

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH

CA (CAA) No. 572/KB/ 2017

In the matter of:

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

And

In the matter of:

AMAR SECURITIES PRIVATE LIMITED, a  
company incorporated under the  
Companies Act, 1956 ; and having its  
Registered Office at 1, Sarojini Naidu  
Sarani, 5<sup>th</sup> Floor, Shubham Apartments,  
Kolkata – 700 017, within the aforesaid  
jurisdiction ;

And

In the Matter of:

PROTECK EXPORT AND COMMERCIAL  
PRIVATE LIMITED, a company incorporated

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under the Companies Act, 1956 ; and having its Registered Office at 46, Strand Road, 3<sup>rd</sup> Floor, Kolkata – 700 007, within the aforesaid jurisdiction ;

And

In the matter of :

ONESTOP MERCANTILE PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 ; and having its Registered Office at 46, Strand Road, 3<sup>rd</sup> Floor, Kolkata – 700 007, within the aforesaid jurisdiction ;

And

In the matter of :

ULTIMATE VANIJYA PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 ; and having its Registered Office at 46, Strand Road, 3<sup>rd</sup> Floor, Kolkata – 700 007, within the aforesaid jurisdiction ;

And

1. AMAR SECURITIES PRIVATE LIMITED
2. PROTECK EXPORT AND COMMERCIAL PRIVATE LIMITED

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3. ONESTOP MERCANTILE PRIVATE LIMITED
4. ULTIMATE VANIJYA PRIVATE LIMITED

..... Applicants

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

For the Applicants:

Mr. AK Upadhyay, Advocate

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

ORDER

Per Jinan K.R.

Pursuant to the provisions of Section 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013, the Board of Directors of the respective Applicant Companies has proposed the Scheme of Amalgamation whereby M/s. Proteck Export and Commercial Private Limited, Transferor Company No.1, Onestop Mercantile Private Limited, the Transferor Company No.2, and Ultimate Vanijya Private Limited, the Transferor Company No.3 are going to merge into Amar Securities Private Limited, the Transferee Company, with effect from 01-04-2017, being the appointed date.

It has been submitted in the Application that Amar Securities Private Limited, the Transferee Company, was originally incorporated on 21-12-1994 as a Company Limited by shares under the provisions of the

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Companies Act, 1956 and registered as a NBFC company with the Reserve Bank of India.

A copy of the Memorandum and Articles of Association of the Transferee Company now in force and the RBI registration certificate along with approval letter of RBI regarding the Scheme of Amalgamation, is annexed with the Application and collectively marked with letter "A-1".

The Board of Directors of the Applicant Companies has, at their respective Board meetings, by a resolution passed unanimously approved the Scheme of Amalgamation.

A copy of the said Scheme of Amalgamation along with the Valuation report of the shares is annexed with the Petition and collectively marked with letter "A-9".

The Scheme of Amalgamation has been proposed to specific group structure and provide for overall business efficiency to combine their managerial and marketing strength, to streamline administration, to build a wider capital and financial base and to promote and secure the overall interest growth and economies of all the companies concerned.

The Amalgamation will result in usual economics of a centralized and a larger company including the reduction in overheads, better and more productive utilization of labour and other resources and reduction in procedural and administrative work.

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It is stated in the Application that the Corporate Restructuring resulting from the Scheme of Amalgamation will integrate all the activities leading to increased opportunities in all the areas of business.

The said Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base facilitating further expansion and development of the business of all the companies.

The said Scheme of Amalgamation will enable the undertakings and the business of the said companies to obtain greater facilities possessed and enjoyed by one large company as compared with a number of smaller companies, for raising capital, securing and conducting trade, on favourable terms and other benefits.

The Scheme of Amalgamation will enable the companies concerned to diversify and expand their activities without restricting their existing activities.

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

It has been submitted in the Application that the shareholders of the Applicant Companies have agreed in writing to the Scheme of Amalgamation and have also consented to waive the holding and convening of the meeting of the shareholders of the Applicant companies.

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It is submitted by the Applicant Companies that in view of the written consent given by each of the shareholders of the Applicant companies, convening and holding of the meetings of the shareholders of the Applicant Companies be dispensed with.

The consent letters received from the shareholders of the Applicant Companies are annexed with the Application and collectively marked with letter "A-10".

The respective Auditors of the Applicant Companies have certified that there are no creditors of the Applicant Companies.

The copy of the Auditor's certificate regarding the creditors of the Applicant Companies are annexed with the Application and marked with letter "A-11".

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

It is stated in the Application that there are no proceedings pending under Sections 235 to 251 of the Companies Act, 1956 and/or Sections 206 to 229 of the Companies Act, 2013 against any of the Applicant Companies.

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It is also submitted that the Applicants have not previously filed any application, writ petition or suit regarding the matter in the instant application before any other authority or any other Bench of this Tribunal nor such application, writ petition or suit is pending before any of them.

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 :

1. In view of the fact that all the equity shareholders of the Applicant Companies duly consented in writing by way of an affidavit 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 and unsecured creditors of the Applicant Companies, convening and holding of separate meetings of the Secured and the Unsecured Creditors of the Applicant Companies does not arise ;
3. 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

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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 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 ;

4. The Applicants shall file affidavit within 7 days of serving the notice regarding the service of notice ;
  
5. 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 ;

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6. 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 ;
  
7. 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 Amalgamation on the part of the authorities, subject to other conditions being applicable under the Companies Act, 2013 and relevant rules made thereunder ;
  
8. 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. 572/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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(Jinán K.R.)  
Member(Judicial)

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