

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA  
C.A.(CAA) No. 781/KB/2018

In the matter of:

The Companies Act, 2013;

And

In the matter of:

An application under Sec. 230 to 232 of the said Act and other relevant provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

And

In the matter of:

ABHIMANYU MARKETING PRIVATE LIMITED, a Private Limited Company, incorporated under the Companies Act, 1956, having registered office at 35, Lake Temple Road, Kolkata - 700 029,

Sd

within the jurisdiction aforesaid; [CIN No. U51909WB2011PTC158201]

And

In the matter of:

GAURISHANKAR DEALMARK PRIVATE LIMITED, a Private Limited Company, incorporated under the Companies Act, 1956, having registered office at 9/2/1, Girish Banerjee Lane, Howrah, West Bengal - 711 101, within the jurisdiction aforesaid; [CIN No. U51909WB2010PTC156334]

And

In the matter of:

JAIPRAKASH TRADING PRIVATE LIMITED, a Private Limited Company, incorporated under the Companies Act, 1956, having registered office at 9/2/1, Girish Banerjee Lane, Howrah, West Bengal - 711 101, within the jurisdiction aforesaid; [CIN No. U51909WB2010PTC156337]

Sd

And

In the matter of:

1. ABHIMANYU MARKETING PRIVATE LIMITED.
2. GAURISHANKAR DEALMARK PRIVATE LIMITED.
3. JAIPRAKASH TRADING PRIVATE LIMITED.

.... Applicants

Date of pronouncement of the Order :

**Coram:**

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

For the Applicants : Mr. Sailendra Kumar Tiwari, Advocate

**ORDER**

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

1. This application has been filed by the Applicant Companies, namely, GAURISHANKAR DEALMARK PRIVATE LIMITED; JAIPRAKASH TRADING PRIVATE LIMITED, the Transferor Companies with ABHIMANYU MARKETING PRIVATE LIMITED, the Transferee Company under Section 230 to 232 of the Companies Act, 2013 and their respective shareholders for obtaining sanction

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of this Tribunal regarding Scheme of Amalgamation proposed to be made between the Transferee Company and the Transferor Companies and their respective shareholders. A copy of the Scheme of Amalgamation has been annexed with the application as Annexure G.

2. The object of this application is to ultimately obtain sanction of this Tribunal to a Scheme of Amalgamation proposed to be made between the applicant companies and their respective shareholders under the Scheme of Amalgamation whereby and whereunder: -

- i. Greater financial strength and flexibility for the amalgamated entity.
- ii. To enable better and efficient management, control and running of the business to attain operational efficiencies, cost competitiveness, create synergies and capitalise on the growth opportunities to the fullest extent.

Sd

- iii. Better financial, business and operational prospects including efficient management of costs, improved administrative control of the Amalgamated Company.
- iv. Greater efficiency in cash management of the amalgamated entity.
- v. The Scheme shall be in the beneficial interest of the Shareholders and Creditors of the Amalgamated Company. The Scheme shall not be in any manner prejudicial to the interest of the concerned members, creditors, employees or general public at large

3. It appears from the record that the Scheme of Amalgamation was approved by the Board of Directors of the Applicant Companies. Copy of the Board Resolution is annexed with the application and marked Annexure H.

4. It further appears from record that the list of equity shareholders of the Applicant No. 1 and the consent letters are annexed with the application and marked as Annexure I and J respectively. It further appears from record that the list of equity shareholders of the Applicant No. 2 and the consent letters are

Sd

annexed with the application and marked as Annexure K and L respectively. It further appears from record that the list of equity shareholders of the Applicant No. 3 and the consent letters are annexed with the application and marked as Annexure M and N respectively.

5. It is submitted that the Applicant Companies have no creditors and, as such, consent of creditors and the requirement of convening and holding of meeting of the creditors is not required. A list of creditors along with an affidavit of a director is annexed with the application and marked as Annexure O and P respectively.

6. The Applicant Companies have, vide the supplementary affidavit dated 10.08.2018, filed the Auditors' Certificate for class of shareholders and that for the class of creditors.

7. It is submitted by the Applicants that there are no investigation proceedings pending under Sections 235 to 251 of the Companies Act, 1956 and/or corresponding provisions of Companies Act, 2013 against any of the petitioner companies.

Sd

8. It is stated in the Application that that the aggregate assets of the applicant companies are more than sufficient to meet all their liabilities. The Scheme of Amalgamation will not adversely affect the rights of the creditors of the applicant companies and due provisions have been made for payment of all liabilities as and when the same will fall due.

9. It is stated in the Application that the valuation of the shares of the Applicant Companies, based on which the share entitlement ratio has been arrived at, after careful consideration and after taking into account all the relevant facts has been carried out and approved by the Chartered Accountants and it is bona fide and reasonable.

10. A copy of the Valuation Report is annexed with the Application and marked as Annexure "Q".

11. It is also stated in the Application that the accounting treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013.

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12. A certificate under Section 230(7) of the Companies Act, 2013 confirming the same is provided by the Chartered Accountant, a copy whereof is annexed with the Application and marked as Annexure "R".

13. Heard the learned Advocate, 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 by this Tribunal:

- (i) In view of the consent given by the shareholders of the Transferee Company and the Transferor Companies by affidavit, the meeting of the shareholders of the Transferor Company and the Transferee Companies are hereby dispensed with ;
- (ii) In view of the fact that the Transferor Company and the Transferee Companies have no secured creditors and no unsecured creditors, the requirement of convening and holding separate meetings of the Creditors of the Applicant Companies, does not arise ;

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- (iii) At least 30 days before the date of filing petition in Form CAA-5 an advertisement be inserted in one each in Aajkal in Bengali and in The Business Standard in English newspaper as per the requirement of Sec.230 of the Companies Act, 2013 and in Form CAA-2 of the Companies (Compromise, Arrangements and Amalgamation) Rules 2016 stating the fact the meeting of the shareholders and creditors has been dispensed with.
- (iv) The petitioner companies shall serve notice of the petition on the following authorities namely -
- (a) Central government through Regional Director, Eastern Region, Ministry of Corporate Affairs.
  - (b) Registrar of Companies, West Bengal.
  - (c) The Income Tax Department of the office having jurisdiction over the respective petitioner companies.
  - (d) The Official Liquidator and such other relevant and seer, oral regulators/ authorities, if applicable, which are likely to be affected by the proposed Scheme by sending the same by hand delivery through special

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messenger or by registered post or speed post within 7 days from the date of this order for filing their representations., if any on the petition. Notice along with the copy of the application and other related documents with PAN Numbers of the Applicant Companies should be served upon the Chief Commissioner of Income Tax Department by e mail and Speed Post or by Messenger. Petitioner Companies are also directed to mention their respective PAN Nos. everywhere.

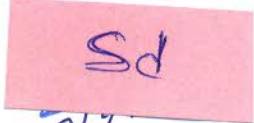
- (v) The notice shall specify that representations, if any, should be filed before this Tribunal within 30 days of date of receipt of the notice with a copy of such representations being sent simultaneously to the petitioners and/or their Authorised Representatives. If no such representations are received by the Tribunal within the said period, it shall be presumed that such authorities have no representations to make on the Scheme of Amalgamation.

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(vi) All Petitioner Companies at least 7 days before the date of hearing of the petition shall file and affidavit of service in relation to the paper publication as well as service of notices in the Authorities specified above including the Pectoral Regulators.

14. The Company Application being C.A. (CAA) No. 781/KB/2018 is disposed of accordingly.

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

  
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(Jinan K.R.)  
Member(Judicial)