

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

CA (CAA) No. 566/KB/ 2017

In the matter of:

An Application under Sections 230 to 232
of the Companies Act, 2013.

And

In the matter of:

DETINNERS PRIVATE LIMITED, a company
within the meaning of Companies Act,
2013, having its Registered Office at 301,
Ground Floor, Block-B, Swastik Garden, 46,
Sridhar Roy Road, Kolkata – 700 039, in the
State of West Bengal, within the aforesaid
jurisdiction.

And

In the Matter of:

FARWIZ REALTY PRIVATE LIMITED, a
company within the meaning of

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Companies Act, 2013, having its Registered Office at 301, Ground Floor, Block-B, Swastik Garden, 46, Sridhar Roy Road, Kolkata – 700 039, within the aforesaid jurisdiction.

And

In the matter of :

1. DETINNERS PRIVATE LIMITED

2. FARWIZ REALTY PRIVATE LIMITED

..... Applicants/Applicant
Companies

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

For the Applicants:

Miss Kiran Sharma, Pr. CS

Date of pronouncing the order: 2/2/18

ORDER

Per Jinan K. R.

The object of this Application is to ultimately obtain sanction of this Tribunal to a Scheme of Arrangement between Detinners Private

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Limited and Farwiz Realty Private Limited and their respective members.

A copy of the Scheme of Arrangement is annexed with the Application and marked as "Annexure "E.

It is submitted in the Application that the Demerged Company, namely, Detinners Private Limited is a well established Company having different and distinct divisions namely, (1) Maharashtra Division, through which it is carrying on business of warehousing exclusively in the State of Maharashtra, and (2) West Bengal Division, through which it carries business of warehousing exclusively in the State of West Bengal.

Apart from the above, the Demerged Company, namely, Detinners Private Limited, also carries on business offering Business Centre facilities to various customers and clients.

The business relating to offering Business Centre facility is centered only in the State of Maharashtra.

It would, thus, be seen from the above that the business of the Demerged Company carried through its various divisions are principally located in the States of Maharashtra and West Bengal.

It is stated in the Petition that the West Bengal Division had been lying shut for the last few decades and started its operations in the last financial year, as a result of which, substantial efforts and

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management focus is required to establish and grow the business in West Bengal.

For the convenience and to extract advantage of economy of scale and to streamline the present businesses and to focus more intently in each particular State where the Company presently carries on the business, the proposed Demerger has been formulated and conceptualized.

The segregation of the Maharashtra Division and the West Bengal Division will ensure better supervision, smoother operations and more robust command and control systems for the two distinct parts of the business, which require different skills and dedicated management and leadership teams to drive optimal results.

Therefore, in order to enable greater focus of management to the operations of each of the diverse businesses, as well as to attract more targeted investors to invest in the two key distinct businesses, the Demerged Company, namely, Detinners Private Limited, proposes to reorganize and segregate, by way of a demerger, its West Bengal Division to the Resulting Company, namely, Farwiz Realty Private Limited.

Thus the present Scheme of Arrangement would involve transfer and vesting of the West Bengal Division of Detinners Private Limited into Farwiz Realty Private Limited on a going concern basis ;

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The Scheme of Arrangement has been drawn up to comply with the conditions relating to "Demerger" as specified under Section 2(19AA) of the Income Tax Act, 1961.

If any terms or provisions of the Scheme of Arrangement are found or interpreted to be inconsistent with the said provisions at later date including resulting from an amendment of law or for any other reason whatsoever, the provisions of the said Section of the Income Tax Act, 1961 shall prevail and the Scheme shall stand modified to the extent determined necessary to comply with Section 2(19AA) of the Income Tax Act, 1961.

The Board of Directors of the Applicant Companies have, at their respective Board meetings, held on 06-10-2017, by a resolution passed unanimously, approved the said Scheme of Arrangement.

The said resolution is annexed with the Application and marked as "Annexure F".

It is stated in the Application that the assets of the Applicant Companies are sufficient to meet all their liabilities and the said Scheme will not adversely affect the rights of any of the creditors of any of the Applicant Companies in any manner whatsoever.

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

It is also submitted that there are no proceedings pending under Section 235 to 251 of the Companies Act, 1956 and Section 217,

Sd

219,221,224 and 225 of the Companies Act, 2013 against any of the Applicant companies.

It is further submitted in the Application that all the applicant companies are closely held companies and there is no outside shareholder or director in either of the applicant companies.

Both the applicant companies have 8 equity shareholders with the same shareholding pattern.

The list of equity shareholders of each company is annexed with the Application and marked as "Annexure H".

Each and every shareholder of the Applicant companies has considered the proposed Scheme of Arrangement and has given their consent in writing along with their respective Affidavit(s) agreeing to the Scheme of Arrangement and also consenting to waive the holding of the meeting of the equity shareholders of the concerned applicant company.

The copies of the consent letters of the shareholders of all the applicant companies are annexed hereto and collectively marked as "Annexure I".

As all the equity shareholders of both the applicant companies have considered and agreed in writing to the proposed Scheme of Arrangement and have also consented to waiving the holding of the meeting of the equity shareholders of the applicant companies concerned, as they have already attended the meeting as aforesaid, the Applicant companies have prayed for dispensing with the

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requirement to convene and hold the meeting of the equity shareholders of the Applicant Companies.

There are no secured creditors of both the Applicant Companies and there are only two unsecured creditors of the Demerged Company, namely, Detinners Private Limited who have consented in writing to the proposed Scheme of Arrangement and also consented to waiving the holding of the meeting of the unsecured creditors of the Demerged Company, namely, Detinners Private Limited.

The Statutory auditors of each applicant company have given a certificate confirming the position of the secured and the unsecured creditors of the applicant companies as on 09-10-2017 and 15-10-2017 respectively.

The copies of such certificates along with the list of the Secured Creditors and the Unsecured Creditors drawn as on that date along with the consent letters of the Unsecured Creditors of the Demerged Company, namely, Detinners Private Limited, by way of their affidavits, are annexed with the Application and marked as "Annexure -J" and "Annexure-K", respectively.

In view of the above, the Applicant companies have prayed for dispensation of convening and holding of the meetings of the Secured and the Unsecured Creditors of the Applicant companies.

It is submitted in the Application that no one will be prejudiced if the Scheme of Arrangement is sanctioned.

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Heard the learned Counsel for the applicant, 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 applicant, the following orders are passed :

1. In view of the fact that all the equity shareholders of both the Applicant Companies duly consented in writing by way of an affidavit to the proposed Scheme of Arrangement, the requirement of convening and holding of meetings to ascertain the wishes of the equity shareholders of all the Applicant Companies for the Scheme of Arrangement, is dispensed with ;
2. In view of the fact that there are no secured creditors of the Applicant Companies, convening and holding of meetings of the Secured Creditors of the Applicant Companies does not arise ;
3. In view of the fact that the unsecured creditors of the Demerged Company, namely, Detinners Private Limited, have duly consented to the Scheme of Arrangement in writing by way of Affidavits, convening and holding of the meeting of the Unsecured Creditors of the Demerged Company, namely, Detinners Private Limited is dispensed with;
4. In view of the fact that there are no unsecured creditors of the Resulting Company, namely, Farwiz Realty Private Limited, convening and holding of the meeting of the Unsecured Creditors

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of the Resulting Company, namely, Farwiz Realty Private Limited does not arise ;

5. 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 Application and all other documents including the copy of the Scheme of Arrangement and the statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, the Regional Director, Ministry of Corporate Affairs, Mumbai, Registrar of Companies, West Bengal, the Registrar of Companies, Maharashtra and the concerned Assessing Officer along with the Chief Commissioner of Income-Tax with PAN Numbers of the Applicant Companies through E-Mail and by Speed Post, both, as also on the Official Liquidator having jurisdiction over the Demerged Company and the Resulting Company 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 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 ;
6. The applicants shall file affidavit within 7 days of serving the notice regarding service of notice ;

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7. 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 petitioners and/or their Advocates, in advance ;

8. 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 Arrangement ;

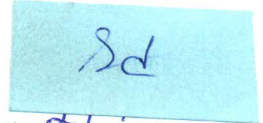
9. Objections, if any, to the scheme contemplated by the authorities to whom notice has been given on or before the date of hearing fixed herein may be filed, failing which it will be considered by this Tribunal that there is no objection to the approval of the Scheme of Arrangement on the part of the authorities, subject to other conditions being applicable under the Companies Act, 2013 and relevant rules made thereunder ;

10. 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. 566/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.



(Jinan K. R.)
Member(Judicial)

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