

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

C.A. No. (CAA) 568/KB/2017

In the Matter of: -

Sections 230 to 232 of the Companies Act,
2013;

And

In the matter of:

Admobile Private Limited, a Company
incorporated under the provisions of the
Companies Act, 1956 having its Registered
office at 15 Brabourne Road, 4th Floor Kolkata-
700001, West Bengal, within the aforesaid
jurisdiction;

~ And ~

In the matter of:

Pricepoint Concept Consultancy Private
Limited, a Company incorporated under the
provisions of the Companies Act, 1956 having
its Registered office at 15 Brabourne Road, 4th
Floor Kolkata- 700001, West Bengal, within the
aforesaid jurisdiction;

~ And ~

In the matter of:

Shrivats Properties Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 15 Brabourne Road, 4th Floor Kolkata-700001, West Bengal, within the aforesaid jurisdiction;

~ And ~

In the matter of:

1. Admobile Private Limited;
2. Pricepoint Concept Consultancy Private Limited ;
3. Shrivats Properties Private Limited;

..... Petitioner

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

For the Applicants :

1. Mr. Shashi Agarwal, Pr. Chartered Accountant

Date of pronouncing of the Order : 06-02-2018

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 Companies, namely, Pricepoint Concept Consultancy Private Limited and Shrivats Properties Private Limited with the Transferee Company, namely, Admobile Private Limited whereby and where under the entire undertaking of the Transferor Companies together with all properties, 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, a copy whereof is annexed and marked with "G".

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.

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 broad base the present business, the Scheme of Amalgamation is proposed to amalgamate the Transferor Companies with the Transferee Company and the amalgamation will simplify the shareholding of the Transferee Company.

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 Board Resolutions passed by both the Applicant companies are annexed and collectively marked "H".

It is stated in the Application that the assets of the applicant companies are sufficient to meet all their liabilities.

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

It is also submitted 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.

The Scheme of Amalgamation does not contain any clause due to which there will be any reduction of share capital of Transferor Companies and/or the Transferee Company.

The Applicant Companies have stated in the Application that the Scheme of Amalgamation does not provide and contain any clause for any kind of corporate debt restructuring.

The Applicant companies have not issued any preference share and accordingly, the Scheme of Amalgamation does not provide for conversion of preference share into equity shares.

It is further stated in the Application that the Applicant Companies have not issued any debentures.

Further, the said Scheme of Amalgamation does not involve any compromise or composition with the creditors of the Applicant Companies.

The Scheme of Amalgamation will not affect the rights of the creditors of the applicant companies in any manner whatsoever.

It is submitted in the Application that the applicant no. 1, 2 , 3 are having 4 , 2 and 2 equity shareholders respectively, and applicant No. 1 is having one preference shares of two class respectively.

It is submitted in the Application that all the shareholders of the Applicant Companies have given affidavit duly notarized signifying their consent and approval to the proposed Scheme of Amalgamation and has also consented to waiver/dispensation of holding of meeting for considering the Scheme of Amalgamation.

The copies of such affidavits received from the shareholders of all the Applicant Companies are annexed and collectively marked with letter "J".

In view of the above, the Applicant companies have prayed that the meeting of the shareholders be dispensed with.

It is also submitted in the Application that as on 31-10-2017, none of the Applicant companies, the Transferee company and the Transferor Companies, have no liabilities towards the Secured Creditors including the secured loan.

It has been further stated that as on 31-10-2017, both the Transferor Companies, Pricepoint Concept Consultancy Private Limited & Shrivats Properties Private Limited has unsecured liabilities, whereas as on 31-10-2017, the Transferee Company has no liability towards the unsecured creditor including the unsecured loan.

All the creditors have given affidavit duly notarized signifying their consent and approval to the proposed Scheme and has also consented to waiver/dispensation of holding of meeting for considering the Scheme of Amalgamation.

The Certificate from the Chartered Accountant confirming the creditors' balance are annexed with the Application and collectively marked as "L".

The Affidavits received from the Creditors are annexed with the Application and collectively marked with letter "M".

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The Certificate from the Chartered Accountant as to the Scheme of Amalgamation complying the Accounting standard is annexed with Application and marked "N".

The Affidavit under Section 230(2) of the Companies Act, 2013 is annexed with the Application and marked "O".

The Affidavit relating to service to be made to the Statutory Authorities is annexed herewith and marked as Annexure "P".

The Applicant Companies have also prayed that as the Transferee Company has no Secured and the Unsecured creditors and whereas the Transferor Companies has no secured creditors and all the unsecured creditors of the Transferor Companies have given no-objection in the form of affidavit to the Scheme of Amalgamation, convening and holding of meetings of the Creditors of the Applicant Companies, be dispensed with.

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Heard the learned Pr. CA 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 Companies and the Transferee Company have NIL secured creditors, verified by the Auditor's Certificate, the question of holding meeting of the secured Creditors of the Transferor Company and the Transferee Company does not arise.
- c) In view of the fact that the Transferee Company has NIL Unsecured Creditors, verified by the Auditor's Certificate, the question of holding the meeting of the Unsecured Creditors of the Transferee Company, does not arise.
- d) In view of the consents given in affidavit form by all the Unsecured Creditors of the transferor Companies, convening and holding of the meetings of the Unsecured Creditors of the transferor Companies, are dispensed with.
- e) 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 ;

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

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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.

h) 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. 568/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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