

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CA (CAA) No.825/KB/2018

In the matter of:

An application under Section 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:

Sumati Industrial Finance Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 31, Alexandra Court, Second Floor, 60/1, Chowringhee Road, Kolkata -700 020, West Bengal;

And

In the matter of:

Swift Distributors Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 31, Alexandra Court, Second Floor, 60/1, Chowringhee Road, Kolkata -700 020, West Bengal;

And

In the matter of:

- | | |
|---------------------------------------|---------------------|
| 1. Sumati Industrial Finance Limited | : ((Transferee Co.) |
| 2. Swift Distributors Private Limited | : (Transferor Co.) |

.....Applicant/Petitioners

Order Delivered on 7th September 2018

For the Applicant/Petitioners

: 1. Mrs. Manju Bhuteria, Advocate
2. Mr. N. Gurumurthy, FCA

ORDER**Per Jinan K.R., Member (Judicial)**

This application has been filed by the Applicant Companies, namely, Sumati Industrial Finance Limited [hereinafter referred to as the Transferee Company] with Swift Distributors Private Limited [hereafter referred to as the Transferor 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 G at page 175 to 207 of the application.

2. It is stated in the application that the Transferor Company is engaged in investing and funding activities and the Transferee Company is a Non Banking Finance Company duly registered with the Reserve Bank of India and is presently engaged in Investing and financing activities. Therefore the business of the Transferor Company and the Transferee Company can be combined/adjusted and carried forward conveniently with combined strength.

3. 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 amalgamation will enable the Transferee Company to consolidate its line of business by restructuring and re-organizing its business activities and Capital Structure;
- ii. The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the Transferee Company;

- iii. 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;
- iv. 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;
- v. 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 favourable terms and other benefits;
- vi. The said scheme will contribute in furthering and fulfilling the objects of the Company concerned and in the growth and development of these businesses;
- vii. The said scheme will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability;
- viii. The said scheme will enable the undertakings concerned to pool their resources and to expand their activities;
- ix. 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;
- x. The said scheme will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.

4. Ld. Counsel for the applicant companies submitted that the assets of the applicant companies are sufficient to meet all the liabilities and the Scheme of Amalgamation will not adversely affect the rights of the creditors of the applicant companies in any manner whatsoever.

5. It is stated in the application that the applicant companies have made due provisions for payment of all liabilities as and when the same fall due.

6. It reveals from the record that the present share capital structure of the transferee company is as follows: -

Authorised Share Capital.	Amount (Rs.)
4,84,000 Equity Shares of Rs.5/- each	24,20,000/-
Total	24,20,000/-
Issued, subscribed and paid up share capital	
4,84,000 Equity Shares of Rs.5/- each fully paid up.	24,20,000/-
Total	24,20,000/-

A copy of the audited Annual Accounts as on 31/3/2017 is annexed with the application as Annexure B page 84 to 112.

7. It further reveals from the record that the present share capital structure of the transferor company is as follows: -

Authorised Share Capital.	Amount (Rs.)
5,50,000 Equity Shares of Rs.10/- each	55,00,000/-
Total	55,00,000/-
Issued, subscribed and paid up share capital	
5,32,194 Equity Shares of Rs.10/- each fully paid up.	53,21,940/-
Total	53,21,940/-

A copy of the audited Annual Accounts as on 31/3/2017 is annexed with the application as Annexure E page 114 to 168.

8. It appears from the record that no proceedings are 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.

9. It is stated in the application that the Board of Directors of the applicant companies have at their Board Meetings held on 7/5/2018 by a resolution passed unanimously approved the Scheme of Amalgamation. Copy of the board resolution of the applicant companies are annexed with the application as Annexure H, at page 208 to 211.

10. It reveals from the record that the copy of Valuation Report for exchange ratio of shares of the Transferor Company and the Transferee Company is annexed with the application as Annexure I, at page 212 to 219.

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

12. 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.

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

14. It is further stated that the Equity Shareholders in the Transferor Company are 3. List of shareholders duly certified by the Statutory Auditors and affidavit by all the equity shareholders of the Transferor Company is annexed with the application as Annexure K page 254 to 261.

15. It is further stated that the Transferee Company is having 1 number of Secured Creditor as on 30/6/2018 which has been duly certified by the Statutory Auditors. The Secured Creditor has given his consent by way of affidavit which is annexed with the application as Annexure L page 262 to 265.

16. It is further stated that the Transferee Company is having 2 Numbers of Unsecured Creditors as on 30/6/2018 which has been duly certified by the Statutory Auditors. The Unsecured Creditors have given their consent by way of affidavit which is annexed with the application as Annexure L at page no 266 to 270.

17. It is further stated that the Transferor Company is having 2 Numbers of Secured Creditors as on 30/6/2018 which has been duly certified by the Statutory Auditors. The Secured Creditors have given their consent by way of affidavit which is annexed with the application as Annexure M at page 271 to 276.

18. It is further stated that the Transferor Company is having 2 Numbers of Unsecured Creditors as on 30/6/2018 which has been duly certified by the Statutory Auditors. The Unsecured Creditors have given their consent by way of affidavit which is annexed with the application as Annexure page 277 to 280.

19. 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. Copy of the statutory Auditors certificate is enclosed marked Annexure - N at Page 281 to 284.

20. 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. 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.

- ii. 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 Company does not arise.
- iii. In view of the consents given in affidavit form by all the Secured Creditors of the Transferee Company and the Transferor Company, convening and holding of separate meeting of the secured creditors does not arise.
- iv. In view of the consents given in affidavit form by all the Unsecured Creditors of the Transferee Company and Transferor Company, convening and holding of separate meetings of the Unsecured Creditors of Transferee Company and the Transferor Company are dispensed with.
- v. 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) Reserve Bank of India,
 - (e) 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.

- vi) 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.
- vii) All Petitioner Companies at least 7 days before the date of hearing of the petition shall file affidavit of service of notices on the Authorities specified above including the Sectoral Regulators.
- viii) The authorized representative of the Applicant Companies shall furnish an affidavit of compliance of all directions contained. The applicants are directed to file confirmation petition within four weeks from the date of the order.
- ix) That the Transferee Company and the 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 Transferee Company and Transferor Companies.

21. The application being CA (CAA) No.825/KB/2018 is disposed of accordingly.

22. There shall be no order as to costs.

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

Sd
Jinan K.R.
Member (J)

Signed on 7th September 2018