

In the National Company Law Tribunal,
Kolkata Bench, Kolkata

CA (CAA) No.55/KB/2018

In the matter of:

An application under Sec.230 – 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016
And

In the matter of:

STERLING BOLTS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 2C, Tentulkuli, Dimjur, NH-6, Howrah-711109 in State of West Bengal
And

In the matter of:

ASHLESH DEALTRADE PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 60/10, Gori Bari Lane, Maniktala, Kolkata-700004 in State of West Bengal
And

In the Matter of:

ASHLESH VANIJYA PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 60/10, Gori Bari Lane Maniktala, Kolkata-700004 in State of West Bengal
And

In the Matter of:

DHARYA DEALMARK PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 41, Shivtalla Street, 1st Floor, Kolkata-700007 in State of West Bengal
And

In the Matter of:

DREAM VALLY TIE-UP PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 10, Swami Vivekanand Path, Deepnagar, Bhagalpur-812001 in State of Bihar
And

In the Matter of:

TOPFLOW COMMERCIAL PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 10, Swami Vivekanand Path, Deepnagar, Bhagalpur - 812001 in State of Bihar
And

In the Matter of:

VIEWHIGH DEALCOM PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 41, Shivtalla Street, 1st Floor, Kolkata-700007 in State of West Bengal
And

In the Matter of:

1. STERLING BOLTS PRIVATE LIMITED : (Transferee Co.)
2. ASHLESH DEALTRADE PRIVATE LIMITED : (Transferor Co. No.1)
3. ASHLESH VANIJYA PRIVATE LIMITED : (Transferor Co. No.2)
4. DHARYA DEALMARK PRIVATE LIMITED : (Transferor Co. No.3)
5. DREAM VALLY TIE-UP PRIVATE LIMITED : (Transferor Co. No.4)
6. TOPFLOW COMMERCIAL PRIVATE LIMITED : (Transferor Co. No.5)
7. VIEWHIGH DEALCOM PRIVATE LIMITED : (Transferor Co. No.6)

.....Applicants

Order Delivered on 5th March 2018

Coram:

Jinan K.R., Member (J)

For the Petitioners

: 1. Ms. Manju Bhuteria, Advocate
2. Mr. N. Gurumurthy, FCA

ORDER

Per Jinan K.R., Member (J)

The object of this application is to ultimately obtain sanction of this Tribunal to the Scheme of Amalgamation whereby the Transferor Companies will be merged/amalgamated with Transferee Company with transfer date or appointed date being 1/4/2017.

2. It is stated in the application that the Transferor Companies are engaged in investing activities, trading and funding activities and the Transferee Company is presently engaged in the business of manufacturing and trading of fasteners and also investing activities. The business of the Transferor Companies and the Transferee Company can be combined and carried forward conveniently with combined strength.

3. For the purposes of better, efficient and economical management, control and running of the business of the undertakings concerned and for administrative convenience and to obtain advantage of economy of large scale and to broad base the present business, the present Scheme is proposed to amalgamate the Transferor Companies with the Transferee Company. The Board of Directors of each Company are of the opinion that the proposed Scheme would benefit their shareholders, creditors, employees and the general public.

4. The Board of Directors of the Transferor Companies and the Transferee Company have at their respective Board Meetings held on 28/10/2017 have passed resolution approving the Scheme of Amalgamation. Copy of the Board Resolution is enclosed marked Annexure - P at page No 532 to 545.

5. It has been stated in the application that the assets of the applicant Companies are sufficient to meet all their liabilities and the said scheme will not adversely affect the rights of any of the creditors of any of the applicant Companies in any manner whatsoever.

6. It is stated in the application that the applicant Companies have made due provisions for payment of all liabilities as and when the same fell due.

7. The statutory Auditors of the Transferee Co. have certified that the accounting treatment proposed in terms of clause 11 of PART III of the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the

Companies Act, 2013. Copy of the statutory Auditors certificate is annexed with the application and marked Annexure - Y at Page No 644 to 645.

8. It has been 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.

9. It has been stated in the application that the present Scheme of Amalgamation does not contain or provide for Corporate Debt Restructuring.

10. It is further stated that the Scheme of Amalgamation does not contain any clause whatsoever relating to arrangement and/or compromise with creditor and interest of creditor will not be affected in any manner whatsoever

11. It is further stated that the applicant Companies have never issued nor agreed to issue any debenture.

12. It is further stated that the Transferee Company is having 9 shareholders and all the shareholders have given their consent by way of affidavit. Copy of consent and list of shareholders duly certified by the Statutory auditors are annexed marked Annexure - R at page no 564 to 584.

13. It is further stated that the Equity Shareholders in the Transferor Company No.1 are 2, in the Transferor Company No.2 are 2, in the Transferor Company No.3 are 2, in the Transferor Company No.4 are 3, in the Transferor Company No.5 are 3 and in the Transferor Company No.6 are 2. List of shareholders duly certified by the Statutory auditors and affidavit by all the equity shareholders of the Transferor Companies is annexed with the application and marked as ANNEXURE S at page no 585 to 630.

14. It is further stated that the copy of Valuation Report is annexed and marked as Annexure Q at page no 546 to 563.

15. It is further stated that the Transferee Company are having Nil Secured Creditors as on 30/9/2017 and which has been duly certified by the Statutory auditors is annexed with the application and marked as ANNEXURE T at page no 631.

16. It is further stated that the Transferor Co. No.4 and 5 are having Nil Secured Creditors as on 30/9/2017 and which has been duly certified by the Statutory auditors is annexed with the application and marked as Annexure X at page no 642 to 643.

17. The Transferee Co. have unsecured creditors as on 30/09/2017 comprising of 90 Nos. of Trade Creditors aggregating to Rs.3,93,44,095/- and Outstanding Expenses Payable Rs.2,46,66,608/ as on 30/09/2017. A certificate from the statutory auditor of the Company dated 23/10/2017 certifying the above is annexed with the application and marked with the Annexure T at page no 632 to 635.

18. There are No Secured & Unsecured Creditors in respect of

- a) ASHLESH DEALTRADE/TRANSFEROR COMPANY NO.1,
- b) ASHLESH VANIJYA/TRANSFEROR COMPANY NO.2
- c) DHARYA/TRANSFEROR COMPANY NO.3,
- d) VIEWHIGH/TRANSFEROR COMPANY NO.6

19. A certificate from the statutory auditor of the TRANSFEROR COMPANIES confirming NIL Creditors as on 30/9/2017 is annexed hereto and marked with the Annexure - U at page no 636 to 639.

20. There are 18 Nos of unsecured Creditors amounting to Rs.1,35,11,510/- and NIL Secured Creditors as on 30.09.2017 in Transferor Co. No.4. A certificate from the statutory auditor of the TRANSFEROR COMPANY NO 4 as on 30/9/2017 is annexed with the application and marked with the Annexure V at page no 640.

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21. There are 8 Nos of unsecured Creditors amounting to Rs.37,45,870/- and NIL Secured Creditors as on 30.09.2017 in Transferor Co. No.5. A certificate from the statutory auditor of the COMPANY confirming the Unsecured Creditors as on 30/9/2017 is annexed with the application and marked as Annexure W at page No 641.

22. Heard the Counsels 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:

ORDER

- i. In view of the consents given in affidavit form by all the shareholders of the Transferee Company and Transferor Companies, convening and holding of separate meetings of the shareholders of the Transferee Company and Transferor Companies are dispensed with.
- ii. In view of the fact that the Transferee Company and Transferor Companies have NIL Secured Creditors verified by Auditors Certificate, the question of holding separate meeting of secured creditors of the Transferee Company and Transferor Company does not arise.
- iii. In view of the fact that the Transferor Company No 1, Transferor Company No 2, Transferor Company No 3 and Transferor Company No 6 have NIL Unsecured Creditors verified by Auditors Certificate, the question of holding separate meeting of unsecured creditors does not arise.
- iv. The Transferee Company have unsecured creditors as on 30.09.2017 Comprising of 90 Nos of Trade Creditors aggregating to Rs.3,93,44,095/.
- v. The Transferor Company No.4 have unsecured creditors as on 30.09.2017 Comprising of 18 Nos of Trade Creditors aggregating to Rs.1,35,11,510/-.

- vi. The Transferor Company No.5 have unsecured creditors as on 30.09.2017 comprising of 8 Nos of Trade Creditors aggregating to Rs.37,45,870/-.
- vii. That the meeting of the Unsecured Creditors of Transferor Company be convened and held on Friday 20th April 2018 at Tentulkuli, Domjur, NH-6 Howrah - 711109 at 3.p.m for the purpose of considering, and if thought fit, approving, with or without modification, the said Scheme of Amalgamation.
- viii. That the meeting of the Unsecured Creditors of Transferor Company No. 4 be convened and held on Friday 20th April 2018 at Tentulkuli, Dimjur, NH-6 Howrah - 711109 at 4.p.m for the purpose of considering, and if thought fit, approving, with or without modification, the said Scheme of Amalgamation.
- ix. That the meeting of the Unsecured Creditors of Transferor Company No.5 be convened and held on Friday 20th April 2018 at Tentulkuli, Dimjur, NH-6 Howrah - 711109 at 5 p.m. for the purpose of considering, and if thought fit, approving, with or without modification, the said Scheme of Amalgamation.
- x. The quorum for the meeting of the unsecured creditors of the Transferee Company, Transferor Company No.4 and Transferor Company No.5 will be as per section 103 of the Companies Act, 2013
- xi. That SHASHI AGARWAL CA is appointed as the Chairperson for the meeting convened in terms of this order. The Chairperson shall be paid a lumpsum of Rs. 50,000/-
- xii. At least one month before the aforesaid date of the said meetings, an advertisement about convening of the meetings indicating the place, day, date and times, as aforesaid, shall be published in the "Business Standard" in English Daily and "Aajkal", in the Bengali Daily. The publication shall indicate the time within which copies of the scheme shall be made available

to the concerned persons free of charge from the registered office of the Transferee Company. The publication shall also indicate that the Statement containing necessary details required to be furnished pursuant to Section 102 read with Sections 230 to 232 of the Companies Act, 2013 and the prescribed form of proxy can be obtained free of charge at the registered office of the transferee company in accordance with second proviso to sub-section (3) of Section 230 of the Act and Rule 7 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 "Companies (CAA) Rules, 2016".

- xiii. At least one month before the aforesaid date of the said meetings of the unsecured creditors of the Transferee Company, Transferor Company No.4 and Transferor Company No.5, a notice convening meetings in Form C.A.A.2 indicating the day, date, place and times as aforesaid together with a copy of the Scheme, copy of statement required to be furnished pursuant to Section 102 of the Act read with Section 230 (3) of the Act and Rule 6 of Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the said unsecured creditors of the Transferee Company, Transferor Company No.4 and Transferor Company No.5 at their respective registered or last known addresses either by registered post or speed post or through courier or by e-mail. The notice shall be sent to all those who are unsecured creditors of the Transferee Company, Transferor Company No.4 and Transferor Company No.5 as on 31/1/2018.
- xiv. The applicant Companies shall individually send notice to 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 officers and Chief Commissioner of Income Tax with PAN numbers along with copies of required documents and disclosures required under the provisions of Section 230 (5) of the

Companies Act, 2013 in Form No. CAA.3 of the Companies (CAA) Rules, 2016 with necessary variations incorporating the directions therein, by sending the same by hand delivery through special messenger or by registered post or speed post, and also through e mail for filling their representation, if any, within 30 days from the date of notice. 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. 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.

- xv. That voting by proxy be permitted, provided that a proxy in the prescribed form duly signed by the person (s) entitled to attend and vote at the meetings, is filed with the respective Applicant Company at their Registered Office not later than forty-eight hours before the meetings. The Chairperson shall have the power to adjourn his/her meetings, if necessary and to conduct the procedure for the adjourned meetings as deemed necessary.
- xvi. That the Chairperson(s) do report to this Court the results of the said meetings of the unsecured creditors of Transferee Company, Transferor Company No.4 and Transferor Company No. 5 within four weeks from the date of the conclusion of the respective meetings and his/her reports shall be in Form NO. CAA 4 pursuant to Rule 13(2) and 14 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016, verified by his/her respective affidavits.
- xvii. The Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

xviii. All the aforesaid directions are to be complied with in accordance with the applicable law including forms and formats contained in the Companies (CAA) Rules, 2016 as well as the provisions of the Companies Act, 2013. The undertaking of the authorized representatives of the applicant Companies to this effect is accordingly taken on record.

The parties and the Chairperson shall act as per the order.

There shall be no orders as to costs.

Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

The application being C.A (CAA) No.55/KB/2018 is disposed of accordingly.

Sd

Jinan K.R.
Member (J)

Signed on 5th March 2018