

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

CA(CAA) NO.551/KB/2017

In the matter of :

An application under Section 230 to 232 of
the Companies Act 2013 ;

And

In the matter of:

1. BANSAL POLES LIMITED, a company
incorporated under the Companies Act, 1956
and having its registered office at "Fortuna
Tower", 23A, Netaji Subhas Road, 8th Floor,
Room No. 9, Kolkata - 700001 within the
aforesaid jurisdiction.

.....Transferee Company/Applicant

And

In the matter of :

2. GIRIRAJ GOODS PRIVATE LIMITED, a
company incorporated under the
Companies Act, 1956 and having its
registered at, 187, Rabindra Sarani, 2nd

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Floor, Room No - 70, Kolkata - 700007
within the aforesaid jurisdiction.

..... Transferor Company APPLICANT

For the Applicants :

CS Sneha Khaitan, PCS

Date of pronouncement of Order :

19/1/18

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

ORDER

Per : Shri VP Singh, Member (J)

This is a joint application filed by the applicants for sanctioning of the Scheme for Amalgamation of M/s. Bansal Poles Limited, Transferee Company and the Applicant No.1 with Giriraj Goods Private Limited, Transferor Company and Applicant No.2 under the provisions of the Companies Act, 2013 whereby and where under all the undertakings of the Transferor Company together with all the assets and liabilities relating thereto as going concern is proposed to be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the Scheme of Amalgamation (with effect from the Transfer Date or Appointed Date being 1st April, 2017), annexed with the Application as "Annexure A-25".

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It is stated by the applicant that the aforesaid Scheme of Amalgamation will be of benefit to all concerned and is not opposed to public policy.

It is submitted by the Applicants that the Balance Sheet of Bansal Poles Limited, the Transferee Company and Giriraj Goods Private Limited, Transferor Company, as on 31-03-2017, have been duly audited and the audited balance sheet as on the said date, related statement of profit and loss accounts and the auditor's report thereon are annexed with the application marked "Annexure A-26" and "Annexure A-28".

The unaudited Supplementary balance sheet and statement of profit and loss accounts of both the Applicant Companies, as on 30-09-2017 are also annexed and marked as "Annexure A-27" and "Annexure A-29".

The Applicant Companies have also declared that, subsequent to the date of the aforesaid balance sheet there has been no substantial change in the financial position of both the applicant Companies, except those arising or resulting from the normal course of business.

The applicants submitted that the proposed re-alignment will create enhanced value for all stakeholders of the companies as it would facilitate focused strategy, direction and business planning to optimize operational, managerial, financial, technical and marketing capabilities of each business. It will help in optimization of the resources and reduction of the operational costs.

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The Transferee Company has been authorized by its Memorandum by Clause 18 to enter into an Amalgamation including Amalgamation with another company.

Similarly, the Transferor Company has also got similar power to transfer of business under Clause 18 of its Memorandum of Association, respectively.

The Board of Directors of the Transferee Company and the Transferor Company respectively have, at their Board meetings, held on 10-11-2017, approved and resolved to carry out the said Scheme of Amalgamation.

The relevant extracts from the minutes of the meeting of the Board of Directors of all the applicant companies held on 10-11-2017 is also annexed with the application and marked as "Annexure A-30".

The applicants further submitted that there are no investigation proceedings pending under the applicable sections of the Companies Act, 1956 or any other proceedings under the Companies Act of 2013 against any of the Applicant Companies. No proceeding under Section 397 or 398 of the Companies Act of 1956 or applicable section under Companies Act, 2013 has ever been launched against any of the applicant companies and there are no proceedings pending under Section 235 to 251 of the Companies Act, 1956 and Section 217, 219, 221, 224 and 225 of the companies Act, 2013 against any of the applicant companies.

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The applicants further submitted that the assets of all the two Applicant Companies are sufficient to meet all its liabilities.

The Scheme of Amalgamation does not involve any compromise or composition or arrangement with any of the creditors of the Applicant Companies in any manner whatsoever.

The Scheme of Amalgamation will not adversely affect the rights of any of the creditors of any applicant companies in whatever manner whatsoever and it is nowhere prejudicial to the interest of the creditors, if any, of the Applicant Companies.

The Applicant Companies have made due provisions for payment of all liabilities as and when the same will fall due.

The applicants also submitted that the present Scheme of Amalgamation does not contain or provide for Corporate Debt Restructuring. None of the Directors of the applicant companies have any material interest in the proposed Scheme of Amalgamation except as shareholders in general the extent of which will appear from the Register of Directors shareholding maintained by the respective applicant companies.

The statutory Auditors of the Transferee Company have certified that the Accounting treatment proposed in terms of clause 8 of PART II of the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013.

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The certificate issued by the statutory Auditors is also annexed with the application and marked as "Annexure A-31".

The provisions of the Monopolies and Restrictive Trade Practice Act, 1969 are not applicable to the said Scheme of Amalgamation. None of the applicant companies are registered under the provisions of the Monopolies and Restrictive Trade Practice Act, 1969 or are liable to be registered under the provisions of the said Act and the provisions of the said Act will not come into existence upon Amalgamation of the applicant companies.

It is submitted in the application that the report determining the number of and exchange ratio of shares which, shall be issued and allotted to the equity shareholders of Transferor companies by the Transferee company for implementation of the terms of the scheme has been prepared by a reputed firm of Chartered Accountants and such recommendations have, been accepted by the Board of Directors of the respective companies.

The Copies of such valuation report is also annexed with the application and marked as "Annexure A-32".

The Applicants have stated that there are total 10(Ten) Shareholders in BANSAL POLES LIMITED. {Transferee Company / Applicant No.1} and 10(Ten) Shareholders in GIRIRAJ GOODS PRIVATE LIMITED {Transferee Company / Applicant No.2}, respectively as on the date of application and all the applicants have intimated individually about the Scheme of Amalgamation to their respective Shareholders which are in common also.

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It is further stated in the application that all the shareholders of both the Applicant companies, holding 100% of the shares of the respective applicant companies, have consented to the Scheme of Amalgamation by way of consent in affidavits to waive off the convening and holding of meeting for consideration and approval of the Scheme of Amalgamation.

The List of the consented shareholders Affidavit verifying list of shareholders of both the applicant companies are annexed with the application and marked as "Annexure A-3 & Annexure A-4" and "Annexure A-15 & Annexure A-16" respectively and Affidavit verifying Consent of shareholders of both the applicant companies are annexed with the application and marked "Annexure A-5" and "Annexure A-17".

A certificate from the statutory auditor of the Company dated 14/11/2017 confirming the List of shareholders of both the applicant Companies are annexed as "Annexure B" to the original application.

In view of the above consent in affidavit form of all the shareholders of both the applicant companies, the applicants have submitted that holding of separate meetings of the shareholders of the Transferee Company and the Transferor Company may be dispensed with by this Tribunal.

The copies of the NIL list of Debenture Holders as on 13-11-2017 in both the Transferee Company and the Transferor Company are annexed with the application and marked as "Annexure A-11" and "Annexure A-23", respectively.

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The Affidavits verifying the above lists of Debenture Holders of both the applicant companies as NIL as on 13-11-2017 are annexed with the application as "Annexure A-12" and "Annexure A-24", respectively.

The Applicants, BANSAL POLES LIMITED {Transferee Company / Applicant No.1} and GIRIRAJ GOODS PRIVATE LIMITED {Transferor Company / Applicant No.2} has NIL secured creditor and Two (2) unsecured creditors as on 30/09/2017.

The list of Secured and Unsecured Creditors of both the applicant Companies are annexed as "Annexure A-6 and Annexure A-18".

A certificate from the statutory auditor of the Company dated 14/11/2017 confirming the List of creditors of both the applicant Companies are annexed as "Annexure A-10 and Annexure A-22".

The Affidavit verifying list of Secured and Unsecured Creditors of both the applicant Companies are annexed as "Annexure A-8 and Annexure A-20" and the Affidavit verifying consent/NOC of two Unsecured Creditors of both the applicant Companies are annexed as "Annexure A-9 and Annexure A-21".

Heard the learned PCS 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 :

- a) In view of the consents given in affidavit form by all the Shareholders of the transferee and the transferor companies, convening and holding of the meetings of the shareholders of the transferee and transferor companies are dispensed with.

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- b) In view of the fact that the transferee company has NIL secured creditors and verified by the Auditor's Certificate, the question of holding meeting of the secured Creditors of the Transferee Company does not arise.
- c) In view of the consents given in affidavit form by all the Unsecured Creditors of the transferee company, convening and holding of the meeting of the Unsecured Creditors of the transferee company is dispensed with.
- d) In view of the fact transferor company have NIL secured creditors and verified by the Auditor's Certificate, the question of holding meeting of the Secured Creditors of the Transferor Company does not arise.
- e) In view of the consents given in affidavit form by all the Unsecured Creditors of the transferor company, holding of the meeting of the Unsecured Creditors of the transferor company is dispensed with.
- f) 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, 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

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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 ;

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

h) 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. 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.

i) 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.

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j) The Company Application bearing No. CA(CAA) No. 551/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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(Jinan K.R.)
Member(Judicial)

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(V.P. Singh)
Member(Judicial)

19/11/18

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