

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH
KOLKATA

C.A.(CAA) No.787/KB/2018

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

In the matter of:

An application under Section 230 to 232 of the Companies Act, 2013 read with Rule 15 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

In the matter of:

LEXI EXPORTS PRIVATE LIMITED, a Non-Banking Financial Company (NBFC) Company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 207, Maharshi Devendra Road 1st Floor, Room No. 27 Kolkata -700007 in State of West Bengal within the aforesaid jurisdiction;

- And -

In the matter of:

ARADHANA VINIMAY PRIVATE LIMITED, a Company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 207, Maharshi Devendra Road, 1st Floor, Room No. 27, Kolkata-700007 in State of West Bengal within the aforesaid jurisdiction;

- And -

In the Matter of:

BALLAN VANIJYA PRIVATE LIMITED, a Company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 207, Maharshi Devendra Road 1st Floor, Room No. 27 Kolkata- 700007 in State of West Bengal within the aforesaid jurisdiction;

- And -

In the Matter of:

TRIDEV COMMOSALES PRIVATE LIMITED, a Company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 207, Maharshi Devendra Road 1st Floor, Room No. 27 Kolkata - 700007 in State of West Bengal within the aforesaid jurisdiction;

- And -

In the Matter of:

- | | |
|--------------------------------------|------------------------------|
| 1. LEXI EXPORTS PRIVATE LIMITED | :(TRANSFEREE COMPANY) |
| 2. ARADHANA VINIMAY PRIVATE LIMITED | :(TRANSFEROR COMPANY NO 1) |
| 3. BALLAN VANIJYA PRIVATE LIMITED | :(TRANSFEROR COMPANY NO 2) |
| 4. TRIDEV COMMOSALES PRIVATE LIMITED | :(TRANSFEROR COMPANY NO 3) |

..... APPLICANTS.

Counsels on Record:

- | | |
|----------------------------------|------------------------|
| 1. Ms. Manju Bhuteria , Advocate |] For the petitioners. |
| 2. Mr. N.Gurumurthy , FCA |] |

Date of pronouncing of the Order: 6th September, 2018

O R D E R

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 1st April, 2018.

2. It is stated in the application that the reasons that have necessitated and/or justified the said Scheme of Amalgamation are, inter alia as follows:-

- (a) The TRANSFEREE COMPANY is a Non Banking Finance Company duly registered with Reserve Bank of India and is

engaged in the business of Investing and Funding activities. The TRANSFEROR COMPANY NO.1, TRANSFEROR COMPANY NO.2 and TRANSFEROR COMPANY NO. has made deployment of funds in other investable instruments. The business of the TRANSFEROR COMPANIES and the TRANSFEREE COMPANY can be combined/adjusted and carried forward conveniently with combined strength;

- (b) The amalgamation will enable the TRANSFEREE COMPANY to consolidate its line of business by restructuring and re-organizing its business activities and Capital Structure;
- (c) The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the TRANSFEREE COMPANY;
- (d) The amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources;
- (e) The business of the Company can be conveniently and advantageously combined together and in general business of the Company concerned and will be carried on more economically and profitably under the said Scheme;
- (f) 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 favorable terms and other benefits;

- (g) The said scheme will contribute in furthering and fulfilling the objects of the Company concerned and in the growth and development of these businesses;
- (h) The said scheme will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability;
- (i) The said scheme will enable the undertakings concerned to pool their resources and to expand their activities;
- (j) The said scheme will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages;
- (k) The said scheme will have beneficial results for the Companies concerned, their shareholders, employees and all concerned;

3. It reveals from the application that capital structure of the Transferee Company is as under :

SHARE CAPITAL	AMOUNT (RS)
AUTHORIZED SHARE CAPITAL	
33,00,000 Equity Shares of Rs.10/- each	3,30,00,000/-
TOTAL	3,30,00,000/-

ISSUED , SUBSCRIBED AND PAID-UP	
32,88,350 Equity Shares of Rs.10/- each	3,28,83,500/-
TOTAL	3,28,83,500/-

It reveals from the application that capital structure of the Transferor Company No 1 is as under

SHARE CAPITAL	AMOUNT(RS)
AUTHORIZED SHARE CAPITAL	
90,000 Equity Shares of Rs.10/- each	9,00,000/-
TOTAL	9,00,000/-
ISSUED , SUBSCRIBED AND PAID-UP	
89,000 Equity Shares of Rs.10/- each	8,90,000/-
TOTAL	8,90,000/-

It reveals from the application that capital structure of the Transferor Company No 2 is as under

SHARE CAPITAL	AMOUNT(RS)
AUTHORIZED SHARE CAPITAL	
20,000 Equity Shares of Rs.10/- each	2,00,000/-
TOTAL	2,00,000/-
ISSUED , SUBSCRIBED AND PAID-UP	
13,700 Equity Shares of Rs.10/- each	1,37,000/-
TOTAL	1,37,000/-

It reveals from the application that capital structure of the Transferor Company No 3 is as under

SHARE CAPITAL	AMOUNT(RS)
AUTHORIZED SHARE CAPITAL	

20,000 Equity Shares of Rs.10/- each	2,00,000/-
TOTAL	2,00,000/-
ISSUED , SUBSCRIBED AND PAID-UP	
15,200 Equity Shares of Rs.10/- each	1,52,000/-
TOTAL	1,52,000/-

4. It is stated in the application that 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 is proposed to amalgamate the TRANSFEROR COMPANIES with the TRANSFEREE COMPANY. The Board of Directors of each Company are of the opinion that the proposed Scheme would benefit their shareholders, creditors, employees and the general public.

5. It is 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. It is stated in the application 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. It is stated in the application that the present Scheme of Amalgamation does not contain or provide for Corporate Debt Restructuring. It is stated in the application that the TRANSFEREE COMPANY as well as the TRANSFEROR COMPANIES has never issued nor agreed to issue any debenture. It is stated in the application that the present

Scheme does not provide for any compromise with the creditors of the Company. 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. In this connection, all the applicant companies crave leave to refer to the accounts book and records of the applicant companies at the time of hearing, if necessary. The following also stated in the application:

1. It is 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.
2. It is stated in the application that a copy of the Scheme of Amalgamation for which this application is made for sanctioning wherein the Terms and conditions of Scheme of Amalgamation are set out is enclosed marked **ANNEXURE – I** at Page No 180 to 216 .
3. It is stated in the application that the Board of Directors of the TRANSFEROR COMPANIES and the TRANSFEREE COMPANY have at their respective Board Meetings held on 10th day of July, 2018 have passed resolution approving the Scheme of Amalgamation. Copy of the Board Resolution is enclosed marked **ANNEXURE – J** at page No 217 to 224.
4. It is stated in the application that the Report determining the exchange ratio of shares which, shall be issued and allotted to the equity shareholders of the TRANSFEROR COMPANIES 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 enclosed marked **ANNEXURE – K** at Page No 225 to 235 .

5. It is further stated in the application that the TRANSFEREE COMPANY are having 3 shareholders as on 30THJune,2018 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 – L** at page no 236 to 251.
6. It is further stated in the application that the TRANSFEROR COMPANY NO 1 are having 3 shareholders as on 30THJune,2018 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 – M** at page no 252 to 267.
7. It is further stated in the application that the TRANSFEROR COMPANY NO 2 are having 2 shareholders as on 30THJune,2018 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 – N** at page no 268 to 272.
8. It is further stated in the application that the TRANSFEROR COMPANY NO 3 are having 2 shareholders as on 30THJune,2018 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 – O** at page no 273 to 277.

9. It is further stated that the TRANSFEREE COMPANY are having NIL Secured Creditor and NIL Unsecured Creditor as on 30THJune,2018,. The list of Secured Creditor and Unsecured Creditor duly certified by the Statutory Auditors has been annexed and marked **ANNEXURE P** at page no 278.
10. It is further stated that the TRANSFEROR COMPANY NO 1 are having NIL Secured Creditor and 1 No Unsecured Creditor as on 30THJune,2018. The list of Secured Creditor and Unsecured Creditor duly certified by the Statutory Auditors and affidavit of consent of 1 No Unsecured Creditor has been annexed and marked **ANNEXURE Q** at page no 279 to 281.
11. It is further stated that the TRANSFEROR COMPANY NO 2 are having NIL Secured Creditor and 1NO Unsecured Creditor as on 30THJune,2018. The list of Secured Creditor and Unsecured Creditor duly certified by the Statutory Auditors and affidavit of consent of 1 No Unsecured Creditor has been annexed and marked **ANNEXURE R** at page no 282 to 284.
12. It is further stated that the TRANSFEROR COMPANY NO 3 are having NIL Secured Creditor and 1NO Unsecured Creditor as on 30THJune,2018. The list of Secured Creditor and Unsecured Creditor duly certified by the Statutory Auditors and affidavit of consent of 1 No Unsecured Creditor has been annexed and marked **ANNEXURE S** at page no 285 to 287.
13. The Statutory Auditors of the TRANSFEREE COMPANY and TRANSFEROR CPOMPANIES have certified that the Accounting treatment proposed in terms of clause 11 of PART III 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 – T** at Page No 288 to 295 .

Heard the arguments of the Ld. Counsel for the Applicant Companies. Order with the following directions is passed:

ORDER

- 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 Company 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 Transferor Company No1 , Transferor Company No 2 , Transferor Company No 3 convening and holding of separate meetings of the

Unsecured Creditors of Transferor Company No1 , Transferor Company No 2 , and Transferor Company No 3 are dispensed with .

- e) The Applicant Companies to serve the notice by way of hand delivery or speed post or registered post and by e-mail +upon the Regional Director – Eastern Region (Ministry Of Corporate Affairs) , Registrar Of Companies – West Bengal , Income Tax Authorities under whose jurisdiction the assessments of the Applicant Companies are made, the Official Liquidator High Court Calcutta , Reserve Bank of India, Regional Office, Kolkata 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 COMPANY 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 TRANSFEREE COMPANY and TRANSFEROR COMPANIES .

- h) 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 COMPANIES.
- i) 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 .
- j) That the applicants Companies are directed to file Company Petition for sanction and confirmation of the Scheme not later than 3 weeks from the date of pronouncement of this order .

The application being C.A.(CAA) No.787/KB/2018 is disposed of accordingly.

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


(Jinan K.R.)
Member (J)

Signed this day of 6th September 2018.

PS_Aloke