

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

CP(CAA) No.595/KB/2018 connected with
C.A(CAA) No. 573/KB/2017

In the matter of:

An application under sections 230 to 232 and
other applicable provisions of the Companies
Act, 2013;

And

In the matter of:

**WOOLVEST MERCHANDISE PRIVATE
LIMITED**, a company incorporated under the
provisions of the Companies Act, 1956 and
having its Registered Office at 55, Chowringhee
Road, King Edward Court, Ground Floor, Flat 1,
Kolkata-700071 in the State of West Bengal
within the aforesaid jurisdiction ;

And

GAREMOHAN TIE-UP PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 55, Chowringhee Road, King Edward Court, Ground Floor, Flat 1, Kolkata-700071 in the State of West Bengal within the aforesaid jurisdiction;

And

1. WOOLVEST MERCHANDISE PRIVATE LIMITED (TRANSFEREE COMPANY)
2. GAREMOHAN TIE-UP PRIVATE LIMITED (TRANSFEROR COMPANY)

.... **PETITIONERS**

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

Shri Madan B Gosavi, Member(Judicial)

For the Petitioners :

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

Sd

Date of pronouncement of order: 3/7/14

ORDER

Per : Madan B Gosavi, Member(Judicial)

1. The object of this Petition is to obtain sanction of this Tribunal to the Scheme of Amalgamation whereby and where under the entire undertaking of the TRANSFEROR COMPANY, namely, Garemohan Tie-up Private Limited, together with all the assets and liabilities relating thereto on going concern are proposed to be transferred to and vested in the TRANSFEREE COMPANY, namely, Woolvest Merchandise Private Limited, with Transfer Date or Appointed Date being 01st April, 2015 on the terms and conditions fully stated in the Scheme of Amalgamation, a copy whereof is annexed with the Petition and marked with the letter Annexure "A".

2. It is stated in the Petition that the TRANSFEROR COMPANY and TRANSFEREE COMPANY are engaged in the business of Non-Banking Financial & Investment activities. The business of the TRANSFEROR COMPANY and the TRANSFEREE COMPANY can be combined and carried forward conveniently with combined strength.

3. It is stated in the Petition that the Scheme of amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration in better and more productive utilisation of various resources.

4. It is also stated in the Petition that the Scheme of Amalgamation will contribute in furthering and fulfilling the objects of the Company concerned and in the growth and development of these businesses.

5. It is further submitted in the Petition that the Scheme of Amalgamation will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability.

6. The Scheme of Amalgamation will enable the undertakings concerned to pool their resources and to expand their activities.

7. Further, the Scheme of Amalgamation will enable the Company concerned to rationalise and streamline their management, business and finances and to eliminate duplication of work to their common advantages.

8. The Scheme of Amalgamation will have the beneficial results for the Company concerned, their shareholders, employees and all concerned.

9. The Board of Directors of the TRANSFEROR COMPANY and the TRANSFEREE COMPANY, have at their respective Board Meetings held on 21st day of December, 2015, passed the resolution approving the Scheme of Amalgamation.

10. The copy of the Resolution passed by the Board of Directors of the Transferee Company and the Transferor Company approving the Scheme of Amalgamation is annexed with the Petition and marked as Annexure "N".

11. It has been stated in the Petition that the assets of the Petitioner 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 Petitioner companies in any manner whatsoever.

12. It is also stated in the Petition that the Petitioner companies have made due provisions for payment of all liabilities as and when the same fell due.

13. It is stated in the Petition that there are no proceedings pending under Section 235 to 251 of the Companies Act, 1956 and Sections 217, 219, 221, 224 and 225 of the Companies Act, 2013 against any of the Petitioner Companies.

14. The Transferee Company and the Transferor Company are Non Banking Finance Company duly registered with the Reserve Bank of India and is presently engaged in Non Banking Financial & Investing activities.

15. The Reserve Bank of India has, vide letter No DNBS. RO.KOL.NO 8965/99.06.002/2016-17 dated 01.06.2017 have given their "No Objection" to the Scheme of Amalgamation upon application made by the Transferee Company.

16. The copy of the said letter issued by the Reserve Bank of India is enclosed, with the Petition and marked Letter "K".

17. The statutory Auditors of the TRANSFEREE COMPANY 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.

18. The copy of the certificate issued by the statutory Auditors is annexed with the Petition and marked **ANNEXURE - O**.

19. It has been submitted in the Petition 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.

20. It has been further submitted in the Petition that the present Scheme of Amalgamation does not contain or provide for any Corporate Debt Restructuring.

21. It is stated that the Scheme of Amalgamation does not contain or provide for any Compromise or arrangements with any of the Creditors of the Petitioner Companies.

22. It is further stated that the Petitioner companies have neither issued nor agreed to issue any debenture.

23. The Report of the Valuation of Shares of the Transferor Company and the Transferee Company prepared by the Chartered Accountants for arriving at fair Exchange Ratio is annexed with the Petition and marked with Annexure "M".

Sd

24. The List of Equity shareholders of the Petitioner Companies as on 26-02-2018 have been duly certified by the statutory Auditors of the Petitioner Companies which is annexed with the Petition and marked with letter "H".

25. NIL Secured Creditors of the Transferee Company as on 26-02-2018 duly certified by the Statutory Auditors of the Transferee Company is annexed with the Petition and marked with letter "I".

26. The list of Unsecured Creditors of the Petitioner Companies as on 26-02-2018 duly certified by the Statutory Auditors of the Petitioner Companies is annexed with the Petition and marked with letter "J".

27. This Tribunal, vide its Order dated 8th February, 2018 passed in Company Application No. CA(CAA) No. 573/KB/2017 granted dispensation with the convening and holding of separate meeting of the shareholders and the Unsecured Creditors of the Petitioner Companies in view of the written consent by all the shareholders and the Unsecured Creditors by way of affidavit adopting the Scheme of Amalgamation without modification.

28. This Tribunal, vide its aforesaid Order dated 8th February, 2018 passed in Company Application No. CA(CAA) No. 573/KB/2017 has recorded that in

view of there being no Secured Creditors, the holding of the meeting of Secured Creditors does not arise.

29. Pursuant to the Order of this Tribunal dated 8th February, 2018, passed in Company Application No. CA(CAA) No.573/KB/2017, the Petitioner Companies had served a copy of the Application together with a copy of the said Order of this Tribunal upon the Income Tax Authorities having jurisdiction over the affairs of the Petitioner Companies, Central Government, Regional Director, Eastern Region, Ministry of Corporate Affairs, Registrar of Companies, West Bengal, Official Liquidator, Calcutta High Court, Calcutta, Reserve Bank of India, Kolkata.

30. The copy of the acknowledgement evidencing service upon the said authorities is enclosed with the Petition and marked will letter Annexure "P".

31. In compliance of the aforesaid Order of this Tribunal dated 8th February, 2018 an Affidavit of service affirmed on 9th March, 2018 has been filed by the Petitioner Companies.

32. It has been stated in the Petition that till the filling of the Petition, the Petitioners have not received any objection from any of the above authorities.

33. After such due compliance, the petitioners have made the instant petition bearing No. CP (CAA) NO. 595/KB/2018, connected with CA(CAA) No. 573/KB/2017 before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Amalgamation and for orders facilitating and giving effect to the same.

34. Heard the arguments of the Ld. Counsel for the petitioner Companies.

35. Let notice be served as per requirements of sub section (5) of section 230 of the Companies Act, 2013 along with all the documents including a copy of the Scheme of Amalgamation on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, the Registrar of Companies, West Bengal and the concerned Assessing Officer along with the Chief Commissioner of Income Tax with PAN numbers of the Petitioner Companies, by hand delivery through personal messenger or by Speed post, E- Mail, both, and also on the Official Liquidator attached to the High Court, Calcutta and Reserve Bank of India, having jurisdiction over the Petitioner Companies, within 14 days from this order.

36. The Petitioner Companies shall file an affidavit, along with the copy of the notice within 14 days regarding service of the notice.

37. The petitioner Companies shall 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 petitioners and 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.

38. Such notices shall be sent under section 230(5) of the Companies Act, 2013 in Form no. CAA-3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein.

39. Let the advertisement of the hearing of this petition be published once in the English daily, and in the Bengali daily, stating the PAN numbers of all the petitioner companies, at least 10 days before the date fixed for hearing in Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016 with necessary variations.

40. The Petition CP(CAA) No. 595/KB/2018, connected with CA(CAA) No. 573/KB/2017 is fixed for hearing on 30.8.2018.

41. Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

Sd

(Jian K.R.)
Member(Judicial)

(Madan B Gosavi)
Member(Judicial)

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