

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CA (CAA) No.255/KB/2018

CP (CAA) No.733/KB/2018

In the matter of:

An application under Sec.230 – 232 of the Companies Act, 2013 read with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

And

In the matter of:

Amber (India) Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 11, Decres Lane, 1st Floor, Kolkata -700 069, West Bengal

And

In the matter of:

West End Caterers Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 11, Decres Lane, 1st Floor, Kolkata -700 069, West Bengal

And

In the matter of:

- | | |
|--------------------------------------|--------------------|
| 1. Amber (India) Private Limited | : (Transferee Co.) |
| 2. West End Caterers Private Limited | : (Transferor Co.) |

.....Applicant/Petitioners

Order Delivered on 18th July 2018

For the Applicant/Petitioners

- : 1. Ms. Manisha Saraf, PCS
2. Ms. Sneha Khaitan, PCS

ORDER

Per Jinan K.R., Member (J)

This application has been filed by the Applicant Companies, namely, West End Caterers Private Limited [hereinafter referred to as the Transferor Company] with Amber (India) Private Limited [hereafter referred to as the Transferee

Company] under Section 230 to 232 of the Companies Act, 2013 and their respective shareholders for obtaining sanction of this Tribunal regarding Scheme of Amalgamation proposed to be made between the Transferee Company and the Transferor Company and their respective shareholders. A copy of the Scheme of Amalgamation has been annexed with the application as Annexure A-1.

2. The object of this application is to ultimately obtain sanction of this Tribunal to a Scheme of Amalgamation proposed to be made between the applicant companies and their respective shareholders under the Scheme of Amalgamation whereby and whereunder: -

- i. The entire undertaking of the Transferor Companies, together with all the assets and liabilities relating thereto are proposed to be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the Scheme of Amalgamation.
- ii. The proposed re-alignment will create enhanced value for all the stakeholders of the applicant companies as it would facilitate focused strategy, direction and business planning to optimize operational, managerial, financial, technical and marketing capabilities of each business. It will help in optimization of the resources and reduction of the operational costs.
- iii. The amalgamation will enable the Transferee Company to consolidate its line of business by restructuring and reorganising its business activities and capital structure.
- iv. The Scheme of Amalgamation will enable the companies concerned to rationalise and streamline their management, business and finances and to eliminate duplication of work to their common advantage.

3. It is stated in the application that the Transferee Company and the Transferor Company are engaged in the business of hotel and catering and renting of commercial property.

4. It is stated in the application that the Board of Directors of the applicant companies have at their board meetings held on 31/1/2018 by a resolution passed unanimously approved the Scheme of Amalgamation. Copy of the board resolutions of the applicant companies are annexed with the application and marked as Annexure A-14, page 224 to 227.

5. It further appears from the record that the Chartered Accountants issued a certificate to the effect that the accounting treatment of the applicant companies in the proposed Scheme of Amalgamation in terms of Clause 8 Part II of the Scheme is in conformity with the accounting standards prescribed under Sec.133 of the Companies Act, 2013. Copy of certificate under Sec.133 is annexed with the application and marked as Annexure A-12.

6. Ld. Counsel for the applicant submits that there are 3 shareholders in the Transferee Company and 3 shareholders in the Transferor Company and all the shareholders of the applicant companies had consented to the Scheme of Amalgamation by way of affidavit. Copy of the list of shareholders of the Transferee Company and the Transferor Company are annexed with the application as Annexure A-15 and Annexure A-16 respectively.

7. It appears from the record that there are NIL Debenture holders in the Transferee Company and the Transferor Company as on 31/1/2018. Copy of the list of Debenture holders are annexed with the application as Annexure A-17 and Annexure A-18 respectively.

8. Ld. Counsel for the applicant submitted the Transferee Company have NIL Secured Creditors and NIL Unsecured Creditors as on 31/01/2018 and the Transferor Company have NIL Secured Creditor and 1 (One) Unsecured Creditor as on 31/01/2018. A Certificate from the Chartered Accountant verifying the list of shareholders, secured and unsecured creditors and the debenture holders of the applicant companies are annexed with the application as Annexure A-21 and A-22 respectively.

9. It reveals from the record that pursuant to order dated 9/5/2018 passed by this Tribunal in C.A. (CAA) No.255/KB/2018, this Tribunal waived the meetings of the equity shareholders and creditors of all the petitioner companies for the purpose of considering with or without modification, the Scheme of Amalgamation in view of the written consent obtained from the equity shareholders of the respective companies and both the petitioner companies have no creditors. Copy of the order of the Tribunal dated 9/5/2018 is annexed with the application as Annexure A-23. Relevant part of the order of the Tribunal dated 9/5/2018 is reproduced below: -

- (i) *"In view of the affidavit given by the shareholders of the Transferee Company and the Transferor Company, meeting of the shareholders is hereby dispensed with;*
- (ii) *In view of the fact transferee company have NIL secured and NIL Unsecured Creditors and verified by the Auditor's Certificate, therefore, question of holding meetings does not arise, hence dispensed with.*
- (iii) *In view of the fact transferor company have NIL secured creditors and verified by the Auditor's Certificate, therefore question of holding meeting does not arise, hence dispensed with. In view of the consents given in affidavit*

*form by the Unsecured Creditor of the transferor company,
meeting of Unsecured Creditor of the transferor company is
hereby dispensed with.”*

10. Ld. Counsel for the applicant companies submitted that service of Notice under Sec.230(5) of the Companies Act along with explanatory statement under Sec.230 (3) and the Scheme of Amalgamation was served to the sectoral authorities as directed by this Tribunal. Affidavit of compliance and Service dated 11/5/2018 has been duly filed by the petitioners along with the application marked as Annexure A-25.

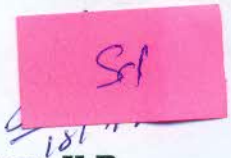
11. Heard Ld. Counsel for the applicants. In view of absence of any objection and since all the requisite compliance has been fulfilled, the following order is passed: -

ORDER

- i. The date of hearing of the petition filed by the Petitioner for the sanction of the Scheme of Amalgamation is fixed on 3/9/2018.
- ii. Notice of hearing of this petition in form NCLT 3A shall be advertised once in English daily “Financial Express” and in Bengali “Dainik Statesman” daily newspaper, not less than 10 days before the aforesaid date fixed for hearing.
- iii. The petitioner companies shall serve notice of the petition on the following authorities, namely,
 - (a) Central government through Regional Director, Eastern Region, Ministry of Corporate Affairs,
 - (b) Registrar of Companies, West Bengal,
 - (c) The Income Tax Department of the office having jurisdiction over the respective petitioner companies,

- (d) The Official Liquidator and such other relevant and sectoral regulators/authorities, if applicable, which are likely to be affected by the proposed Scheme of Amalgamation by sending the same by hand delivery through special messenger or by registered post or speed post within 7 days from the date of this order for filing their representations, if any, on the petition. Notice along with the copy of the application and other related documents with PAN Numbers of the Applicant Companies should be served upon the Chief Commissioner of Income Tax Department by e mail and Speed Post or by Messenger. Petitioner Companies are also directed to mention their respective PAN Number everywhere.
- iv. The notice shall specify that representations, if any, should be filed before this Tribunal within 30 days of date of receipt of the notice with a copy of such representations being sent simultaneously to the petitioners and/or their Authorised Representatives. If no such representations are received by the Tribunal within the said period, it shall be presumed that such authorities have no representations to make on the Scheme of Amalgamation.
- v. The petitioner companies shall send notice through email also and file copies of the emails 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.
- vi. All Petitioner Companies at least 7 days before the date of hearing of the petition shall file affidavit of service in relation to the paper publication as well as service of notices on the Authorities specified above including the Sectoral Regulators.

12. The petition being CP (CAA) No.733/KB/2018 [in CA (CAA) No.255/KB/2018], is directed to be listed for further hearing on 3/9/2018.
13. There shall be no order as to costs.
14. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.


Jinan K.R.
Member (J)

Signed on 18th July 2018