

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

C.A. No. (CAA) 532/KB/2017

In the Matter of: -

A petition under Sections 230, 232(1)  
of the Companies Act, 2013;

And

In the matter of :

SATYANARAYAN COMMODITIES PVT.

LTD (1st Transferor Company), a

company incorporated under the

Companies Act, 1956, having is

registered Office at 51, Vivekananda

Road, Room No. 302, 3<sup>rd</sup> Floor,

Kolkata – 700 007, West Bengal

within the aforesaid jurisdiction ;

~ And ~

RG PROTEINS PRIVATE LIMITED ( 2nd

Transferor Company), a company

incorporated under the Companies

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Act, 1956, having is registered Office  
at 51, Vivekananda Road, Room No.  
302, 3<sup>rd</sup> Floor, Kolkata – 700 007,  
West Bengal within the aforesaid  
jurisdiction ;

~ And ~

BHOOTNATH HOMOEOPHARMACY  
PRIVATE LIMITED, (3<sup>rd</sup> Transferor  
Company), a company incorporated  
under the Companies Act, 1956,  
having is registered Office at 51,  
Vivekananda Road, Room No. 302,  
3<sup>rd</sup> Floor, Kolkata – 700 007,  
West Bengal within the aforesaid  
jurisdiction ;

~ And ~

KAMNA DISTRIBUTORS PRIVATE  
LIMITED(4th Transferor Company), a  
company incorporated under the  
Companies Act, 1956, having its  
registered Office at 51, Vivekananda  
Road, Room No. 302, 3<sup>rd</sup> Floor,  
Kolkata – 700 007, West Bengal

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within the aforesaid jurisdiction ;

-And -

LAKSHMI TIE-UP PVT LTD( Transferee

Company), a NBFC Company,

incorporated under the Companies Act

1956, having its registered Office at Bala

Bhavani Bhavan, 51, vivekananda Road

Room No. 302, 3rd Floor, Kolkata –

700 007, West Bengal within the

aforesaid jurisdiction ;

1.Satyanarayan Commodiies Pvt.Ltd.

2. RG Proteins Private Limied

3. Bhootnath Homoeo Pharmacy Pvt.

Ltd.

4. Kamna Distributors Private Limied

5. Lakshmi Tie-up Pvt. Ltd.

..... Applicants

CORAM : MR. V.P. SINGH, MEMBER(JUDICIAL)

MR. JINAN K.R., MEMBER(JUDICIAL)

Date of Pronouncement of Order : 10-1-18

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of the Applicants :

1. Mr. Vishnu Kr. Tulsyan, FCA

Per : Mr. Jinan K. R.

### ORDER

The object of this Application is to ultimately obtain sanction of this Tribunal to the proposed Scheme of Amalgamation of the Transferor Company 1, No.2, No.3, and No.4, collectively referred to as the Transferor Companies, with the Applicant Company No.5, the Transferee Company, namely, Lakshmi Tie-up Pvt. Ltd.

whereby all the properties, assets, rights and claims whatsoever of the transferor company and their entire undertakings together with all their rights and obligations relating thereto are proposed to be transferred to and vest in the Transferee Company on the terms and conditions as fully stated in the Scheme of Amalgamation, a copy whereof is annexed with the Petition as Annexure -11.

The Transferor Companies and the Transferee Company belong to common group and common management. There are common shareholders and common director in the Transferor Companies and the Transferee Company.

In order to integrate the fields of activities of the companies and for improving overall business efficiency, to streamline administration of the Companies and in

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the overall interest of future growth and diversification is proposed to amalgamate the Transferor Companies with the Transferee Company.

The Scheme of Amalgamation will be complimentary to the Companies for their mutual benefit and interest.

The proposed Scheme will result in economies of scale, reduction in overheads and other expenses, reduction in administrative and procedural work, elimination of duplication of work, better and more productive and effective utilisation of the combined resources of all the companies and will enable the amalgamated company to effect internal economies and optimize productivity.

The Scheme of Amalgamation will result in optimum growth and development of the business of the companies concerned and exploitation of the potential thereof.

The Scheme of Amalgamation will enable the undertaking and business of both the Companies to obtain greater facilities for raising capital, securing and conducting trade on favourable terms and other benefits.

It is submitted in the Application that the Transferee Company, being a Non-Banking Financial Company (NBFC) has duly written to the Reserve Bank of India for its approval of Amalgamation.

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The Scheme of Amalgamation will enable the companies concerned to rationalise and streamline their management, business and finance and will pave way for better, more productive and economical control of the running of the operations.

It is further stated in the Petition that the business of all the companies will be carried on more economically and profitably under the Scheme of Amalgamation.

It is also stated in the Application that the Scheme of Amalgamation will have beneficial results for the companies concerned, their shareholders, employees and all concerned.

The Board of Directors of the Transferor Companies and the Transferee Company have, at their respective meetings by resolutions passed unanimously, approved the Scheme of Amalgamation.

The copies of the resolutions are annexed with the Application and collectively marked as "Annexure-12".

It is submitted in the Application that the Transferee Company, being a Non-Banking Financial Company (NBFC) has duly written to the Reserve Bank of India for its approval to the Scheme of Amalgamation.

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A copy of the said letter dated 13-10-2017, is annexed with the Application and marked as "Annexure-13".

It is submitted in the Application that the aggregate assets of the Applicant Companies are more than sufficient to meet all their liabilities and the Scheme of Amalgamation will not adversely affect the rights of any of the Creditors of the Applicant Companies in any manner whatsoever and due provisions have been made for payment of all liabilities as and when the same fall due in usual course.

It is further submitted in the Application that since the Creditors' interest is protected under the Scheme of Amalgamation, holding of the meetings of the creditors may not be necessary.

For the purpose of the Scheme of Amalgamation, the unaudited accounts of the applicants for the period as on 30-09-2017 is annexed with the Application and collectively marked as "Annexure-15".

It is further submitted in the Application that there are no proceedings pending under Sections 206 to 229 of the Companies Act, 2013 against any of the Applicant Companies.

There are also no proceedings pending under Section 241 and 242 of the said Act.

It is also stated in the Application that the Applicant No.1 is having 7 Equity Shareholders, the Applicant No.2 is having 7 Equity Shareholders, the Applicant No.3 is having 7 Equity Shareholders, the Applicant No.4 is having 8 Equity Shareholders, the Applicant No.5, the Transferee Company, is having 7 Equity Shareholders.

The copies of the list of shareholders of all the applicant companies are annexed hereto and collectively marked as "Annexure-18".

It is submitted in the Application that each and every shareholder of the Applicant Companies have considered the proposed Scheme of Amalgamation and on such consideration have given their consent in writing agreeing to the Scheme of Amalgamation and also consented to waive the holding and convening of the meetings of the shareholders of the applicant companies concerned.

The original consent letters received from all the shareholders of the applicant companies are annexed with application and collectively marked as "Annexure-20".

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The Consent of the shareholders of the Applicant Companies by way of affidavit has been attached with the letter dated 16-11-2017 of the Chartered Accountants of the Applicant Companies as Annexure "C".

It is submitted by the Applicant Companies that inasmuch as all the shareholders of the Applicants have agreed in writing to the proposed Scheme of Amalgamation and have also consented to waive the holding and convening of the meeting of the shareholders of the applicants concerned, it is submitted that holding of the individual meetings of the shareholders of the Applicants be dispensed with for considering and approving the Scheme of Amalgamation.

It is submitted in the Application that there are no secured, unsecured and other creditors of the Applicant Companies No.1, No.2, No. 3 and No.4.

A copy of the affidavit verifying the list of creditors along with Auditor's certificate for creditors are annexed with the application and collectively marked as Annexure - "14".

It is stated in the Application that the Applicant No.5, the Transferee Company, is having 6 Creditors.

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The copy of the list of Creditors of the Transferee Company are annexed with the Application and marked as "Annexure-19".

It has been further submitted in the Application that more than 90% of the creditors of the Applicant Company, the Transferee Company have considered the proposed Scheme of Amalgamation and on such consideration have given their consent in writing agreeing to the Scheme of Amalgamation and also consented to waive the holding and convening of the meetings of the creditors of the Applicants by way of Affidavit, annexed with the Application and collectively marked as "Annexure-21".

It is submitted by the Applicant Companies that inasmuch as all the creditors of the Transferee Company have agreed in writing to the Scheme of Amalgamation and have also consented by way of Affidavit to waive the holding and convening of the meeting of the Creditors of the Transferee Company for considering and approving the Scheme of Amalgamation, be dispensed with.

Heard the learned FCA for the applicants, perused the records, documents annexed to the application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants, the following orders are passed :

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a) In view of the individual affidavit by the respective Shareholders of the Applicant Companies, giving consent for the approval of the draft Scheme of Amalgamation, convening and holding of separate meetings of the shareholders of the Transferor Company and the Transferee Company, are dispensed with.

b) Since the Transferor Companies have no secured creditors and unsecured creditors, convening and holding of separate meetings of the Secured and the Unsecured Creditors of the Transferor Companies, are dispensed with.

c) In view of the fact that all the 6 Creditors of the Transferee Company have given their consent in writing by way of affidavit agreeing to the Scheme of Amalgamation and to waive convening and holding of separate meetings of the Creditors, convening and holding of separate meetings of the Creditors of the Transferee Company, is dispensed with.

d) Let the notice be served by the applicant companies, as per the requirements of sub-section (5) of Section 230 of the Companies Act, 2013, along with the copy of the petition and all other documents including the copy of the Scheme of Amalgamation 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 Income-Tax Assessing Officer along with the Chief Commissioner of Income-TAX with PAN Numbers of the Applicant Companies, Reserve Bank of India

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as also on the Official Liquidator attached to the Hon'ble High Court, Calcutta, having jurisdiction over 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 by Speed Post and E-mail, both, within seven days from the date of this order for filing their representation, if any, on the application within 30 days from the date of the notice ;

e) The applicants shall file the affidavit within 7 days of serving the notice regarding service of notice ;

f) The applicants are further directed to send notice through e-mail also and file 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 applicants and/or heir 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 Amalgamation. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 and Companies (Compromises, Arrangements & Amalgamation) Rules, 2016 with necessary variations incorporating the directions therein.

g) The applicant companies shall comply with the proviso to sub-section (3) of Section 232 or proviso to sub-section (7) of Section 230, as may

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be applicable under the circumstances on or before the date fixed for hearing by filing the certificate of Companies' Auditor.

The Company Application bearing No. CA(CAA) No. 532/KB/2017 is, accordingly, disposed of.

Certified copy of this Order may be issued, if applied for, upon compliance of all requisite formalities.

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(V.P. Singh)  
Member(Judicial)

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(Jinsh K. R.)  
Member(Judicial)

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