

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

C.P(CAA) NO 707/KB/2018

CONNECTED WITH

C.A(CAA) 55/KB/2018

In the matter of

A petition for sanction of Scheme of Amalgamation made under Sections 230 to 232 and other applicable provisions of the Companies Act , 2013 read with the Companies (Compromises, Arrangements and Amalgamations Rules) , 2016

AND

In the matter of

Scheme of Amalgamation

In the matter of

STERLING BOLTS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 2C, Tentulkuli, Domjur, NH-6, Howrah-711109 in State of West Bengal within the aforesaid jurisdiction

- AND -

In the matter of

ASHLESH DEALTRADE PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 60/10, Gori Bari Lane, Maniktala, Kolkata-700004 in State of West Bengal within the aforesaid jurisdiction;

- AND -

In the matter of

ASHLESH VANIJYA PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 60/10, Gori Bari Lane Maniktala, Kolkata-700004 in State of West Bengal within the aforesaid jurisdiction;

- AND -

In the matter of

DHARYA DEALMARK PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 41, Shivtalla Street, 1st Floor, Kolkata-700007 in State of West Bengal within the aforesaid jurisdiction;

- AND -

In the matter of

DREAM VALLY TIE-UP PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 10, Swami Vivekanand Path, Deepnagar, Bhagalpur-812001 in State of Bihar within the aforesaid jurisdiction;

- AND -

In the matter of

TOPFLOW COMMERCIAL PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 10, Swami Vivekanand Path, Deepnagar, Bhagalpur - 812001 in State of Bihar within the aforesaid jurisdiction;

AND -

In the matter of

VIEWHIGH DEALCOM PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 41, Shivtalla Street, 1st Floor, Kolkata-700007 in State of West Bengal within the aforesaid jurisdiction;

In the matter of:

- | | |
|---------------------------------------|-------------------------------|
| 1. STERLING BOLTS PRIVATE LIMITED | : (TRANSFEREE COMPANY) |
| 2. ASHLESH DEALTRADE PRIVATE LIMITED | : (TRANSFEROR COMPANY NO 1) |
| 3. ASHLESH VANIJYA PRIVATE LIMITED | : (TRANSFEROR COMPANY NO 2) |
| 4. DHARYA DEALMARK PRIVATE LIMITED | : (TRANSFEROR COMPANY NO 3) |
| 5. DREAM VALLY TIE-UP PRIVATE LIMITED | : (TRANSFEROR COMPANY NO 4) |
| 6. TOPFLOW COMMERCIAL PRIVATE LIMITED | : (TRANSFEROR COMPANY NO 5) |
| 7. VIEWHIGH DEALCOM PRIVATE LIMITED | : (TRANSFEROR COMPANY NO 6) |

... .. APPLICANT/PETITIONER

Coram : Shri Jinan K.R, Member(Judicial)

For the Petitioners :

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

Mr. K.S. Pradhan, Joint Director, Office of the Regional Director, Eastern Region, Ministry of Corporate Affairs

Date of pronouncement of order: 04 / 09 / 2018

ORDER

Per Shri Jinan K.R., Member(Judicial)

1. This joint petition has been filed for sanctioning of the proposed Scheme of Amalgamation of ASHLESH DEALTRADE PRIVATE LIMITED, the petitioner No 2 above named, ASHLESH VANIJYA PRIVATE LIMITED the petitioner No 3 above named , DHARYA DEALMARK PRIVATE LIMITED, the petitioner No 4 above named, DREAM VALLY TIE-UP PRIVATE LIMITED, the

petitioner No 5 above named, TOPFLOW COMMERCIAL PRIVATE LIMITED, the petitioner No 6 above named and VIEWHIGH DEALCOM PRIVATE LIMITED the petitioner No 7 above named, the "TRANSFEROR COMPANIES" and STERLING BOLTS PRIVATE LIMITED, being the petitioner No 1 above named, the "TRANSFeree COMPANY".

2. The object of this Petition is to ultimately obtain sanction of the Hon'ble Tribunal to the Scheme of Amalgamation whereby and where under the entire undertaking of the TRANSFEROR COMPANIES together with all assets and liabilities relating thereto on going concern basis are proposed to be transferred to and vested in the TRANSFeree COMPANY with Transfer Date or Appointed Date being 1st April, 2017 on the terms and conditions fully stated in the Scheme of Amalgamation a copy whereof is annexed hereto and marked with the letter ANNEXURE-A to this petition .

3. This Tribunal, vide their order dated 05TH March,2018, passed in Company Application C.A.(CAA)NO.55/KB/2018, had dispensed with the convening and holding of the meetings of the shareholders of the TRANSFeree COMPANY and TRANSFEROR COMPANIES to consider the said Scheme of Amalgamation.

4. This Tribunal, vide order dated 05TH March,2018, passed in Company Application C.A.(CAA)NO.55/KB/2018, had recorded that 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 meetings of the Secured Creditors of Transferee Company and Transferor Companies did not arise.

5. This Tribunal, vide their order dated 05TH March,2018, passed in Company Application C.A.(CAA)NO.55/KB/2018, had recorded that in view of the fact that the TRANSFEROR COMPANY NO 1 , TRANSFEROR COMPANY NO 2, TRANSFEROR COMPANY NO 3 and TRANSFEROR COMPANY NO 6

have NIL Unsecured Creditors verified by Auditors Certificate the question of holding separate meetings of the Unsecured Creditors did not arise.

6. This Tribunal, vide their order dated 05TH March, 2018, passed in Company Application C.A.(CAA)NO.55/KB/2018, has directed to convene and hold separate meeting of Unsecured Creditors of TRANSFEREE COMPANY , TRANSFEROR COMPANY NO 4 and TRANSFEROR COMPANY NO 5 to consider the said Scheme of Amalgamation.

7. The Chairperson of the said meetings has filed his report before this Tribunal duly sworn by his affidavit on 18th May, 2018.

8. Upon compliance of the directions made in the Order of this Tribunal dated 5th March, 2018, passed in CA(CAA) No. 55/KB/2018, the Petitioner Companies made this application before this Tribunal for its sanctioning by way of confirmation of the Scheme.

9. This Tribunal passed Order dated 13th July, 2018, in CP(CAA) No.707/KB/2018, connected with CA(CAA) No. 55/KB/2018.

10. The Petitioner Companies have, in Compliance with the order passed by this Tribunal on 13th July, 2018 in C.P.(CAA) NO. 707/ KB/ 2018, connected with C.A(CAA) NO.55/KB/2018, filed affidavit of compliance affirmed on 25th July, 2018 evidencing publication made in Business Standard and Aajkal on 19th July, 2018 and service upon the Regional Director , Eastern Region , Ministry of Corporate Affairs , Registrar of Companies , West Bengal , Official Liquidator , High Court Calcutta and Income Tax Authorities having jurisdiction over the affairs of the Company.

11. The petitioners Companies have come before the Tribunal with this Company Petition and submitted the following documents along with the Company Petition for confirmation and sanctioning of the Scheme :

- i) Copies of Audited Balance Sheet as on 31ST MARCH, 2017 and interim audited Balance Sheet as at 30Th September , 2017 of Petitioner Companies have been annexed and marked as ANNEXURE " D " , ANNEXURE " D1 " , ANNEXURE " F" , ANNEXURE " F1 " , ANNEXURE " H " , ANNEXURE " H1 " , ANNEXURE " J " ANNEXURE " J1 " , ANNEXURE " L " , ANNEXURE " L1 " , ANNEXURE " N " , ANNEXURE " N1 " and ANNEXURE " P " , ANNEXURE " P1 " at pages 116 to 147, pages 148 to 163 , pages 196 to 218 , pages 219 to 228 , pages 260 to 283, pages 284 to 293, pages 325 to 347, pages 348 to 357, pages 382 to 408, pages 409 to 420, pages 445 to 471, pages 472 to 483, pages 517 to 540, and pages 541 to 550 of the petition.
- ii) Copies of Memorandum and Articles of Association of all Petitioner Companies have been annexed and marked as ANNEXURE " C " , ANNEXURE " E " , ANNEXURE " G " ANNEXURE " I " ANNEXURE " K " , ANNEXURE " M " and ANNEXURE " O " at pages 94 to 115, pages 164 to 195, pages 229 to 259, pages 294 to 324, pages 358 to 381, pages 421 to 444 and pages 484 to 516 of the petition.
- iii) Copy of Letter evidencing submission of Report by the Chairperson has been annexed and marked as ANNEXURE " Q " at pages 551.
- iv) Copies of advertisement published in dailies for meeting convened has been annexed and marked as ANNEXURE " R " at pages 552 to 555.

- v) Copy of evidence for service upon the Regulatory authorities have been annexed and marked as ANNEXURE " S " at pages 556 to 594.
- vi) Copy of the share valuation report has been annexed and marked as ANNEXURE " T " at pages 595 to 633.
- vii) Copy of Certificate from the Company's Chartered Accountants confirming that the Accounting Standard prescribed in terms of Sec 133 of the Companies Act have been annexed and marked as ANNEXURE " U " at pages 634 to 635.
- viii) List of shareholders of the Petitioner Companies duly certified by the statutory Auditor have been annexed and marked as ANNEXURE " V " at pages 636 to 642.
- ix) NIL Secured And List Of Creditors of the TRANSFEREE COMPANY duly certified by the statutory auditor have been annexed and marked as ANNEXURE " W " at pages 643 to 644
- x) NIL SECURED AND UNSECURED CREDITORS of ASHLESH DEALTRADE/TRANSFEROR COMPANY NO.1, ASHLESH VANIJYA/TRANSFEROR COMPANY NO.2, DHARYA/TRANSFEROR COMPANY NO.3 and ASHLESH TOPFLOW/TRANSFEROR COMPANY NO.5 duly certified by the STATUTORY AUDITOR have been annexed and marked as ANNEXURE " X " at pages 645 to 649.
- xi) NIL SECURED AND LIST OF CREDITORS OF THE DREAM VALLY/TRANSFEROR COMPANY NO.4 DULY CERTIFIED BY THE STATUTORY AUDITOR have been annexed and marked as ANNEXURE " X " at pages 650 .
- xii) Copies of necessary Board resolutions dated 28th day of October, 2017 of the TRANSFEREE COMPANY and the TRANSFEROR COMPANIES approving the Scheme of

Amalgamation has been annexed to the petition and marked as ANNEXURE " Z" at pages 651 to 664 of the petition .

12. The Regional Director , Eastern Region , Ministry of Corporate Affairs has, vide his affidavit affirmed on 28th August, 2018 has reported as below :

- (a) That it is submitted that on the examination of the report of the Registrar of Companies , West Bengal it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation . The petitioner Companies are also up-dated in filing their statutory returns. It is further submitted that on examination of the proposed Scheme of Amalgamation, it appears that the proposed scheme is not prejudicial to the interest of members / shareholders and/or public. The Central Government has, therefore, decided that the instant petition / scheme need not be opposed.
- (b) It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the Scheme was forwarded to the Income Tax Department on 20.03.2018 with a request to forward their comments / observations / objections, if any on the proposed scheme of amalgamation within 15 days and the report forwarded by the said department vide letter dated 11.4.2018 is enclosed herewith and marked as Annexure - A for the kind perusal of the Hon'ble Tribunal."

13. The relevant paragraph of the letter received from the Income Tax Department as referred to in Annexure – A above is reproduced below :

“ In the case of above proposed Scheme of Amalgamation of the said assessee company , in the name of two cases a) DHARYA DEALMARK PRIVATE LIMITED- PAN AAECD 1194R b) VIEW HIGH DEALCOM PRIVATE LIMITED – PAN : AADCV9306L pertains to this charge has no pending proceedings and has no outstanding demand against the assessee found as per Departmental on-line system . Hence , no objection is raised regarding the proposed amalgamation .”

14. The Official Liquidator attached to Hon'ble High Court, Calcutta vide his report dated 28-08-2018 has observed that after scrutiny of the report submitted by the Chartered Accountant appointed by him and other relevant papers and records etc., submitted by the Advocate-on-Record of the Petitioners, the Official Liquidator is of the opinion that the affairs of the Transferor Company, namely, Ashlesh Dealtrade Private Limited, Ashlesh Vanijya Private Limited, Dharya Dealmark Private Limited, Dream Vally Tie-Up Private Limited, Topflow Commercial Private Limited and Viewhigh Dealcom Private Limited, have not been conducted in a manner prejudicial to the interest of their members or to public.

15. Heard the arguments of Ld. Counsels for the Petitioner Companies and the Ld. Joint Director, Office of the Regional Director, Eastern Region, Ministry of Corporate Affairs.

16. In view of the facts stated above and in absence of any objection and since all requisite compliance has been fulfilled, the following orders in terms prayers made in the petition, with modification by this Tribunal are passed :

- a. The Scheme of Amalgamation mentioned in this Petition being Annexure "A" to the Petition is sanctioned by this Tribunal to be binding with effect from 1st day of April, 2017 on ASHLESH DEALTRADE PRIVATE LIMITED, ASHLESH VANIJYA PRIVATE LIMITED, DHARYA DEALMARK PRIVATE LIMITED, DREAM VALLY TIE-UP PRIVATE LIMITED, TOPFLOW COMMERCIAL PRIVATE LIMITED and VIEWHIGH DEALCOM PRIVATE LIMITED with STERLING BOLTS PRIVATE LIMITED and their shareholders and all concerned ;
- b. All the properties, rights and interest of ASHLESH DEALTRADE PRIVATE LIMITED, ASHLESH VANIJYA PRIVATE LIMITED, DHARYA DEALMARK PRIVATE LIMITED, DREAM VALLY TIE-UP PRIVATE LIMITED, TOPFLOW COMMERCIAL PRIVATE LIMITED and VIEWHIGH DEALCOM PRIVATE LIMITED are transferred to and vested in without further act or deed in STERLING BOLTS PRIVATE LIMITED and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and vested in STERLING BOLTS PRIVATE LIMITED for all the estate and interest of ASHLESH DEALTRADE PRIVATE LIMITED, ASHLESH VANIJYA PRIVATE LIMITED, DHARYA DEALMARK PRIVATE LIMITED, DREAM VALLY TIE-UP PRIVATE LIMITED, TOPFLOW COMMERCIAL PRIVATE LIMITED and VIEWHIGH DEALCOM PRIVATE LIMITED but subject nevertheless to all charges, now affecting the same;
- c. All the liabilities and duties of ASHLESH DEALTRADE PRIVATE LIMITED, ASHLESH VANIJYA PRIVATE LIMITED, DHARYA DEALMARK PRIVATE LIMITED, DREAM VALLY TIE-UP PRIVATE LIMITED, TOPFLOW COMMERCIAL PRIVATE

LIMITED and VIEWHIGH DEALCOM PRIVATE LIMITED are transferred without further act or deed to STERLING BOLTS PRIVATE LIMITED and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and become the liabilities and duties of STERLING BOLTS PRIVATE LIMITED;

- d. That all the proceedings and/or suit appeals now pending by or against ASHLESH DEALTRADE PRIVATE LIMITED, ASHLESH VANIJYA PRIVATE LIMITED, DHARYA DEALMARK PRIVATE LIMITED, DREAM VALLY TIE-UP PRIVATE LIMITED, TOPFLOW COMMERCIAL PRIVATE LIMITED and VIEWHIGH DEALCOM PRIVATE LIMITED shall be continued by or against STERLING BOLTS PRIVATE LIMITED;
- e. The Transferee Company do issue and allot shares to the shareholders of ASHLESH DEALTRADE PRIVATE LIMITED, ASHLESH VANIJYA PRIVATE LIMITED, DHARYA DEALMARK PRIVATE LIMITED, DREAM VALLY TIE-UP PRIVATE LIMITED, TOPFLOW COMMERCIAL PRIVATE LIMITED and VIEWHIGH DEALCOM PRIVATE LIMITED as envisaged in the said Scheme of Amalgamation and for that, if necessary, to increase the authorized share capital;
- f. The schedule of assets in respect of ASHLESH DEALTRADE PRIVATE LIMITED, ASHLESH VANIJYA PRIVATE LIMITED, DHARYA DEALMARK PRIVATE LIMITED, DREAM VALLY TIE-UP PRIVATE LIMITED, TOPFLOW COMMERCIAL PRIVATE LIMITED and VIEWHIGH DEALCOM PRIVATE LIMITED be filed within a period of 60 days from the date of this order ;

- g. The Transferor Companies of ASHLESH DEALTRADE PRIVATE LIMITED, ASHLESH VANIJYA PRIVATE LIMITED, DHARYA DEALMARK PRIVATE LIMITED, DREAM VALLY TIE-UP PRIVATE LIMITED, TOPFLOW COMMERCIAL PRIVATE LIMITED and VIEWHIGH DEALCOM PRIVATE LIMITED shall stand dissolved without winding up from the appointed date ;
- h. STERLING BOLTS PRIVATE LIMITED, ASHLESH DEALTRADE PRIVATE LIMITED, ASHLESH VANIJYA PRIVATE LIMITED, DHARYA DEALMARK PRIVATE LIMITED, DREAM VALLY TIE-UP PRIVATE LIMITED, TOPFLOW COMMERCIAL PRIVATE LIMITED and VIEWHIGH DEALCOM PRIVATE LIMITED shall within 30 days after the date of obtaining the Certified Copy of this order cause certified copies of this order to be delivered to the Registrar of Companies, West Bengal for registration respectively ;
- i. In the event of the petitioner companies supplying the legible computerized print out of the Scheme and schedule of assets in acceptable form to the department, the department will append such computerized print out, upon verification to be certified copy of the order without insisting on hand-written copy thereof.

17. Accordingly, the Company Petition CP(CAA) No. 707/KB/2018, connected with Company Application CA(CAA) No. 55/KB/2018, stands disposed of.

18. Urgent Photostat certified copy of this order, if applied for, to be supplied to the parties, subject to compliance with all requisite formalities.

Sd
(Jinān K.R)

Member (Judicial)

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