

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

CA (CAA) No. 232/KB/2017

In the matter of:

An application under Section 230 (1) of
the Companies Act, 2013 ;

And

In the matter of:

ANAND PINKY PROPERTIES PRIVATE
LIMITED, a company incorporated
under the provisions of the Companies
Act, 1956 and having its registered
Office at C/o. P.N. Distributors Ghosh
Nursery Building, Sevoke Road, Siliguri -
734 001 in the state of West Bengal
within the aforesaid jurisdiction ;

And

KOYEL PROPERIES PRIVATE LIMITED, a
company incorporated under the
provisions of the Companies Act, 1956
and having its Registered Office at

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House No. 1, Ashoke Vihar Colony, Janta Nagar, behind Ek Tiasal Post Office, Sevoke Road, Siliguri – 734 001 in the state of West Bengal within the aforesaid jurisdiction ;

And

FABULOUS COMMERCIAL PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at Village-Suboljote, Post Office-Nemai Matigara, Siliguri, Darjeeling, PIN- 734 010 in the state of West Bengal within the aforesaid jurisdiction.

And

1. ANAND PINKY PROPERTIES PVT. LTD.
2. KOYEL PROPERTIES PVT. LTD.
3. FABULOUS COMMERCIAL PVT. LTD.

.... Applicants

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

For the Applicants:

1. Ms. Noelle Banerjee, Advocate
2. Mr. Pallav Samajdar, Advocate

Date of pronouncement of the order: 19-02-2018

ORDER

Per Jinan K.R.

The instant Application under Section 230(1) of the Companies Act, 2013 has been filed on 26-04-2017 by the Applicants before this Tribunal for approval of the Scheme of Amalgamation of Anand Pinky Properties Pvt. Limited and Koyel Properties Pvt. Ltd., the Transferor Companies with Fabulous Commercial Pvt. Ltd., the Transferee Company and issuance of equity shares of the Transferee Company to the equity shareholders of the Transferor Company in accordance with the share exchange ratio, as per the terms of the Scheme of Amalgamation and pursuant to Sections 230 to 232 and the other relevant provisions made under the Companies Act, 2013, as applicable and various other matters consequential to or otherwise integrally connected with the above in the manner provided for in the Scheme of Amalgamation.

It has been stated in the Petition that the amalgamation is expected to enable greater realization of potential of the businesses of the Transferor Companies and the Transferee Company and have beneficial results and enhanced value creation for the companies, their respective shareholders, their respective lenders and employees of such companies.

The Amalgamation will consolidate the business and simplify the group structure.

Further, the amalgamation will provide a high level of synergistic integration to the Transferee Company's operations, better operational management and provide value addition to existing and future projects of the Transferor company and the amalgamated Company by integrating the respective financial and other expertise and resources.

The amalgamation of the Transferor Companies with the Transferee Company pursuant to the Scheme of Amalgamation, shall take place with effect from the appointed date.

Consequently, the Board of Directors of the Transferor and the Transferee Companies have considered the Scheme of Amalgamation and accordingly, proposed the Scheme of Amalgamation of the Transferor Companies with the Transferee Company.

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A copy of the list of Directors of the Applicant Companies along with the Board Resolution approving the proposed Scheme of Amalgamation by the Directors of the Transferor and the Transferee Companies are annexed with the Application and the same are collectively marked with letter "G".

It is also stated in the Application that the Scheme of Amalgamation has been drawn up to comply with the conditions relating to "amalgamation" as defined and specified under section 2(1B) of the Income-Tax Act.

If any terms or provisions or part of the Scheme of Amalgamation are found or interpreted to be inconsistent with the provisions of Section 2(1B) of the Income Tax Act, at a later date, including resulting from an amendment of law or for any other reason whatsoever, the provisions of Section 2(1B) of the Income Tax Act shall prevail and the Scheme of Amalgamation shall stand modified to the extent necessary to comply with Section 2(1B) of the Income Tax Act and such modifications shall not affect other parts of the Scheme.

The Board of Directors of all the Applicant Companies have, at their respective Board meetings, by a resolution passed unanimously, approved the said Scheme of Amalgamation.

A copy of the said Scheme of Amalgamation is annexed with the Application and the same is marked as Annexure "I".



It is stated in the Application that the assets of the applicant companies are sufficient to meet all their liabilities and the said Scheme of Amalgamation will not adversely affect the rights of any of the creditors of any of the applicant companies in any manner whatsoever.

There are no proceedings pending under Sections 210,213 to 216, 219,220, 222 to 225 of the Companies Act, 2013 against any of the applicant companies.

None of the applicant companies have any debenture holders or preference shareholders, therefore, the question of consent from them does not arise.

The Applicant Company No.1, namely, Anand Pinky Properties Private Limited, has no creditors also.

The Auditor's certificate to this effect has been annexed with the Application.

The Applicant Company Nos. 2 and 3 has no secured creditors and only has unsecured creditors and the said unsecured creditors have given their 'no objection' as well as unconditional consent to the proposed Scheme of Amalgamation and also waived their right as to holding of the Creditors' meeting.

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The "no creditor" certificate of the Auditor of the Applicant Company No.1 and the list of creditors along with the consent letters from the creditors of the Applicant Company Nos. 2 and 3 are also annexed with the Application and collectively marked as Annexure "J".

It has also been stated in the Application that all the shareholders of the Applicant Companies have given their unconditional consent for dispensing with the meeting of the equity shareholders.

It has further been stated that this Tribunal may dispense with holding of such meetings.

The copies of the consent letters from all the shareholders of the Applicant Companies along with the list of shareholders are annexed with the Application and the same is marked with letter "K" and the copies of the Auditors' certificate relating to Accounting Standard of the Applicant Companies are annexed with the Application and collectively marked as Annexure "L".

In view of the aforesaid facts as stated in the Application, the Applicant Companies have prayed that :

- (a) The convening and holding of the meeting of the creditors of all the applicant companies to consider and approve the Scheme of Amalgamation, be dispensed with;



- (b) The convening and holding of the meeting of the shareholders/members of all the applicant companies to consider and approve the Scheme of Amalgamation, be dispensed ;

Heard the learned Counsel 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 :

1. In view of the fact that all the equity shareholders of the Transferee Company and the Transferor Companies have given their unconditional consent for dispensing with the meeting of the equity shareholders, by way of affidavits, to the proposed Scheme of Amalgamation, the requirement of convening and holding of separate meetings of the equity shareholders of the Transferee Company and the Transferor Companies, are dispensed with ;
2. In view of the fact that there are no Secured Creditors of all the Applicant Companies, as certified by the respective Auditors, convening and holding of separate meetings of the Secured creditors of the Applicant Companies, does not arise ;
3. In view of the fact that there are no unsecured creditor of the Applicant Company No. 1, namely, Anand Pinky Properties Pvt. Ltd., the Transferor Company, as certified by the respective

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Auditor, convening and holding of separate meeting of the unsecured creditors of the Applicant Company No.1, does not arise ;

4. In view of the fact that all the Unsecured Creditors of the Applicant Company Nos. 2 & 3, namely, Koyel Properties Pvt. Ltd., the Transferor Company and Fabulous Commercial Pvt. Ltd., the Transferee Company, have given their respective unconditional consent for dispensing with the meeting of the Unsecured Creditors, by way of affidavits, as certified by the respective Auditors, to the proposed Scheme of Amalgamation, the requirement of convening and holding of separate meetings of the Unsecured Creditors of the Applicant Company Nos. 2 & 3, are dispensed with ;

5. 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 Application 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 through E-Mail and by Speed Post, both, as also on the Official Liquidator, having jurisdiction over the

Applicant 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, by 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 ;

6. The Applicants shall file affidavit within 7 days of serving the notice regarding the service of notice ;

7. 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 their Advocates, in advance ;

8. 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 ;



9. Objections, if any, to the scheme contemplated by the authorities to whom notice has been given, may be filed within the time stipulated, failing which it will be considered by this Tribunal that there is no objection to the approval of the Scheme of Amalgamation on the part of the authorities, subject to other conditions being applicable under the Companies Act, 2013 and relevant rules made thereunder ;

The Company Application bearing No. CA(CAA) No. 232/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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(Jināh K.R.)
Member(Judicial)

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