

NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

CA (CAA)No. 246(KB) 2017

In the matter of:

Sections 230 to 232 of the Companies Act, 2013;

And

In the matter of:

The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

And

In the matter of:

PANCHDEV CONSTRUCTION PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office at 171, Metropolitan Co-operative Housing Society, Sector-A, Tiljala, Kolkata-700105, West Bengal

.....Applicant No.1

And

VARIETY DISTRIBUTORS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office at ½, Ranirashmani Garden Lane, Sector-A, Tiljala, Kolkata- 700015, West Bengal

.....Applicant No.2

And

YOGMAYA AGENCIES PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office at ½, Ranirashmani Garden Lane, Sector-A, Tiljala, Kolkata- 700015, West Bengal

.....Applicant No.3

In the matter of:

1. PANCHDEV CONSTRUCTION PRIVATE LIMITED
2. VARIETY DISTRIBUTORS PRIVATE LIMITED
3. YOGMAYA AGENCIES PRIVATE LIMITED

.... Applicant

Counsels on Record for the Applicants:

1. Mr. N.Gurumurthy,CA,] For the Petitioner /Applicants

Date of pronouncement of the order: 18/08/2017

CORAM: Ms. Manorama Kumari

Hon'ble Member (J)

ORDER

The instant joint Application filed under Section 230(1) and Section 232(1) of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 filed by the Applicant Nos. 1 to 4, namely,

- | | |
|--------------------------------------------------|----------------------|
| (1) Panchdev Construction Private Limited (PCPL) | (Transferee Company) |
| (2) Variety Distributors Private Limited (VDPL) | (Transferor company) |
| (3) Yogmaya Agencies Private Limited (YAPL) | |

(1)The learned Advocate submitted that; (i) the Applicant company no. 1 was incorporated on June 24, 2008 under the companies' Act 1956 in the name and style of Panchdev Construction Private Limited. The registered office is in the state of West Bengal under the jurisdiction of this Bench. The authorized share capital of the company

is Rs.3,00,00,000/-divided into 30,00,000 equity shares of Rs 10 each. Clause 20 of memorandum of association of applicant no 1 provides them to amalgamate with company(s) or to enter into merger/arrangements with any other company(s).

(ii) That the **Applicant no 2** company was incorporated on December 26th, 2008 under the Companies Act 1956 in the name and style of Variety Distributors Private Limited. The registered office of the company is in the state of west Bengal under the jurisdiction of this Bench. The authorized share capital of the company is Rs. 53,50,000 divided into 5,35,000 equity shares of Rs.10 each. Clause 18 of memorandum of association of applicant no 2 provides them to amalgamate with company(s) or to enter into merger/arrangements with any other company(s).

(iii) That the **Applicant no 3** company was incorporated on January 13th, 2009 under the Companies Act 1956 in the name and style of Yogmaya Agencies Private Limited. The registered office of the company is in the state of west Bengal under the jurisdiction of this Bench. The authorized share capital of the company is Rs. 50,50,000 divided into 5,05,000 equity shares of Rs.10 each. Clause 18 of memorandum of association of applicant no 2 provides them to amalgamate with company(s) or to enter into merger/arrangements with any other company(s).

(2) On perusal of the records the following documents are annexed with application viz;

- Necessary Board Resolution dated 30 January 2017 of transferor and transferee companies have been annexed and marked as **Annexure- 'K'** at pages 149-154 of the application.
- The benefit of the scheme mentioned at pages 69-83 of the application. The salient feature of the scheme of amalgamation is elaborated in the scheme marked as **Annexure 'D'**
- The valuation report submitted by the chartered accountant is mentioned at pages 207-215 of the application and marked as **Annexure 'Q'**.
- An Affidavit in prescribed form of joint application is sworn by shri Panchdev kumar Shaw in respect of all the applicant company at **Page No. 216-219**

- List of shareholders of transferor and transferee companies is annexed and marked as Annexure-'L' and is at Page No.155-163;164-175
- List of creditors of both the companies alongwith their respective Affidavits of creditors mentioned at pages 176-197;198-203;204-206 of the application and is annexed and marked as Annexure-'N'; 'O'; 'P'

In view of the above as also prayed by the applicants for convening separate meetings of the equity / preferential shareholders / member as well as unsecured creditors of both the applicant companies be held at 171,Metropolitan Co-operative Housing Society,Sector-A,Tiljala,Kolkata-700105, West Bengal and or such other place or places as may be determined by this Hon'ble Tribunal and on such date or dates and at such times as this Hon'ble Tribunal may direct and that a Chairperson may be appointed for each of the meetings to be held.

Heard petitioner, perused the records and documents annexed therein, so far as convening the meetings of member / shareholders / preferential shareholders and unsecured creditors are concerned the following order is passed

1. That a meeting of the Equity Shareholders of Panchdev Construction Private Limited, being the applicant no. 1 herein shall be convened and held at 171,Metropolitan Co-operative Housing Society,Sector-A,Tiljala,Kolkata-700105, West Bengal on Thursday the 12th day of October,2017 at 4:00 P.M for the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme of Arrangement between the Applicants and their respective shareholders.
2. That a meeting of the Equity Shareholders of Variety Distributors Private Limited, being the applicant no. 2 herein shall be convened and held at 171,Metropolitan Co-operative Housing Society,Sector-A,Tiljala,Kolkata-700105, West Bengal on Thursday the 12th day of October, 2017 at 4:30 P.M for the purpose of considering, and if thought fit, approving, with or

without modification the proposed Scheme of Arrangement between the applicants and their respective shareholders.

3. That a meeting of the Equity Shareholders of Yogmaya Agencies Private Limited, being the applicant no. 3 herein shall be convened and held at 171, Metropolitan Co-operative Housing Society, Sector-A, Tiljala, Kolkata-700105, West Bengal on Thursday the 12th day of October, 2017 at 5:00 P.M for the purpose of considering, and if thought fit, approving, with or without modification the proposed Scheme of Arrangement between the applicants and their respective shareholders.
4. That a meeting of the secured as well as unsecured creditors, shall be convened and held separately at 171, Metropolitan Co-operative Housing Society, Sector-A, Tiljala, Kolkata-700105, West Bengal on Thursday the 12th day of October, 2017 at 6:00 P.M. respectively for the purpose of considering, and if thought fit, approving, with or without modification the proposed Scheme of Arrangement between the Applicants and their respective shareholders.
5. Both the Applicant Companies to serve the notice upon the Regional Director – Eastern Region (Ministry of Corporate Affairs), Registrar of Companies – West Bengal, Income tax Authority within whose jurisdiction the assessments of the Applicant Companies are made and the Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with suitable changes in the notice relating to and creditors is concerned.
6. The notices to be served under Section 230(5) of the Companies Act, 2013 as aforesaid shall contain all disclosures as mentioned in Rule 6(3) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
7. Joint Advertisement of dispatch of notices to the creditors as above shall be published in accordance with Rule 7 of the Companies (Compromises,

Arrangements and Amalgamations) Rules, 2016 with suitable changes as may be practicable.

8. Both the Applicant Companies shall furnish copy of the Scheme free of charge within 1 day of any requisition for the same made by every creditor as mentioned above or member of the concerned Applicant Company.
9. Both the Applicant Companies to file an affidavit in compliance of all the conditions laid down herein along with original proof of service to all the authorities and creditors.
10. Liberty is given to file a joint application by both the applicant companies 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 and mention the matter for further directions.
11. That **Mr. Mohan Ram Goenka**, FCS, (Mobile No.9831074332) shall be the Chairperson for the said meetings of the Equity Shareholders and creditors of the Applicants to be held as aforesaid at a consolidated remuneration of Rs. 40,000/- (Forty thousand only).
12. That Chairperson appointed for the said meetings or any person authorized by him/her do issue and send out the notice of the said meetings referred to above.
13. The quorum for meeting of the Equity Shareholders of the applicant companies be fixed in accordance with Section 103 of the Companies Act, 2013 present either in person or by proxy.
14. 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 meeting, is filed with the concerned Applicant Companies at their Registered Office not later than forty eight hours before the meetings. The Chairperson shall have the power to adjourn the meeting, if necessary, and to conduct the procedure for the adjourned meeting as deemed necessary under the Act.
15. That the value of each member / creditor shall be in accordance with the respective books of the concerned Applicant Companies and where entries

in the books are disputed, the Chairperson concerned shall determine the value for the purpose of the meeting.

16. That the Chairperson do report to this Court the result of the said meetings within four weeks from the date of the conclusion of the respective meetings and his report shall be verified by way of affidavit
17. Parties and the Chairpersons to act on the order.
18. Both the 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.

The prayer stands allowed.


(MANORAMA KUMARI)
MEMBER (J)