

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

C.A.No.715/KB/2018

In

CA (CAA) No.555/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:

GOPALPRIYA MERCHANDISE PRIVATE LIMITED, a Company registered under the Companies Act 1956, having its registered office at Room No. 326, Premises No. 27, Weston Street, Kolkata in the state of West Bengal under the aforesaid jurisdiction;

And

In the matter of:

JYOTIRADITYA COMMERCIAL PRIVATE LIMITED, a Company registered under the Companies Act 1956, having its registered office at Room No. 326, Premises No. 27 Weston Street, Kolkata in the state of West Bengal under the aforesaid jurisdiction;

And

In the matter of:

SAPPHIRE BARTER PRIVATE LIMITED, a Company registered under the Companies Act 1956, having its registered office at 33/1, N. S. Road, Room No-247, 2nd Floor, Kolkata – 700 001 in the state of West Bengal under the aforesaid jurisdiction;

And

In the matter of:

ANINDITA DISTRIBUTORS PRIVATE LIMITED, a Company registered under the Companies Act 1956, having its registered office at 33/1, N. S. Road, Room No-247, 2nd Floor, Kolkata – 700 001 in the state of West Bengal under the aforesaid jurisdiction;

And

In the matter of:

VEDIK SALES PRIVATE LIMITED, an existing Company within the meaning of the Companies Act, 1956, having its registered office at Room No. 326, Premises No. 27, Weston Street, Kolkata – 700 012 in the state of West Bengal under the aforesaid jurisdiction;

And

In the matter of:

- | | |
|--|-------------------------|
| 1. Gopalpriya Merchandise Private Limited | : (Transferor Co. No.1) |
| 2. Jyotiraditya Commercial Private Limited | : (Transferor Co. No.2) |
| 3. Sapphire Barter Private Limited | : (Transferor Co. No.3) |
| 4. Anindita Distributors Private Limited | : (Transferor Co. No.4) |
| 5. Vedik Sales Private Limited | : (Transferee Co.) |

..... Petitioners / Applicants

COUNSEL ON RECORD :

Mr. Sanjay Kumar Gupta, Pr. C.S.]	For the Petitioners.
Ms Rekha Goenka, Pr. C.S.]	
Mr. Rohit Kumar Keshri, Pr. C.S.]	

Date of pronouncement of order: 10th September 2018.

Sd

ORDER

1. This application has been filed by the Applicant Companies, namely, (1) Gopalpriya Merchandise Private Limited (Hereinafter referred to as Transferor Company No. (2), Jyotiraditya Commercial Private Limited (Hereinafter referred to as Transferor Company No. (3), Sapphire Barter Private Limited (Hereinafter referred to as Transferor Company No. (4), Anindita Distributors Private Limited (Hereinafter referred to as Transferor Company No. (5) with Vedik Sales Private Limited (Hereinafter referred to as Transferee 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 A – 16, at page 280 to 323 of the application.

2. 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 Scheme of Amalgamation will be of benefit to all concerned and is not opposed to public policy.

ii. The proposed Amalgamation result in usual economics of a centralized and a larger company including reduction in overheads, better and more productive utilization of labour and other resources and reduction in procedural and administrative work.

iii. With the proposed re-alignment, the business of the said companies can be conveniently and advantageously combined together and in general the business of all the companies concerned will be carried on more economically and profitably if the scheme is implemented.

iv. The proposed scheme will enable the companies concerned to diversify and expand their activities without restricting their existing activities.

v. It will help in optimisation of the resources and reduction of the operational costs.

3. PCS 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 affect the rights of the creditors of the applicant companies in any manner whatsoever.

4. The Scheme of Amalgamation does not involve any compromise or composition or arrangement with any of the creditors of the Applicant Companies in any manner whatsoever. The said Scheme of Amalgamation will not adversely affect the rights of any of the creditors of any applicant companies in whatever manner whatsoever and it is nowhere prejudicial to the interest of the creditors, if any, of the Applicant Companies. The Applicant Companies have made due provisions for the payment of all liabilities as and when the same will fall due.

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

	Amount (Rs.)
Authorized Share Capital: 50,000 Equity Shares of Rs.10/- each	5,00,000/-
Issued, Subscribed and Paid - up Share Capital: 50,000 Equity Shares of Rs.10/- each	5,00,000/-

A copy of the audited Annual Accounts as on 31/03/2017 is annexed with the application as Annexure A – 6, page 134 – 157 and Statement of Accounts as on 31/12/2017 is annexed with the application as Annexure A – 7, page 158 – 163.

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

	Amount (Rs.)
Authorized Share Capital: 50,000 Equity Shares of Rs.10/- each	5,00,000/-
Issued, Subscribed and Paid - up Share Capital: 50,000 Equity Shares of Rs.10/- each	5,00,000/-

A copy of the audited Annual Accounts as on 31/03/2017 is annexed with the application as Annexure A – 8, page 164 – 187 and Statement of Accounts as on 31/12/2017 is annexed with the application as Annexure A – 9, page 188 – 193.

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

	Amount (Rs.)
Authorized Share Capital: 8,50,000 Equity Shares of Rs.10/- each	85,00,000/-
Issued, Subscribed and Paid - up Share Capital: 6,40,000 Equity Shares of Rs.10/- each	64,00,000/-

A copy of the audited Annual Accounts as on 31/03/2017 is annexed with the application as Annexure A – 10, page 194 – 214 and Statement of Accounts as on 31/12/2017 is annexed with the application as Annexure A – 11, page 215 – 219.

8. It further reveals from the record that the present share capital structure of the Transferor Company No. 4 is as follows:-

	Amount (Rs.)
Authorized Share Capital: 85,00,000 Equity Shares of Rs.1/- each	85,00,000/-
Issued, Subscribed and Paid - up Share Capital: 84,00,000 Equity Shares of Rs.1/- each	84,00,000/-

A copy of the audited Annual Accounts as on 31/03/2017 is annexed with the application as Annexure A – 12, page 220 – 240 and Statement of Accounts as on 31/12/2017 is annexed with the application as Annexure A – 13, page 241 – 246.

9. It further reveals from the record that the present share capital structure of the Transferee Company is as follows:-

	Amount (Rs.)
Authorized Share Capital: 3,10,000 Equity Shares of Rs.10/- each	31,00,000/-
Issued, Subscribed and Paid - up Share Capital: 3,05,620 Equity Shares of Rs.10/- each	30,56,200/-

A copy of the audited Annual Accounts as on 31/03/2017 is annexed with the application as Annexure A – 14, page 247 – 270 and Statement of Accounts as on 31/12/2017 is annexed with the application as Annexure A – 15, page 271 – 279.

10. It appears from the record that no proceedings are pending under Sections 235 to 251 of the Companies Act, 1956 and Sections 210 to 226 of the Companies Act, 2013 against any of the applicant companies.

11. PCS for the Applicant Companies submitted that subsequent to the date of the aforesaid balance sheet, there has been no substantial change in the financial position of all the applicant companies, except those arising or resulting from the normal course of business.

12. It is stated in the application that the Board of Directors of the applicant companies have at their Board Meetings held on 20/04/2018 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 A – 17, page 324 – 333.

13. PCS for the applicants also submitted that the Present Scheme of Amalgamation does not contain or provide for Corporate Debt Restructuring. None of the Directors of the applicant companies have any material interest in the proposed Scheme of Amalgamation and none of the Directors are shareholders in the applicant companies.

14. It appears from the record that the Statutory Auditors of the Transferee Company have certified that the Accounting treatment proposed in terms of Section D of Part V of the Scheme is in conformity with the Accounting Standards prescribed under section 133 of the Companies Act, 2013. The certificate issued by the Statutory Auditor is also annexed with the supplementary affidavit as Annexure A – 25, Page 5-6.

15. It is submitted in the application that the report determining the number and exchange ratio of shares which, shall be issued and allotted to the equity shareholders of Transferor Companies by the Transferee Company for implementation of the terms of the scheme has been prepared by a Practicing Chartered Accountant and such recommendations have been accepted by the Board of Directors of the respective

companies. Copies of such valuation report are also annexed with the application as Annexure A – 20, page 411 – 426.

16. The Transferee Company have 4 (Four) Equity Shareholders, Transferor Company No. 1 have 3 (Three) Equity Shareholders, Transferor Company No. 2 have 2 (Two) Equity Shareholders, Transferor Company No. 3 have 3 (Three) Equity Shareholders and Transferor Company No. 4 also have 3 (Three) Equity Shareholders as on 31/12/2017.

17. All the shareholders of the Transferee and Transferor Companies, holding 100% of the shares of the respective companies, have consented to the Proposed Scheme of Amalgamation by way of duly verified Affidavits and also to waive off the convening and holding of meeting for consideration and approval of the Scheme of Amalgamation. The list of shareholders and the Consent given by the shareholders of all the applicant companies in the form of affidavits are annexed with the application as Annexure A – 18, page 334 – 405.

18. None of the applicant companies have any Creditors as on 31/12/2017. Certificates by a Practicing Chartered Accountant confirming that the applicant companies do not have any Unsecured Creditors as on 31/12/2017 are annexed with the application as Annexure A – 19, page 406 – 410 and Certificates by a Practicing Chartered Accountant confirming that the applicant companies do not have any Secured Creditors

as on 31/12/2017 are annexed with the supplementary affidavit as Annexure A – 26, page 7 – 11.

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

ORDER


- a) In view of the consents given in the form of affidavit by all the Shareholders of the transferee and transferor companies, convening and holding of the meeting of shareholders of the transferee and transferor companies are hereby dispensed with.
- b) In view of the fact that the neither transferee nor transferor companies have any Creditors and the same is confirmed by Certificates from a Practicing Chartered Accountant, convening and holding of the meeting of Creditors of the transferee and transferor companies are hereby dispensed with and consequently publication of notice of the proposed Scheme of Amalgamation in the Newspaper be also dispensed with.
- c) The Applicant Companies are given directions to file the confirmation Application within a period of Six weeks.
- d) The Applicant Companies shall serve notice of the petition on the following authorities, namely, Central Government through Regional Director, Eastern Region, Ministry of Corporate Affairs, Registrar of Companies, West Bengal, The Income Tax Department of the office having jurisdiction over the respective petitioner Companies, 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 and by e-mail 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 or Speed Post or by Messenger. Petitioner Companies are also directed to mention their respective PAN Numbers everywhere.

- e) Objections, if any, to the Scheme contemplated by the authorities to whom notice has been given on or before the date of hearing fixed herein may be filed, 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 authorities under the Companies Act, 2013 and relevant rules made thereunder;

The application being CA No. 715KB/2018 In CA (CAA) No. 555/KB/2018 is disposed of accordingly.

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


(Jinan K.R.)
Member (J)

Signed this day of 10th September 2018.

PS_Aloke