

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C. P. (CAA) NO. 605/KB/2018

connected with

C. A. (CAA) NO. 11/KB/2018

In the Matter of: -In the Matter of: -

The Companies Act, 2013;

And

In the Matter of: -

Sections 230 to 232 of the Companies Act, 2013;

And

In the Matter of: -

Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

And

In the Matter of :-

Petition for Sanction scheme of Amalgamation

And

In the matter of:

RVH Consultants Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at Top Floor, Room No – 3, East India Building, 8 Madan Street, Kolkata-700072 in the State of West Bengal, within the aforesaid jurisdiction;

~ And ~

In the matter of:

RVH Advisors Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at Top Floor, Room No – 3, East India Building, 8 Madan Street, Kolkata-700072, in the State of West Bengal, within the aforesaid jurisdiction;

~ And ~

In the matter of:

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1. RVH Consultants Private Limited;
2. RVH Advisors Private Limited;

.....Petitioners

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

For The Petitioners :

Mr Shashi Agarwal, FCA

Mr. K.S. Pradhan, Joint Director, Eastern Region, Ministry of Corporate Affairs

Date of Pronouncement of the Order :

ORDER

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

1. The object of this petition is to obtain sanction of this National Company Law Tribunal to a Scheme of Amalgamation relating to amalgamation of RVH Advisors Private Limited, the "Transferor Company" with RVH Consultants Private Limited, the "Transferee Company" where all the assets, properties, rights and claims whatsoever of the Transferor Company and their entire undertaking together with all rights and obligations relating thereto are proposed be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the Scheme

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of Amalgamation, a copy whereof is annexed with the Petition and marked with letter "A".

2. By an order dated 16th Day of February, 2018 in Company Application C.A.(CAA) NO. 11/KB/2018, this Tribunal was pleased to dispense with the meetings of the equity shareholders of the Petitioner Companies for the purpose of considering and if thought fit for approving with or without modification, the said Scheme of Amalgamation in view of the written consent obtained from the Equity Shareholders of the respective companies.

3. Further there was no secured and unsecured creditors in the Transferor Company as well as Transferee company, thus the convening and/or dispensation of meeting in respect of creditors did not arise.

4. In terms of the said order dated 16-02-2018, notices had been sent to Income Tax Department, Official Liquidator, Registrar of Companies and Regional Director, Eastern Region (MCA). The Copy of Affidavit of Service/ compliance is annexed with Company petition and marked letter "F".

5. It is submitted that the Scheme of Amalgamation is in conformity with the Accounting Standards prescribed under section 133. A certificate from Chartered Accountant relating to compliance of Accounting standard is annexed with Company petition and marked letter "G".

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6. It is submitted by the petitioners that there are no proceedings pending under Sections 235 to 251 of the Companies Act, 1956 and/or corresponding provisions of Companies Act, 2013 against any of the petitioner companies.

7. It is further submitted by the petitioners that the Scheme does not contain any clause due to which there will be any reduction of share capital of Applicant Companies.

8. It is further submitted by the petitioners that the Scheme does not provide (contain any clause) for any kind of corporate debt restructuring.

9. It is further submitted by the petitioners that the assets of the applicant companies are sufficient to meet all their liabilities. The applicant companies have made due provisions for payment of all liabilities as and when the same will fall due. Further, the said Scheme of Amalgamation does not involve any compromise or composition with the creditors of the applicant companies and scheme will not affect the rights of the creditors of the applicant companies in any manner whatsoever.

10. Upon compliance of the directions of this Tribunal dated 16-02-2018, made in CA(CAA) No.11/KB/2018, the Petitioner Companies had filed the Petition bearing CP(CAA) No. 605/KB/2018 and this Tribunal had passed order dated 3rd July, 2018 in the said Petition, directing the Petitioner Companies for publication to be effected of the hearing of the Petition,



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issuance of the notices of this Petition to the Statutory authorities for their objections, if any.

11. Pursuant to the aforesaid Order dated 03-07-2018 of this Tribunal, passed in CP(CAA) No. 605/KB/2018, notice was served upon the Central Government, Statutory Authorities and publications of notice were made in two newspapers- Business Standard in English on 10th July, 2018 and Aajkaal in Bengali on 10th July, 2018.

12. The Petitioner Companies have filed an affidavit of service affirmed on 30th August, 2018 evidencing the newspaper publication on 10th July, 2018 and serving of notice to the Statutory Authorities on 12th July, 2018.

13. The Regional Director , Eastern Region , Ministry of Corporate Affairs has, vide his affidavit affirmed on 29th August, 2018 has reported as below :

"2.(a) That it is submitted that on examination of the report of the Registrar of Companies, west Bengal it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. The petitioner companies are also up dated in filing their statutory returns. It is further submitted that on examination of the proposed Scheme of Amalgamation, it appears that the proposed Scheme is not prejudicial to the interest of members/shareholders

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and/or public. The Central Government has, therefore, decided that the instant petition/Scheme need not be opposed.

(b) It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the Scheme was forwarded to the Income Tax Department on 26.02.2018 with a request to forward their comments/observations /objections, if any. However, the said authority has not forwarded their report to this Directorate till date."

14. The Official Liquidator attached to Hon'ble High Court, Calcutta vide his report dated 28-08-2018 has observed that after scrutiny of the report submitted by the Chartered Accountant appointed by him and other relevant papers and records etc., submitted by the Advocate-on-Record of the Petitioners, the Official Liquidator is of the opinion that the affairs of the Transferor Company, namely, RVH Advisors Private Limited, have have not been conducted in a manner prejudicial to the interest of their members or to public.

15. Heard the arguments of Ld. Counsels for the Petitioner Companies and the Ld. Joint Director, Eastern Region, Ministry of Corporate Affairs.

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16. In view of the facts stated above and absence of any objection and since all requisite compliance has been fulfilled, the following orders in terms prayers made in the petition, with modification by this Tribunal are passed :

- a) That the Scheme of Amalgamation is sanctioned by this National Company Law Tribunal to be binding with effect from appointed date on the Transferee Company, the Transferor Company, their shareholders, and all concerned;
- b) That the said Transferor Company with all their respective assets, properties, rights, powers, titles, and interest thereof are transferred to and vested without any further act or deed in the Transferee Company and accordingly the same shall pursuant to section 230 to 232 of the Companies Act 2013 be Transferred to and vested in the Transferee company for all the estates and interests of the said Transferor Company therein but subject nevertheless to all charges, now affecting the same;
- c) That all the liabilities and duties of the Transferor Company are transferred without any further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 230 to 232 of the Companies Act 2013 be transferred to and become the liabilities and duties of the said Transferee Company.

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- d) That all proceedings and/or suits and/or appeals now pending by or against the Transferor Company shall be continued by or against the Transferee Company.
- e) That the Transferee Company do without further application allot to such members of the Transferor Company herein the shares in the transferee company to which they are entitled as per the said scheme of amalgamations;
- f) That the Transferor Company and the Transferee Company shall within 30 days after the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration respectively.
- g) The Transferor company shall be dissolved without winding up from the date of filing of the certified copy of this order with the Registrar of Companies, West Bengal and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee Company and the files to the said Transferee Company and the Transferor Company shall be consolidated accordingly;
- h) That any person interested shall be a liberty to apply to this National Company Law Tribunal in the above matter for any directions that may be necessary;
- i) That the schedule of assets in respect of the Transferor Company be filed in this National Company Law Tribunal within a period of 60 days from the date of this order.

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17. In the event of the petitioners supply legible computerized print out of the scheme and schedule of assets in acceptable form to the department, the department will append such computerized print-out, upon verification to the certified copy of the order without insisting on a hand-written copy thereof.

18. Accordingly C.P. (CAA) No.605/KB/2018, connected with CA(CAA) No. 11/KB/2018 stands disposed of.

19. Urgent certified copy of this order if applied for be issued upon compliance with all requisite formalities.

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3/9/18
(Jinan K.R.)

Member(Judicial)