

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

C.A.(CAA) No.845/KB/2018

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

In the matter of:

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

In the matter of:

LINKPLAN MERCHANTS LIMITED, a Company incorporated under the Companies Act, 2013; and having its registered office at 31, Shakespeare Sarani, 2nd Floor, Room No. 211, Kolkata- 700017, in the state of West Bengal, within the aforesaid jurisdiction;

And

In the matter of:

PINKROSE REAL BUILD PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956; and having its registered office at 31, Shakespeare Sarani, 2nd Floor, Room No- 211, Kolkata - 700017, in the state of West Bengal, within the aforesaid jurisdiction;

And

In the matter of:

GATEWAY VENTURE CAPITAL LIMITED, a Company incorporated under the Companies Act, 1956; and having its registered office at 31, Shakespeare Sarani, 2nd Floor, Room No- 209&210, Kolkata - 700017, in the state of West Bengal, within the aforesaid jurisdiction;

And

In the matter of:

HIGHLAND SALES PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956; and having its registered office at 7A, Bentinck Street, Room No. 403, Kolkata - 700001, in the state of West Bengal, within the aforesaid jurisdiction;

And

In the matter of:

JAIMATADI VYAPAAR PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956; and having its registered office at 31, Shakespeare Sarani, 2nd Floor, Room No- 209&210, Kolkata - 700017, in the state of West Bengal, within the aforesaid jurisdiction;

And

In the matter of:

PUNCTUAL REAL ESTATE PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956; and having its registered office at 36A, Bentinck Street, Kolkata - 700069, in the state of West Bengal, within the aforesaid jurisdiction;

And

In the matter of:

SANTAWANA BUSINESS LIMITED, a Company incorporated under the Companies Act, 1956; and having its registered office at 31, Shakespeare Sarani, 2nd Floor, Room No- 211, Kolkata - 700017, in the state of West Bengal, within the aforesaid jurisdiction;

And

In the matter of:

GATEWAY DERIVATIVES PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956; and having its registered office at 31, Shakespeare Sarani, 2nd Floor, Room No- 209-210, Kolkata - 700017, in the state of West Bengal, within the aforesaid jurisdiction;

And

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In the matter of:

GATEWAY FINANCIAL SERVICES LIMITED, a Company incorporated under the Companies Act, 1956; and having its registered office at 31, Shakespeare Sarani, 2nd Floor, Room No- 209&210, Kolkata - 700017, in the state of West Bengal, within the aforesaid jurisdiction;

In the matter of:

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| 1. Linkplan Merchants Limited; | (Transferor Co. No.1) |
| 2. Pinkrose Real Build Private Limited; | (Transferor Co. No.2) |
| 3. Gateway Venture Capital Limited; | (Transferor Co. No.3) |
| 4. Highland Sales Private Limited; | (Transferor Co. No.4) |
| 5. Jaimatadi Vyapaar Private Limited; | (Transferor Co. No.5) |
| 6. Punctual Real Estate Private Limited; | (Transferor Co. No.6) |
| 7. Santawana Business Limited; | (Transferor Co. No.7) |
| 8. Gateway Derivatives Private Limited; | (Transferor Co. No.8) |
| 9. Gateway Financial Services Limited; | (Transferee Co.) |
-Applicants.

COUNSEL ON RECORD :

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| 1. Mr. Patita Paban Bishwal, Advocate] | For the Applicants. |
| 2. Mr. Avik Chaudhuri, Advocate] | |

Date of Pronouncement of Order: 17th September 2018.

ORDER

1. The object of this application is to ultimately obtain sanction of this Tribunal for the Scheme of Amalgamation of LINKPLAN MERCHANTS LIMITED, PINKROSE REAL BUILD PRIVATE LIMITED, GATEWAY VENTURE CAPITAL LIMITED, HIGHLAND SALES PRIVATE LIMITED, JAIMATADI VYAPAAR PRIVATE LIMITED, PUNCTUAL REAL ESTATE PRIVATE LIMITED, SANTAWANA BUSINESS LIMITED and GATEWAY

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DERIVATIVES PRIVATE LIMITED Transferor Companies with GATEWAY FINANCIAL SERVICES LIMITED, the Transferee Company and their respective shareholders whereby and whereunder it is proposed to amalgamate the Transferor Companies with the Transferee Company by transferring the assets and liabilities of the Transferor Companies, as defined in the Scheme of Amalgamation to the Transferee Company.

2. The terms and conditions of the amalgamation are fully stated in the Scheme of Amalgamation. A copy of the Scheme of Amalgamation is annexed with the Application and marked as "Annexure A-19 at page nos. 576-600".

A. It has been stated in the Application that the scheme of Amalgamation has been proposed for specific group structure and provide for overall business efficiency to combine their managerial and marketing strength, to streamline administration, to build a wider capital and financial base and to promote and secure the overall interest growth and economics of all the companies concerned.

B. The Scheme of Amalgamation will enable the establishment of a larger company with larger company with larger resources and a larger capital base facilitating further expansion and development of the business of all companies.

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C. The scheme of Amalgamation will enable the undertakings and business of the said Companies to obtain greater facilities processed and enjoyed by one large company as compared with a number of smaller companies, for raising capital, securing and conducting trade, on favourable terms and other benefits.

D. It has been also stated in the Application that the Scheme of Amalgamation will have beneficial results for all the Applicant Companies concerned, their shareholders, employees and concerned.

3. The Board of Directors of the Applicant Company has, at their respective Board meetings by resolution passed unanimously approved the scheme of Amalgamation. The copy of the Board Resolution of the Applicant Company is annexed with the application and marked as Annexure "A-20 at page nos. 601-609".

4. It is stated in the Application that the Assets of the Applicant Company are sufficient to meet all their liabilities and the scheme of Amalgamation will not adversely affect the rights of any of the creditors of Applicant Company in any manner whatsoever.

5. There are no proceedings pending under section 235 to 251 of the Companies Act, 1956, Section 210 to 226 of the Companies Act, 2013 against the Applicant Company.

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6. The Transferor Company No. 1, namely, LINKPLAN MERCHANTS LIMITED is having 12 (Twelve) shareholders. The Transferor Company No. 2, namely, PINKROSE REAL BUILD PRIVATE LIMITED is having 04 (Four) shareholders. The Transferor Company No. 3, namely, GATEWAY VENTURE CAPITAL LIMITED is having 07 (Seven) shareholders. The Transferor Company No. 4, namely, HIGHLAND SALES PRIVATE LIMITED is having 02 (Two) shareholders. The Transferor Company No. 5, namely, JAIMATADI VYAPAAR PRIVATE LIMITED is having 03 (Three) shareholders. The Transferor Company No. 6, namely, PUNCTUAL REAL ESTATE PRIVATE LIMITED is having 02 (Two) shareholders. The Transferor Company No. 7, namely, SANTAWANA BUSINESS LIMITED is having 12 (Twelve) shareholders.

7. The Transferor Company No. 8, namely, GATEWAY DERIVATIVES PRIVATE LIMITED is having 04 (Four) shareholders. The Transferee Company, namely, GATEWAY FINANCIAL SERVICES LIMITED is having 09 (Nine) shareholders. The copy of the list of shareholders of the Applicant Company along with the consent of shareholders in the form of Affidavit of the Applicant Company are annexed with the Application and collectively marked as Annexure "A-21 at page nos. 601-749" and certificate regarding list of shareholders from a Practicing Chartered Accountant is enclosed with the Application and marked as Annexure "A-22 at page nos. 750-758". The Applicant submitted that as all the shareholders of the Applicant Company have given their consent for the approval of the proposed Scheme of Amalgamation

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in writing in the form of Affidavit, holding of meeting of the equity shareholders of the Applicant Company may be dispensed with.

8. As on 31st March, 2018, the Transferor Company No. 1, namely LINKPLAN MERCHANTS LIMITED have 02 (Two) creditors and the credit amount is Rs. 36,05,000/-. As on 31st March, 2018, the Transferor Company No. 2, namely PINKROSE REAL BUILD PRIVATE LIMITED have 01 (One) creditor and the credit amount is Rs. 5,000/-. As on 31st March, 2018, the Transferor Company No. 3, namely GATEWAY VENTURE CAPITAL LIMITED have 01 (One) creditor and the credit amount is Rs. 5,000/-. As on 31st March, 2018, the Transferor Company No. 4, namely HIGHLAND SALES PRIVATE LIMITE have 01 (One) creditor and the credit amount is Rs. 5,000/-. As on 31st March, 2018, the Transferor Company No. 5, namely JAIMATADI VYAPAAR PRIVATE LIMITED have 02 (Two) creditors and the credit amount is Rs. 34,290/-.

9. As on 31st March, 2018, the Transferor Company No. 6, namely PUNCTUAL REAL ESTATE PRIVATE LIMITED have 01 (One) creditor and the credit amount is Rs. 5,000/-. As on 31st March, 2018, the Transferor Company No. 7, namely SANTAWANA BUSINESS LIMITED have 02 (Two) creditors and the credit amount is Rs. 5,000/-. As on 31st March, 2018, the Transferor Company No. 7, namely GATEWAY DERIVATIVES PRIVATE LIMITED have 01 (One) creditor and the credit amount is Rs. 29,500/-.

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10. As on 31st March, 2018, the Transferee Company, namely GATEWAY FINANCIAL SERVICES LIMITED have 08 (Eight) creditors and the credit amount is Rs. 2,72,39,788/-. The copy of the list of creditors of the Applicant Companies alongwith the consent of creditors in the form of Affidavit of the Applicant Companies are annexed herewith the Application and collectively marked as Annexure "A-23 at page nos. 759-807" and certificate regarding list of creditors from a Practicing Chartered Accountant is enclosed with the Application and marked as Annexure "A-22 at page nos. 750-758".

11. A certificate regarding list of Creditors from a Practicing Chartered Accountant is enclosed with the Application and marked as Annexure "A-24 at page nos. 808-825". It is stated in the Application that the Transferee Company shall, without any further application, act or deed, issue and allot equity shares to the of held by such shareholders of the Transferor Company. A certificate and calculation regarding share exchange ratio from a Practicing Chartered Accountant is enclosed with the Application and marked as Annexure "A-25 at page nos. 826-832". It further from the record that the Chartered Accountants issued a certificate to the effect that the accounting treatment of the applicant companies in the proposed scheme of amalgamation is in conformity with the accounting standards prescribe under section 133 of the companies Act, 2013 copy of which is annexed with the application and marked as annexure "A-26 at page nos. 833-841.

Heard the arguments of the Ld. Counsel and Ld. Pr. C.S. for the Petitioner Companies. Order with the following directions is passed:

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ORDER

- i) In view of the fact that all the equity shareholders of the Applicant Company duly consented in writing by way of affidavit, to the proposed Scheme of Amalgamation, duly certified by the Chartered Accountants, the requirement of convening and holding of separate meetings of the shareholders of the Applicant Company to ascertain the wishes of the equity shareholders of the Applicant Company for the Scheme of Amalgamation, is dispensed with;
- ii) Since there are no Creditors of the Applicant Company, as certified by the Chartered Accountant along with affidavit verifying list of Creditors as per the provisions of the Companies Act, 2013, convening and holding of separate meetings of the Creditors of the Applicant Company, does not arise ;
- iii) Let the notice be served by the Applicant Company, as per the requirements of sub-section (5) of Section 230 of the Companies Act, 2013, along with the copy of the Application and all other documents including the copy of the Scheme of Amalgamation and the statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal, and the concerned Income-Tax Assessing Officer along with the Chief Commissioner of Income-Tax with PAN Numbers of the Applicant Company through E-Mail and by Speed Post / Registered Post both, as also on the Official Liquidator, having jurisdiction over the Applicant Company, and such other relevant sectorial regulators/authorities, if applicable, which are likely to be affected by the

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proposed scheme, by sending the same by hand delivery through Special Messenger or by registered post or by Speed Post/ Registered Post, by E-Mail, both, within seven days from the date of this order for filing representation, if any, on the Application within 30 days from the date of the notice ;

- iv) The Applicant shall file affidavit within 10 days of serving the notice regarding the service of notice;
- v) The Applicants are further directed to send notice through e-mail also and file copies of the mails along with an affidavit. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with the copy of such representation being sent simultaneously to the Applicants and/or their Advocates, in advance;
- vi) If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation;
- vii) Objections, if any, to the Scheme contemplated by the authorities to whom notice has been given, may be filed within the time stipulated, failing which it will be considered by this Tribunal that there is no objection to the approval of the Scheme of Amalgamation on the part of the authorities, subject to other conditions being applicable under the Companies Act, 2013 and relevant rules made thereunder ;



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21. The Company Application bearing CA(CAA) No. 845/KB/2018 is accordingly, disposed of.

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

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17/9/18
(Jinan K.R.)
Member (J)

Signed this day of 17th September 2018.

PS_Aloke