

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH

COMPANY APPLICATION No.C.A.(CAA) No.464/KB/2017

**In the matter of:**

The Companies Act, 2013 – Sections 230,231  
and 232 of the said Act.

-And -

1. VMV CONSULTANCY PRIVATE LIMITED,  
having its registered Office at 35, Ganesh  
Chandra Avenue, 3<sup>rd</sup> Floor, Kolkata – 700 013

... Transferor Company 1

2. VMV ACADEMY PRIVATE LIMITED, having its  
registered Office at 18, Giri Babu Lane, 1<sup>st</sup> Floor,  
Room No. 1A, Kolkata – 700 012

... Transferor Company 2

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3. VMV EXIM PRIVATE LIMITED, having its registered Office at 35, Ganesh Chandra Avenue, 3<sup>rd</sup> Floor, Kolkata – 700 013

... Transferor Company 3

4. VMV INTERIORS PRIVATE LIMITED, having its registered Office at 35, Ganesh Chandra Avenue, 3<sup>rd</sup> Floor, Kolkata – 700 013

... Transferor Company 4

5. VMV HEALTH SOLUTION PRIVATE LIMITED, having its registered Office at 35, Ganesh Chandra Avenue, 3<sup>rd</sup> Floor, Kolkata – 700 013

... Transferor Company 5

6. MANAVI NIKETAN PRIVATE LIMITED, having its registered Office at 35, Ganesh Chandra Avenue, 3<sup>rd</sup> Floor, Kolkata – 700 013

... Transferor Company 6

And

7. VMV ARTS PRIVATE LIMITED, having its registered office at 18, Giri Babu Lane, 1<sup>st</sup> Floor, Room No. 1A, Kolkata – 700 012

... Transferee Company

And

1. VMV CONSULTANCY PRIVATE LIMITED
2. VMV ACADEMY PRIVATE LIMITED
3. VMV EXIM PRIVATE LIMITED
4. VMV INTERIORS PRIVATE LIMITED
5. VMV HEALTH SOLUTION PRIVATE LIMITED
6. MANAVI NIKETAN PRIVATE LIMITED
7. VMV ARTS PRIVATE LIMITED

.... Applicants

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

**For the Applicants :**

1. Ms. Disha Dugar, Pr. CS

**Date of pronouncement of order: 13-03-2018**

Per Mr. Jinan K.R.

ORDER

1. The object of this application is to ultimately obtain sanction of this Tribunal to the Scheme of Amalgamation of the Transferor Companies, namely, (1) VMV CONSULTANCY PRIVATE LIMITED, (2) VMV ACADEMY PRIVATE LIMITED, (3) VMV EXIM PRIVATE LIMITED, (4) VMV INTERIORS

PRIVATE LIMITED, (5) VMV HEALTH SOLUTION PRIVATE LIMITED, (6) MANAVI NIKETAN PRIVATE LIMITED, into the Transferee Company, namely, (1) VMV ARTS PRIVATE LIMITED, where the undertaking, property and the liabilities of the Transferor Companies are to be transferred to the Transferee Company, pursuant to the provisions of Sections 230 to 232(Amalgamation) of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013, as detailed in the Application pages 39 to 118, with effect from the Appointed date, i.e. 01-04-2017.

2. It has been stated in the Application that the Transferor Companies and the Transferee Company are promoted by the same set of individuals. The promoters have tried to diversify their area of business and enter into different industries by the incorporation of the Transferor and the Transferee Companies.

3. However, on account of the long period of gestation that is normally undergone by companies in such business, the Transferor Companies have suffered losses continuously, in several subsequent financial years.

4. On evaluating the growth of the Transferor Company, it is considered that the amalgamation will enable pooling of resources of the aforesaid Transferor Companies with the resources of the Transferee Company to their advantage, resulting in more productive utilization of the said resources, and cost and operational efficiencies which would be beneficial to all stakeholders.

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5. It has also been stated in the Application that the consolidated entity will offer a strong and stable financial structure to all stakeholders, facilitate resource mobilization and lead to the achievement of better cash flows and also optimum utilization of assets and resources. This will result in a substantial enhancement of shareholders' value of the Transferee Company.

6. It is also stated that consequent upon merger, the Transferee Company would be able to optimize the resources required for overall general and administrative purpose.

7. The Transferee Company would be able to use its existing resources as well as the resources of the Transferor Company and this would reduce the cost of maintaining and using separate resources.

8. The consolidation of the business operations, undertakings, assets, liabilities etc. of the Transferor Companies into the Transferee Company, under a single centralized system of management, will result in the management being able to exercise greater control over the operations of the Companies.

9. It has further been stated that the Banks, Creditors and the Institutions, if any, of the Transferor and the Transferee Companies are not affected by the proposed amalgamation as their security is maintained and no compromise or arrangement is made with them.

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10. There is no likelihood that the interests of any shareholder or creditor of either the Transferor Companies or the Transferee Company would be prejudiced as a result of the Scheme of Amalgamation.

11. The Amalgamation will not impose any additional burden on the members of the Transferor Companies or the Transferee Company.

12. It has also been stated that the Scheme of Amalgamation is in the interest of the shareholders, creditors and employees of the Transferor/Transferee Companies and their stakeholders and would enable the Transferor Companies and the Transferee Company to adopt a focused business approach for the maximization of benefits to their respective stakeholders.

13. The Scheme of Amalgamation shall not, in any manner, be prejudicial to the interests of the concerned shareholders, creditors and/or the general public at large.

14. In view of the aforesaid, the Board of Directors of the Transferor Companies as well as the Transferee Company have considered and proposed the amalgamation of the entire undertaking and business of the Transferor Companies with the Transferee Company in order to benefit the stakeholders of both the Transferor and the Transferee Companies.

15. The respective Board of Directors of the Transferor Companies, have by resolutions passed unanimously at their meetings all held on 02-05-2017 and the Transferee Company, have by a resolution passed

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unanimously at their meeting held on 02-05-2017, approved the Scheme of Amalgamation.

16. The copy of the Board Resolution and the Memorandum of Appearance is attached with the Application marked Annexure -VII.

17. It has been stated in the Application that the Transferee Company shall issue and allot to every shareholder of the Transferor Companies, in the manner as detailed in the Application pages 29-31 and such consideration has been fixed on a fair and reasonable basis as ratified by the Valuation Report of the independent Valuer, by which the share exchange ratio has been arrived at.

18. The copy of the Valuation Report obtained from the Valuer is attached with the Application and marked Annexure-IV.

19. It is stated that the aggregate assets of the Transferor Companies and the Transferee Company are more than sufficient to meet all their liabilities and the Scheme of Amalgamation will not adversely affect the rights of any of the Creditors of the Transferor Companies and the Transferee Company in any manner whatsoever and due provisions have been made for payment of all the liabilities as and when the same fall due in usual course.

20. It is also stated that there are no proceedings pending under Section 210 to 227 of the Companies Act, 2013 against either the Transferor Companies or the Transferee Company.

21. No investigation proceedings are pending against the applicants.

22. The certificate issued by the Auditor of the Company to the effect that the accounting treatment, if any, proposed in the Scheme of Amalgamation is in conformity with the accounting standards of Section 133 of the

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Companies Act, 2013, is attached with the Application and marked Annexure-VIII.

23. The Applicants have also provided with the Application, the list of Members and the Creditors with their consent for dispensing of the meeting of the Members and the Creditors in the form of duly notarized affidavit amounting to 100% of value of the Members and 100% of the value of the creditors, as Annexure I to the Application.

24. 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 :

a) In view of the consents given in affidavit form by all the Members/shareholders of the TRANSFEREE COMPANY AND TRANSFEROR COMPANIES, amounting to 100% of value of the Members, convening and holding of separate meetings of the members/ shareholders of the Transferee Company and Transferor Companies are dispensed with.

b) In view of the consents given in affidavit form by all the Members/shareholders of the TRANSFEREE COMPANY AND TRANSFEROR COMPANIES, amounting to 100% of value of the Creditors, convening and holding of separate meetings of the Creditors of the Transferee Company and Transferor Companies are dispensed with.

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- c) The Applicant Companies to serve the notice along with a 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 ) , Registrar Of Companies – West Bengal , the concerned Assessing Officer, Income Tax, the Chief Commissioner of Income Tax with PAN numbers of the Applicant Companies, within whose jurisdiction the assessments of the Applicant Companies are made, and also on the Official Liquidator attached to Hon'ble High Court, Calcutta, Reserve Bank of India pursuant to Section 230(5) of the Companies Act , 2013 read with Rule 8 of the Companies ( Compromises , Arrangements and Amalgamations ) Rules, 2016 with suitable changes in the notice relating to Waiver of meetings.
- d) If no response is received by the tribunal from the above authorities within 30 days of date of receipt of the notice it will be presumed that such authorities have no objection to the proposed Scheme of Amalgamation, as per Rule 8 of the Companies ( Compromises , Arrangements and Amalgamations ) Rules, 2016 .
- e) 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 ;
- f) An affidavit of Compliance of all the conditions laid down herein along with original proof of service of the notice to

all authorities to be filed jointly by Transferee Company and Transferor Company within seven days of the notice, regarding service of the notice.

25. The Company Application bearing No. CA(CAA) No. 464/KB/2017 is, accordingly, disposed of.

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



(Jinan K.R.)  
Member(Judicial)