companies Act, 2013, along with the copy of the Application and all other documents including the copy of the Scheme of Amalgamation and the statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal, and the concerned Income-Tax Assessing Officer along with the Chief Commissioner of Income-Tax with PAN Numbers of the Applicant Companies through E-Mail and by Speed Post, both, as also on the Official Liquidator, having jurisdiction over the Applicant Companies, and such other relevant sectoral regulators/authorities, if applicable, which are likely to be affected by the proposed scheme, by sending

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the same by hand delivery through Special Messenger or by registered post or by Speed Post, by E-Mail, both, within seven days from the date of this order for filing their representation, if any, on the Application within 30 days from the date of the notice ;

- iv) The Applicants shall file affidavit within 7 days of serving the notice regarding the service of notice ;
- v) The Applicants are further directed to send notice through e-mail also and file copies of the mails along with an affidavit. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the Applicants and/or their Advocates, in advance ;
- vi) If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation ;
- vii) Objections, if any, to the scheme contemplated by the authorities to whom notice has been given, may be filed within the time stipulated, failing which it will be considered by this Tribunal that there is no objection to the approval of the Scheme of Amalgamation on the part of the authorities, subject to other conditions being applicable under the Companies Act, 2013 and relevant rules made thereunder ;

28. The Company Application bearing CA(CAA) No. 09/KB/2018 is, accordingly, disposed of.

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29. Certified copy of this Order may be issued, if applied for, upon compliance of all requisite formalities.

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(Jinan K.R.)
Member(Judicial)

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