

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CA (CAA) No.859/KB/2018

In the matter of:

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

And

In the matter of:

Kayan Investment & Trading Company Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at P-355, Keyatala Road, Kolkata -700 029, West Bengal;

And

In the matter of:

Aashirwad Dealers Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 6A, Raja Subodh Mullick Square, Kolkata -700 013, West Bengal;

And

In the matter of:

Aashirwad Realtors Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 6A, Raja Subodh Mullick Square, Kolkata -700 013, West Bengal;

And

In the matter of:

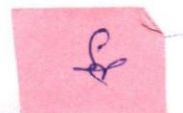
Bhawani Barter Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at Room No.3J, Hastings Chamber, 7C, Kiran Shankar Roy Road, Kolkata -700 001, West Bengal;

And

In the matter of:

- | | |
|---|-------------------------|
| 1. Kayan Investment & Trading Company Private Limited | : (Transferee Co.) |
| 2. Aashirwad Dealers Private Limited | : (Transferor Co. No.1) |
| 3. Aashirwad Realtors Private Limited | : (Transferor Co. No.2) |
| 4. Bhawani Barter Private Limited | : (Transferor Co. No.3) |

.....Applicant/Petitioners



Order Delivered on 26th September 2018

For the Applicant/Petitioners : 1. Mrs. Manju Bhuteria, Advocate
2. Mr. Madan Kumar Maruti, PCA

ORDER

Per Jinan K.R., Member (Judicial)

This application has been filed by the Applicant Companies, namely, Kayan Investment & Trading Company Private Limited [hereinafter referred to as the Transferee Company] with (1) Aashirwad Dealers Private Limited, (2) Aashirwad Realtors Private Limited and (3) Bhawani Barter 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 Companies and their respective shareholders. A copy of the Scheme of Amalgamation has been annexed with the application as Annexure I at page 244 to 278 of the application.

2. It is stated in the application that the Transferor Companies are engaged in investing and trading 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 Companies 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 broaden 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: -

SHARE CAPITAL	AMOUNT (Rs.)
AUTHORIZED SHARE CAPITAL	
32,00,000 Equity Shares of Rs.10/- each	3,20,00,000/-
Total	3,20,00,000/-
ISSUED, SUBSCRIBED AND PAID-UP	
25,94,910 Equity Shares of Rs.10/- each	2,59,49,100/-
Total	2,59,49,100/-

7. It reveals from the record that the present share capital structure of the Transferor Company No.1 is as follows: -

SHARE CAPITAL	AMOUNT(Rs.)
AUTHORIZED SHARE CAPITAL	
3,25,000 Equity Shares of Rs.10/- each	32,50,000/-
Total	32,50,000/-
ISSUED , SUBSCRIBED AND PAID-UP	
2,35,000 Equity Shares of Rs.10/- each	23,50,000/-
Total	23,50,000/-

8. It reveals from the record that the present share capital structure of the Transferor Company No.2 is as follows: -

SHARE CAPITAL	AMOUNT(Rs.)
AUTHORIZED SHARE CAPITAL	
100,000 Equity Shares of Rs.10/- each	10,00,000/-
Total	10,00,000/-
ISSUED , SUBSCRIBED AND PAID-UP	
50,000 Equity Shares of Rs.10/- each	5,00,000/-
Total	5,00,000/-

9. It reveals from the record that the present share capital structure of the Transferor Company No.3 is as follows: -

SHARE CAPITAL	AMOUNT(Rs.)
AUTHORIZED SHARE CAPITAL	
1,50,000 Equity Shares of Rs.10/- each	15,00,000/-
Total	15,00,000/-
ISSUED, SUBSCRIBED AND PAID-UP SHARE CAPITAL	
1,30,000 Equity Shares of Rs.10/- each fully paid-up	13,00,000/-
Total	13,00,000/-

10. 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.

11. It is stated in the application that the Board of Directors of the applicant companies have at their Board Meetings held on 3/7/2018 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 J at page 279 to 282.

12. 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.

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

14. 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.

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

16. It is further stated that the Transferee Company are having 13 shareholders 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 - L at page 294 to 351.

17. It is further stated that the Equity Shareholders in the Transferor Company No.1 are 10. List of shareholders duly certified by the Statutory auditors and affidavit of consent by all equity shareholders of the Transferor Company No.1 is annexed and marked Annexure - M at page 352 to 391.

18. It is further stated that the Equity Shareholders in the Transferor Company No.2 is 6. List of shareholders duly certified by the Statutory auditors and affidavit of consent by all equity shareholders of the Transferor Company No.2 is annexed and marked Annexure - N at page 392 to 420.

19. It is further stated that the Equity Shareholders in the Transferor Company No.3 is 9. List of shareholders duly certified by the Statutory auditors and affidavit by all the equity shareholders of the Transferor Company is annexed and marked Annexure - O at page 421 to 462.

20. It is further stated that the Transferee Company is having Nil Secured Creditors and 1 Unsecured Creditors. List of Secured and Unsecured Creditors duly certified by the Statutory auditors and affidavit by the only Unsecured Creditors of the Transferee Company is annexed and marked Annexure - P at page 463 to 467.

21. It is further stated that the Transferor Company No.1 are having Nil Secured Creditors and 1 Unsecured Creditors. List of Secured and Unsecured

Creditors duly certified by the Statutory auditors and affidavit by the only Unsecured Creditors of the Transferor Company No.1 is annexed and marked Annexure - P at page 468 to 475.

22. It is further stated that the Transferor Company No.2 is having Nil Secured Creditors and 1 Unsecured Creditors. List of Secured and Unsecured Creditors duly certified by the Statutory auditors and affidavit by the only Unsecured Creditors of the Transferor Company No.2 is annexed and marked Annexure - R at page 476 to 480.

23. It is further stated that the Transferor Company No.3 is having Nil Secured Creditors and 1 Unsecured Creditors. List of Secured and Unsecured Creditors duly certified by the Statutory auditors and affidavit by the only Unsecured Creditors of the Transferor Company No.3 is annexed and marked Annexure - S at page 481 to 494.

24. The statutory Auditors of the Transferee Company have certified that the Accounting treatment proposed in terms of clause 13 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 - T at Page 495 to 502.

25. 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.

Sd

- 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 Companies does not arise.
- iii. In view of the consents given in affidavit form by all the Unsecured Creditors of the Transferee Company and Transferor Companies, convening and holding of separate meetings of the Unsecured Creditors of Transferee Company and the Transferor Companies are dispensed with.
- iv. 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.

- v) 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.
- vi) 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.
- vii) 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.
- viii) 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.

26. The application being CA (CAA) No.859/KB/2018 is disposed of accordingly.

27. There shall be no order as to costs.

28. 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 26th September 2018