

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

C.P.(CAA) NO 595/KB/2018

Connected with

C.A.(CAA) NO 573/KB/2017

In the matter of

A petition for sanction of Scheme of Amalgamation made under Sections 230 to 232 and other applicable provisions of the Companies Act , 2013 read with the Companies (Compromises, Arrangements and Amalgamations Rules) , 2016

AND

In the matter of

Scheme of Amalgamation

In the matter of

WOOLVEST MERCHANDISE PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 55, Chowringhee Road, King Edward Court, Ground Floor, Flat 1, Kolkata-700071 in State of West Bengal within the aforesaid jurisdiction

AND

In the matter of

GAREMOHAN TIE-UP PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 55, Chowringhee Road, King Edward Court, Ground Floor, Flat 1, Kolkata-700071 in State of West Bengal within the aforesaid jurisdiction;

AND

In the matter of

1. WOOLVEST MERCHANDISE PRIVATE LIMITED : (TRANSFEREE COMPANY)
2. GAREMOHAN TIE-UP PRIVATE LIMITED : (TRANSFEROR COMPANY)

..... PETITIONERS.

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

FOR THE PETITIONERS :

1. Ms. Manju Bhuteria , Advocate ,
2. Mr. N.Gurumurthy , FCA

Mr. KS Pradhan, Joint Director, Office of the Regional Director, Eastern Region, Ministry of Corporate Affairs

Date of pronouncement of order: 04 / 06 / 2018

ORDER

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

1. This is a Joint Petition for sanctioning of the Scheme of Amalgamation of GAREMOHAN TIE-UP PRIVATE LIMITED, the Petitioner No. 2 above named, the "TRANSFEROR COMPANY" with WOOLVEST MERCHANDISE PRIVATE LIMITED being the petitioner No 1 above named, the "TRANSFEREE COMPANY".

2. The object of this Petition is to ultimately obtain sanction of this Tribunal to the Scheme of Amalgamation whereby and where under the entire undertaking of the TRANSFEROR COMPANY together with all assets and liabilities relating thereto on going concern basis are proposed to be transferred to and vested in the TRANSFEREE COMPANY with Transfer Date

or Appointed Date being 1st April, 2015 on the terms and conditions fully stated in the Scheme of Amalgamation, a copy whereof is annexed hereto to this petition and marked with the letter Annexure "A".

3. It is stated in the Petition that the TRANSFEROR COMPANY and the TRANSFEREE COMPANY are engaged in the business of Non-Banking Financial & Investment activities. The business of the TRANSFEROR COMPANY and the TRANSFEREE COMPANY can be combined and carried forward conveniently with combined strength.

4. It is stated in the Petition that the Scheme of amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration in better and more productive utilisation of various resources.

5. It is also stated in the Petition that the Scheme of Amalgamation will contribute in furthering and fulfilling the objects of the Company concerned and in the growth and development of these businesses.

6. It is further submitted in the Petition that the Scheme of Amalgamation will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability.

/. The Scheme of Amalgamation will enable the undertakings concerned to pool their resources and to expand their activities.

8. Further, the Scheme of Amalgamation will enable the Company concerned to rationalise and streamline their management, business and finances and to eliminate duplication of work to their common advantages.

9. The Scheme of Amalgamation will have the beneficial results for the Company concerned, their shareholders, employees and all concerned.

10. The Board of Directors of the TRANSFEROR COMPANY and the TRANSFEREE COMPANY, have at their respective Board Meetings held on 21st day of December, 2015, passed the resolution approving the Scheme of Amalgamation.

11. The copy of the Resolution passed by the Board of Directors of the Transferee Company and the Transferor Company approving the Scheme of Amalgamation is annexed with the Petition and marked as Annexure "N".

12. It has been stated in the Petition that the assets of the Petitioner companies are sufficient to meet all their liabilities and the said scheme will not adversely affect the rights of any of the creditors of any of the Petitioner companies in any manner whatsoever.

13. It is also stated in the Petition that the Petitioner companies have made due provisions for payment of all liabilities as and when the same fell due.

14. It is stated in the Petition that there are no proceedings pending under Section 235 to 251 of the Companies Act, 1956 and Sections 217, 219, 221, 224 and 225 of the Companies Act, 2013 against any of the Petitioner Companies.

15. The Transferee Company and the Transferor Company are Non Banking Finance Company duly registered with the Reserve Bank of India and is presently engaged in Non Banking Financial & Investing activities.

16. The Reserve Bank of India has, vide letter No DNBS. RO.KOL.NO 8965/99.06.002/2016-17 dated 01.06.2017 have given their "No Objection" to the Scheme of Amalgamation upon application made by the Transferee Company.

17. The copy of the said letter issued by the Reserve Bank of India is enclosed, with the Petition and marked Letter "K".

18. 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.

19. The copy of the certificate issued by the statutory Auditors is annexed with the Petition and marked ANNEXURE - O.

20. It has been further submitted in the Petition that the present Scheme of Amalgamation does not contain or provide for any Corporate Debt Restructuring.

21. It is stated that the Scheme of Amalgamation does not contain or provide for any Compromise or arrangements with any of the Creditors of the Petitioner Companies.

22. It is further stated that the Petitioner companies have neither issued nor agreed to issue any debenture.

23. The Report of the Valuation of Shares of the Transferor Company and the Transferee Company prepared by the Chartered Accountants for arriving at fair Exchange Ratio is annexed with the Petition and marked with Annexure "M".

24. This Hon'ble Tribunal vide its order passed on 8th February, 2018 in Company Application No. C.A (CAA) No 573/(KB)/2017 had recorded that

- i. In view of the consent letters given by all the shareholders of the Applicant Companies and the consent letters given by all the unsecured creditors by way of affidavit submitted by the Applicant Companies, the holding of meeting of the Shareholders and the unsecured creditors of the Applicant Companies are dispensed with
- ii. In view of there being no Secured creditors the holding of meeting of secured creditors does not arise.

25. Upon such dispensation of the meeting the Petitioner Companies made this Petition before this Tribunal for its sanctioning by way of confirmation of the Scheme.

26. Upon filing of the Petition, this Tribunal had passed an Order dated 03-07-2018 in CP(CAA) No. 595/KB/2018, connected with CA(CAA) No. 573/KB/2017, for publication of notice of this Petition in the newspaper and for serving of notice to the Statutory Authorities.

27. The Petitioner Companies have, in compliance with the order passed by this Tribunal on 03rd July, 2018 in C.P.(CAA) NO. 595/ KB/ 2018, connected with CA(CAA) No. 573/KB/2017, filed affidavit of Compliance affirmed on 25-07-2018 evidencing newspaper publication on 8th July, 2018 and service upon the Statutory authorities.

28 The Regional Director , Eastern Region , Ministry of Corporate Affairs has, vide his affidavit affirmed on 24th August, 2018 has reported as below :

" (a) That it is submitted that on the 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 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 14.02.2018 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."

29. 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, Garemohan Tie-Up Private Limited, have not been conducted in a manner prejudicial to the interest of their members or to public.

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

31. 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) The Scheme of Amalgamation mentioned in this Petition being Annexure "A" to the Petition is sanctioned by this Tribunal to be binding with effect from 1st day of April, 2015 on Garemohon Tie-up Private Limited with Woolvest Merchandise Private Limited and their shareholders and all concerned ;
- (b) All the properties, rights and interest of Garemohon Tie-up Private Limited are transferred to and vested in without further act or deed in Woolvest Merchandise Private Limited and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and vested in Woolvest Merchandise Private Limited for all the estate and interest of Garemohon Tie-up Private Limited but subject nevertheless to all charges, now affecting the same ;
- (c) All the liabilities and duties of Garemohon Tie-up Private Limited are transferred without further act or deed to Woolvest Merchandise Private Limited and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and

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- Amalgamation) Rules, 2016 be transferred to and become the liabilities and duties of Woolvest Merchandise Private Limited ;
- (d) That all the proceedings and/or suit appeals now pending by or against Garemohan Tie-up Private Limited shall be continued by or against Woolvest Merchandise Private Limited ;
- (e) The Transferee Company do issue and allot shares to the shareholders of Garemohan Tie-up Private Limited as envisaged in the said Scheme of Amalgamation and for that, if necessary, to increase the authorized share capital ;
- (f) The schedule of assets in respect of Garemohan Tie-up Private Limited be filed within a period of 60 days from the date of this order ;
- (g) The Transferor Company namely Garemohan Tie-up Private Limited shall stand dissolved from the appointed date ;
- (h) Woolvest Merchandise Private Limited and Garemohan Tie-up Private Limited shall within 30 days after the date of obtaining the Certified Copy of the order to be made herein cause certified copies of this order to be delivered to the Registrar of Companies, West Bengal for registration respectively.

32. Accordingly, the Company Petition CP(CAA) No. 595/KB/2018 connected with Company Application CA(CAA) No. 573/KB/2017 stands disposed of.

33. Urgent Photostat certified copy of this order, if applied for, to be supplied to the parties, subject to compliance with all requisite formalities.

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4/9/11
(Jinan K.R)

Member (Judicial)

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