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IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

CA (CAA) No. 571/KB/ 2017

In the matter of:

Section 230 read with Sections 66, 232 and
other applicable provisions of the
Companies Act, 2013.

And

In the matter of:

NEXTGEN COMMOSALES PRIVATE LIMITED,
having its registered Office at B.R.S-3,
Block-9, Flat- 19, 59/60, Bagmari Road,
Kankurgachi, Kolkata – 700 054 within the
aforesaid jurisdiction ;

.. Transferor Company

And

SIMPLEX IMPEX PRIVATE LIMITED, having its
registered Office at 32, JL Nehru Road, OM
Tower, 15th Floor, Kolkata – 700 071 within
the aforesaid jurisdiction ;

... Transferee Company

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And

1. Nextgen Commosales Private Limited

And

2. Simplex Impex Private Limited

.. Applicants

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

For the Applicants:

Mr. Arko Deb Sinha, Advocate

Date of pronouncement of the order: 07-02-2018

ORDER

Per Jinan K.R.

This is an Application filed by the Applicants, namely Nextgen Commosales Private Limited, the Transferor Company and Simplex Impex Private Limited, the Transferee Company under Sections 230 and 232 of the Companies Act, 2013 read with the Companies(Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation proposed between the Transferor Company and the Transferee Company.

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A copy of the Scheme has been annexed as Annexure "I" to the application.

The object of this Application is to ultimately obtain the sanction of this Tribunal to the Scheme of Amalgamation by which the Transferor Company, namely, Nextgen Commosales Private Limited, is entirely merged with the Transferee Company, namely, Simplex Impex Private Limited, on a going concern basis and in consideration thereof, issue of equity shares by the Transferee Company to the shareholders of the Transferor Company.

The Transferor Company is in the business of traders, merchants, stockists and distributors of consumer durables.

The Transferee Company is in the business of traders, merchants, stockists and distributors of consumer durables and is also registered as a NBFC with the Reserve Bank of India bearing No. B-05.05026 dated 26-05-2003 and annexed to the Application and marked as Annexure "G".

It is stated by the Applicant Companies vide affidavit dated 30-01-2018 that the Transferee Company, Applicant Company No.2, had applied to the Reserve Bank of India for its approval of the Scheme of Amalgamation, copy of which is annexed with the Application and marked as Annexure "H".

The Reserve Bank of India vide its letter bearing Ref. No. DNBS. RO. KOL. No. 4122/99.06.002/2017-18 dated 17-01-2018 has issued its "No-

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Objection" to the Scheme of Amalgamation between the Applicant Companies.

A copy of the letter issued by the Reserve Bank of India dated 17-01-2018 is annexed with the said Affidavit of the Applicants dated 30-01-2018 and marked with letter "AA".

It has been stated in the Application that the Transferor Company and the Transferee Company are engaged in a similar business on account whereof the instant amalgamation of the Transferor Company with the Transferee Company will allow the optimum growth, development and diversification of the businesses with the combined resources of the said companies and for centralizing the asset base and resources to result in better management and effective utilization of resources thereby resulting in lowering of overall costs and increase in overall productivity, efficiency and profitability, it is considered expedient and desirable to amalgamate the Transferor Company with the Transferee Company in the manner and on the terms and conditions stated in the Scheme of Amalgamation.

It is further stated that the Scheme of Amalgamation will result in economies of scale, reduction in overhead and other expenses, reduction in administrative and procedural work, elimination of duplication of work, better and more productive and effective utilization of the resources of the applicant companies to enable the applicant companies to effect internal economies and optimize productivity.

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The instant Scheme of Amalgamation will have beneficial results for all the Applicant Companies concerned, their shareholders, employees, creditors and all concerned.

The Board of Directors of the Applicant Companies have approved the Scheme of Amalgamation in its respective meetings held on 22-03-2017.

The Board resolution is annexed with the Application and marked with letter "J-1" and "J-2", respectively.

It is also submitted in the Application that the aggregate assets of the Transferor Company and the Transferee Company are sufficient to meet all their liabilities and the Scheme of Amalgamation will not adversely affect the rights of any of the creditors of the Transferor Company and the Transferee Company in any manner whatsoever and due provisions have been made in the Scheme of Amalgamation for payment of all the liabilities of the concerned entities.

It has been stated that there are no proceedings pending under Sections 235 to 251 of the Companies Act, 1956 or Sections 217,219,221,224 and 225 of the Companies Act, 2013 against any of the Applicant Companies

The valuation report and the share exchange ratio for the Scheme of Amalgamation has been issued by the Chartered Accountants and annexed with the Application and marked with letter "L".

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The Auditors' of the Applicant Companies have also issued certificates for complying with the Accounting Standards upon the Scheme of Amalgamation becoming effective and annexed with the Application and marked with letter "M-1" and "M-2", respectively.

It has been stated in the Application that there are 4 shareholders of the Transferor Company and 17 shareholders of the Transferee Company and the lists of shareholders are annexed and marked as "N-1" and "N-2".

All the shareholders of the Transferor Company and the Transferee Company have consented to the Scheme of Amalgamation in a shareholders' meeting held on 06-11-2017 and 03-11-2017 and by way of affidavits.

The copies of the resolutions of the shareholders of the respective applicant companies are annexed with the Application and collectively marked with letter "K-1" and "K-2", respectively.

The copies of the affidavits of consent given by the respective shareholders of the Applicant Companies are annexed and collectively marked as "O-1" and "O-2", respectively.

The Applicant Companies have submitted that convening and holding of the separate meetings of the members of the Applicant Companies be dispensed with, in view of the written consents in the form of affidavits, given by all the members of both the Applicant Companies, as aforesaid.

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The Creditors(unsecured) having more than ninety per cent of value of the Transferor Company have given their consent to the Scheme of Amalgamation in the form of Affidavits and their consents along with the Auditor's Certificate certifying the debt are collectively annexed with the Application and marked with letter "P".

The Creditors(unsecured) having more than ninety per cent of value of the Transferee Company have given their consent to the Scheme of Amalgamation in the form of Affidavits and their consents along with the Auditor's Certificate certifying the debt are collectively annexed with the Application and marked with letter "Q".

The Applicant Companies further submitted that convening and holding of the meetings of the Creditors of the Applicant Companies be dispensed with in view of the written consents, by way of affidavits, given by all the creditors of both the Applicant Companies, as aforesaid.

It is submitted in the Application that no one will be prejudiced if the Scheme of Amalgamation is sanctioned and the sanction of the Scheme of Amalgamation will benefit all concerned and is in the interest of the Applicant Companies, their shareholders, creditors, employees and of the general public.

Heard the learned Counsel 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 :

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1. In view of the fact that all the equity shareholders of the Applicant Companies duly consented in writing by way of affidavits, to the proposed Scheme of Amalgamation, the requirement of convening and holding of separate meetings of the Applicant Companies to ascertain the wishes of the equity shareholders of all the Applicant Companies for the Scheme of Amalgamation, are dispensed with ;
2. In view of the fact that there are no secured creditors of the Applicant Companies, as certified by the respective Auditors, convening and holding of separate meetings of the Secured Creditors of the Applicant Companies does not arise ;
3. In view of the written consents, by way of affidavits, given by the unsecured Creditors of both the Applicant Companies, convening and holding of separate meetings of the Unsecured creditors of the Applicant Companies, are dispensed with ;
4. 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 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 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

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also on the Official Liquidator and the Reserve Bank of India, having jurisdiction over the Applicant 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, by 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 ;

5. The Applicants shall file affidavit within 7 days of serving the notice regarding the service of notice ;
6. 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, in advance ;
7. 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 ;
8. Objections, if any, to the scheme contemplated by the authorities to whom notice has been given, may be filed within the time

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stipulated, failing which it will be considered by this Tribunal that there is no objection to the approval of the Scheme of Amalgamation on the part of the authorities, subject to other conditions being applicable under the Companies Act, 2013 and relevant rules made thereunder ;

9. 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. 571/KB/2017 is, accordingly, disposed of.

Certified copy of this Order may be issued, if applied for, upon compliance of all requisite formalities.



(Jinan K.R.)
Member(Judicial)