

**In the National Company Law Tribunal
Division Bench, Chennai**

**CP/71/CAA/2017
[CA/49/CAA/2017]**

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation of

M/s. Magic Woods Exports Private Limited
(Transferor Company 1)

And

M/s. Modularkitchen.com Private Limited
(Transferor Company 2)

With

M/s. Indyca Solutions (India) Private Limited
(Transferee Company)

Order delivered on: 21.09.2017

Coram:

Ch. Mohd Sharief Tariq, Member (J)

S. Vijayaraghavan, Member (T)

For the Petitioners: Shri K. Ramasamy, Advocate
Shri G.V. Mohan Kumar, Advocate

ORDER

Per: Ch. Mohd Sharief Tariq, Member (J)

1. Under consideration is a joint Company Petition No. CP/71/CAA/2017 filed by above mentioned petitioner companies under section 230 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules 2016. The purpose of the Company Petition is to obtain sanction of the Scheme of Amalgamation (in short, '**Scheme**') by virtue of which M/s. Magic Woods Exports Private Limited (hereinafter referred to as '**Transferor Company 1**') and M/s. Modularkitchen.com Private Limited (hereinafter referred to as '**Transferor Company 2**') are

proposed to be merged, amalgamated and vested with M/s. Indyca Solutions (India) Private Limited (hereinafter referred to as ‘**Transferee Company**’) as a going concern.

2. The details of Share Capitals, shareholders, Secured & Unsecured creditors of the Companies are as under:

Particulars	Authorised Capital	Issued, S&P Capital	Share-holders	Secured Creditors	Unsecured Creditors
Transferor Company 1	Rs. 6,50,00,000	Rs. 6,36,10,000	3	1	156
Transferor Company 2	Rs. 10,00,000	Rs. 100,000	2	Nil	Nil
Transferee Company	Rs. 500,000	Rs. 500,000	2	Nil	12

3. The Transferor Companies and the Transferee Company are Private Limited Companies having their registered office in Chennai. The Transferor Company 1 is engaged in the business of manufacturing, buying, selling or dealing in all kinds of kitchen cabinets, bathroom furniture etc. whereas the Transferor Company 2 is following business activities relating to the provisions of any type of E-Commerce Services. The Transferee Company is engaged in the business of IT related services. The Board of Directors of the Transferor Company 1, Transferor Company 2 and the Transferee Company vide their resolutions dated 07.01.2017, 10.02.2017 and 09.02.2017 respectively have approved the said scheme of Amalgamation.

4. This Bench vide its order dated 21.04.2017, in CA/49/CAA/2017 dispensed with the convening and holding of the meeting of the equity shareholders of all three petitioner companies. In the said order, the transferor company 1 and the transferee company was directed to issue individual notices to their creditors. There are no secured & unsecured creditors in the Transferee Company 2. The petitioner companies complied with all the orders passed by this Bench and produced the proof of sending private notices to the creditors by way of Affidavit of service.
5. Shri K. Ramasamy, the learned counsel appearing for the Petitioner Companies submitted that the rationale and circumstances that have necessitated the proposed scheme are that the amalgamation will enable consolidation of the business of the three entities into one entity which will facilitate in focused growth, operational efficiency, resulting in more productive utilization of said resources and cost & operational efficiency which would be beneficial to all stakeholders. The learned counsel further submits that no investigation proceedings are pending against the Companies under the provisions of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.
6. Learned counsel for the Companies has further submitted that the equity shares of the Petitioner companies are not listed with the stock

exchange, thus the Companies do not require any compliance of Listing Agreement or any SEBI Rules/regulations.

7. The notices were issued to the statutory authorities viz. Official Liquidator, Regional Director, RoC, Income Tax and CCI Authority as per the procedure prescribed. However, there has been no objection to the proposed scheme under reference.
8. The Regional Director, Southern Region (In short, '**RD**') in the Report Affidavit (for brevity, '**Report**') dated 11.08.2017 submitted that as per records of ROC, Chennai, the Transferor Companies are regular in filing its statutory returns and no investigation is pending against the company. It is further submitted that clause 5 of the subject scheme provides for the protection of the interest of the employees of the Transferor Companies. However, the RD submitted that para 14.1 of the scheme proposes to change the name of the transferee company from M/s. Indyca Solutions (India) Private Limited to M/s. Magic Woods Exports Private Limited. It is also submitted that clause 15 of the scheme proposes to amend the object clauses of the MoA of the transferee company by adding object clauses of the transferor companies. The RD further submitted that Clause 10.4 of the scheme proposes to merge the authorised capital of the transferor companies with that of the transferee company, therefore, the transferee company may be directed to file the amended MoA and AoA with the RoC, Chennai for records. However, in para 5 of the Report, it is submitted

that this bench vide its order dated 21.04.2017 directed the transferor company 1 and the transferee company to issue individual notices to their creditors, therefore, the companies may be directed to furnish the objection of the creditors, if any. The RD has decided not to make any objection to the Scheme and submitted that the petition may be disposed of on merits.

9. With regard to above observation made by the RD, learned counsel for the petitioner companies submitted that the transferee company undertakes to file the amended MoA and AoA with the RoC, Chennai.

10. The Official Liquidator (In short, 'OL') in its two separate reports dated 24th August, 2017 submitted that M/s. RaghavanVedantam & Co., Chartered Accountants and M/s. JLR & Co., Chartered Accountants (**Auditors**) appointed by this Bench vide its common order dated 21.04.2017, have scrutinized the books and accounts of the Transferor Company1 and Transferor Company 2 respectively. The said Auditors have broadly reviewed and observed that the Transferor Company 1 and Transferor Company 2 have maintained and written up all the statutory books in accordance with normally accepted accounting principles and fulfilled the requirements of the Companies Act, 2013 and also the affairs of both the Transferor companies have not been conducted in a manner prejudicial to the interest of its members, creditors or the public. The OL further submits that under Clause 5 of Part- II of the proposed scheme, the

interest of all the workmen and employees in the service of the Transferor Companies are safeguarded. The OL submitted that the petition may be decided appropriately. However, in Para 5 of the OL Report, it is submitted that the Transferor Company 1 has not complied with the provisions of Sections 230 to 232 of the Companies Act 2013 as the transferor company 1 has not submitted the consent affidavits from the secured & unsecured creditors.

11. With regard to above observation of RD and OL, the petitioner companies has produced an affidavit stating that they have not received any objections from secured and unsecured creditors.
12. The Competition Commission of India (in short, 'CCI') vide its letter dated 22.05.2017 submitted that before passing an appropriate order, the NCLT may seek an undertaking from the companies involved in the merger/amalgamation that CCI approval is not required for the said scheme.
13. With regard to the observation made by the CCI, the petitioner companies have furnished an affidavit wherein it has been stated that the proposed amalgamation does not exceed the threshold limits specified under the provisions of the Competition Act, 2002.
14. Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any of the creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of

Amalgamation will not cast any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed date of the said Scheme is 1st April, 2016.

15. There is no additional requirement for any modification and the said Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under section 230 to 232 of the Companies Act, 2013. Taking into consideration the above facts, the Company Petition is allowed and the scheme of Amalgamation annexed with the petition is hereby sanctioned which shall be binding on the members, creditors and shareholders.

16. While approving the scheme as above, we further clarify that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.

17. The Transferee Company is directed to file the amended MoA and AoA with the RoC, Chennai for records.

18. The Companies to the said Scheme or other person interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the implementation of the said Scheme.

19. The Petitioner Companies shall file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.
20. The Transferor Companies shall be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies, Chennai.
21. Upon receiving the certified copy of this order, the RoC, Chennai is directed to place all documents relating to the Transferor Companies with that of the Transferee Company and the files relating to the Transferor Companies shall be consolidated with the files and records of the Transferee Company.
22. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.
23. Accordingly, the Scheme stands sanctioned and CP/71/CAA/2017 stands disposed of.


(S. Vijayaraghavan)
Member (T)


(Ch. Mohd. Sharief Tariq)
Member (J)

RLS