

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH

KOLKATA

COMPANY APPLICATION No.C.A(CAA) 684 / KB / 2018

In the matter of:

An application under sections 230 to 232 of the Companies Act, 2013 read with Rule 15 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016

- And -

In the Matter of:

SUBHRATNA INVESTMENTS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 6C, Elgin Road, Oriental House, 3rdFloor, Kolkata – 700020 in the State of West Bengal within the aforesaid jurisdiction;

- And -

In the Matter of:

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AMBICA APPARTMENT PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at Oriental House, 3rdFloor, 6C, Elgin Road, Bhowanipore, Kolkata – 700020 in the State of West Bengal within the aforesaid jurisdiction;

- And -

In the matter of:

ARISTOCRAT VANIJYA PRIVATE LIMITED, a Company Incorporated under The Provisions of The Companies Act, 1956 and having its Registered Office at Oriental House,3rdFloor, 6C, Elgin Road, Kolkata – 700020 in the State of West Bengal within the aforesaid jurisdiction;

- And -

In the matter of:

CROMEX AGENCY PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at Oriental House,3rdFloor, 6C, Elgin Road, Kolkata – 700020 in the State of West Bengal within the aforesaid jurisdiction;

And -

In the matter of:

GOMATI AGENCIES PRIVATE LIMITED , a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at Oriental House,3rdFloor, 6C, Elgin Road, Kolkata – 700020 in the State of West Bengal within the aforesaid jurisdiction;

- And -

In the matter of:

MAHABALI NIRMAN PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at Oriental House, 3rdFloor, 6C, Elgin Road, Bhowanipore, Kolkata – 700020 in the State of West Bengal within the aforesaid jurisdiction;

- And -

In the matter of:

MATHURA TOWERS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at Oriental House, 3rdFloor, 6C, Elgin Road, Bhowanipore, Kolkata – 700020 in the State of West Bengal in the State of West Bengal within the aforesaid jurisdiction;

- And -

In the matter of:

ROAD SURFACE SERVICE PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at Oriental House, 3rdFloor, 6C, Elgin Road, Bhowanipore, Kolkata - 700020 in the State of West Bengal within the aforesaid jurisdiction;

- And -

In the matter of:

VAISHNO NIRMAN PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at Oriental House, 3rdFloor, 6C, Elgin Road, Bhowanipore, Kolkata - 700020 in the State of West Bengal within the aforesaid jurisdiction;

- And -

In the matter of:

1. **SUBHRATNA INVESTMENTS PRIVATE LIMITED:
(TRANSFEEE COMPANY)**
2. **AMBICA APPARTMENT PRIVATE LIMITED:
(TRANSFEROR COMPANY NO.1)**
3. **ARISTOCRAT VANIJYA PRIVATE LIMITED:**

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- (TRANSFEROR COMPANY NO.2)
4. CROMEX AGENCY PRIVATE LIMITED:
(TRANSFEROR COMPANY NO.3)
5. GOMATI AGENCIES PRIVATE LIMITED:
(TRANSFEROR COMPANY NO.4)
6. MAHABALI NIRMAN PRIVATE LIMITED:
(TRANSFEROR COMPANY NO.5)
7. MATHURA TOWERS PRIVATE LIMITED:
(TRANSFEROR COMPANY NO.6)
8. ROAD SURFACE SERVICE PRIVATE LIMITED:
(TRANSFEROR COMPANY NO.7)
9. VAISHNO NIRMAN PRIVATE LIMITED:
(TRANSFEROR COMPANY NO.8)

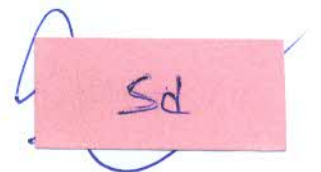
.... APPLICANTS.

Coram : **Shri Madan B Gosavi, Member(Judicial)**

FOR THE PETITIONERS :

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

Date of pronouncement of order: /09 /2018



O R D E R

Per Shri Madan B Gosavi, Member(Judicial)

1. The object of this application is to ultimately obtain sanction of the Hon'ble Tribunal to the Scheme of Amalgamation whereby the TRANSFEROR COMPANIES will be merged / amalgamated with the TRANSFEREE COMPANY with Transfer Date or Appointed Date being 1st April, 2017.

2. It is stated in the application that the reasons that have necessitated and/or justified the said Scheme of Amalgamation are, inter alia as follows :

- a) The TRANSFEREE COMPANY is a Non Banking Finance Company duly registered with Reserve Bank of India and is engaged in the business of Investing and Funding activities .The TRANSFEROR COMPANY NO.1, TRANSFEROR COMPANY NO. 2, TRANSFEROR COMPANY NO. 3, TRANSFEROR COMPANY NO. 4, TRANSFEROR COMPANY NO. 5, TRANSFEROR COMPANY NO. 6, TRANSFEROR COMPANY NO.7and TRANSFEROR COMPANY NO.8 are engaged in other financial service activities except insurance and pension funding activities. The business of the TRANSFEROR COMPANIES and the TRANSFEREE COMPANY can be combined/adjusted and carried forward conveniently with combined strength;
- b) The amalgamation will enable the TRANSFEREE COMPANY to consolidate its line of business by restructuring and re-organizing its business activities and Capital Structure;



- c) The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the TRANSFEREE COMPANY;
- d) 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;
- e) 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;
- f) 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 favorable terms and other benefits;
- g) The said scheme will contribute in furthering and fulfilling the objects of the Company concerned and in the growth and development of these businesses;
- h) The said scheme will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability;

- i) The said scheme will enable the undertakings concerned to pool their resources and to expand their activities;
- j) 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;
- k) The said scheme will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.

3. It is stated in the application that for the purposes of better, efficient and economical management, control and running of the business of the undertakings concerned and for administrative convenience and to obtain advantage of economy of large scale and to broad base the present business, the present Scheme is proposed to amalgamate the TRANSFEROR COMPANIES with the TRANSFEREE COMPANY. The Board of Directors of each Company are of the opinion that the proposed Scheme would benefit their shareholders, creditors, employees and the general public.

4. It is stated in the application that the assets of the applicant 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 applicant companies in any manner whatsoever.

5. It is stated in the application that there will not be any reduction of capital of TRANSFEREE COMPANY upon coming into effect of the Scheme as

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per section 66 of the Companies Act, 2013 except cancellation of shares of TRANSFEREE COMPANY due to inter /cross holding.

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

7. It is stated in the application that the TRANSFEREE COMPANY as well as the TRANSFEROR COMPANIES have never issued nor agreed to issue any debenture.

8. It is stated in the application that the present Scheme does not provide for any compromise with any creditors of the Applicant Companies.

9. It is stated in the application that the Applicant Companies have made due provisions for payment of all liabilities as and when the same fell due. In this connection, all the Applicant Companies crave leave to refer to the accounts book and records of the applicant companies at the time of hearing, if necessary.

10. It is stated in the application that there are no proceedings 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 upon coming into effect of the Scheme of the TRANSFEREE COMPANY shall cease to be a Non Banking Finance

Company and accordingly it will surrender its Certificate of Registration with the Reserve Bank of India upon completion of all formalities in this regard.

12. It is stated in the application that a copy of the Scheme of Amalgamation for which this application is made for sanctioning wherein the Terms and conditions of Scheme of Amalgamation are set out is enclosed marked ANNEXURE - O (Vol III) at Page No 429 to 463 .

13. It is stated in the application that the Board of Directors of the TRANSFEROR COMPANIES and the TRANSFEREE COMPANY have at their respective Board Meetings held on 15th day of November, 2017 have passed resolution approving the Scheme of Amalgamation. Copy of the Board Resolution is enclosed marked ANNEXURE - P (Vol III) at page No 464 to 477.

14. It is stated in the application that the Report determining the exchange ratio of shares which, shall be issued and allotted to the equity shareholders of the TRANSFEROR COMPANIES by the TRANSFEREE COMPANY for implementation of the terms of the scheme has been prepared by an independent firm of Chartered Accountants and such recommendations has been accepted by the Board of Directors of the respective Companies. Copy of such report is enclosed marked ANNEXURE - Q(Vol III) at Page No 478 to 492 .

15. It is further stated in the application that the TRANSFEREE COMPANY are having 2 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 – R (Vol III) at page no 493 to 500.

16. It is further stated in the application that the TRANSFEROR COMPANY NO 1 are having 2 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 – S (Vol III) at page no 501 to 507.

17. It is further stated in the application that the TRANSFEROR COMPANY NO 2 are having 2 shareholders as on 31ST January,2018 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 – S (Vol III) at page no 508 to 514.

18. It is further stated in the application that the TRANSFEROR COMPANY NO 3 are having 2 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 – S (Vol III) at page no 515 to 522.

19. It is further stated in the application that the TRANSFEROR COMPANY NO 4 are having 2 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 – S (Vol III) at page no 523 to 529.

20. It is further stated in the application that the TRANSFEROR COMPANY NO 5 are having 2 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 – S (Vol III) at page no 530 to 536.

21. It is further stated in the application that the TRANSFEROR COMPANY NO 6 are having 4 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 – S (Vol III) at page no 537 to 551.

22. It is further stated that the TRANSFEREE COMPANY are having NIL Secured Creditor and 3 NOs Unsecured Creditors. The list of Secured Creditor and Unsecured Creditors duly certified by the Statutory Auditors and affidavit of consent of 3 Nos Unsecured Creditor has been annexed and marked ANNEXURE T (Vol III) at page no 552 to 561.

23. It is further stated that the TRANSFEROR COMPANY NO 1 are having NIL Secured Creditor and 3 Nos Unsecured Creditor . The list of Secured Creditor and Unsecured Creditor duly certified by the Statutory Auditors and affidavit of consent of 3 Nos Unsecured Creditor has been annexed and marked ANNEXURE U (Vol III) at page no 562 to 571.

24. It is further stated that the TRANSFEROR COMPANY NO 2 are having NIL Secured Creditor and 2 NOS Unsecured Creditor. The list of Secured Creditor and Unsecured Creditor duly certified by the Statutory Auditors and affidavit

of consent of 2 Nos Unsecured Creditor has been annexed and marked ANNEXURE V (Vol III) at page no 572 to 575.

25. It is further stated that the TRANSFEROR COMPANY NO 3 are having 1 No Secured Creditor and 3 Nos Unsecured Creditor . The list of Secured Creditor and Unsecured Creditor duly certified by the Statutory Auditors and affidavit of consent of 1 No Secured Creditor and 3 Nos Unsecured Creditor has been annexed and marked ANNEXURE W (Vol III) at page no 576 to 585.

26. It is further stated that the TRANSFEROR COMPANY NO 4 are having NIL Secured Creditor and 1 No Unsecured Creditor. The list of Secured Creditor and Unsecured Creditor duly certified by the Statutory Auditors and affidavit of consent of 1 No Unsecured Creditor has been annexed and marked ANNEXURE X (Vol III) at page no 586 to 589.

27. It is further stated that the TRANSFEROR COMPANY NO 5 are having NIL Secured Creditor and 3 Nos Unsecured Creditor . The list of Secured Creditor and Unsecured Creditor duly certified by the Statutory Auditors and affidavit of consent of 3 Nos Unsecured Creditor has been annexed and marked ANNEXURE Y (Vol III) at page no 590 to 599.

28. It is further stated that the TRANSFEROR COMPANY NO 6 are having NIL Secured Creditor and 1 No Unsecured Creditor . The list of Secured Creditor and Unsecured Creditor duly certified by the Statutory Auditors and affidavit of consent of 1No Unsecured Creditor has been annexed and marked ANNEXURE Z(Vol III) at page no 600 to 603.

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29. The Statutory Auditors of the TRANSFEREE COMPANY and TRANSFEROR COMPANIES 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 – AA at Page No 604 to 605 .

30. Heard the counsels for the applicants , perused the records , documents annexed to the application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants the following orders are passed :

- a) 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 .
- b) 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 Company does not arise .
- c) 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 shareholders of the Transferee

Company and Transferor Companies are dispensed with

- d) The Applicant Companies to serve the notice upon the Regional Director - Eastern Region (Ministry Of Corporate Affairs) , Registrar Of Companies - West Bengal , the concerned Assessing Officer along with the Chief Commissioner of Income Tax with PAN numbers of the Petitioner Companies, the Reserve Bank of India (if applicable), the Official Liquidator High Court Calcutta pursuant to Section 230(5) of the Companies Act , 2013 read with Rule 8 of the Companies (Compromises , Arrangements and Amalgamations) Rules, 2016 with suitable changes in the notice relating to Waiver of meetings.
- e) If no response is received by the tribunal from the above authorities within 30 days of date of receipt of the notice it will be presumed that such authorities have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises , Arrangements and Amalgamations) Rules, 2016 .
- f) That the TRANSFEREE COMPANY and 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 .

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- g) That an affidavit of Compliance of all the conditions laid down herein along with original proof of service to all authorities to be filed jointly by TRANSFEREE COMPANY and TRANSFEROR COMPANIES.
- h) If consent affidavits / letters of the members and unsecured creditors annexed with the application are found to be false / dubious at any stage then necessary action for committing fraud under Section 447 and 448 of the Companies Act , 2013 shall be initiated against the Transferee and Transferor Companies and all its directors for punishment under Section 449 of the Companies Act , 2013 .
- i) That the applicants Companies are directed to file Company Petition for sanction and confirmation of the Scheme not later than 3 weeks from the date of pronouncement of this order .

31. The Company Application bearing CA(CAA) No.684/KB/2018 is accordingly, disposed of.

32. The certified copy of this Order may be issued to the parties, if applied for, upon compliance of all requisite formalities.

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7/11/2018
Madan B Gosavi
Member(Judicial)

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