

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH

Company Petition CP(CAA) No.718/KB/2017

IN THE MATTER OF:

An Application under Section 232(3) of the Companies Act, 2013 and Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Amalgamation Rules, 2016)

-And-

IN THE MATTER OF:

BAJORIA HOLDINGS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956, having is registered Office at 3, Netaji Subhas Road, Kolkata – 700 001, within the jurisdiction of this Tribunal ;

.. Petitioner No.1

And

BAJORIA FINANCIAL SERVICES PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956, having is registered Office at 3, Netaji Subhas Road, Kolkata – 700 001, within the jurisdiction of this Tribunal ;

.. Petitioner No.2

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Date of pronouncement of the Order : 01/02/2018

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

Mr. Jinan K. R., Member(Judicial)

For the Petitioners:

Mrs. Manju Bhuteria, Advocate

Per Jinan K. R.

### ORDER

The object of this petition is to obtain sanction of this Tribunal to the Scheme of Arrangement between the Petitioner companies and their respective shareholders for demerger of Non-banking Financial Institution business, Demerged Undertaking, of Bajoria Holdings Pvt. Ltd. and merger of Demerged Undertaking with Bajoria Financial Services Pvt. Ltd., the Petitioner No. 2 on and from 01-04-2017 whereby all the investments, rights and claims of whatsoever nature and entire Demerged Undertaking of the Petitioner No. 1 together with all rights and obligations relating thereto are proposed to be transferred to and vested in the Petitioner No.2 on the terms and conditions fully stated in the said Scheme of Arrangement.

A copy of the said Scheme of Arrangement is annexed with the Petitioner and marked Annexure "A".

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It is stated in the Petition that the Scheme of Arrangement would result in simplified group and business structure and consolidation of the investment activities under one umbrella through which businesses can be carried on more economically, conveniently and advantageously and thus will have beneficial results for both the Petitioner Companies, their shareholders, stakeholders and all concerned.

There will be greater efficiency in cash management and pooling of cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities to maximize shareholder value.

The respective Board of Directors of the Petitioner No.,1 and the Petitioner No.2 have, at their respective meetings, held on 04-01-2017, by resolutions, approved the said Scheme of Arrangement.

It is also stated in the Petition that both the petitioner companies do not have any secured creditors.

The Petitioner No.1 had only one unsecured creditor as on 31-07-2017 as certified by the Statutory Auditors.

The Scheme of Arrangement will not adversely affect the rights of any of the creditors of the either of the petitioner companies in any manner whatsoever.

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All the creditors relating to the Demerged Undertaking of the petitioner No.1, upon said Scheme of Arrangement coming into effect, will become the creditors of the Petitioner No.2 and their interest will not be affected in any manner.

The assets of the petitioner No.2 together with that of Demerged Undertaking of the petitioner No.1 will be more than sufficient to meet any liability of the creditors.

There are no proceedings pending against the Petitioner companies either under the Companies Act, 1956 or the Companies Act, 2013.

The Petitioner Companies are unlisted companies registered as Non-Banking Financial Institution with the Reserve Bank of India and the Petitioner Companies have obtained the "No Objection" of Reserve Bank of India for the proposed Scheme of Arrangement.

It is stated in the Petition that Heritage Health Insurance TPA Private Ltd., is a subsidiary of the Petitioner No.1 and the petitioner No.1 holds 27,50,000 equity shares of Rs.10/- each fully paid up constituting 56.12% of its total issued, subscribed and paid up capital of Heritage Health Insurance TPA Pvt. Ltd., a third party administrator for health services licensed by the Insurance Regulator and Development Authority of India (IRDAI).

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Since upon the said Scheme of Arrangement coming into effect upon sanction thereof by this Tribunal, the said shareholding will get transferred from the petitioner No.1 to Petitioner No. 2, no objection of IRDAI has also been obtained.

It is further stated in the Petition that both the applicant companies are private limited companies and not quoted on any stock Exchange. Accordingly, the Securities and Exchange Board of India (SEBI) has not been served notice.

The Scheme of Arrangement does not involve dissolution of either of the Petitioner Companies.

Under the Scheme of Arrangement, only the Non-Banking Financial Institution business of the petitioner No.1 is to merge in the petitioner No.,2. Accordingly, the Official Liquidator is not involved.

It is also stated in the Petition that no investigation or proceedings under the Companies Act, 1956 or the Companies Act, 2013 have been instituted or are pending in relation to the applicant companies and in this regard reference is drawn to Affidavit of Compliance annexed with the Petition and marked Annexure "K".

It is stated in the Petition that no one will be prejudiced if the said Scheme of Arrangement is sanctioned and the sanction thereof will benefit and is in the interest of the Petitioner Companies and their shareholders, creditors, employees and all concerned.

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In compliance of proviso to Section 230(7) of the Companies Act, 2013, the Chartered Accountants, who is the Statutory Auditor of the Petitioner Companies, by certificate dated 04-01-2017 certified that the accounting treatment proposed in the Scheme of Arrangement is in conformity with the accounting standard prescribed under Section 133 of the Companies Act, 2013.

A copy of the said certificate is filed with the Petition and marked Annexure "L".

The Petitioners had filed application being CA (CAA) No. 380/KB/2017 before this Tribunal for dispensation of convening and holding of meetings of equity shareholders and creditors of the Petitioner Companies.

The said application was allowed by this Tribunal by Order dated 27-10-2017.

As directed by the said Order, notices had been served upon the Central Government through the Regional Director(Eastern Region), Registrar of Companies, West Bengal, Kolkata, Reserve Bank of India and Income tax Authority in compliance of Rule 12 of the Companies(Compromises, Arrangements and Amalgamations) Rules, 2016.

The Affidavit of compliance of service dated 13-11-2017 is attached with the Petition.

After such due compliance, the petitioners have made the instant petition bearing No. CP(CAA)/718/KB/2017 before this Tribunal, among other things, seeking final

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sanction to the proposed Scheme of Arrangement and for orders facilitating and giving effect to the same.

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

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 Arrangement 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 and the concerned Assessing Officer, Income Tax along with the Chief Commissioner of Income-Tax with PAN numbers of the Petitioner 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, both, 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, along with the copy of the notice within seven days regarding service of the notice.

The petitioners are further directed to send notice through e-mail also and file the 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. 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 Arrangement.

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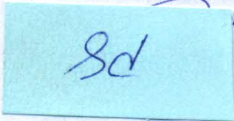


Such notices shall be sent under Section 230(5) of the Companies Act, 2013 in Form No. CAA-3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein.

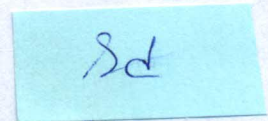
Let the advertisement of the hearing of this petition be published one in the English daily, "The Business Standard" and another in the Bengali daily newspaper, "Pratidin", stating the PAN numbers of all the Petitioner Companies, 10 days before the date fixed for hearing under Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016 with necessary variations.

The petition is fixed for hearing on 12-03-2018.

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



(V.P. Singh)  
Member(Judicial)



(Jinan K. R.)  
Member(Judicial)

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