

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CA (CAA) No.694/KB/2018

In the matter of:

An application under Section 230 – 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016

And

In the matter of:

Rajshree Devcons Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 17, Armenian Street, 1st Floor, Kolkata - 700 001, West Bengal

And

In the matter of:

Maco Marketing Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 2/5, Sarat Bose Road, Kolkata - 700 020, West Bengal

And

In the matter of:

- | | |
|-------------------------------------|--------------------|
| 1. Rajshree Devcons Private Limited | : (Transferor Co.) |
| 2. Maco Marketing Private Limited | : (Transferee Co.) |

.....Applicant/Petitioners

Order Delivered on 10th September 2018

For the Applicant/Petitioners : 1. Mr. Patita Paban Bishwal, Advocate
2. Mr. Avik Chaudhuri, Advocate

ORDER

Per Madan Gosavi, Member (Judicial)

This application has been filed by the Applicant Companies, namely, Rajshree Devcons Private Limited [hereafter referred to as the Transferor Company] with Maco Marketing Private Limited [hereinafter referred to as the

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 Transferor Company and the Transferee Company and their respective shareholders. A copy of the Scheme of Amalgamation has been annexed with the application as Annexure A-5 at page 109 to 127 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 whereby and whereunder:-

- i. The amalgamation shall 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.
- ii. The amalgamation will result in reduction in overheads, better productive utilisation of labour and other resources and reduction in procedural and administrative work.
- iii. The amalgamation will result in usual economics of a centralised and a larger company including reduction in overheads, better and more productive utilisation of labour and other resources and reduction in procedural and administrative work.
- iv. The Scheme would ensure higher retained earning leading to enhanced intrinsic value of shareholding to the investors.
- v. The scheme will contribute in furthering and fulfilling the objects of all the companies concerned and in the growth and development of their business.

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

vii. The scheme will have beneficial results for all the applicant companies, their shareholders, employees and all concerned.

3. It is the case of the applicants that the Board of Directors of the applicant companies by a resolution at the meeting held on 8/3/2018 passed unanimously approved the Scheme of Amalgamation. Copy of the Board resolution of the applicant companies are annexed with the application as Annexure A-6 page 128 to 129.

4. It reveals from the record 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 further appears from the record that no proceedings are pending under Sec.235 to 251 of the Companies Act, 1956 or under Sec.210 to 226 of the Companies Act, 2013 against any of the applicant companies.

6. It reveals from the record, all the shareholders of the applicant companies have agreed in writing to the proposed Scheme of Amalgamation. Copies of the list of shareholders of the applicant companies along with the consent of shareholders in the form of Affidavit are annexed with the application as Annexure A-7 and A-8 respectively at page 130 to 162.

7. Ld. Counsel for the Applicants submitted that all the shareholders of the respective companies have given their consent for dispensing with the meetings of the equity shareholders.

8. It reveals from the record that the copy of Valuation Report for exchange ratio of shares of the Transferor Companies and the Transferee Company issued

by the Chartered Accountant is annexed with the application as Annexure A-11 page 175 to 176.

9. Ld. Counsel for the applicant companies submitted that the statutory Auditors of the applicant companies have certified that the Accounting treatment proposed in terms of the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act 2013. Copy of the certificate under Sec.230(7)(e) issued by the Chartered Accountant is annexed with the application as Annexure A-12 page 177 to 178.

10. Heard Ld. Counsel for the applicants, perused the records, documents annexed to the application and affidavits filed in the instant proceedings. On perusal of the documents submitted by the petitioners, the following orders are passed:

ORDER

- i. Since the shareholders of all the applicants have given their consent in the form of affidavit, the meeting of the shareholders is hereby dispensed with.
- ii. In view of the fact that the applicant companies have no secured and unsecured creditors and verified by the Auditor's Certificate, therefore question of holding meetings does not arise, hence dispensed with.
- iii. The petitioner companies shall serve notice of the petition on the following authorities namely
 - (a) Central government through Regional Director, Eastern Region, Ministry of Corporate Affairs,
 - (b) Registrar of Companies, West Bengal,

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(c) The Income Tax Department of the office having jurisdiction over the respective petitioner companies,

(d) the Official Liquidator and such other relevant and sectoral regulators/authorities, if applicable, which are likely to be affected by the proposed Scheme by sending the same by hand delivery through special messenger or by registered post or speed post 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 and Speed Post or by Messenger. Petitioner Companies are also directed to mention their respective PAN Number everywhere.

- iv. The notice shall specify that representations, if any, should be filed before this Tribunal within 30 days of date of receipt of the notice with a copy of such representations being sent simultaneously to the petitioners and/or their Authorised Representatives. If no such representations are received by the Tribunal within the said period, it shall be presumed that such authorities have no representations to make on the Scheme of Amalgamation.
- v. All Petitioner Companies at least 7 days before the date of hearing of the petition shall file an affidavit of service on the Authorities specified above including the Sectoral Regulators.

11. The CA (CAA) No.694/KB/2018 is disposed of accordingly.

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12. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

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Madan Gosavi
Member (J)

Signed on 10th September 2018