

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH

KOLKATA

C.A.(CAA) No.698 /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:**

**KALPATARU HOUSEFIN & TRADING PRIVATE LIMITED**, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 29, Ganesh Chand Avenue, Kolkata-700013 in State of West Bengal within the aforesaid jurisdiction;

- AND -

**In the matter of:**

**SONATA TRADERS PRIVATE LIMITED**, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 29, Ganesh Chandra Avenue, Kolkata -700013 in State of West Bengal within the aforesaid jurisdiction;

- AND -

**In the matter of:**

Sd



**FOR THE PETITIONERS :**

1. **Mr. Joy Saha**, Sr. Advocate
2. **Ms. Manju Bhuteria** , Advocate ,
3. **Mr. Madan Kumar Maroti** , FCA
4. **Mr. N.Gurumurthy** , FCA

Date of pronouncement of order: 18 /09 /2018

**ORDER**

**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 TRANSFEREE COMPANY with Transfer Date or Appointed Date being 01st April, 2017.
2. It is stated in the application that the
  - a) The TRANSFEROR COMPANIES are currently engaged in the business of investing activities. The TRANSFEREE COMPANY is a Non Banking Finance Company duly registered with the Reserve Bank of India and is currently engaged in 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

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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;

Sd

- 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 -"M"** ( Vol II ) at page No 242 to 273.
11. The Reserve Bank of India has vide letter No.DNBS.RO. KOL.NO. 11937/ 99.06.002/2017-18, Dt. 19<sup>TH</sup> 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 - N** ( Vol II ) at page No 274.
12. The Board of Directors of the TRANSFEROR COMPANIES and the TRANSFEREE COMPANY have at their respective Board Meetings held on 02<sup>ND</sup> January , 2018 and 04<sup>th</sup>

January , 2018 have passed resolution approving the Scheme of Amalgamation. Copy of the Board Resolution is enclosed marked **ANNEXURE – "O"** ( Vol II ) at page No 275 to 278.

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 – P ( Vol II )** at page no 279 to 288.
14. It is further stated that the TRANSFEREE COMPANY is having 10. shareholders and all the shareholders have given their consent by way of affidavit . Copy of consent and list of shareholders duly certified by the Statutory auditors are annexed marked **ANNEXURE – Q ( Vol II )** at page no 289 to 322.
15. It is further stated that the Equity Shareholders in the Transferor Company No 1 are 5. List of shareholders duly certified by the Statutory auditors and affidavit by all the equity shareholders of the TRANSFEROR COMPANY is annexed and marked **ANNEXURE – Q ( Vol II )** at page no 323 to 339.
16. It is further stated that the Equity Shareholders in the Transferor Company No 2 are 5. List of shareholders duly certified by the Statutory auditors and affidavit by all the equity shareholders of the TRANSFEROR

COMPANY is annexed and marked **ANNEXURE – Q ( Vol II )** at page no 340 to 356.

17. It is further stated that the Equity Shareholders in the Transferor Company No 3 are 5. List of shareholders duly certified by the Statutory auditors and affidavit by all the equity shareholders of the TRANSFEROR COMPANY is annexed and marked **ANNEXURE – Q ( Vol II )** at page no 357 to 373.
18. It is further stated that the TRANSFEREE COMPANY are having Nil Secured Creditors and NIL Unsecured Creditors which has been duly certified by the Statutory auditors is annexed and marked **ANNEXURE – R( Vol II )** at page no 374.
19. It is further stated that the TRANSFEROR COMPANY NO 1 are having Nil Secured Creditors and 1 No Unsecured Creditor 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 – S ( Vol II )** at page No 375 to 379.
20. It is further stated that the TRANSFEROR COMPANY NO 2 are having Nil Secured Creditors and 1 No Unsecured Creditor 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 – T ( Vol II )** at page No 380 to 382.
21. It is further stated that the TRANSFEROR COMPANY NO 3 are having Nil Secured Creditors and 1 No Unsecured Creditor 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 – U ( Vol II )** at page No 383 to 387.

22. 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 – V** at Page No 388 to 389.

23. 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 COMPANIES does not arise .

c) In view of the fact that the TRANSFEREE COMPANY have NIL Unsecured Creditors verified by Auditors Certificate, the question of holding separate meeting

of Unsecured Creditors of the TRANSFEREE COMPANY does not arise .

- d) In view of the consents given in affidavit form by all the Unsecured Creditors of the TRANSFEROR COMPANIES, convening and holding of separate meetings of the unsecured creditors of the TRANSFEROR COMPANIES 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 Assessing Officer of the Income Tax and the Chief Commissioner of Income Tax Department having jurisdiction over the Transferor Companies and Transferee Company 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.

24. The Company Application being C.A. (CAA) No. 193/KB/2018 is disposed of accordingly.

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

  
**Madan B Gosavi**  
**Member( Judicial )**

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