

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CA(CAA)No.16/KB/2018

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)

In the matter of :

An application under Sections 230(1) to 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013.

IN THE MATTER OF:

RAINBOW IRON & STEEL SUPPLIERS PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Paridhan Garment Park, 19, Canal South Road, SDF-1, 4th Floor, A501-A502, Kolkata 700 015 in the State of West Bengal, under the above jurisdiction.

.... Transferor Company

And

VEDANT FASHIONS PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Paridhan Garment Park, 19, Canal South Road, SDF-1, 4th Floor, A501-A502, Kolkata 700 015 in the State of West Bengal, under the above jurisdiction.

.... Transferee Company

Counsels on Record:

1. Mr. D.N. Sharma, Advocate } For the Applicants.
2. Mr. T. Khaitan, Advocate }

Date of pronouncement of order: 19/02/2018

ORDER

Shri Jinan K.R., Member (J)

ORDER

1. This is an application filed by the applicants namely M/s Rainbow Iron & Steel Suppliers Private Limited ("transferor company") and M/s. Vedant Fashions Private Limited ("transferee company") under Section 230(1)/ Section 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the proposed Scheme of Amalgamation of the transferor company with the transferee company. The aforesaid Scheme is annexed as Annexure "I" to the application. In the Affidavit, the applicants have annexed in Annexure "M" consents by affidavits of all the Equity Shareholders and Unsecured Creditors of the transferor company. The transferor company does not have any Secured Creditors. The applicants have annexed the list of shareholders and creditors of the applicant companies duly certified by JMP Associates, Chartered Accountants.

3. M/S RAINBOW IRON & STEEL SUPPLIERS PRIVATE LIMITED (CIN U51109WB2008PTC123978) having PAN number AAECR2960F, a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at Paridhan Garment Park, 19 Canal South Road, SDF-1, 4th Floor, A501-A502, Kolkata 700 015. M/s Rainbow Iron & Steel Suppliers Private Limited (Transferor Company) was incorporated on 11.03.2008 under the name and style of "Rainbow Iron & Steel Suppliers Private Limited" as a private company limited by shares under the provisions of the Companies Act, 1956. The authorized share capital of the Transferor Company as on 31.03.2017 was Rs.5,00,000/- divided into 50,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid up share capital of the transferor company as on 31.03.2017 was Rs.5,00,000/- divided into 50,000 Equity Shares of Rs.10/- each fully paid up. A copy of the Annual Accounts and Directors' and Auditors' Reports of the Transferor Company for the financial year ending 31.03.2017 is annexed with the application and marked "C". Subsequently, on 10.11.2017 the Transferor Company has increased its authorized share capital and the same is presently Rs.10,00,000 divided into 5,00,000 equity shares of Rs.2 each. Further on 10.11.2017, the Transferor Company has carried out stock split of 1 shares to 5 and on 29.11.2017 has issued 2,50,000 bonus shares as a result whereof the issued, subscribed and paid up share capital of the Transferor Company has become Rs.10,00,000 divided into 5,00,000 shares of Rs.2 each.

4. The objects of the Transferor Company are to carry on the business as marketing, suppliers, processors, refineries, agents or merchants in all

kinds and form of ferrous and non-ferro metal, steel, alloys and metals required for or used in industrial defense, agricultural transport, commercial, domestic building power transmission and/or construction purposes.

6. M/S VEDANT FASHIONS PRIVATE LIMITED, Transferee Company was incorporated on 24.05.2002 as a private company limited by shares under the provisions of the Companies Act, 1956. M/s Vedant Fashions Private Limited has CIN U51311WB2002PTC094677 and PAN No. AAECR2960F. The authorized share capital of the Transferee Company as on 31.03.2017 was Rs.12,00,00,000/- divided into 1,20,00,000 Equity Shares of Rs.10/- each. The issued, Subscribed and Paid up Share Capital of the Transferee Company as on 31.03.2017 was Rs.11,85,72,800/- divided into 1,18,57,280 equity shares of Rs.10 each fully paid up. Subsequently, on 10.07.2017, the Transferee Company has increased its authorized share capital to Rs.15,00,00,000/- divided into 1,50,00,000 equity shares of Rs.10 each. Thereafter, on 22.11.2017 the Transferee Company has further increased its authorized share Capital and the same is presently Rs.30,00,00,000 divided into 15,00,00,000 equity shares of Rs.2 each. Further, on 22.11.2017 the Transferee Company the Transferee Company has carried out stock split of 1 shares to 5 shares and on 5.12.17 has issued 6,25,57,585 bonus shares, as a result whereof, the issued, subscribed and paid up share capital of the Transferee Company has become Rs.25,02,30,340/- divided into 12,51,15,170 equity shares of Rs.2 each. A copy of the Annual Accounts and Auditors' Reports of the Transferee Company for the financial year ending on 31st March 2017 is annexed with the application and marked "G".

7. The objects of the Transferee Company is to acquire and take over the whole or any part of goodwill, business concern, property rights, assets and liabilities of proprietorship business and to carry on the business as manufacturers, designers, traders, dealers, wholesalers, agents, distributors, consigners, consignee, commission agent, retailers, combbers, job work, scourers, spinners, weavers, finishers, dyers, tailors and drapers, cutters, importers and exporters of all garments and to open and operate show rooms, departmental stores or any other retail outlets.

8. The object of this Application is to ultimately obtain sanction of this Hon'ble Tribunal to a Scheme of Amalgamation of the Transferor Company with the Transferee Company on the terms of the Scheme of Amalgamation, a copy of which has been annexed with the application and marked "I".

9. Vide this application the applicants sought the following reliefs:

- (a) That convening of meetings of the Equity Shareholders and Unsecured Creditors of the Transferor Company be dispensed with;
- (b) That meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferee Company be convened and held at Paridhan Garment Park, 19, Canal South Road, SDF-1, 4th Floor, A501-A502, Kolkata 700 015 or at such other place as may be deemed fit by this Tribunal to consider and approve the said Scheme of Arrangement and for necessary directions as to

the issue of notices for convening, holding and conducting of the meetings proposed and for the publication of advertisements pursuant to sub-section (1) of Section 232 of the Companies Act, 2013;

(c) Direction be issued to serve notices upon the Registrar of Companies, West Bengal; the Regional Director and Income Tax Authorities in which the Applicants have jurisdiction pursuant to sub-section (5) of Section 230 of the Companies Act, 2013.

10. It is further stated in the application that the object of this application is to ultimately obtain sanction of the Tribunal to a Scheme of Amalgamation of the Transferor Company with the Transferee Company on the terms and conditions fully stated in the said Scheme annexed with the application as "I". To justify sanction of this amalgamation, the following main points have been made.

(i) The proposed amalgamation shall enable better, efficient and economical management, control and running of the businesses and will prove beneficial for capitalizing on the growth opportunities to the fullest extent for the Transferor Company and the Transferee Company.

(ii) The proposed amalgamation and vesting of the Transferor Company into the Transferee Company would be in the interest of the shareholders, creditors, employees and other stakeholders, or both the Applicants, as it would enable a focused business approach for the maximization of benefits of all stakeholders.

11. The Board of Directors of both the applicants, have, at their respective meetings, by resolutions passed unanimously, approved the

Scheme of Amalgamation. It is further stated in the application that the aggregate assets of both the Applicants (combined) are more than sufficient to meet their aggregate liabilities. Further, the aggregate assets of the Transferee Company are more than sufficient to meet the liabilities. The said Scheme will not adversely affect the rights of any of the creditors of the Applicants in any manner whatsoever as due provisions have been made for payment of all liabilities as and when the same fall due in usual course.

12. There are no proceedings pending under Sections 210, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224 and 225 of the Companies Act, 2013 and / or Sections 235 to 251 of the Companies Act, 1956 against the Applications.

13. The sectoral / statutory / regulatory involved in this Scheme are (i) Regional Director, Eastern Region, Kolkata, (ii) Registrar of Companies, West Bengal and (iii) Income Tax Authorities and the applicants are seeking orders to serve notice on such sectoral / statutory / regulatory authorities, including Securities Exchange Board of India, stock exchanges, Reserve Bank of India and/ or the Competition Commission of India, who will be affected by the proposed Scheme. Accordingly, it is stated in the application, that no approval / no-objection is required to be obtained from the said authorities.

14. On perusal of the list of shareholders and creditors of the applicants, we observe as under:

As on 14th December 2017 the Transferor company had 2 equity

shareholders and 1 Unsecured Creditor. The Transferor company did not have any Secured Creditors. The Transferee company had 7 equity shareholders, 4 Secured Creditors and 1012 Unsecured Creditors.

15. Heard the Learned Counsel for the applicants and perused the records. Taking into consideration the above, the convening of meetings of equity shareholders and unsecured creditors of the transferor company are hereby dispensed with.

16. The following directions are issued in relation to calling, convening and holding of the meetings of the equity shareholders, secured creditors and unsecured creditors of the transferee company:

(1) Meetings will be convened and held as under:

(a) Meeting of the equity shareholders of Vedanta Fashions Private Limited ("transferee company") shall be convened and held at Paridhan Garment Park, 19, Canal South Road, SDF-1, 4th floor, A501-A502, Kolkata 700 015 on Tuesday, the 27th day of March, 2018 at 3.00 P.M. for the purpose of considering, and if thought fit approving, with or without modification, the proposed Scheme of Amalgamation of the transferor company with the transferee company;

(b) Meeting of the secured creditors of Vedant Fashions Private Limited ("transferee company") shall be convened and held at Paridhan Garment Park, 19, Canal South Road, SDF-1, 4th floor, A501-A502, Kolkata 700 015 on Tuesday, the 27th day of March, 2018 at 3.30 P.M. for the purpose of considering, and if thought fit approving, with or

without modification, the proposed Scheme of Amalgamation of the transferor company with the transferee company; and

- © Meeting of the unsecured creditors of Vedant Fashions Private Limited ("transferee company") shall be convened and held at Paridhan Garment Park, 19, Canal South Road, SDF-1, 4th floor, A501-A502, Kolkata 700 015 on Tuesday, the 27th day of March, 2018 at 4.00 P.M. for the purpose of considering, and if thought fit approving, with or without modification, the proposed Scheme of Amalgamation of the transferor company with the transferee company.

(d) The quorum for the meetings of the equity shareholders, secured creditors and unsecured creditors of the transferee company will be as per Section 103 of the Companies Act, 2013. If the quorum is not present at the commencement of the meeting(s), the meeting(s) would be adjourned for 30 minutes and thereafter, the members or creditors, as the case may be, present in person or through proxy would be treated as proper quorum as per Section 103 (2) of the Companies Act, 2013.

17. Mr. Siddhartha Murarka, practising Company Secretary is appointed as the Chairperson for the meetings to be held under this order and the relevant law. The Chairperson shall be paid Rs.50,000/- (Rupees Fifty Thousands only) lump sum for his services as the Chairperson.

18. At least one month before the aforesaid date of the said meetings, an advertisement about convening of the meetings indicating the place, day, date and times, as aforesaid, shall be published in the

“Financial Express and “Pratidin”, in the Bengali Daily. The publication shall indicate the time within which copies of the scheme shall be made available to the concerned persons free of charge from the registered office of the transferee company. The publication shall also indicate that the Statement containing necessary details required to be furnished pursuant to Section 102 read with Sections 230 to 232 of the Companies Act, 2013 and the prescribed form of proxy can be obtained free of charge at the registered office of the transferee company or at the office of their Advocates M/s. Khaitan & Co, Emerald House, 1B, Old Post Office Street, Kolkata 700 001 in accordance with second proviso to sub-section (3) of Section 230 of the Act and Rule 7 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 [“Companies (CAA) Rules, 2016”].

19. At least one month before the aforesaid date of the said meetings of the equity shareholders, secured creditors and unsecured creditors of the transferee company, a notice convening meetings in Form C.A.A.2 indicating the day, date, place and times as aforesaid together with a copy of the Scheme, copy of statement required to be furnished pursuant to Section 102 of the Act read with Section 230 (3) of the Act and Rule 6 of Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the said equity shareholders, secured creditors and unsecured creditors of the transferee company at their respective registered or last known addresses either by registered post or speed post / Airmail or through courier or by e-mail. The notice shall sent to the equity shareholders, secured creditors and unsecured creditors of the transferee company with reference to the list of persons

appearing on the record of the transferee company as on 14th December, 2017.

20. The applicant companies shall individually send notice to 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 officers and Chief Commissioner of Income Tax with PAN numbers along with copies of required documents and disclosures required under the provisions of Section 230(5) of the Companies Act, 2013 in Form No. CAA.3 of the Companies (CAA) Rules, 2016 with necessary variations incorporating the directions therein, by sending the same by hand delivery through special messenger or by registered post or speed post after the notice is sent to the equity shareholders, secured creditors and unsecured creditors of the transferee company, for filing their representation, if any, within 30 days from the date of notice. 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. 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.

21. Voting of the meetings shall be allowed on the proposed Scheme by voting in person or by proxy.

22. The Chairperson shall be responsible to report the results of the meetings within 3 days of the conclusion of the meetings with a vote on the proposed scheme.

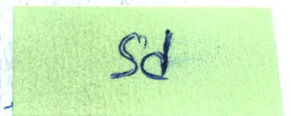
23. The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

24. All the aforesaid directions are to be complied with in accordance with the applicable law including forms and formats contained in the Companies (CAA) Rules, 2016 as well as the provisions of the Companies Act, 2013. The undertaking of the authorized representatives of the applicant companies to this effect is accordingly taken on record.

25. The application being C.A. ~~(CAA)~~ No.16/KB/ 2018 is disposed of accordingly.

26. There shall be no orders as to costs.

27. Urgent Photostat certified copies of this Order, if applied for, be supplied to parties upon compliance of all requisite formalities.



(K R Jinan)
Member (J)

Signed on 19th day of February 2018.

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