

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**KOLKATA BENCH**

**C.A. No. (CAA) 434/KB/2017**

**In the Matter of :**

**Sections 230 to 232 of the Companies Act, 2013;**

**And**

**In the matter of:**

**Trimurti Grihanirman Private Limited, a Company  
incorporated under the provisions of the  
Companies Act, 1956 having its Registered office  
at 1, Garstin Place Kolkata -700001 in the State of  
West Bengal, within the aforesaid jurisdiction;**

**~ And ~**

**In the matter of :**

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Trimurti Kunj Private Limited, a Company  
incorporated under the provisions of the  
Companies Act, 1956 having its Registered office  
at 1, Garstin Place Kolkata -700001, in the State of  
West Bengal, within the aforesaid jurisdiction;

~ And ~

In the matter of:

- 1) Trimurti Grihanirman Private Limited;
- 2) Trimurti Kunj Private Limited;

..... Applicants

CORAM : Shri Jinan K.R., Member(Judicial)

For the Applicants:

1. Mr Shashi Agarwal, Pr. Chartered Accountant

Date of pronouncing of the Order : 31-01-18

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ORDER

Per Shri Jinan K. R.

The object of this application is to ultimately obtain, the sanction of this Tribunal to the Scheme of Amalgamation between the applicant companies and their respective members for amalgamation of the "Transferor company", namely, Trimurti Kunj Private Limited with the Transferee Company", namely, Trimurti Grihanirman Private Limited whereby and where under the entire undertaking of the Transferor Company together with all properties, assets and liabilities relating thereto as a 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, a copy whereof is annexed with the Application and marked with letter "E".

It is stated in the Petition that the amalgamation will enable the companies to expand its business activities by pooling their resources at one place.

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For the purposes of better, efficient and economical management, control and running of the business of the undertakings concerned and for administrative convenience and to obtain advantage of economy of large scale and to broaden the present business, the present Scheme of Amalgamation is proposed to amalgamate the Transferor Company with the Transferee Company.

It is also stated in the Application that the Scheme of Amalgamation will have the beneficial results for the Companies concerned, their shareholders, employees and all concerned.

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

The copies of the Board Resolutions passed by both the Applicant Companies are annexed with the Application and collectively marked "F".

The Auditors of the respective Applicant Companies have not made any adverse remark or comment and they have certified that the affairs of the Applicant Companies have been conducted prudently and property.

It is stated in the Application that no petition under Section 397 or 398 of the Companies Act, 1956 and/or corresponding provisions of the Companies Act, 2013 has, at any point of time, been filed against the Transferor and/or against the Transferee Company by the Transferee and/or by the Transferor Company.

It has been further submitted in the Application that the assets of the Applicant Companies are sufficient to meet all their liabilities.

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

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It is also been stated in the Application that the Scheme of Amalgamation does not involve any compromise or composition with the creditors of the Applicant Companies.

The Scheme will not affect the rights of the creditors of the Applicant Companies in any manner whatsoever.

It is also stated that there are no proceeding pending under Sections 235 to 251 of the Companies Act, 1956 and/or corresponding/applicable provisions of the Companies Act, 2013 against any of the Applicant Companies.

It is stated in the petition that the Scheme of Amalgamation does not provide or contain any clause for any kind of corporate debt restructuring.

It is further submitted that the Scheme of Amalgamation does not contain any clause whatsoever relating to arrangement and/or compromise with creditor and interest of the creditor will not be affected in any manner whatsoever.

It is stated in the Application that the applicant companies have not issued any debentures.

It is stated in the Application that the sanction of the Scheme of Amalgamation will not result in the variation of the shareholders' rights and creditors rights.

It is submitted that the applicant companies have 2 each equity shareholders with a paid up capital of Rs. 1,00,000/- and Rs 1,00,000/- respectively.

The shareholders of the Applicant Companies have approved the Scheme of Amalgamation in their respective extra ordinary general meetings and the said resolutions approved by the shareholders of the respective applicant companies have been filed and taken on record by the Registrar of Companies, West Bengal.

The copies of the same e-form are annexed with the Application and collectively marked with letter "H".

All the shareholders of all the Applicant companies have also given signed letter signifying their consent and approval to the proposed Scheme of Amalgamation wherein all such shareholders have consented to waive holding of the meetings for considering the Scheme of Amalgamation.

The copies of such waiver/consent letters received from all the Shareholders of the Applicant Companies along with the list of shareholders of the respective applicant companies are annexed with the Application and collectively marked with letter "I".

In view of the consent of the Shareholders of all the Applicant companies to the Scheme of Amalgamation and waiver of requirement to hold meeting to consider the Scheme of Amalgamation, the applicant companies have submitted that this Tribunal may direct for not holding meeting of the



Shareholders based on the consent letter given by all the shareholders of all the Applicant Companies.

It has been submitted that both the applicant companies have Unsecured Creditors(including the unsecured loan) as on 15-05-2017.

The Transferee Company has 55 Unsecured Creditors and the Transferor Company has 6 unsecured creditors.

The list of unsecured creditors of the Transferee and the Transferor Company are annexed with the Application and marked collectively as Annexure "J".

It is further stated that as on 15-05-2017, the Transferor Company has no liabilities towards secured loan whereas the Transferee Company has 1 Secured Creditor.

The list of the secured creditors and secured loan are annexed with the Application and marked collectively as Annexure "K".

It is stated in the Application that the sanction of the Scheme of Amalgamation will not result in the variation of the shareholders' rights and creditors' rights and at the same time the Scheme of Amalgamation is under Section 230(1)(b) of the Companies Act, 2013. Accordingly, the meeting of the unsecured creditors of both the applicant companies and the meeting of the secured creditors of the transferee company to consider and approve the Scheme of Amalgamation may be dispensed with.

It has also been submitted that the Transferee Company is into Real Estate business including the construction and sale of the flats, commercial space etc. The Transferee Company receives advance from customers who books flats, commercial space etc. in lieu of properties booked and accordingly, even though in legal terms they are not creditors as it is advance from booking received but as per accounting standard norms in the books of accounts of the Transferee Company, they are shown as Advance Received from customers as

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liabilities till the time the properties booked for them are not handed over to them and/or full booking amount/consideration is received from the customers.

The Secured creditor and unsecured creditors 93.71% in value of Transferee Company has given no-objection to the proposed scheme of amalgamation and dispensation of the meeting.

All the unsecured Creditors of Transferor Company has given no-objection to the proposed scheme of amalgamation and dispensation of the meeting.

It is, in the premises, the applicant companies pray for dispensing with the calling and holding of the meetings of the shareholders of both the applicant companies.

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.
- b) In view of the fact that the transferor company has 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.
- c) In view of the consent given in affidavit form by the secured creditor of the transferee company, the holding of the meeting of the Secured Creditor of the Transferee Company, is dispensed with.
- d) 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.
- e) 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.
- 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 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 be applicable under the circumstances on or before the date fixed for hearing by filing the certificate of Companies' Auditor.

The Company Application bearing No. CA(CAA) No. 434/KB/2017 is, accordingly, disposed of.

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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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