

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

C.A.(CAA) No. 915/KB/2018

In the matter of:

An application under sections 230 to 232 of the Companies Act, 2013 read with Rule 15 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

AND

In the Matter of:

JAAGRITI VANIJYA PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 12 Lindsay Street 1st Floor PS Taltalla ,Kolkata-700087 in the State of West Bengal within the aforesaid jurisdiction;

.....Transferee Company

AND

In the matter of:

INDRAJIT SUPPLIERS PRIVATE LIMITED, a company incorporated

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under the provisions of the Companies Act, 1956 and having its Registered Office at 4b Madan Mohan Burman Street, 1st Floor, Kolkata- 700007 in the State of West Bengal within the aforesaid jurisdiction;

.....Transferor Company No. 1

AND

In the matter of:

SINJAN VINCOM PRIVATE LIMITED, a company incorporated under The Provisions of The Companies Act, 1956 and having its Registered Office at 32, Metcalfe Street 3rd Floor Kolkata 700013 in the State of West Bengal within the aforesaid jurisdiction;

.....Transferor Company No. 2

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Shri Jinan K.R., Hon'ble Member, (J)

COUNSELS ON RECORD FOR THE PETITIONERS

1. Ms. Manju Bhuteria , Advocate ,
2. Mr. Madan Kumar Maroti , FCA
3. Mr. N.Gurumurthy , FCA } For the Applicants.

Date of pronouncement of order ..10.10.2018..October, 2018

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O R D E R

The object of this application is to ultimately obtain sanction of the Hon'ble Tribunal to the Composite Scheme of Arrangement for reduction of share capital of Transferor Company No. 1 and Transferor Company No. 2 and post reduction of capital amalgamation of Transferor Company No. 1 and Transferor Company No. 2 with Transferee Company with transfer date or appointed date being 1st April, 2018.

(2) It is stated in the application that the reasons that have necessitated and/or justified the Amalgamation of Transferor Companies with Transferee Company are, inter alia as follows:-

- a. The Transferor Company No.1 and the Transferor Company No. 2 apart from pursuing the main objects have made deployment of funds not immediately required in other investible instruments. The Transferee Company is a Non Banking Finance Company duly registered with the Reserve Bank of India and is currently engaged in investing and funding activities. The business of the Transferor Companies and the Transferee Company can be combined/adjusted and carried forward conveniently with combined strength;
- b. The amalgamation will enable the Transferee Company to consolidate its line of business by restructuring and

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re-organizing its business activities and Capital Structure;

- c. The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the Transferee Company.
- d. The amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resource.
- e. The business of the Company can be conveniently and advantageously combined together and in general business of the Company concerned and will be carried on more economically and profitably under the said Scheme;
- f. The said Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business of the company concerned. The said scheme will also enable the undertakings and business of the said applicant company to obtain greater facilities possessed and enjoyed by one large company compared with a number of small Company for raising capital,

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securing and conducting trade on favorable terms and other benefits;

- g. The said scheme will contribute in furthering and fulfilling the objects of the Company concerned and in the growth and development of these businesses;
- h. The said scheme will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability;
- i. The said scheme will enable the undertakings concerned to pool their resources and to expand their activities;
- j. The said scheme will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages;
- k. The said scheme will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.

(3) The reasons for and facts and circumstances that have necessitated and/or justify the proposed reduction of share capital are stated as hereunder:

- a) The Transferor Companies have surplus fund which they want to refund back to the investors.

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- b) The Transferor Companies have assessed that post reduction of capital they will be left with requisite funds for managing their individual business.
- c) Transferor Companies are closely held private limited company with no outside shareholders.
- d) The scale of the business operations of the Transferor Companies and business carried on by the Transferor Companies reveals that there is no correlation between the capital employed and the scale of business operations.
- e) The Transferor Companies in order to expand, enlarge and diversify its business operations has been conserving the resources. However, presently there are no immediate plans for expansion or diversification of the business activities.
- f) The Board of Directors of the Transferor Companies feels that the present share capital of the Company is in excess of the wants of the Transferor Companies.
- g) It is felt that that the present business requirement of the Transferor Companies does not necessitate deployment of shareholders' funds or justify retention of the shareholders' money as at present and the unutilized shareholders' funds is presently not required and is in excess of the present wants of the Transferor Companies.

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- h) Accordingly, it is proposed that a portion of the share capital relating and constituting the Equity Shares, which is in excess of the present wants of the Transferor Companies, be paid off to the Equity Shareholders.
- i) The Board of Directors decided to give effect to this reduction, the amount paid up on every Equity Share of Rs.10/- each of both the Transferor Companies will be reduced to the extent of Rs.8/- per Equity Share and 5 Equity of Rs.2/- shall be consolidated into 1 Equity Shares of Rs.10/- each fully paid up.
- j) The proposed manner of reduction of Transferor Companies will enable the concerned Transferor Companies to have an optimum capital structure in consonance with the size of its operations and needs. The same will also facilitate better and more productive utilization of the surplus resources, making the capital base more serviceable.
- k) The proposal of reduction of Share Capital shall also obviate the need to continue to service the Shareholders' funds, especially when the same is not required. The same shall enable the Company to save on substantial and unnecessary expenses.
- l) The proposal of reduction of Share Capital by return of portion of Shareholders' funds presently not required and in excess of wants is in the best interest of the Shareholders. The Shareholders shall not be

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forced to block their money with the Transferor Companies, especially when the same is not presently required.

- m) There are no creditors in the Transferor Companies at present. Therefore, the proposed reduction does not adversely affect the rights of any creditor.
- n) The proposed reduction will not adversely affect the rights of any shareholder, creditor or any person whatsoever.
- o) In the circumstances the paid up Share Capital of the Transferor Companies ought to be reduced to the extent and in the manner stated hereinabove in compliance with the provisions of the Companies Act, 2013 and the Rules made thereunder.

(4) It is Stated in the Application that as an integral part of the Scheme the paid share Capital of the Transferor Company No. 1 and Transferor Company No. 2 shall stand reduced by refunding to the shareholders to the extent of 80% of face value shares and 80% of the balance lying credited in Securities Premium Account. Upon such reduction the share capital of the Transferor Company No. 1 and Transferor Company No. 2 shall be consolidated and subdivided into equity shares of Rs. 10/ each.

(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

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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) 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.

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

(9) 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.

(10) It is further stated that the applicant companies has never issued nor agreed to issue any debenture.

(11) It is further stated that there will not be any reduction of capital of Transferee Company upon coming into effect of the Scheme as per section 66 of the Companies Act, 2013 except cancellation of shares of Transferee Company due to inter/cross holding of shares resulting from this amalgamation, if any.

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(12) A copy of the Scheme of Amalgamation for which this application is made for sanctioning is annexed hereto and marked with the ANNEXURE 'G' at page No. 169 to 210.

(13) The Board of Directors of the Transferor Companies and the Transferee Company have at their respective Board Meetings held on 24th day of July, 2018 have passed resolution approving the Composite Scheme of Arrangement involving Amalgamation of Transferor Companies with Transferee Company and simultaneous reduction of Share Capital of Transferor Companies by refunding 80% of the Share Capital and equivalent percent of Securities premium to the shareholders. The Board of Directors of the Transferor Companies and the Transferee Company have also resolved that Reduction of Share Capital and Securities Premium Account of Transferor Companies shall take effect prior to coming into effect of Amalgamation of Transferor Companies with the Transferee Company.

(14) Copy of the Board Resolution is enclosed marked ANNEXURE - "H" at page No 211 to 219.

(15) It is further stated that the Report determining the exchange ratio of shares which, shall be issued and allotted to the equity shareholders of the Transferor Companies by the Transferee Company for implementation of the terms of the scheme has been prepared by a firm of Chartered Accountants considering the post Capital Structure of the Transferor Companies upon completion of reduction of Share Capital including refund of securities premium and such recommendations has been accepted by the Board of Directors of

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the respective Company. Copy of such report is annexed and marked ANNEXURE – I at page no 220 to 229.

(16) It is further stated that the Transferee Company are having 4 shareholders as on 31st August, 2018 and all shareholders have given their consent by way of affidavit . Copy of affidavit of consent and list of shareholders duly certified by the Statutory auditors are annexed marked ANNEXURE – J at page no 230 to 256.

(17) It is further stated that the Equity Shareholders in the Transferor Company No. 1 are 3 as on 31st August, 2018 and all shareholders have given their written consent by way of affidavit to the proposed Composite Scheme of Arrangement which provides for refund of capital and securities premium to the equity shareholders of Transferor Company No. 1 and Amalgamation of Transferor Company No. 1 post Reduction of Capital with Transferee Company. The list of shareholders duly certified by the statutory auditor and affidavit of consent by all the equity shareholders of the Transferor Company No. 1 is annexed and marked ANNEXURE – K at page no 257 to 272.

(18) It is further stated that the Equity Shareholders in the Transferor Company No 2 are 3 as on 31st August, 2018 and all shareholders of Transferor Company No. 2 have given their written consent by way of affidavit to the proposed Composite Scheme of Arrangement which provides for refund of capital and securities premium to the equity shareholders of Transferor Company No. 2 and Amalgamation of Transferor Company No. 2 post Reduction of Capital with Transferee Company. The list of shareholders duly certified by the statutory auditor and affidavit of

consent by all the equity shareholders of the Transferor Company No. 2 is annexed and marked ANNEXURE – L at page No. 273 to 288.

(19) It is further stated that the Transferee Company are having Nil Secured Creditors and Nil Unsecured Creditors duly certified by the Statutory auditors of the Transferee Company is annexed and marked ANNEXURE – M at page no 289.

(20) It is further stated that the Transferor Company No. 1 are having Nil Secured Creditors and Nil Unsecured Creditors duly certified by the Statutory auditors of the Transferor Company No. 1 is annexed and marked ANNEXURE – ‘N’ at page no 290.

(21) It is further stated that the Transferor Company No. 2 ANY are having Nil Secured Creditors and Nil Unsecured Creditors duly certified by the Statutory auditors of the Transferor Company No. 2 is annexed and marked ANNEXURE – “O” at page no 291.

(22) The statutory Auditors of the Transferee Company and Transferor Companies have certified that the Accounting treatment proposed in terms of clause 14 of PART VI 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 enclosed marked Annexure– ‘P’ at Page No 292 to 297.

Heard the counsels for the applicants, perused the records, documents annexed to the application and affidavits filed in the

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instant proceedings and after hearing the submissions made on behalf of the applicants the following orders are passed:

1. 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.
2. 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 Companies does not arise.
3. In view of the fact that the Transferee Company and Transferor Companies have NIL Unsecured Creditors verified by Auditors Certificate, the question of holding separate meeting of Unsecured creditors of the Transferee Company and Transferor Companies does not arise.
4. The Applicant Companies to serve the notice upon the Regional Director – Eastern Region (Ministry Of Corporate Affairs), Registrar Of Companies – West Bengal, Reserve Bank of India, Income Tax Authority within whose jurisdiction the assessments of the Applicant Companies are made, the Official Liquidator, 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.

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5. 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 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

6. That the Transferee and Transferor Companies shall affirm by way of affidavit that no investigation or proceedings under the Companies Act 1956 or Companies Act, 2013 have been instituted or are pending in relation to the amalgamating and amalgamated companies.

7. Liberty is given to file joint application by Transferee and Transferor Companies in accordance with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 15 days after the expiry of the period of 30 days as mentioned in Section 230 (5) of the Companies Act, 2013.

8. That an affidavit of Compliance of all the conditions laid down herein along with original proof of service to all authorities to be filed jointly by Transferee Company and Transferor Companies.

9. If consent affidavits / letters of the members and unsecured creditors annexed with the application are found to be false / dubious at any stage then necessary action for committing fraud under Section 447 and 448 of the Companies Act, 2013 shall be initiated against the

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Transferee and Transferor Companies and all its directors for punishment under Section 449 of the Companies Act, 2013.

The prayer stands allowed and the applications being C.A.(CAA) No.915 / KB / 2018 is disposed of accordingly.

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 this , the 10th day of October, 2018.

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