

AMBER

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH
KOLKATA

C.P.(CAA) No.733KB/2018
Connected with
CA (CAA) No.255/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 and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

In the matter of:

AMBER (INDIA) PVT. LTD., is a Company incorporated under the provisions of Companies Act, 1956 and having its registered office at 11 DACRES LANE, 1ST FLOOR, KOLKATA -700069 within the aforesaid jurisdiction;
.....Transferee Company

-And-

In the matter of:

WEST END CATERERS PVT. LTD., is a Company incorporated under the provisions of Companies Act, 1956 and having its registered office at 11 DACRES LANE, 1ST FLOOR, KOLKATA -700069, within the aforesaid jurisdiction;
.....Transferor Company

In the matter of:

- 1.AMBER (INDIA) PVT. LTD. (AIPL)
- 2.WEST END CATERERS PVT. LTD. (WECPL)

.....PETITIONERS

Sd

Counsel on Record:

Mr. Mohan Ram Goenka, Practising Company Secretary]
Ms. Manisha Saraf, Practising Company Secretary] For Applicants.
Ms. Sneha Khaitan, Practising Company Secretary]

Mr. K.S. Pradhan, Joint Director, O/o RD (ER) MCA.

Date of pronouncing of the Order: 5th September, 2018

ORDER

1. This joint petition has been filed by WEST END CATERERS PRIVATE LIMITED(hereinafter referred to as the "Transferor Company") with AMBER (INDIA) PVT. LTD. (AIPL), (hereinafter referred to as the "Transferee Company") for sanctioning of the scheme of amalgamation under the provisions of sections 230 to 232 of the Companies Act , 2013 read with the relevant rules made thereunder.

2. The object of this petition is to ultimately obtain sanction of this Tribunal to the proposed Scheme of Amalgamation of WEST END CATERERS PVT. LTD., being the transferor company abovenamed with AMBER (INDIA) PVT. LTD., the petitioner no.1,the Transferee company where all the properties, assets, rights and claims whatsoever of the Transferor Company and their entire undertakings together with all rights and obligations relating thereto are proposed to be transferred to and vested in the Transferee Company on the terms and conditions as fully stated in the said Scheme of Amalgamation w.e.f.

AMBER

1st April, 2017. The Scheme of Amalgamation is annexed with the Petition and marked as "**Annexure A-1**".

3. The Petitioner companies stated in the affidavit that none of the petitioner companies is listed with any stock exchange and are not registered with the Reserve Bank of India as Non- Banking Financial Companies. It has also been stated that the proposed scheme of amalgamation will not attract the provisions of the Competition Act, 2002 and hence no approval of the Competition Commission of India is required.

4. The petition states that the Transferee Company and the Transferor Company are engaged in the business of Hotel and Catering and renting of commercial property etc.

5. The petitioners further submitted that this proposed scheme of amalgamation result in consolidation of the business in one entity and strengthen the position of the merged entity. The amalgamation of Transferor Company with AIPL, will combine synergies and enable the amalgamated company to focus on its business of Hotel and Catering and renting of commercial property and other business and the financial resources of all the company will be conveniently merged and pooled together leading to a more effective and centralized management and reduction of administrative and manpower expenses and overheads which are presently being multiplied because of separate entities. All the applicant companies belong to the same group and are managed and controlled by the same management. This amalgamation would lead to a more efficient utilization of capital for future growth of the amalgamated entity and result in larger pool of various resources as well as manpower and will create a synergy, which will enable the Transferee Company to grow and prosper at a faster pace.

6. The petitioners further contended that in compliance of the order of this Tribunal dated 09th May, 2018, the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of all the petitioner companies were dispensed with in view of the written consents, by way of affidavits, to the Scheme of Amalgamation.

7. Further, it is stated in the petition that the petitioner companies, in compliance of order dated 09th May, 2018 of this Tribunal, served notice in form CAA-3 along with the Scheme of Amalgamation, a statement as required under section 230 of the Companies Act, 2013 upon the Central Government through Regional Director, ROC, West Bengal, the Official Liquidator and the Income Tax Department within whose jurisdiction the assessment of the petitioners are made. A copy of Affidavit of Service have been attached to the petition at "**Annexure A-25**".

8. The petitioners have also submitted that in compliance with section 230(7) of the Companies Act, Statutory Auditor of the transferee company has certified that the Accounting Treatment is in conformity with the Accounting Standards under section 133 of the Act. A copy of the said certificate is attached to the petition as "**Annexure A-12**".

9. The Regional Director, Eastern Region, Ministry of Corporate Affairs at Kolkata vide its affidavit dated 29th August, 2018 on behalf of the Central Government has observed that no complaint and/or representation has been received against the proposed scheme of amalgamation and the proposed scheme is not prejudicial to the interest of the members/shareholders and/or public. As such, the Central Government has decided that the instant petition / scheme need not be opposed. Therefore, the Central Government has no

objection to the proposed scheme of amalgamation. The Regional Director also mentioned that a copy of the scheme was forwarded to the Income Tax Department on 15.05.2018 with a request to forward their comments/ observations/ objections, if any on the proposed scheme of Amalgamation and the said authority has not forwarded their report till date.

10. The Official Liquidator vide his report dated 17th July, 2018 has observed that after scrutiny of the report submitted by Mr. M. R. Sen & Co., Chartered Accountants, the Official Liquidator is of the opinion that the affairs of the Transferor Company namely WEST END CATERERS PVT. LTD. has not been conducted in a manner prejudicial to the interest of its members or to public.

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

ORDER

- a. The said scheme of amalgamation, being Annexure A-1, is sanctioned by this Tribunal to be binding on all the equity shareholders of the petitioner companies and all concerned with effect from 1st April, 2017.
- b. All the properties, rights and interest of WEST END CATERERS PVT. LTD. be transferred to and vested in without further act or deed in AMBER (INDIA) PVT. LTD. 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 AMBER (INDIA) PVT. LTD. for all the

estate and interest of WEST END CATERERS PVT. LTD. but subject nevertheless to all charges, now affecting the same.

- c. All the liabilities and duties of WEST END CATERERS PVT. LTD. be transferred without further act or deed to AMBER (INDIA) PVT. LTD. 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 AMBER (INDIA) PVT. LTD.
- d. All the proceedings and/or suit appeals now pending by or against WEST END CATERERS PVT. LTD. shall be continued by or against AMBER (INDIA) PVT. LTD.
- e. The Transferee Company do issue and allot shares to the shareholders of WEST END CATERERS PVT. LTD. as envisaged in the said Scheme of Amalgamation and for that, if necessary, to increase the authorized share capital.
- f. Post dissolution of the transferor company, the fee paid by the transferor company on their Authorized Share Capital to be set off against the fee payable by the Transferee Company on its authorized share capital subsequent to the amalgamation.
- g. Leave is granted to the petitioner Companies to file schedule of assets of the transferor Company within 60 days from the date of this order.
- h. The Transferor Company WEST END CATERERS PVT. LTD. shall stand dissolved from the appointed date, without winding up.
- i. The Transferee Company, AMBER (INDIA) PVT. LTD. and Transferor Company, WEST END CATERERS PVT. LTD. shall within 30 days after the date of obtaining the Certified Copy of the order to be made


herein, cause certified copies of this order to be delivered to the Registrar of Companies/ West Bengal for registration respectively;

- j. That, any person interested be at liberty to apply to this Hon'ble Tribunal in the above matter for any direction that may be necessary;

12. 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.

The application being C.A.(CAA) No.733/KB/2018 connected with Company Application No.255/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 5th September 2018.

PS_Aloke