

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH
KOLKATA**

**C.P.(CAA) No.707/KB/2018
Connected with
CA (CAA) No.55/KB/2018**

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

In the matter of:

An application under Section 230 to 232 of the Companies Act, 2013 and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

In the matter of:

STERLING BOLTS PRIVATE LIMITED, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 2C Tentulkuli, Domjur, NH-6, Howrah 711 109 in the State of West Bengal, within the aforesaid jurisdiction;

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 within the aforesaid jurisdiction;

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 within the aforesaid jurisdiction;

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 within the aforesaid jurisdiction;

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 within the aforesaid jurisdiction;

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 within the aforesaid jurisdiction;

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 within the aforesaid jurisdiction;

In the matter of :

- | | |
|---------------------------------------|-------------------------------|
| 1. STERLING BOLTS PRIVATE LIMITED | : (TRANSFEREE COMPANY) |
| 2. ASHLESH DEALTRADE PRIVATE LIMITED | : (TRANSFEROR COMPANY NO 1) |
| 3. ASHLESH VANIJYA PRIVATE LIMITED | : (TRANSFEROR COMPANY NO 2) |
| 4. DHARYA DEALMARK PRIVATE LIMITED | : (TRANSFEROR COMPANY NO 3) |
| 5. DREAM VALLY TIE-UP PRIVATE LIMITED | : (TRANSFEROR COMPANY NO 4) |
| 6. TOPFLOW COMMERCIAL PRIVATE LIMITED | : (TRANSFEROR COMPANY NO 5) |
| 7. VIEWHIGH DEALCOM PRIVATE LIMITED | : (TRANSFEROR COMPANY NO 6) |

..... APPLICANT/PETITIONER

Counsel on Record:

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

} For the Petitioners

Date of pronouncing of the Order: 13 th July, 2018

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ORDER

1. This joint petition has been filed for sanctioning of the proposed Scheme of Amalgamation of ASHLESH DEALTRADE PRIVATE LIMITED, the petitioner No 2 above named, ASHLESH VANIJYA PRIVATE LIMITED the petitioner No 3 above named , DHARYA DEALMARK PRIVATE LIMITED the petitioner No 4 above named, DREAM VALLY TIE-UP PRIVATE LIMITED the petitioner No 5 above named , TOPFLOW COMMERCIAL PRIVATE LIMITED the petitioner No 6 above named and VIEWHIGH DEALCOM PRIVATE LIMITED the petitioner No 7 above named (herein after referred to as " TRANSFEROR COMPANIES ") and STERLING BOLTS PRIVATE LIMITED, being the petitioner No 1 above named (herein after referred to as " TRANSFEREE COMPANY ").

2. The object of this Petition is to ultimately obtain sanction of the Hon'ble Tribunal to the Scheme of Amalgamation whereby and where under the entire undertaking of the TRANSFEROR COMPANIES together with all assets and liabilities relating thereto ongoing concern basis are proposed to be transferred to and vested in the TRANSFEREE COMPANY with Transfer Date or Appointed Date being 1st April, 2017 on the terms and conditions fully stated in the Scheme of Amalgamation a copy whereof is annexed hereto and marked with the letter **ANNEXURE-A** to this petition .

3. The Authorized Share Capital of **STERLING BOLTS PRIVATE LIMITED** the Transferee Company ,i.e the Petitioner No 1 is **Rs 80,00,000/-** divided into 8,00,000 Equity Shares of Rs.100/- each.The issued ,subscribed and Paid Up Share Capital of the Company is **Rs 72,54,700/-** /- divided into 7,25,470 Equity Shares of Rs.10/- each fully paid-up.

4. The Authorized Share Capital of **ASHLESH DEALTRADE PRIVATE LIMITED** the Transferor Company No 1, i.e the Petitioner No 2 is

Rs 3,00,000/- divided into 30,000 Equity Shares of Rs.10/- each .The issued ,subscribed and Paid Up Share Capital of the Company is **Rs 2,00,000/-** divided into 20,000 Equity Shares of Rs.10/- each fully paid-up.

5. The Authorized Share Capital of **ASHLESH VANIJYA PRIVATE LIMITED** the Transferor Company No 2 ,i.e the Petitioner No 3 is **Rs 3,00,000/-** divided into 30,000 Equity Shares of Rs.10/- each .The issued ,subscribed and Paid Up Share Capital of the Company is **Rs 2,00,000/-** divided into 20,000 Equity Shares of Rs.10/- each fully paid-up.

6. The Authorized Share Capital of **DHARYA DEALMARK PRIVATE LIMITED** the Transferor Company No 3 ,i.e the Petitioner No 4 is **Rs 3,00,000/-** divided into 30,000 Equity Shares of Rs.10/- each .The issued ,subscribed and Paid Up Share Capital of the Company is **Rs 2,00,000/-** divided into 20,000 Equity Shares of Rs.10/- each fully paid-up.

7. The Authorized Share Capital of **DREAM VALLY TIE-UP PRIVATE LIMITED** the Transferor Company No 4 ,i.e the Petitioner No 5 is **Rs 20,00,000/-**divided into 2,00,000 Equity Shares of Rs.10/- each. The issued ,subscribed and Paid Up Share Capital of the Company is **Rs 14,08,000/-** divided into 1,40,800 Equity Shares of Rs.10/- each fully paid-up.

8. The Authorized Share Capital of **TOPFLOW COMMERCIAL PRIVATE LIMITED** the Transferor Company No 5, i.e the Petitioner No 6 is **Rs 20,00,000/-**divided into 2,00,000 Equity Shares of Rs.10/- each. The issued ,subscribed and Paid Up Share Capital of the Company is **Rs 14,34,500/-** divided into 1,43,500 Equity Shares of Rs.10/- each fully paid-up.

9. The Authorized Share Capital of **VIEWHIGH DEALCOM PRIVATE LIMITED** the Transferor Company No 6 ,i.e the Petitioner No 7 is **Rs 3,00,000/-** divided into 30,000 Equity Shares of Rs.10/- each .The issued

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,subscribed and Paid Up Share Capital of the Company is **Rs 2,00,000/-** divided into 20,000 Equity Shares of Rs.10/- each fully paid-up.

10. Copies of necessary Board resolutions dated 28th day of October, 2017 of the TRANSFEREE COMPANY and the TRANSFEROR COMPANIES approving the Scheme of Amalgamation has been annexed to the petition and marked as **ANNEXURE “ Z”** at pages 651 to 664 of the petition .

11. This Tribunal vide their order dated 05TH March,2018 passed in Company Application C.A.(CAA)NO.55/KB/2018 has dispensed with the convening and holding of the meetings of the shareholders of the TRANSFEREE COMPANY and TRANSFEROR COMPANIES to consider the said Scheme of Amalgamation.

12. This Tribunal vide their order dated 05TH March,2018 passed in Company Application C.A.(CAA)NO.55/KB/2018 has recorded that 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 meetings of the Secured Creditors of Transferee Company and Transferor Companies does not arise.

13. This Tribunal vide their order dated 05TH March,2018 passed in Company Application C.A.(CAA)NO.55/KB/2018 has recorded that 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 meetings of the Unsecured Creditors does not arise.

14. This Tribunal vide their order dated 05TH March,2018 passed in Company Application C.A.(CAA)NO.55/KB/2018 has directed to convene and

hold separate meeting of Unsecured Creditors of TRANSFEREE COMPANY , TRANSFEROR COMPANY NO 4 and TRANSFEROR COMPANY NO 5 to consider the said Scheme of Amalgamation.

15. This Tribunal vide their order dated 05TH March,2018 passed in Company Application C.A.(CAA)NO.55/KB/2018 has appointed CA SHASHI AGARWAL , as the Chairperson for the meeting of Unsecured Creditors of TRANSFEREE COMPANY , TRANSFEROR COMPANY NO 4 and TRANSFEROR COMPANY NO 5 . The said Chairperson has filed his report before this Tribunal duly sworn by his affidavit on 18th May, 2018.

16. The petitioners Companies have come before the Tribunal with this Company Petition i.e; this Second Motion and submitted the following documents along with the Company Petition .

- i) Copies of Audited Balance Sheet as on **31ST MARCH, 2017** and interim audited Balance Sheet as at **30TH September , 2017** of Petitioner Companies have been annexed and marked as **ANNEXURE " D " , ANNEXURE " D1 " , ANNEXURE " F" , ANNEXURE " F1 " , ANNEXURE " H" , ANNEXURE " H1 " , ANNEXURE " J " ANNEXURE " J1 " , ANNEXURE " L " , ANNEXURE " L1 " , ANNEXURE " N " , ANNEXURE " N1 " and ANNEXURE " P " , ANNEXURE " P1 "** at pages 116 to 147, pages 148 to 163 , pages 196 to 218 , pages 219 to 228 , pages 260 to 283, pages 284 to 293, pages 325 to 347, pages 348 to 357, pages 382 to 408, pages 409 to 420, pages 445 to 471, pages 472 to 483, pages 517 to 540, and pages 541 to 550 of the petition.

- ii) Copies of Memorandum and Articles of Association of all Petitioner Companies have been annexed and marked as **ANNEXURE “ C ”**, **ANNEXURE “ E ”**, **ANNEXURE “ G ”** **ANNEXURE “ I ”** **ANNEXURE “ K ”**, **ANNEXURE “ M ”** and **ANNEXURE “ O ”** at pages 94 to 115, pages 164 to 195, pages 229 to 259, pages 294 to 324, pages 358 to 381, pages 421 to 444 and pages 484 to 516 of the petition.
- iii) Copy of Letter evidencing submission of Report by the Chairperson has been annexed and marked as **ANNEXURE “ Q ”** at pages 551.
- iv) Copies of advertisement published in dailies for meeting convened has been annexed and marked as **ANNEXURE “ R ”** at pages 552 to 555.
- v) Copy of evidence for service upon the Regulatory authorities have been annexed and marked as **ANNEXURE “ S ”** at pages 556 to 594.
- vi) Copy of the share valuation report has been annexed and marked as **ANNEXURE “ T ”** at pages 595 to 633.
- vii) Copy of Certificate from the Company's Chartered Accountants confirming that the Accounting Standard prescribed in terms of Sec 133 of the Companies Act have been annexed and marked as **ANNEXURE “ U ”** at pages 634 to 635.
- viii) List of shareholders of the Petitioner Companies duly certified by the statutory Auditor have been annexed and marked as **ANNEXURE “ V ”** at pages 636 to 642.
- ix) NIL Secured And List Of Creditors of the TRANSFEREE COMPANY duly certified by the statutory auditor have

been annexed and marked as **ANNEXURE “ W ”** at pages 643 to 644

- x) Nil secured and unsecured creditors of Ashlesh Dealtrade /transferor company no.1, Ashlesh Vanijya/transferor company no.2, dharya/transferor company no.3 and Ashlesh Topflow/transferor company no.5 duly certified by the statutory auditor have been annexed and marked as **ANNEXURE “ X ”** at pages 645 to 649.
- xi) Nil secured and list of creditors of the Dream Vally/transferor company no.4 duly certified by the statutory auditor have been annexed and marked as **ANNEXURE “ X ”** at pages 650 .

17. I have perused the documents annexed to the application and have heard the submissions made on behalf of the applicants and pass the following orders:

O R D E R

- a) The date of hearing of the petition filed jointly by the Petitioner for the sanction of the Scheme is fixed on Friday 31ST August, 2018.
- b) Notice of hearing of this petition in form NCLT 3A shall be advertised once in English daily “ Business standard “ and in Bengali “ Aajkal “ daily newspaper , not less than 10 days before the aforesaid date fixed for hearing .
- c) In addition to the above public notice , 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 sectorial regulators/authorities, if applicable , which are likely to be affected by the proposed Scheme by sending the same by hand delivery through special messenger or by registered post or speed post and by e-mail 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 Mail and Speed Post or by Messenger. Petitioner Companies are also directed to mention their respective PAN Nos everywhere.

- d) 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 Authorized Representatives. If no such representations is 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.
- e) All Petitioner Companies at least 7 days before the date of hearing of the petition shall file and affidavit of service in relation to the paper publication as well as service of notices n the Authorities specified above including the Sectorial Regulators.

The Company Petition No C.P.(CAA)NO.707/KB/2018 connected with C.A(CAA) NO. 55/ KB/2018 is directed to be listed for further hearing on **Friday 31st AUGUST, 2018** .

Let the certified copy of the order be issued upon compliance with requisite formalities

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13/7/18
(Jinan K.R.)
Member (J)

Signed this day of 13th July, 2018.

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