

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
Kolkata**

C.A.(CAA) No.929 / 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:

G.D. EMPORIUM PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 5/1, Muzzafar Ahmed Street, 2nd Floor, Unit - 1, Kolkata - 700016 in State of West Bengal within the aforesaid jurisdiction;

AND

In the matter of:

NAVYUG TIE UP PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office 5/1, Muzzafar Ahmed Street, 2nd Floor, Unit - 1, Kolkata - 700016 in State of West Bengal within the aforesaid jurisdiction;

AND

In the Matter of:

Sd _____

SAMUNDAR DISTRIBUTORS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 5/1, Muzzafar Ahmed Street, 2nd Floor, Unit - 1, Kolkata - 700016 in State of West Bengal within the aforesaid jurisdiction;

AND

In the Matter of:

SAMUNDAR DISTRIBUTORS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 5/1, Muzzafar Ahmed Street, 2nd Floor, Unit - 1, Kolkata - 700016 in State of West Bengal within the aforesaid jurisdiction;

AND

In the Matter of:

SWASTIKA COLLECTION PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 5/1, Muzzafar Ahmed Street, 2nd Floor, Unit - 1, Kolkata - 700016 in State of West Bengal within the aforesaid jurisdiction;

AND

In the Matter of:

SWASTIKA SELECTION PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 5/1, Muzzafar Ahmed Street, 2nd Floor, Unit - 1, Kolkata - 700016 in State of West Bengal within the aforesaid jurisdiction;

Sd

AND

In the Matter of:

S A DESIGN & ART PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 5/1, Muzzafar Ahmed Street, 2nd Floor, Unit - 1, Kolkata - 700016 in State of West Bengal within the aforesaid jurisdiction;

AND

In the Matter of:

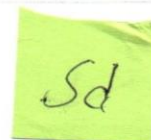
- | | |
|--|-------------------------------|
| 1. G.D. EMPORIUM PRIVATE LIMITED | : (TRANSFEROR COMPANY NO 1) |
| 2. NAVYUG TIE UP PRIVATE LIMITED | : (TRANSFEROR COMPANY NO 2) |
| 3. SAMUNDAR DISTRIBUTORS PRIVATE LIMITED | : (TRANSFEROR COMPANY NO 3) |
| 4. SWASTIKA COLLECTION PRIVATE LIMITED | : (TRANSFEROR COMPANY NO 4) |
| 5. SWASTIKA SELECTION PRIVATE LIMITED | : (TRANSFEROR COMPANY NO 5) |
| 6. S A DESIGN & ART PRIVATE LIMITED | : (TRANSFEREE COMPANY) |

..... **APPLICANTS.**

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

COUNSELS ON RECORD

- | | |
|------------------------------------|-------------------------|
| 1. Ms. Manju Bhuteria , Advocate , | |
| 2. Mr. N.Gurumurthy , FCA |For the Applicants |



Date of pronouncement of order: 10th October, 2018

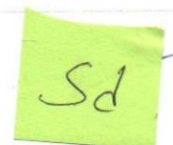
ORDER

Per Shri Jinan K.R., Member(J)

1. The object of this application is to ultimately obtain sanction of the Hon'ble Tribunal to the Scheme of Amalgamation whereby the TRANSFEROR COMPANIES will be merged / amalgamated with TRANSFEREE COMPANY with Transfer Date or Appointed Date being 01st April, 2018.
2. It is stated in the application that the
 - a) Apart from pursuing the main objects, the TRANSFEROR COMPANY NO.1, TRANSFEROR COMPANY NO.2, and TRANSFEROR COMPANY NO.3, was incorporated for the purpose of pursuing the main objects apart from deployment of funds in other investable instruments. TRANSFEROR COMPANY NO.4 and TRANSFEROR COMPANY NO.5 is presently engaged in trading of garments (Sarees & fancy dress materials) apart from deployment of funds in other investable instruments. The TRANSFEREE COMPANY is presently setting up its own warehouse apart from deployment of funds in other investable instruments. 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 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;

Sd

- 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 resources;
- 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, 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. It reveals from the application that the present share capital structure of the Transferee Company is as under :

SHARE CAPITAL	AMOUNT (RS)
AUTHORIZED SHARE CAPITAL	
6,00,000 Equity Shares of Rs.100/- each	6,00,00,000/-
TOTAL	6,00,00,000/-
ISSUED , SUBSCRIBED AND PAID-UP	
5,16,700 Equity Shares of Rs.100/- each	5,16,70,000/-
TOTAL	5,16,70,000/-

4. It reveals from the application that the present share capital structure of the Transferor Company No1 is as under :

SHARE CAPITAL	AMOUNT(RS)
AUTHORIZED SHARE CAPITAL	
1,00,000 Equity Shares of Rs.100/- each	1,00,00,000/-
TOTAL	1,00,00,000/-
ISSUED , SUBSCRIBED AND PAID-UP	
72,000 Equity Shares of Rs.100/- each	72,00,000/-
TOTAL	72,00,000/-

5. It reveals from the application that the present share capital structure of the Transferor Company No 2 is as under :

SHARE CAPITAL	AMOUNT(RS)
AUTHORIZED SHARE CAPITAL	
50,000 Equity Shares of Rs.10/- each	5,00,000/-
TOTAL	5,00,000/-

Sd

ISSUED , SUBSCRIBED AND PAID-UP	
18,000 Equity Shares of Rs.10/- each	1,80,000/-
TOTAL	1,80,000/-

6. It reveals from the application that the present share capital structure of the Transferor Company No 3 is as under :

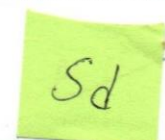
SHARE CAPITAL	AMOUNT(RS)
AUTHORIZED SHARE CAPITAL	
51,00,000 Equity Shares of Rs.1/- each	51,00,000 /-
TOTAL	51,00,000 /-
ISSUED , SUBSCRIBED AND PAID-UP	
51,00,000 Equity Shares of Rs.1/- each	51,00,000 /-
TOTAL	51,00,000 /-

7. It reveals from the application that the present share capital structure of the Transferor Company No 4 is as under :

SHARE CAPITAL	AMOUNT(RS)
AUTHORIZED SHARE CAPITAL	
1,75,000 Equity Shares of Rs.100/- each	1,75,00,000/-
TOTAL	1,75,00,000/-
ISSUED , SUBSCRIBED AND PAID-UP	
28,990 Equity Shares of Rs.100/- each	28,99,000/-
TOTAL	28,99,000/-

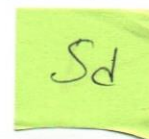
8. It reveals from the application that the present share capital structure of the Transferor Company No 5 is as under :

SHARE CAPITAL	AMOUNT(RS)
AUTHORIZED SHARE CAPITAL	
1,00,000 Equity Shares of Rs.100/- each	1,00,00,000/-
TOTAL	1,00,00,000/-



ISSUED , SUBSCRIBED AND PAID-UP	
56,000 Equity Shares of Rs.100/- each	56,00,000/-
TOTAL	56,00,000/-

9. 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 the creditors of any of the applicant companies in any manner whatsoever.
10. 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.
11. 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.
12. It has been stated in the application that the present Scheme of Amalgamation does not contain or provide for Corporate Debt Restructuring.
13. 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 .
14. It is further stated that the applicant companies has never issued nor agreed to issue any debenture .



15. A copy of the Scheme of Amalgamation for which this application is made for sanctioning is enclosed marked ANNEXURE – M at page No 336 to 373.
16. The Board of Directors of the TRANSFEROR COMPANIES and the TRANSFEREE COMPANY have at their respective Board Meetings held on 3rd day of July, 2018 have passed resolution approving the Scheme of Amalgamation. Copy of the Board Resolution is enclosed marked ANNEXURE – N at page No 374 to 385.
17. 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 an independent firm of Chartered Accountants and such recommendations have been accepted by the Board of Directors of the respective Companies. Copy of such report is annexed and marked ANNEXURE O at page no 386 to 398 .
18. It is further stated that the TRANSFEREE COMPANY are having 7 Shareholders as on 30th June, 2018 and all the 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 – P at page no 399 to 426.
19. It is further stated that the Equity Shareholders in the Transferor Company NO 1 are 4 as on 30th June, 2018 and all the shareholders have given their consent by way of affidavit. List of shareholders duly certified by the Statutory auditors and affidavit of consent by all the

Sd

equity shareholders of the TRANSFEROR COMPANY No 1 is annexed and marked ANNEXURE P1 at page no 427 to 445.

20. It is further stated that the Equity Shareholders in the Transferor Company NO 2 are 2 as on 30th June, 2018 and all the shareholders have given their consent by way of affidavit. List of shareholders duly certified by the Statutory auditors and affidavit of consent by all the equity shareholders of the TRANSFEROR COMPANY No 2 is annexed and marked ANNEXURE P2 at page no 446 to 452.
21. It is further stated that the Equity Shareholders in the Transferor Company NO 3 are 2 as on 30th June, 2018 and all the shareholders have given their consent by way of affidavit. List of shareholders duly certified by the Statutory auditors and affidavit of consent by all the equity shareholders of the TRANSFEROR COMPANY No 3 is annexed and marked ANNEXURE P3 at page no 453 to 459.
22. It is further stated that the Equity Shareholders in the Transferor Company NO 4 are 7 as on 30th June, 2018 and all the shareholders have given their consent by way of affidavit. List of shareholders duly certified by the Statutory auditors and affidavit of consent by all the equity shareholders of the TRANSFEROR COMPANY No 4 is annexed and marked ANNEXURE P4 at page no 460 to 485.
23. It is further stated that the Equity Shareholders in the Transferor Company NO 5 are 5 as on 30th June, 2018 and all the shareholders have given their consent by way of affidavit. List of shareholders duly certified by the Statutory auditors and affidavit of consent by all the

equity shareholders of the TRANSFEROR COMPANY No 5 is annexed and marked ANNEXURE P5 at page no 486 to 505.

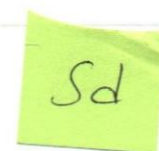
24. It is further stated that the TRANSFEREE COMPANY are having Nil Secured Creditors as on 30th June, 2018 and which has been duly certified by the Statutory auditors is annexed and marked ANNEXURE Q at page no 506.

It is further stated that the TRANSFEREE COMPANY are having 4 Unsecured Creditors as on 30th June, 2018 and all Unsecured Creditors have given their consent by way of affidavit . Copy of affidavit of consent and list of Unsecured Creditors duly certified by the Statutory auditors are annexed marked ANNEXURE – Q at page no 506 to 525.

25. It is further stated that the TRANSFEROR COMPANY No 1 are having Nil Secured Creditors and Unsecured Creditors as on 30th June, 2018 and which has been duly certified by the Statutory auditors is annexed and marked ANNEXURE Q1 at page no 526.

26. It is further stated that the TRANSFEROR COMPANY NO 2 are having Nil Secured Creditors as on 30th June, 2018 and which has been duly certified by the Statutory auditors is annexed and marked ANNEXURE Q2 at page no 527.

It is further stated that the TRANSFEROR COMPANY NO 2 are having 1 Unsecured Creditors as on 30th June, 2018 and all Unsecured Creditors have given their consent by way of affidavit . Copy of affidavit



of consent and list of Unsecured Creditors duly certified by the Statutory auditors are annexed marked ANNEXURE – Q2 at page no 527 to 530.

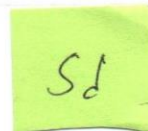
27. It is further stated that the TRANSFEROR COMPANY NO 3 are having Nil Secured Creditors as on 30th June, 2018 and which has been duly certified by the Statutory auditors is annexed and marked ANNEXURE Q3 at page no 531.

It is further stated that the TRANSFEROR COMPANY NO 3 are having 1 Unsecured Creditors as on 30th June, 2018 and all Unsecured Creditors have given their consent by way of affidavit . Copy of affidavit of consent and list of Unsecured Creditors duly certified by the Statutory auditors are annexed marked ANNEXURE – Q3 at page no 531 to 534.

28. It is further stated that the TRANSFEROR COMPANY No 4 are having Nil Secured Creditors and Unsecured Creditors as on 30th June, 2018 and which has been duly certified by the Statutory auditors is annexed and marked ANNEXURE Q4 at page no 535.

29. It is further stated that the TRANSFEROR COMPANY NO 5 are having Nil Secured Creditors as on 30th June, 2018 and which has been duly certified by the Statutory auditors is annexed and marked ANNEXURE Q5 at page no 536.

It is further stated that the TRANSFEROR COMPANY NO 5 are having 4 Unsecured Creditors as on 30th June, 2018 and all Unsecured Creditors have given their consent by way of affidavit . Copy of affidavit



of consent and list of Unsecured Creditors duly certified by the Statutory auditors are annexed marked ANNEXURE – Q5 at page no 536 to 551.

30. The statutory Auditors of the TRANSFEREE COMPANY have certified that the Accounting treatment proposed in terms of clause 14 of PART V 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 – R at Page No 552 to 557 .

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 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 .
- b) 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 .

- c) In view of the consents given in affidavit form by all the Unsecured Creditors of TRANSFEREE COMPANY ,TRANSFEROR COMPANY NO 2, TRANSFEROR COMPANY NO 3 and TRANSFEROR COMPANY NO 5, convening and holding of separate meetings of the Unsecured Creditors of TRANSFEREE COMPANY ,TRANSFEROR COMPANY NO 2, TRANSFEROR COMPANY NO 3 and TRANSFEROR COMPANY NO 5 are dispensed with .
- d) In view of the fact that the TRANSFEROR COMPANY NO 1, and TRANSFEROR COMPANY NO 4, have NIL Unsecured Creditors verified by Auditors Certificate , the question of holding separate meeting of Unsecured Creditors of the TRANSFEROR COMPANY NO 1, and TRANSFEROR COMPANY NO 4 does not arise .
- e) The Applicant Companies to serve the notice upon the Regional Director – Eastern Region (Ministry Of Corporate Affairs) , Registrar Of Companies – West Bengal , Income Tax Authority within whose jurisdiction the assessments of the Applicant Companies are made, the Official Liquidator , 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.
- f) 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 .
- g) That the Transferee and Transferor Companies shall affirm by way of affidavit that no investigation or proceedings under the

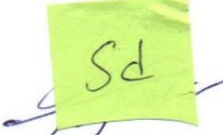
SD

Companies Act 1956 or Companies Act , 2013 have been instituted or are pending in relation to the amalgamating and amalgamated companies .

- h) Liberty is given to file joint application by Transferee and Transferor Company 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 .
- i) 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 Company
- j) 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 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.929 / KB / 2018 is disposed of accordingly .

Urgent certified copies of this order, if applied for, be supplied to the parties upon compliances of all requisite formalities.


(Jinan K.R)
Member (J)

Signed this 10th day of October, 2018

Deeksha-(steno)