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IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Company Petition No. CP(CAA) No. 577/KB/2017

In the matter of:

Sections 230 to read with Section
232 of the Companies Act, 2013

And

In the matter of:

CANBERRA TRADERS PRIVATE
LIMITED, a company incorporated
under the Companies Act, 1956
and having its registered Office at
Birla Building, 9/1, RN Mukherjee
Road, Kolkata – 700 001, West
Bengal within the aforesaid
jurisdiction.

.. Petitioner No. 1

MUDRA FINTRADE PRIVATE LIMITED,
a company incorporated under
the Companies Act, 1956 and
having its registered Office at Birla
Building, 9/1, RN Mukherjee Road,
Kolkata – 700 001, West Bengal
within the aforesaid jurisdiction.

.. Petitioner No. 2

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WINTECH TEL-COM PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered Office at Birla Building, 9/1, RN Mukherjee Road, Kolkata - 700 001, West Bengal within the aforesaid jurisdiction.

Petitioner No.3

For the Petitioners : 08.01.2018

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

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

Date of Pronouncing the order :

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

Per V.P. Singh, Member(Judicial)

ORDER

The Scheme of Amalgamation envisages merger of Mudra Fintrade Private Limited and Wintech Tel-Com Private Limited, the "Transferor

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Companies" with Canberra Traders Private Limited, the "Transferee Company" under the provisions of Section 230 to 232 of the Companies Act, 2013 read with relevant rules made thereunder.

The object of this Petition is to ultimately obtain the sanction of this Tribunal to a scheme of Amalgamation proposed to be made between the Transferee Company, Transferor Companies and their respective shareholders whereby and where under the entire undertaking of the Transferor Companies with all assets and liabilities relating thereto as a going concern is proposed to be transferred to and vested in the Transferee Company.

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

It is stated in the affidavit filed on 26-12-2017 by the Petitioner Companies that all the Petitioner Companies are Non-deposit taking Non Banking Financial Company registered with Reserve Bank of India and that the shares of none of the Petitioner Companies are listed with any Stock Exchange.

It is also stated in the said affidavit dated 26-12-2017 filed by the Petitioner Companies that the proposed Scheme of Amalgamation will not attract the provisions of the Competition Act, 2002 and hence no approval of the Competition Commission of India is required.

It is stated in the Petition that the Reserve Bank of India vide Notification No. DNBS.132/CGM(VSNM)-99 dated 21-04-1999 stipulated

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the minimum Net Owned Fund("NOF") requirement for new companies applying for grant of CoR to commence business of an NBFC at Rs. 200 lakh.

Although the requirement of minimum NOF at present stands at Rs. 200 lakh, the minimum NOF for companies that were already in existence before 21-04-1999 was retained at Rs. 25 lakh.

Since the Transferor Companies and the Transferee Company were companies in existence before 21-04-1999, the minimum NOF requirement for them was Rs. 25 lakh only. However, the Reserve Bank of India vide notification No. RBI/2014-15/299 DNBR(PD) CC. No. 002/03.10.001/2014-15 dated 10-11-2014, has stipulated that it shall be mandatory for all the NBFCs to attain a minimum NOF of Rs. 200 lakhs by the end of March, 2017.

In view of the above RBI Notification and to comply with the minimum NOF requirement, the Petitioner Companies have proposed to merge Mudra Fintrade Private Limited and Wintech Tel-Com Private Limited, the Transferor Companies with Canberra Traders Private Limited, the Transferee Company, leading to increase in the post merger NOF of Transferee Company, Canberra Traders Private Limited to Rs. 350.16 Lakhs.

It is further submitted in the Petition that the proposed Scheme of Amalgamation shall also result in consolidation of the business in one entity and strengthen the position of the merged entity, by enabling it to harness and optimize the synergies of the applicant companies.

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Accordingly, it would be in the best interests of the shareholders of the Transferor Companies and the Transferee Company.

It is also stated in the Petition that all the applicant companies belong to the same management group, thus post merger, there shall be no change in the management and control of the Transferee Company.

The amalgamation of the Transferor Companies with the Transferee Company would lead to a more efficient utilisation of capital for future growth of the amalgamated entity.

The amalgamation will result in administrative and operational rationalisation, organisational efficiencies, reduction in overheads and other expenses and optimal utilisation of various resources.

It will prevent cost duplication and the resultant operations would be substantially cost-efficient. Consequently, the Transferee Company will offer a strong financial structure and facilitate resource mobilization and achieve better cash flows.

The synergies created by the amalgamation would increase the operational efficiency and integrate business functions.

It is stated in the Petition that the amalgamation will provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilisation of existing resources and provide an opportunity to fully leverage assets, capabilities, experience and infrastructure of the companies.

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The amalgamation will also reduce the managerial overlaps involved in operating different entities, ease and increase operational and management efficiency, integrate business functions, and eliminate duplication and rationalisation of administrative expenses.

It is also stated in the Petition that greater efficiency in cash management of the Transferee Company and unfettered access to cash flow generated by the combined businesses can be deployed more efficiently to fund organic and inorganic growth opportunities to maximise shareholder value.

The improved organisational capability and the leadership arising from the pooling of human capital that has diverse skills, talent and vast experience will compete successfully in an increasingly competitive industry.

The cost savings are expected to flow from more focussed operational efforts, rationalisation, standardization and simplification of business processes, productivity improvements, improved procurement; and synchronizing of efforts to achieve uniform corporate policy.

The Board of Directors of the Petitioner Companies have, at their respective meetings held on 30-03-2017 by resolutions passed unanimously, approved the Scheme of Amalgamation of the Transferor Companies with Canberra Traders Private Limited, the Transferee Company.

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The copy of the Board Resolution is annexed to this petition and marked as Annexure -"E".

An application CA(CAA) No. 279/KB/2017 was made before this Tribunal seeking dispensation of the meeting of the members and of the Petitioner Companies in view of their written consent provided for the proposed Scheme of Amalgamation.

This Tribunal by its Order dated 23-08-2017 has dispensed with the convening of the meeting of the equity shareholders of all the petitioner companies.

In compliance of the order of this Tribunal dated 23-08-2017, notice was duly published once in the "AAJKAL" Bengali Newspaper and once in the "The Business Standard", English Newspaper on 13-09-2017 vide affidavit of service attached with the Petition as Annexure-I at page 196 of the Petition.

Further, in compliance of the order of this Tribunal dated 23-08-2017 and in terms of Section 230(5) of the Companies Act, 2013, notice in form CAA.3 along with the Scheme of Amalgamation, Explanatory statement disclosing necessary details in terms of Companies Act, 2013 was duly served upon the Central Government through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal, Income-Tax Authorities within whose jurisdiction the assessment of the Petitioner Companies are made and the Official Liquidator.

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The copy of the Affidavit of service is attached to this Petition as Annexure-I at page 179-222.

In compliance with Section 230(7) of the Act, Statutory Auditor of the Transferee Company has certified that the Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards under Section 133 of the Act.

A copy of the said certificate is attached to this Petition as Annexure-J at page 223.

The Regional Director, Eastern Region, Ministry of Corporate Affairs at Kolkata vide his affidavit dated 03-01-2018, 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.

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The Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata has further submitted vide the said affidavit dated 03-01-2018 that the Petitioner Companies are registered with Reserve Bank of India as NBFCs. and with regard to NOC from RBI, the Petitioner Companies vide letter dated 20-09-2017 stated that "NOC from Reserve Bank of India in the instant case is not applicable as the amalgamation will not result in change of the shareholding beyond the specified limit".

The Regional Director, Eastern Region, Ministry of Corporate Affairs, in his said affidavit dated 03-01-2018 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 07-09-2017 with a request to forward their comments/observations/objections, if any, on the proposed Scheme of Amalgamation and the reply letter dated 13-10-2017, received from the said authority with regard to one of the Transferor Company, namely, M/s., Wintech Tel-Com Private Limited is enclosed with the affidavit as Annexure "A" wherein it has been stated that Wintech Tel-Com Pvt. Ltd.(PAN : AAACW2196C) is assessed by the IT Department and as on date, no income tax demand is outstanding against the said company.

The Official Liquidator vide his report dated 02-01-2018 has observed that after scrutiny of the report submitted by the Chartered Accountant, the Official Liquidator is of the opinion that the affairs of the Transferor Companies, namely Mudra Fintrade Private Limited and Wintech Tel-Com Private Limited, have not been conducted in a manner prejudicial to the interest of their members or to public.

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

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

- 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 ;

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- 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 shares to the shareholders of the Transferee company post amalgamation ;
- i) Leave is hereby granted to file application before this Tribunal for dissolution of the Transferor Companies without winding up ;

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

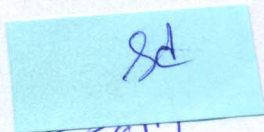
In the event of the petitioner Companies supplying the legible computerized print out of the scheme and schedule of assets in acceptable form to the department, the department will append such computerized print-out, upon verification to be certified copy of the order without insisting on a hand-written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

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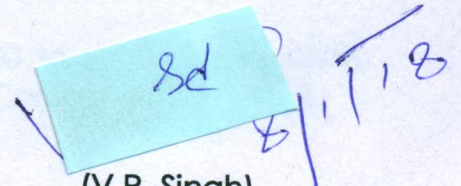
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Accordingly, the Company Petition bearing No. CP(CAA) No. 577/KB/2017 stands disposed of.

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



(Jinan K.R.)
Member(Judicial)



(V.P. Singh)
Member(Judicial)

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