

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM

Shri V. P. Singh
Hon'ble Member(J)
&
Shri Jinan K.R.
Hon'ble Member (J)

C.P.(CAA) No.684/KB/2017 arising out of CA
No.170/KB/2017

In the matter of :

A petition for sanction of Scheme of Amalgamation made under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

-And-

In the matter of:

Scheme of Amalgamation;

Surichi Distributors Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 59, N. S. Road, 3rd floor, Room No. 15B, Kolkata- 700 001 within the aforesaid jurisdiction;

-And-

Prashant Sales Promotion Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 5/1, Clive Row, 3rd floor, Room no.63, Kolkata- 700 001, West Bengal, within the aforesaid jurisdiction;

-And-

Rachna Vanijya Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 5/1, Clive Row, 3rd floor, Room no.63, Kolkata- 700 001, within the aforesaid jurisdiction;

-And-

Rosy Marketing Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 5/1, Clive Row, 3rd floor, Room no.63, Kolkata- 700 001, within the aforesaid jurisdiction;

1. Surichi Distributors Private Limited;
2. Prashant Sales Promotion Private Limited;
3. Rachna Vanijya Private Limited;
4. Rosy Marketing Private Limited;

... **Applicant/Petitioners**

Counsels on Record:

1. CA. Shashi Agarwal] For the Petitioners

Date of Pronouncing the order : 10.01.2018

ORDER

Per Shri Jinan K.R. Member (J)

This petition has been filed jointly for sanctioning of the proposed Scheme of Amalgamation of Surichi Distributors Private Limited, Prashant Sales Promotion Private Limited, Rachna Vanijya Private Limited and Rosy Marketing Private Limited under section 230 to 232 of the Companies Act, 2013.

The object of this petition is to obtain sanction of this Tribunal to a Scheme of Amalgamation of Prashant Sales Promotion Private Limited, Rachna Vanijya Private Limited and Rosy Marketing Private Limited (hereinafter referred to as the

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"Transferor Companies") with Surichi Distributors Private Limited (hereinafter referred to as "Transferee Company") whereby all the assets, properties, rights and claims whatsoever of the Transferor Companies and their entire undertaking together with all rights and obligations relating thereto are proposed to be transferred to and vested in the "Transferee Company" on the terms and conditions fully stated in the said Scheme of Amalgamation, a copy whereof has been annexed and marked with Annexure "A" to this petition.

The Authorised Share Capital of Surichi Distributors Private Ltd., the Transferee Company i.e., the Petitioner no.1 is Rs.1,60,00,000/- divided into 16,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Company is Rs.1,52,75,000/- divided into 15,27,500 equity shares of Rs.10/- each. This is not a listed company.

The Authorised share capital of Prashant Sales Promotion Private Limited, the First Transferor Company is Rs.17,00,000/- divided into 1,70,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Company is Rs.16,28,130/- divided into 1,62,813 equity shares of Rs.10/- each.

The Authorised share capital of Rachna Vanijya Private Limited, the Second Transferor Company is Rs.40,00,000/- divided into 4,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Company is Rs.38,43,500/- divided into 3,84,350 equity shares of Rs.10/- each.

The Authorised share capital of Rosy Marketing Private Limited, the Third Transferor Company is Rs.3,00,000/- divided

into 30,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Company is Rs.2,80,100/- divided into 28,010 equity shares of Rs.10/- each.

Copies of necessary Board Resolutions dated 10th January 2017 of the Transferee and all the Transferor Companies approving the scheme had been annexed with the Company Petition at pages 40 to 43 of the petition.

Pursuant to the direction of this Tribunal vide their order dated 9th May 2017, the meetings of the equity shareholders and creditors of all the petitioner companies for the purpose of considering and if thought fit for approving with or without modification, were waived and dispensed with, in view of written consent obtained from equity shareholders and creditors of the respective companies. The copy of the order of this Tribunal dated 9th May, 2017 has been annexed and marked as Annexure "J" to this petition.

The Reserve Bank of India vide its letter dated 2nd December, 2016 have given their "No Objection" to the proposed Scheme of Amalgamation of Prashant Sales Promotion Pvt. Ltd., Rachna Vanijya Pvt. Ltd., Rosy Marketing Pvt. Ltd. with Surichi Distributors Pvt. Ltd. A copy of the above letter has been annexed with the petition and marked as Annexure "M" to the petition.

The petitioner companies have come before the Tribunal with this Company Petition i.e., this Second Motion and submitted the following documents along with the Company Petition.

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- i) Copies of Audited Balance-sheet as on 31st March, 2016, Interim Balance-sheet as on 30th November, 2016 and Balance-sheet as on 31st March, 2017 of the Transferor Company as well as Transferee Company have been annexed and marked as Annexures "C" to "E" and "G" to "I" of the petition.
- ii) Copies of Memorandum & Articles of Association of all the Petitioner companies have been annexed and marked as Annexures "B", "D", "F" and "H" to the petition.
- iii) Copies of certificate from the Company's Chartered Accountants in respect of Accounting Standard prescribed in terms of section 133 of the Companies Act have been annexed and marked as Annexure "L" to the petition.
- iv) Copy of Affidavit of Service/Compliance has been annexed and marked as Annexure "K" to the petition.
- v) Affidavit of Compliance under section 232 of the Companies Act, 2013 has been annexed and marked as Annexure "O" to the petition.
- vi) Synopsis of the case and the List of Dates have been submitted by the petitioner companies.
- vii) Copies of newspaper publication both dated 15th May, 2017 in the "Business Standard" in English and "Aajkal" in Bengali have been annexed and marked as Annexure "A" to the Supplementary Affidavit dated 19th July, 2017 to the petition.

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Pursuant to the letter dated 10th November, 2017, the petitioner companies have also filed the Supplementary Affidavit duly affirmed on 29th November, 2017 annexing the following documents:

- i) Copy of the audited accounts as on 31st March, 2017 has been annexed and marked as Annexure "A" at page 7 to 107 of the Supplementary Affidavit.
- ii) Copy of the Share Valuation Report dated 1st December, 2015 has been annexed and marked as Annexure "B" at pages 108 to 114 of the Supplementary Affidavit.
- iii) Copy of PAN Card and Income Tax Return filed Acknowledgement has been annexed and marked as Annexure "C" at pages 115 to 122 of the Supplementary Affidavit.
- iv) Certificate relating to balance of Creditors by the Auditor has been annexed and marked as Annexure "D" at pages 123 to 130 of the Supplementary Affidavit.
- v) Certificate relating to class of shares has been annexed and marked as Annexure "E" at pages 131 to 138 of the Supplementary Affidavit.

Now, after filing the petition before this Hon'ble Tribunal and perusing the documents submitted by the petitioner and as per norms enunciated in Motion II format, it is ordered as follows:

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- a) The date of hearing of the Petition filed jointly by the Petitioner for the sanction of the Scheme is fixed on 1st of March, 2018.
- b) Notice of the hearing of this petition in form NCLT 3A shall be advertised once in English daily 'Business Standard' and in Bengali 'Aajkal' daily newspaper, not less than 10 days before the aforesaid date fixed for hearing.
- c) In addition to the above public notice, the petitioner companies shall serve notice of the petition on the following authorities namely (a) Central Government through Regional Director, Eastern Region, Ministry of Corporate Affairs, (b) Registrar of Companies, West Bengal (c) The Income Tax Department of the office having jurisdiction over the respective petitioner companies, (d) the Official Liquidator 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 7 days from the date of this order for filing their representations, if any on the petition. Notice along with the copy of the application and other related documents with PAN Numbers of the applicant companies should be served upon the Chief Commissioner of Income-Tax and the Assessing Officer of the Income Tax Department by Mail and Speed Post or by Messenger. Applicant Companies are also directed to mention their respective PAN Nos. everywhere.

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d) The notice shall specify that representations, if any should be filed before this Tribunal within 30 days of date of receipt of the notice with a copy of such representations being sent simultaneously to the petitioners and/or their Authorized Representatives. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representations to make on the Scheme of Amalgamation.

e) All the petitioner companies at least 7 days before the date of hearing of the petition shall file an affidavit of service in relation to the Paper Publication as well as service of notices on the Authorities specified above including the Sectoral Regulators.

The Company Petition No. 684/KB/2017 connected with C.A No.170/KB/2017 is directed to be listed for further hearing on 1st March, 2018.

Urgent Photostat copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.


(V. P. Singh)
Member (J)


(Jinan K.R.)
Member(J)

Signed on this, the 10th day of January, 2018