

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH

KOLKATA

**COMPANY APPLICATION NO CA ( CAA ) NO 682 / KB / 2018**

**In the matter of:**

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

- And -

**In the Matter of:**

**MAGMA CONSUMER FINANCE PRIVATE LIMITED**, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at Magma House, 24 Park Street, Kolkata-700016 in State of West Bengal within the aforesaid jurisdiction;

- And -

**In the matter of:**

**COLUMBINE DECORATIVE & MARKETING PRIVATE LIMITED**, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at Development House, 3rd floor, 24 Park Street, Kolkata-700016 in State of West Bengal within the aforesaid jurisdiction;

- And -

**In the Matter of:**

1. MAGMA CONSUMER FINANCE PRIVATE LIMITED : ( TRANSFEREE COMPANY )

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2. COLUMBINE DECORATIVE & MARKETING PRIVATE LIMITED : ( TRANSFEROR COMPANY)

..... APPLICANTS.

Coram : Shri Madan B Gosavi, Member( Judicial )

FOR THE PETITIONERS :

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

Date of pronouncement of order: / 09 /2018

### ORDER

Per Shri Madan B Gosavi, Member(Judicial)

1. This application has been filed by the Applicant Companies namely MAGMA CONSUMER FINANCE PRIVATE LIMITED ( TRANSFEREE COMPANY ) and COLUMBINE DECORATIVE & MARKETING PRIVATE LIMITED ( TRANSFEROR COMPANY ) for obtaining sanction of this Tribunal regarding the Scheme of Amalgamation proposed between the TRANSFEREE COMPANY and TRANSFEROR COMPANY with Transfer Date or Appointed Date being 1st April, 2018 .
2. It has been stated in the application that the reasons that have necessitated and/or justified the said Scheme of Amalgamation mentioned in the application are as follows:-
  - a) The business of TRANSFEROR COMPANY and TRANSFEREE COMPANY is closely aligned. TRANSFEROR COMPANY is not able to get the benefit of gearing the resources, hence the shareholders of TRANSFEROR COMPANY decided to get merged with TRANSFEREE COMPANY to maximise the use of the existing resources of TRANSFEROR COMPANY and get the benefit of the resources of TRANSFEREE COMPANY which is a registered non-banking financial company;

- b) To achieve greater integration and greater financial strength and flexibility, to maximise overall shareholder value.
  - c) To achieve cost savings from more focused operational efforts, rationalisation, standardisation and simplification of business processes, productivity improvements and rationalization of administrative expenses;
  - d) The consolidation of activities of the TRANSFEROR COMPANY and the TRANSFEREE COMPANY by way of merger will lead to operational synergies, greater productivity and economical operations for future growth of the TRANSFEREE COMPANY;
  - e) The merger will provide for pooling of the managerial, technical and financial resources of the TRANSFEROR COMPANY and the TRANSFEREE COMPANY which will help in increasing the competitiveness of the TRANSFEREE COMPANY;
  - f) The merger will result in economies of scale, reduction in overheads including administrative, managerial and other expenditure, operational rationalisation, organisational efficiency and optimal utilisation of resources;
  - g) The merger will result in a significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by both the TRANSFEROR COMPANY and the TRANSFEREE COMPANY;
  - h) The increased asset base of the TRANSFEREE COMPANY would have better financial viability and clearer focus, which would be in the interests of all creditors, including the creditors of the TRANSFEROR COMPANY, if any;
  - i) The banks, creditors and financial institutions, if any, are not adversely affected by the proposed merger as their security and asset cover will be maintained;
3. It has been 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.
4. 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.
5. It has been 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.

6. It has been stated in the application that the present Scheme of Amalgamation does not contain or provide for Corporate Debt Restructuring.
7. It is further stated that the Scheme of Amalgamation does not contain any clause whatsoever relating to arrangement and/or compromise with creditor and interest of creditor will not be affected in any manner whatsoever
8. It is further stated that the applicant companies has never issued nor agreed to issue any debenture .
9. A copy of the Scheme of Amalgamation has been annexed with the application as **ANNEXURE - E** at Pages 188 to 227.
10. The Board of Directors of the TRANSFEROR COMPANY and the TRANSFEREE COMPANY have at their respective Board Meetings held on 04th day of May,2018 have passed resolution approving the Scheme of Amalgamation. Copy of the Board Resolution is enclosed marked **ANNEXURE – F** at page No 228 to 233.
11. It reveals from the application that the Report determining the exchange ratio of shares which, shall be issued and allotted to the equity shareholders of the TRANSFEROR COMPANY 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 Company. Copy of Valuation Report is annexed marked **ANNEXURE - G** at page no 234 to 242.
12. It is further stated that the TRANSFEREE COMPANY is having 4 shareholders and all the shareholders have given their consent by way of affidavit . The affidavit of consent by all the shareholders and list of shareholders duly certified by the Statutory auditors are annexed marked **ANNEXURE – H** at page no 243 to 255.
13. It is further stated that the TRANSFEROR COMPANY is having 4 Equity shareholders and 1 Preference Shareholder. List of shareholders duly certified by the Statutory auditors and affidavit of consent by all the shareholders of the

TRANSFEROR COMPANY is annexed and marked **ANNEXURE - I** at page no 256 to 271.

14. It is further stated that the TRANSFEREE COMPANY are having Nil Secured Creditors as on 31<sup>ST</sup> May,2018 and which has been duly certified by the Statutory auditors is annexed and marked **ANNEXURE J** at page no 272.
15. It is further stated that the TRANSFEREE COMPANY are having 2 Nos Unsecured Creditors as on 31<sup>ST</sup> May,2018 and which has been duly certified by the Statutory auditors. The Unsecured Creditors have given their consent by way of affidavit which is annexed and marked **ANNEXURE J** at page no 272 to 276.
16. It is further stated that the TRANSFEROR COMPANY are having Nil Secured Creditors as on 31<sup>ST</sup> May,2018 and which has been duly certified by the Statutory auditors is annexed and marked **ANNEXURE K** at page no 277.
17. It is further stated that the TRANSFEROR COMPANY are having 14 Unsecured Creditor as on 31<sup>ST</sup> May,2018 and which has been duly certified by the Statutory auditors is annexed and marked **ANNEXURE K** at page no 277.
18. The statutory Auditors of the TRANSFEREE COMPANY have certified that the Accounting treatment proposed in terms of clause 14 of PART V 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 – L** at Page No 278 to 280.
19. Heard the counsels for the applicants , perused the records , documents annexed to the application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants the following orders are passed :
  - a) In view of the consents given in affidavit form by all the shareholders of the TRANSFEREE COMPANY AND TRANSFEROR COMPANY, convening and holding of separate meetings of the shareholders of the TRANSFEREE COMPANY and TRANSFEROR COMPANY are dispensed with .

- b) In view of the fact that the TRANSFEREE COMPANY AND TRANSFEROR COMPANY 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 consents given in affidavit form by all the Unsecured Creditors of the TRANSFEREE COMPANY convening and holding of separate meetings of the unsecured creditors of the TRANSFEREE COMPANY are dispensed with.
- d) That a separate meeting of the Unsecured Creditors of the Transferor Company will be convened and held on Friday 16th November, 2018 at the Registered Office of the TRANSFEROR COMPANY at MAGMA HOUSE ,24 PARK STREET , KOLKATA - 700016 at 12.30 P.M for the purpose of considering and if thought, approving with or without modification the proposed Scheme of Amalgamation.
- e) That Mr. MR Goenka, CS ( Mobile No. 9831074332) be and is hereby appointed as the Chairperson for the meeting of the unsecured creditors of the TRANSFEROR COMPANY and at a Remuneration of Rs. 50,000/- (Rupees Fifty thousand only).
- f) That the Chairperson(s) do report to this Court the results of the said meetings of the creditors of the concerned petitioner companies within four weeks from the date of the conclusion of the respective meetings and his report shall be in Form No CAA4 pursuant to Rule 13(2) and 14 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016, verified by his affidavit.
- g) The quorum for the meetings of the secured and unsecured creditors of the applicant companies be fixed in accordance

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with Section 103 of the Companies Act, 2013 present either in person or by proxy.

- h) That voting by proxy be permitted, provided that a proxy in the prescribed form duly signed by the person(s) entitled to attend and vote at the meetings, is filed with the TRANSFEROR COMPANY at their Registered Office not later than forty eight hours before the meetings.
- i) That the Chairperson shall have the power to adjourn the meetings, if necessary and to conduct the procedure for the adjourned meetings as deemed necessary.
- j) That at least 40( Forty ) clear days before the date of the said meetings , an advertisement convening the same and stating that copies of the said Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Companies Act , 2013 read with the Companies ( Compromises , Arrangements and Amalgamation) Rules ,2016 and prescribed form of Proxy can be obtained free of charge at the Registered Office of the Applicant Companies to be published once in English newspaper " The Business Standard" and once in Bengali newspaper " AajKal" in Kolkata as per the requirements of Section 230 of the Companies Act , 2013 and the Companies ( Compromises , Arrangements and Amalgamation) Rules ,2016.
- k) That in addition , at least 40( Forty ) clear days before the meetings to be held as aforesaid , a notice convening the said meetings at the Place and time as aforesaid together with a copy of the said Scheme , the statement disclosing necessary details required to be sent under the Companies Act , 2013 read with the Companies ( Compromises , Arrangements and Amalgamation) Rules ,2016 and the prescribed form of proxy be

sent by Registered Post or speed post or by email or by hand through special messenger or by courier addressed to each of the creditors of the TRANSFEROR COMPANY at their respective last known addresses .

- l) The Applicant Companies to serve the notice upon the Regional Director – Eastern Region ( Ministry Of Corporate Affairs ) , Registrar Of Companies – West Bengal , Income Tax Authorities within whose jurisdiction the assessments of the Applicant Companies are made, the Official Liquidator , Reserve Bank of India pursuant to Section 230(5) of the Companies Act , 2013 read with Rule 8 of the Companies ( Compromises , Arrangements and Amalgamations ) Rules, 2016.
- m) 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 .
- n) That the Transferee 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 amalgamating and amalgamated companies .
- o) Liberty is given to file joint application by Transferee and Transferor Company in accordance with Rule 15 of the Companies ( Compromises , Arrangements and Amalgamations ) Rules, 2016 within 15 days after the expiry of the period of 30 days as mentioned in Section 230(5) of the Companies Act , 2013 .

- p) 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 Company
- q) 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 .

20. The Company Application bearing CA(CAA) No.682/KB/2018 is accordingly, disposed of.

21. The certified copy of this Order may be issued to the parties, if applied for, upon compliance of all requisite formalities.

*11/20/18*

*Sd*

**Madan B Gosavi**  
**Member ( Judicial )**

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