

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH

KOLKATA

COMPANY APPLICATION No.C.A.(CAA) No.696/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:

NICHOLSON VANIJYA PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 1A, Grant Lane, 2nd Floor, Room No.203 & 204, Kolkata - 700012 in State of West Bengal within the aforesaid jurisdiction;

- AND -

In the matter of:

B.O.R. SECURITIES LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 1A, Grant Lane, 2nd Floor Room No. 203 & 204, Kolkata - 700012 in State of West Bengal within the aforesaid jurisdiction;

- AND -

In the matter of:

GURUKUL MERCHANDISE PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 1A, Grant Lane, 2nd Floor Room No. 203 & 204, Kolkata - 700012 in State of West Bengal within the aforesaid jurisdiction;

- And -

In the matter of:

KNIGHT MERCHANDISE PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 1A, Grant Lane, 2nd Floor Room No. 203 & 204, Kolkata - 700012 in State of West Bengal within the aforesaid jurisdiction;

- And -

Sd

In the matter of:

SRI GOUR NIDHI INNOVESTMENT PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 1A, Grant Lane, 2nd Floor, Room No.203 & 204, Kolkata-700012 in State of West Bengal within the aforesaid jurisdiction;

- And -

In the matter of:

1. NICHOLSON VANIJYA PRIVATE LIMITED : (TRANSFEREE COMPANY)
2. B.O.R. SECURITIES LIMITED : (TRANSFEROR COMPANY NO 1)
3. GURUKUL MERCHANDISE PRIVATE LIMITED: (TRANSFEROR COMPANY NO 2)
4. KNIGHT MERCHANDISE PRIVATE LIMITED : (TRANSFEROR COMPANY NO 3)
5. SRI GOUR NIDHI INNOVESTMENT PRIVATE LIMITED: (TRANSFEROR COMPANY NO 4)

..... 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

ORDER

Per Shri Madan B Gosavi, Meber(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 TRANSFEREE COMPANY with Transfer Date or Appointed Date being 01st April, 2017.
2. It is stated in the application that the
 - a) The TRANSFEROR COMPANY NO.1 and 4 are engaged in investing and funding activities, TRANSFEROR COMPANY NO.2 and TRANSFEROR COMPANY NO.3 is engaged in investing activities. The TRANSFEREE COMPANY is a Non Banking Finance Company duly registered with the Reserve Bank of India and is presently engaged Investing and financing activities. Upon amalgamation, all the assets of the TRANSFEROR COMPANY will be utilized by the Transferee Company by combining with its resources which will gear and take the Company to new heights;
 - b) The Transferee Company will use all the assets transferred to it in the process of amalgamation most advantageously for furtherance of its business.
 - c) The amalgamation will enable the TRANSFEREE COMPANY to consolidate its line of business by

- restructuring and re-organising its business activities and Capital Structure;
- d) The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the TRANSFEREE COMPANY;
 - e) The 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;
 - f) The business of the Company can be conveniently and advantageously combined together and in general business of the Company concerned will be carried on more economically and profitably under the said scheme;
 - g) 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 favourable terms and other benefits;
 - h) The said scheme will contribute in furthering and fulfilling the objects of the Company concerned and in the growth and development of these businesses;
 - i) The said scheme will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability;

- j) The said scheme will enable the undertakings concerned to pool their resources and to expand their activities;
 - k) The said scheme will enable the Company concerned to rationalise and streamline their management, business and finances and to eliminate duplication of work to their common advantages;
 - l) The said scheme will have beneficial results for the Company concerned, their shareholders, employees and all concerned.
3. It has been 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.
4. 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.
5. It has been 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.

6. It has been stated in the application that the present Scheme of Amalgamation does not contain or provide for Corporate Debt Restructuring.
7. It is further stated that the Scheme of Amalgamation does not contain any clause whatsoever relating to arrangement and/or compromise with creditor and interest of creditor will not be affected in any manner whatsoever
8. It is further stated that the applicant companies has never issued nor agreed to issue any debenture .
9. It is further stated that there will not be any reduction of capital of TRANSFEREE COMPANY upon coming into effect of the Scheme as per section 66 of the Companies Act, 2013 except cancellation of shares of TRANSFEREE COMPANY due to inter/cross holding of shares resulting from this amalgamation, if any
10. A copy of the Scheme of Amalgamation for which this application is made for sanctioning is annexed hereto and marked with the **ANNEXURE -"P"** (Vol II) at page No 308 to 340.
11. The Reserve Bank of India has vide letter No.DNBS.RO. KOL.NO. 11825/ 99.06.002/2017-18, Dt. 05TH June, 2018 has granted No objection to the Proposed Scheme of Amalgamation. Copy of the No Objection letters issued by

Reserve Bank of India is enclosed marked **ANNEXURE – Q** (Vol II) at page No 341.

12. The Board of Directors of the TRANSFEROR COMPANIES and the TRANSFEREE COMPANY have at their respective Board Meetings held on 23RD February ,2018 have passed resolution approving the Scheme of Amalgamation. Copy of the Board Resolution is enclosed marked **ANNEXURE – "R"** (Vol II) at page No 342 to 351.
13. It is further stated that the Report determining the exchange ratio of shares which, shall be issued and allotted to the equity shareholders of the TRANSFEROR COMPANY 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 annexed and marked **ANNEXURE – S (Vol II)** at page no 352 to 364.
14. It is further stated that the TRANSFEREE COMPANY 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 – T** (Vol II) at page no 365 to 381.

15. It is further stated that the Equity Shareholders in the Transferor Company No 1 are 8 . List of shareholders duly certified by the Statutory auditors and affidavit by all the equity shareholders of the TRANSFEROR COMPANY NO 1 is annexed and marked **ANNEXURE – T (Vol II)** at page no 382 to 412.
16. It is further stated that the Equity Shareholders in the Transferor Company No 2 are 4. List of shareholders duly certified by the Statutory auditors and affidavit by all the equity shareholders of the TRANSFEROR COMPANY NO 2 is annexed and marked **ANNEXURE – T (Vol II)** at page no 413 to 429.
17. It is further stated that the Equity Shareholders in the Transferor Company No 3 are 4. List of shareholders duly certified by the Statutory auditors and affidavit by all the equity shareholders of the TRANSFEROR COMPANY NO 3 is annexed and marked **ANNEXURE – T (Vol II)** at page no 430 to 445.
18. It is further stated that the Equity Shareholders in the Transferor Company No 4 are 3. List of shareholders duly certified by the Statutory auditors and affidavit by all the equity shareholders of the TRANSFEROR COMPANY NO 4 is

annexed and marked **ANNEXURE – T (Vol II)** at page no 446 to 462.

19. It is further stated that the TRANSFEREE COMPANY are having Nil Secured Creditors and NIL Unsecured Creditors as on 31st March , 2018 which has been duly certified by the Statutory auditors is annexed and marked **ANNEXURE – U (Vol II)** at page no 463.
20. It is further stated that the TRANSFEROR COMPANY NO 1 are having Nil Secured Creditors and NIL Unsecured Creditors as on 31st March , 2018 which has been duly certified by the Statutory auditors is annexed and marked **ANNEXURE – V (Vol II)** at page no 464.
21. It is further stated that the TRANSFEROR COMPANY NO 2 are having Nil Secured Creditors and 1 No Unsecured Creditor as on 31st March , 2018 and which has been duly certified by the Statutory auditors. The Unsecured Creditor have given their consent by way of affidavit which is annexed and marked **ANNEXURE – W (Vol II)** at page No 465 to 468.
22. It is further stated that the TRANSFEROR COMPANY NO 3 are having Nil Secured Creditors and 1 No Unsecured Creditor as on 31st March , 2018 and which has been duly certified by the Statutory auditors. The Unsecured Creditor have given

their consent by way of affidavit which is annexed and marked **ANNEXURE – X (Vol II)** at page No 469 to 472.

23. It is further stated that the TRANSFEROR COMPANY NO 4 are having Nil Secured Creditors and Unsecured Creditor as on 31st March , 2018 and which has been duly certified by the Statutory auditors is annexed and marked **ANNEXURE – Y(Vol II)** at page No 473.

24. The statutory Auditors of the TRANSFEREE COMPANY 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 – Z (Vol II)** at Page No 474 to 475.

25. Heard the Ld. 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, the requirement for 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, TRANSFEROR COMPANY NO 1 and TRANSFEROR COMPANY NO 4 have NIL Secured Creditors and Unsecured Creditors verified by Auditors Certificate, the question of holding separate meeting of Secured Creditors and Unsecured Creditors of the TRANSFEREE COMPANY, TRANSFEROR COMPANY NO 1 and TRANSFEROR COMPANY NO 4 does not arise .
- c) In view of the fact that the TRANSFEROR COMPANY NO 2 and TRANSFEROR COMPANY NO 3 have NIL Secured Creditors verified by Auditors Certificate, the question of holding separate meeting of Secured Creditors of the TRANSFEROR COMPANY NO 2 and TRANSFEROR COMPANY NO 3 does not arise .
- d) In view of the consents given in affidavit form by all the Unsecured Creditors of the TRANSFEROR COMPANY NO 2 and TRANSFEROR COMPANY NO 3 convening and holding of separate meetings of the unsecured creditors of the TRANSFEROR COMPANY NO 2 and TRANSFEROR COMPANY NO 3 are dispensed with.

- e) The Applicant Companies to serve the notice upon the Regional Director - Eastern Region (Ministry Of Corporate Affairs) , Registrar Of Companies - West Bengal , and the concerned Assessing Officer along with the Chief Commissioner of Income tax with PAN numbers of Petitioners Companies, within whose jurisdiction the assessments of the Applicant Companies are made, the Official Liquidator ,Reserve Bank of India 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.
- f) 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 .
- g) That the Transferee 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 amalgamating and amalgamated companies .
- h) Liberty is given to file joint application by Transferee and Transferor Company in accordance with Rule 15 of the Companies (Compromises , Arrangements and Amalgamations) Rules, 2016 within 15 days after the expiry of the period of 30 days as mentioned in Section 230(5) of the Companies Act , 2013 .
- i) 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 Company

- j) 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 .

26. The Company Application bearing CA(CAA) No.696/KB/2018 is accordingly, disposed of.

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

Sd

Madan B Gosavi
Member(Judicial)

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