

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.A. No. (CAA) 734/KB/2018

In the Matter of: -

The Companies Act, 2013;

And

In the Matter of: -

Sections 230 to 232 of the Companies Act, 2013;

And

In the Matter of: -

Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

And

In the matter of:

Artmoss Sales Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 4N, Nandaram Sen Street, Kolkata- 700005, West Bengal, within the aforesaid jurisdiction;

~ And ~

In the matter of:

Index Tradecom Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 4N,

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Nandaram Sen Street, Kolkata- 700005, West Bengal, within the aforesaid jurisdiction;

~ And ~

In the matter of:

Model Commotrade Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 4N, Nandaram Sen Street, Kolkata- 700005, West Bengal, within the aforesaid jurisdiction;

~ And ~

In the matter of:

1. Artmoss Sales Private Limited
2. Index Tradecom Private Limited
3. Model Commotrade Private Limited

.....Applicants

CORAM Shri Madan B Gosavi, Member (Judicial)

For the Applicants :

1. Mr Shashi Agarwal, Pr. Chartered Accountant

Date of pronouncing of the Order : 18/9/2018 ✓

ORDER

Per Shri Madan B Gosavi, Member(Judicial)

Sd ✓

1. This application has been filed by the Applicant Companies, namely, Index Tradecom Private Limited and Model Commotrade Private Limited, the "Transferor Companies" with Artmoss Sales Private Limited, the "Transferee Company" under Section 230 to 232 of the Companies Act, 2013, for obtaining sanction of this Tribunal to the Scheme of Amalgamation of the above mentioned companies whereunder and whereby the entire undertaking of the Transferor Companies with all assets and liabilities relating thereto as a going concern is proposed to be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the Scheme of Amalgamation, a copy whereof is annexed with the Application and marked with letter "G".
2. It is stated in the Application that the amalgamation will enable the companies to expand its business activities by pooling their resources at one place. 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 of Amalgamation is proposed to amalgamate the Transferor Companies with the Transferee Company.
3. It is also stated in the Application that the amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration, better and more productive utilisation of various resources.
4. The Scheme of amalgamation will have beneficial results for the companies concerned, their shareholders, employees and all concerned.

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5. The Board of Directors of all the Applicant Companies have, at their respective meetings, by resolutions passed unanimously, approved the draft Scheme of Amalgamation. The copies of Board Resolutions passed by the Applicant Companies are annexed with the Application and collectively marked "H".
6. The respective Auditors of the Transferee Company and the Transferor Companies have not made any adverse remark or comment in their report. The respective Auditors' report does not disclose any irregularity or mismanagement in the affairs of the Transferee Company and the Transferor Companies.
7. It is stated in the Application that the affairs of the Transferee Company and the Transferor Company have been conducted prudently and property. No ;petition under Section 397 or 398 of the Companies Act, 1956 and corresponding provisions of the Companies Act, 2013 has, at any point of time, been filed against the Transferee Company and the Transferor Companies.
8. It is also stated that the assets of the Applicant Companies are sufficient to meet all their liabilities. The Applicant Companies have made due provisions for payment of all the liabilities as and when the same will fall due.
9. Further, the Scheme of Amalgamation does not involve any compromise or composition with the Creditors of the Applicant Companies. The Scheme of Amalgamation will not affect the rights of the Creditors of the Applicant Companies in any manner whatsoever.

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10. It is further stated that the Scheme of Amalgamation does not contain any clause whatsoever relating to arrangement and/or compromise with the Creditor and interest of the Creditor will not be affected in any manner whatsoever.
11. The ratio of issuing shares stipulated under the Scheme of Amalgamation has been prepared by an independent Chartered Accountant and such recommendation has been accepted by the Board of Directors of both the Applicant Companies and is bona fide, fair and reasonable. The copies of Valuation Report is annexed with the Application and marked "I".
12. It is stated in the Application that there are no proceeding pending under Sections 235 to 251 of the Companies Act, 1956 and/or corresponding/applicable provisions of the Companies Act, 2013 against any of the Applicant Companies.
13. The Scheme of Amalgamation does not contain any clause due to which there will be any reduction of share capital of the Transferor Companies and/or the Transferee Company.
14. The Scheme of Amalgamation does not provide and contain any clause for any kind of corporate debt restructuring.
15. It is stated that the Applicant Companies have not issued any preference share and accordingly, the Scheme of Amalgamation does not provide for conversion of preference share into equity shares.
16. The Applicant companies have not issued any debentures.

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17. The Applicant no. 1, 2, 3 are having 5, 5, 6 nos. equity shareholders respectively. There are no Creditors, secured and the unsecured, of the Transferee Company and the Transferor Companies and a certificate of the Chartered Accountant are also annexed.

18. Further, all the shareholders of the Transferee Company and the Transferor Companies have given affidavit annexed with Application relating to no-objection to the Scheme of Amalgamation and dispensation of the meeting of the Shareholders.

19. Heard the Ld. CA, perused the records and documents annexed to the application and affidavits filed in the instant proceedings and on perusal of the submission made on behalf of the applicants, the following orders are passed herein by this Tribunal:

- a) In view of free consent in writing to the Scheme of Amalgamation by the Shareholders of the Applicant Companies and also signifying their consent in not holding the meeting of equity shareholders of the Applicant Companies to consider the Scheme of Amalgamation, the requirement of convening and holding of separate meetings of the Equity shareholders of the Applicant Companies is dispensed with ;
- b) In view of the fact that there are no Secured Creditors of the Transferor Company and the Transferee Company, the requirement of convening and holding of separate meetings of the Secured Creditors of the Applicant Companies does not arise ;

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- c) In view of the fact that there are no Unsecured Creditor of the Transferor Company and the Transferee Company, the requirement of convening and holding of separate meeting of the Unsecured Creditors of the Transferor Company and the Transferee Company does not arise ;
- d) Let the notice be served as per requirements of sub-Section (5) of Section 230 of the Companies Act, 2013 along with all the documents including a copy of the Scheme of Amalgamation and the Statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, 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 and such other relevant 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, E-Mail, both, within 7 days from the date of this order for filing their representation, if any, within 30 days from the date of notice. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the applicants and/or their advocates. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation.

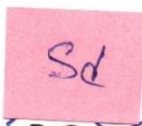
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Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 in Form No. CAA.3 of the Companies (Compromises, Arrangements & Amalgamation) Rules, 2016 with necessary variations incorporating the directions therein ;

e) The Applicant Companies shall file affidavit of service of aforementioned notice within 7 days of serving such notice.

20. The Company Application being C.A. (CAA) No. 734/KB/2018 is disposed of accordingly.

21. 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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