

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**T.P. 68 OF 2017
[C.P.No. 1114 of 2016]
[Connected with C.A.No.740 of 2016]**

Before Shri Vijai Pratap Singh, Hon'ble Member (Judicial)

In the matter of:

The Companies Act, 1956;

And

In the matter of:

An application under sections 391(2) to 394 of the said Act;

And

In the matter of:

Tristar Finvest Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at Bikaner Building, 8/1 Lal Bazar Street, Room No.3, Mezannine Floor, Kolkata 700001 in the State of West Bengal, within the aforesaid jurisdiction;

And

In the matter of:

RSP Securities Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at Bikaner Building, 8/1 Lal Bazar Street, Room No.3, Mezannine Floor, Kolkata 700001, in the State of West Bengal, within the aforesaid jurisdiction;

And

In the matter of:

1. Tristar Finvest Private Limited;
2. RSP Securities Private Limited; ... Petitioners

Counsel last attended:

Mr. Shashi Agarwal, FCA]	For the Petitioners
Mr. Tapas Kumar Das, Assistant Director]	For R.D. (E.R.)

ORDER

This is a petition for sanctioning the scheme and on hearing the Advocate appearing for the petitioners, it is submitted that vide the order dated 26th September, 2016 of the Hon'ble High Court at Calcutta, meeting of the shareholders was held on 30th November, 2016. All the shareholders present in the meeting approved the proposed Scheme of Amalgamation without any objection.

In compliance of the Order of the Tribunal dated 21/02/2017, the copy of petition was served upon the Central Government, Official Liquidator,

Registrar of Companies, Income Tax Officers and The Reserve Bank of India and publications were made in Business Standard on 15/03/2017 and Pratidin on 15/03/2017.

The Central Government has filed their affidavit affirmed on 26th May, 2017 and the observations of the Central Government are as under:

“(a) That it is submitted that on examination of the report of the Registrar of Companies, West Bengal it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. The petitioner companies are also up-dated in filing their statutory returns. It is further submitted that on examination of the proposed scheme of amalgamation, it appears that the proposed scheme is not prejudicial to the interest of members/shareholders and/or public. The Central Government has, therefore, decided that the instant petition/scheme need not be opposed.”

“(b) That it is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the Scheme was forwarded to the Income Tax Department on 18/19-04-2017 with a request to forward their comments/observations/objections, if any, on the proposed Scheme of Amalgamation within 15 days. The Income Tax Department vide their letter F.No. ACIT/HQRS/TECH/Amalgamation/2017-18/1081 dated 25/04/2017 has made a communication in the matter, but no comments/observations/objections have been submitted. A photo copy of this Directorate's letter dated 18/19-04-2017 is enclosed herewith for kind perusal of this Hon'ble Bench and marked as Annexure-I and the photo copy of the Income Tax Department's above

mentioned letter is also attached herewith for kind perusal of this Hon'ble Tribunal and marked as Annexure – II."

The Income-tax Department in spite of notice dated 18/19-04-2017 of the Regional Director, Eastern Region has not submitted any observation/comment on the Scheme of Amalgamation.

The Reserve Bank of India vide its letter No. RO.KOI.No.9199/99.06.002/2016-17 dated 08/06/2017 observed as follows:

"2. In this connection, we advise that the Bank does not have any objection to the proposed amalgamation of RSP Securities Pvt. Ltd. (Transferor Company) with Tristar Finvest Pvt. Ltd. (Transferee NBFC CoR No. B.05.05582)"

Upon receipt of Notice, the Official Liquidator appointed Mr. Sanjai Kumar Gupta, Chartered Accountant of 153A, A.P.C. Road, Kolkata 700006 a panel of auditor of the Hon'ble High Court at Calcutta to examine the books, papers, records and documents of the petitioner company and to make a report indicating clearly as to whether in the opinion of the said Chartered Accountant the affairs of the transferor company has been conducted in a manner prejudicial to the interest of its members or to public. Upon scrutiny of the said report submitted by Mr. Sanjai Kumar Gupta dated 11th April, 2017 and on the basis of verification carried out in accordance with generally accepted auditing practices and conventions, the Official Liquidator has filed his report dated 24th April, 2017 wherein he has stated that the affairs of the

transferor company has not been conducted in a manner prejudicial to the interest of its members or to public.

The matter was reserved for order. But on perusal of the petition it appears that petitioners have annexed the Balance Sheet as at 31/03/2015 in respect of both transferor and transferee companies and the Auditor's report in respect of transferor and transferee companies is also based on balance sheet as at 31/03/2015. It is also seen that some pages of Hon'ble Calcutta High Court's order dated 26/09/2016 annexed to the petition is missing. No Vakalatnama is filed in the NCLT. Petitioners have not enclosed the Board Resolutions approving the proposed scheme of amalgamation by the Board of Directors of the transferor and transferee companies.

In view of the above position the petitioners are directed to file the following documents in the form of a supplementary affidavit annexing those documents within 15 days.

1. Memo of Appearance/Vakalatnama duly stamped and executed by the applicant companies along with the Board Resolution approving the scheme of amalgamation by the Board of Directors of transferor and transferee companies.
2. Copy of the Order of the Hon'ble Calcutta High Court dated **26/09/2016** passed by the Hon'ble Mr. Justice Soumen Sen in **C.A.No. 740 of 2016** is incomplete as some page(s) are missing .

3. Latest audited Balance Sheet/Financial Statement along with Auditor's Report.
4. Auditor's Certificate as per Section 232(3) of the Companies Act, 2013.

List the matter on 24-8-17 for further order.

Sd/-

Vijai Pratap Singh
Hon'ble Member (J)

Signed on this, the 7th day of Aug. 2017.