

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH

Company Application No. CP No. 609/KB/2017

In the matter of:

The Companies Act, 2013.

And

In the matter of:

A petition made under Sections 230 and 232 of the said Act

And

In the matter of:

Simplex Developments Private Limited, an existing company within the meaning of the companies Act, 2013 having its Registered Office at Poddar Point, 10<sup>th</sup> Floor, 113, Park Street, Kolkata - 700 016 within the aforesaid jurisdiction.

And

In the Matter of:

Navyug Business Private Limited, an existing company within the meaning of the companies Act, 2013 having its Registered Office at Poddar Point, 10<sup>th</sup> Floor, 113, Park Street, Kolkata - 700 016 within the aforesaid jurisdiction.

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And

In the matter of :

Tecalemit Industries Limited, an existing company within the meaning of the Companies Act, 2013 having its Registered Office at 756, Anandapur EM Bypass, Kolkata - 700 107, within the aforesaid jurisdiction.

And

In the matter of :

Greysham and Co. Private Limited, an existing company within the meaning of the Companies Act, 2013 having its Registered Office at 756, Anandapur EM Bypass, Kolkata - 700 107, within the aforesaid jurisdiction.

And

In the matter of :

Traco International Investment Private Limited, an existing company within the meaning of the Companies Act, 2013 having its Registered Office at Premlata, 4<sup>th</sup> Floor, 39, Shakespeare Sarani, Kolkata - 700 017, within the aforesaid jurisdiction.

1. Simplex Developments Private Limited

2. Navyug Business Private

Limited

3. Tecalemit Industries Limited

4. Greysham and Co. Private Limited

5. Traco International Investment Private Limited

.... Petitioners

Judgment delivered on : 4-12-2017

Coram : Mr. V.P. Singh, Member(Judicial)  
Mr. Jinan KR, Member(Judicial)

For the petitioners :  
Mr. Ravi Asopa, Advocate

Per Mr. VP, Singh, Member(Judicial)

## **ORDER**

The object of this petition is to obtain sanction of this Tribunal to the proposed Scheme of Amalgamation of Simplex Developments Private Limited, being the petitioner No.1, above named, Transferor company No.1, Navyug Business Private Limited, being the petitioner No.2 above named, Transferor company No.2, Tecalemit Industries Limited, being the petitioner No.3 above named, Transferor Company No. 3, Greysham and Co. Private Limited, being the petitioner No.4 above named, Transferor company No. 4 with Traco International Investment Private Limited, being the petitioner No.5 above named, the Transferee Company

whereby and where under the entire undertakings of the Transferor Company No. 1,2,3, 4, the Transferor companies, together with all their properties, rights, claims and liabilities relating thereto are proposed to be transferred to and vest in the Transferee Company on the terms and conditions as fully stated in the Scheme of Amalgamation, a copy whereof is annexed with the petition and marked " A".

It is stated in the petition that all the Petitioner Companies belong to common group and common management. There are common shareholders and common directors in the petitioner companies. In order to integrate the fields of activities of the companies and for improving overall business efficiency, to streamline administration of the Companies and in the overall interest of future growth and diversification of the business of the Companies, the Scheme of Amalgamation is proposed to amalgamate the Transferor Companies with the Transferee Company. The Scheme will be complimentary to the companies for the mutual benefit and interest of the petitioners.

It is also stated in the petition that the proposed Scheme will result in economies of scale, reduction in overheads and other expenses, reduction in administrative and procedural work, elimination of duplication of work, better and more productive and effective utilisation of the combined resources of all the companies and will enable the amalgamated company to effect internal economies and optimize productivity.

It is stated in the petition that the said Scheme of Amalgamation will have beneficial results for the companies concerned, their

shareholders, employees and all concerned.

It is stated in the petition that the Scheme of Amalgamation will not adversely affect the rights of any of the creditors of the Petitioner Companies in any manner whatsoever and due provisions have been made for payment of all liabilities as and when the same fall due in usual course.

It is stated in the petition that there are no proceedings pending under Sections 206 to 213 of the Companies Act, 2013 against any of the Petitioner Companies. There are also no proceedings pending under Sections 241 and 242 of the said Act or any other proceedings whatsoever. There are no proceedings pending under the Companies Act, 1956 or Companies Act, 2013 against any of the Companies. The instant Scheme of Amalgamation does not attract the provisions of Competition Commission of India. There is at present no scheme of corporate debt restructuring ongoing or pending in relation to the Companies.

The Board of Directors of the Transferor Companies and the Transferee Company have, at their respective meetings by resolutions, unanimously approved the said Scheme of Amalgamation.

The copies of the said resolutions are annexed with the petition and collectively marked as "L".

The Transferee Company, being a NBFC has duly written to the

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Reserve Bank of India for its approval to the instant Scheme. The copies of the said letters and the communication as received from the Reserve Bank of India are annexed with the petition and collectively marked as "M".

By an Order made in Company Application CA(CAA) No.199 of 2017 on the 21<sup>st</sup> day of July, 2017, this Tribunal directed that separate meetings of the Equity Shareholders and unsecured creditors of the Transferor companies and the Transferee Company be convened and held for the purpose of considering and, if thought fit, approving, with or without modification, the proposed Scheme of Amalgamation.

It is stated in the petition that following the said Order dated 21-07-2017 of this Tribunal, notice of the meetings was served individually by courier upon each of the said Equity shareholders and unsecured creditors of the Petitioner Companies as required by the said order, together with a copy each of the Scheme of Amalgamation and of the Statement required under Section 230 of the Companies Act, 2013 and a form of Proxy.

It is also stated in the petition that in terms of the said order dated 21-07-2017, notice under the NCLT Rules have been served on the Statutory Authorities. The notice of the said meetings were also advertised, separately, as directed by the said order of this Tribunal dated 21-07-2017, in "The Business Standard", Kolkata and also in "Pratidin", Kolkata in their respective issues dated 12<sup>th</sup> August, 2017. The affidavit of compliance and service has been duly filed on 29-08-2017.

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On the 15<sup>th</sup> September, 2017, the said meetings of the Equity Shareholders and unsecured creditors of the Petitioner Companies were held, in accordance with the said Order dated 21-07-2017 of this Tribunal. The said meetings of all the Equity shareholders of the Transferor and the Transferee Companies, unanimously approved the said Scheme of Amalgamation without any modification.

With regard to the meetings of the unsecured creditor of the petitioner Nos. 1 and 2, there was only one creditor each. At the time of the meetings, the respective petitioners produced the 'no objection' certificate from the two unsecured creditors. Hence, the meetings of the unsecured creditor of the petitioner Nos. 1 and 2 were not held. The copy of such certificates from the two unsecured creditors were submitted to the Chairperson for record, original whereof is annexed with the petition and marked as " P" .

The meeting of the unsecured creditors of the Transferor Company No. 3 and 4 and the Transferee Company were held and Mr. Soumabho Ghose, Advocate acted as Chairperson for the said meetings of the unsecured creditors and in all the meetings of the unsecured creditors, the Scheme of amalgamation was approved unanimously without any modification.

The list of the unsecured creditors of all the petitioner companies duly certified by the auditor are annexed with the petition and collectively marked as " Q".

The Chairperson of the aforesaid meetings has reported the results of the meetings to this Tribunal. True copies of the reports together with their affidavits are annexed with the petition and collectively

marked as " R".

It is stated in the petition that the exchange ratio of shares of the Petitioner Companies have been fixed on a fair and reasonable basis and on the basis of the Valuation Report prepared by a firm of Chartered Accountants, a copy whereof is annexed with the petition and marked as " S".

A certificate from the Auditor of the Transferee Company stating that the accounting treatment is in conformity with the accounting standard under Section 133 is annexed with the petition and marked as " T".

It is stated in the petition that no one will be prejudiced if the said Scheme of Amalgamation is sanctioned and the sanction of the said Scheme will benefit and will be in the interest of the said companies, their shareholders, creditors, employees and all concerned.

After such due compliance, the petitioners have made the instant petition bearing No. CP No. 609/KB/2017 before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Amalgamation.

Heard the arguments of the Ld. Counsel for the petitioner.

Let notice be served as per requirements of sub-section(5) of section 230 of the Companies Act, 2013 along with all the documents including a copy of the Scheme of Amalgamation and the statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs,

Kolkata, Registrar of Companies, West Bengal, the Reserve Bank of India and the concerned Income-Tax Assessing Officer along with the Chief Commissioner of Income-Tax with PAN numbers of the Transferor and the Transferee companies, through E-Mail and by Speed Post, both, as also on the Official Liquidator having jurisdiction of the transferor and the transferee companies and such other relevant sectoral regulators/authorities, if applicable, which are likely to be affected by the proposed scheme, by sending the same by hand delivery through Special Messenger or by registered post or speed post within seven days from the date of this order for filing their representation, if any, on the petition within 30 days from the date of notice.

The petitioners are to file an affidavit within seven days regarding service of the notice.

The petitioners are further directed to send notice through e-mail also and filed copies of the mails along with an affidavit. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the petitioners and their Advocates, in advance. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation ;

Such notices shall be sent under Section 230(5) of the Companies Act, 2013 in Form No. CAA-3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein.

Let the advertisement of the hearing of this petition be published one in the English daily, "The Business Standard", Kolkata and another in the Bengali daily newspaper, "Pratidin", Kolkata, same as was made earlier in 1st motion, 10 days before the date fixed for hearing.

The petition is fixed for hearing on 18<sup>th</sup> January, 2018.

Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

*Sd*  
(Jitwan KR)  
Member(Judicial)

*Sd*  
(V.P. Singh)  
Member(Judicial)