

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Company Petition No. CP(CAA) No. 585/KB/2017

In the matter of:

Sections 232(3) of the Companies Act, 2013
read with Rule 15 of the Companies
(Compromises, Arrangements and
Amalgamations) Rules, 2016

And

In the matter of:

1. ALERT CONSULTANTS & CREDIT PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered Office at 22, RN Mukherjee Road, 3rd Floor, Kolkata - 700 001, West Bengal within the aforesaid jurisdiction.

2. STANDARD COMMUNICATION PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered Office at 22, RN Mukherjee Road, 3rd Floor, Kolkata - 700 001, West Bengal within the aforesaid jurisdiction.

3. VISHESHWAR COMMERCIAL PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered Office at 22, RN Mukherjee Road, 3RD Floor, Kolkata - 700 001, West Bengal within the aforesaid jurisdiction.

4. CENTURY BARTER PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered Office at 24A, Rabindra Sarani, GR Floor, Kolkata - 700 073, West Bengal within the aforesaid jurisdiction.

5. KUNDAN VYAPAAR PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered Office at 22, RN Mukherjee Road, 3rd Floor, Kolkata - 700 001, West Bengal within the aforesaid jurisdiction.

6. MANOHAR DEALERS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered Office at 7B, Palm Avenue, Flat No. 1B, 1st Floor, Ballygunge, Kolkata - 700 019, West Bengal within the aforesaid jurisdiction.

7. GAJRAJ NIKETAN LIMITED, a company incorporated under the Companies Act, 1956 and having its registered Office at 22, RN Mukherjee Road, 3rd Floor, Kolkata - 700 001, West Bengal within the aforesaid jurisdiction.

8. TRIBHUWAN FINANCIAL ADVISORY PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered Office at 22, RN Mukherjee Road, 3RD Floor, Kolkata - 700 001, West Bengal within the aforesaid jurisdiction.

And

1. ALERT CONSULTANTS & CREDIT PRIVATE LIMITED
2. STANDARD COMMUNICATION PRIVATE LIMITED
3. VISHESHWAR COMMERCIAL PRIVATE LIMITED
4. CENTURY BARTER PRIVATE LIMITED
5. KUNDAN VYAPAAR PRIVATE LIMITED
6. MANOHAR DEALERS PRIVATE LIMITED
7. GAJRAJ NIKETAN LIMITED
8. TRIBHUWAN FINANCIAL ADVISORY PRIVATE LIMITED

For the Petitioners :

1. Mr. DN Sharma, Advocate
2. Ms. Neha Somani, Pr. CS
3. Ms. Bidisha Achari, Pr. CS

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Ms. Tia Inla, Deputy Director, C/o. Regional Director, Eastern Region, Ministry
of Corporate Affairs

Date of Pronouncing the order : 12-1-18

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

Per Jinan K. R., Member(Judicial)

ORDER

The object of this Petition is to obtain sanction of this Tribunal to a Scheme of Amalgamation proposed to be made between the Transferee Company, namely, Alert Consultants & Credit Private Limited, the Transferor Companies, namely, Standard Communication Private Limited, Visheshwar Commercial Private Limited, Century Barter Private Limited, Kundun Vyapaar Private Limited, Manohar Dealers Private Limited, Gajraj Niketan Limited and Tribhuwan Financial Advisory Private Limited and their respective shareholders whereby and where under the entire undertaking of the Transferor Companies as a going concern, together with all its assets and liabilities will stand transferred to and vested in the Transferee Company with effect from 01-04-2016, appointed date, in a manner as provided in the Scheme of Amalgamation, duly consented to by the shareholders of the Petitioner Companies through their written consent by way of affidavit.

A copy of the Scheme of Amalgamation is annexed with the Petition and marked "A".

It is stated in the Petition that all the petitioner companies are companies under the same management group.

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By the Scheme of Amalgamation, the financial resources of all the companies will be conveniently merged and pooled together leading to a more effective and centralised management and reduction of administrative expenses and overheads which are presently being multiplied because of separate entities.

The amalgamation of the Transferee Company and the Transferor Companies will combine synergies and enable the amalgamated company to focus on their core business.

The amalgamation will lead to growth prospects for personnel and organisations connected with these companies and thus will be in the interest of and for the welfare of the employees of the companies concerned in this Scheme of Amalgamation and will also be in the larger interest of all concerned.

The Board of Directors of the Petitioner Companies have, at their respective meetings held on 27-02-2017 by resolutions passed unanimously, approved the Scheme of Amalgamation of Standard Communication Private Limited, Visheshwar Commercial Private Limited, Century Barter Private Limited, Kundun Vyapaar Private Limited, Manohar Dealers Private Limited, Gajraj Niketan Limited and Tribhuwan Financial Advisory Private Limited, the Transferor Companies with Alert Consultants & Credit Private Limited, the Transferee Company.

The Copies of the said resolutions have been annexed with the Company Application No. CA(CAA) No.260/KB/2017 filed before this Tribunal.

It is submitted in the Petition that the aggregate assets of the Petitioner Companies are sufficient to meet all their liabilities and the said Scheme will not adversely affect the rights of any of the creditors of the Petitioner Companies in any manner whatsoever and due provisions have been made for payment of all the liabilities as and when the same fall due.

By an Order dated 02-08-2017 passed by this Tribunal in Company Application CA(CAA) No. 260/KB/2017 and CA(CAA) No. 261/KB/2017, holding of meetings of

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the shareholders and the creditors of the petitioner companies was dispensed with, in view of the respective written consent given by the shareholders and the creditors of the Petitioner companies by way of affidavits.

It is stated in the Petition that the Petitioner Companies, in compliance of the Order dated 02-08-2017 of this Tribunal, served notice in Form CAA.3 upon the Central Government through the Regional Director, Eastern Region, Registrar of Companies, West Bengal, Reserve Bank of India and Income Tax Department together with the copy of the Scheme of Amalgamation and the statement as required under Section 232 read with Section 230 of the Companies Act, 2013.

The copy of the individual notices dated 17-08-2017 is enclosed with the Petition and marked "K".

The Petitioner Companies, in compliance of the said Order of this Tribunal dated 02-08-2017 serviced notice upon the Creditors of the Company as on the date of the Order i.e. 02-08-2017 in the same manner as notice served upon the various authorities as per Section 230(5) of the Companies Act, 2013.

The joint advertisement of despatch of notice to the Creditors was also advertised as directed by the said Order of this Tribunal dated 02-08-2017 once in "AAJKAAL", Bengali Newspaper and once in the "The Business Standard", English Newspaper on 18-08-2017.

A copy of the individual notices dated 17-08-2017 is annexed with the Petition and marked "M".

In compliance of the said Order dated 02-08-2017 of this Tribunal and Rule 12 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016, the Petitioner Companies filed an Affidavit in compliance of all the conditions laid down in the Order with the Registry on 23-08-2017.

A copy of the said Affidavit is annexed with the Petition and marked "N".

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It is stated in the Petition that the proceedings as specified in Section 232(1) and 232(2) have been complied with.

In compliance of proviso to Section 230(7) of the Act, the statutory auditor of the Company by certificate dated 04-04-2017 certified that the accounting treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards prescribed under Section 133 of the Act.

A copy of the said Certificate is attached with the Petition as Annexure "O".

It is stated in the Petition that the sanctioning of the Scheme of Amalgamation will be for the benefit of the companies and their shareholders, creditors, employees and all concerned and no one will be prejudiced.

The Regional Director, Eastern Region, Ministry of Corporate Affairs at Kolkata vide his affidavit dated 08-01-2018, on behalf of the Central Government, has observed that on examination of the report of the Registrar of Companies, West Bengal it appeared that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. The petitioner companies are also up dated in filing their statutory returns.

It is further observed by the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata that on examination of the proposed Scheme of Amalgamation, it appeared that the proposed Scheme of Amalgamation is not prejudicial to the interest of members/shareholders and/or public.

The Central Government has, therefore, decided that the instant petition/scheme need not be opposed.

The Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata has further submitted vide the said affidavit dated 08-01-2018 that the Transferee Company is registered with Reserve Bank of India as NBFC and all the transferor

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companies are doing the business of sale and purchase of yarn and other activities including sale and purchase of shares and the clauses 10 and 11 of PART V of the proposed Scheme of Amalgamation speaks about the grounds on which the Scheme of Amalgamation is not necessary to take approval from the Reserve Bank of India.

The Regional Director, Eastern Region, Ministry of Corporate Affairs, in his said affidavit dated 08-01-2018 has further submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the Scheme was forwarded to the Income-Tax Department on 28-08-2017 with a request to forward their comments/observations/objections, if any, on the proposed Scheme of Amalgamation within 15 days. However, the said authority vide letter dated 19-09-2017, 17-10-2017, 07-11-2017 and 22-12-2017 forwarded the report relating to M/s. Tribhuwan Financial Advisory Private Limited, M/s. Kundan Vyapaar Private Limited, M/s., Vishveshwar Commercial Private Limited and M/s. Gajraj Niketan Limited. The said reports are attached with the affidavit as Annexure "A".

The Official Liquidator vide his report dated 02-01-2018 has observed that after scrutiny of the report submitted by the Chartered Accountant and other relevant papers and records etc., submitted by the Authorised representatives of the applicants, the Official Liquidator is of the opinion that the affairs of the Transferor Companies, namely Standard Communication Private Limited, Visheshwar Commercial Private Limited, Century Barter Private Limited, Kundun Vyapaar Private Limited, Manohar Dealers Private Limited, Gajraj Niketan Limited and Tribhuwan Financial Advisory Private Limited, have not been conducted in a manner prejudicial to the interest of their members or to public.

Heard the arguments of the Ld. Counsel for the petitioner Companies.

In view the facts stated above, the following orders in terms of prayers made in the petition, with modification by this Tribunal, are passed :

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- a) The Scheme of Amalgamation, being Annexure "A" to the petition is sanctioned as to be binding on all the equity shareholders of the Petitioner companies and all concerned with effect from 01-04-2016 ;
- b) All the assets and properties and interest of the Transferor Companies be transferred without any further act or deed to Transferee Company and become the assets and vest in the Transferee Company with all the estate and interest of the Transferor Companies pursuant to Section 232 read with Section 230 of the Companies Act, 2013 ;
- c) All the liabilities and duties of the Transferor Companies be transferred without further act or deed to Transferee Company and shall become liabilities and duties of the Transferee Company pursuant to Section 232 read with Section 230 of the Companies Act, 2013 ;
- d) All employees of the Transferor Companies to be transferred to the Transferee Company ;
- e) All proceedings and/or suit and/appeals now pending by or against the Transferor companies shall be continued by or against the Transferee Company ;
- f) Leave is granted to the petitioners to file the schedule of Assets of the Transferor companies within four weeks of the date of this Order ;
- g) The Transferor Companies and the Transferee Company do within 30 days after the date of this Order, cause a certified copy thereof to be delivered to the Registrar of Companies, West Bengal for registration ;
- h) The Transferee company to allot equity shares to the shareholders of the Transferee company post amalgamation ;

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
- i) The Transferor Company shall within 30 days of receipt of this order cause a certified copy of this Order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company and register with him on the file kept by him in relation to the Transferee Company and the files relating to the said two companies shall be consolidated accordingly ;
- j) Post dissolution of the Transferrer Companies, the fee paid by the Transferor Companies on their Authorised share Capital to be set off against the fee payable by the Transferee Company on is Authorised Share Capital subsequent to the amalgamation.

Any person interested shall be at liberty to apply before this Tribunal in the above matter for such directions as may be necessary.


In the event of the petitioner Companies supplying the legible computerized print out of the scheme and schedule of assets in acceptable form to the department, the department will append such computerized print-out, upon verification to be certified copy of the order without insisting on a hand-written copy thereof.

Accordingly, the Company Petition bearing No. CP(CAA) No. 585/KB/2017 stands disposed of.

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

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(V.P. Singh)
Member(Judicial)
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(Jinan K. R.)
Member(Judicial)