

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

COMPANY APPLICATION C.A(CAA) No. 573/KB/2017

In the matter of:

An application under sections 230 to 232 and
other applicable provisions of the Companies
Act, 2013;

And

In the matter of:

WOOLVEST MERCHANDISE PRIVATE
LIMITED, a company incorporated under the
provisions of the Companies Act, 1956 and
having its Registered Office at 55, Chowringhee
Road, King Edward Court, Ground Floor, Flat 1,
Kolkata-700071 in the State of West Bengal
within the aforesaid jurisdiction ;

And

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GAREMOHAN TIE-UP PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 55, Chowringhee Road, King Edward Court, Ground Floor, Flat 1, Kolkata-700071 in the State of West Bengal within the aforesaid jurisdiction;

And

1. WOOLVEST MERCHANDISE PRIVATE LIMITED (TRANSFEREE COMPANY)
2. GAREMOHAN TIE-UP PRIVATE LIMITED (TRANSFEROR COMPANY)

.... **APPLICANTS.**

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

For the Petitioners :

1. Ms. Manju Bhuteria , Advocate ,
2. Mr. N.Gurumurthy , FCA

Date of pronouncement of order:

8/2/2018

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O R D E R

Per : Jinan K.R., Member(Judicial)

The object of this application is to ultimately obtain sanction of this Tribunal to the Scheme of Amalgamation whereby the TRANSFEROR COMPANY, namely, Garemohan Tie-up Private Limited, will be merged / amalgamated with the TRANSFEREE COMPANY, namely, Woolvest Merchandise Private Limited, with Transfer Date or Appointed Date being 01st April, 2015.

It is stated in the application that the TRANSFEROR COMPANY and TRANSFEREE COMPANY are engaged in the business of Non-Banking Financial & Investment activities. The business of the TRANSFEROR COMPANY and the TRANSFEREE COMPANY can be combined and carried forward conveniently with combined strength.

It is stated in the application that the Scheme of amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration in better and more productive utilisation of various resources.

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It is also stated in the application that the Scheme of Amalgamation will contribute in furthering and fulfilling the objects of the Company concerned and in the growth and development of these businesses.

It is further submitted in the application that the Scheme of Amalgamation will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability.

The Scheme of Amalgamation will enable the undertakings concerned to pool their resources and to expand their activities.

Further, the Scheme of Amalgamation will enable the Company concerned to rationalise and streamline their management, business and finances and to eliminate duplication of work to their common advantages.

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

The Board of Directors of the TRANSFEROR COMPANY and the TRANSFEREE COMPANY, have at their respective Board Meetings held on 21st day of December, 2015, passed the resolution approving the Scheme of Amalgamation.

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The copy of the Board Resolution is enclosed, marked **ANNEXURE – I**, at pages 155 and 156 of the Application.

It has been 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.

It is also stated in the application that the applicant companies have made due provisions for payment of all liabilities as and when the same fell due.

The Reserve Bank of India vide their letter No DNBSRO.KOL.NO 8965/99.06.002/2016-17 dated 01.06.2017 have given their "No Objection" to the Scheme of Amalgamation.

The copy of the said letter is enclosed, marked – **ANNEXURE – H**, at page no 153 and 154 of the Application.

The statutory Auditors of the TRANSFEREE COMPANY have certified that the Accounting treatment proposed in terms of clause 11 of PART III of the

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Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act 2013.

The copy of the certificate of the statutory Auditors is enclosed and marked **ANNEXURE – O**, at pages 223 and 224 of the Application.

It has been submitted in the application that there are no proceedings pending under Section 235 to 251 of the Companies Act, 1956 and Section 217, 219, 221, 224 and 225 of the Companies Act, 2013 against any of the applicant companies.

It has been further submitted in the application that the present Scheme of Amalgamation does not contain or provide for Corporate Debt Restructuring.

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

It is further stated that the applicant companies has never issued nor agreed to issue any debenture .

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It is further stated that the Transferee Company, namely, Woolvest Merchandise Private Limited, is having 6 shareholders and all the shareholders have given their consent by way of affidavit .

The copy of the consent and list of the Shareholders of the Transferee Company are annexed and marked **ANNEXURE -L**, page no 165 to 188 of the Application.

It is further stated that the Transferor Company, namely, Garemohon Tie-up Private Limited, is having 7 shareholders and all the shareholders have given their consent by way of affidavit .

The copy of the consent and the list of the shareholders of the Transferor Company are annexed and marked **ANNEXURE M**, page no 189 to 216 of the Application.

The copy of Valuation Report is annexed and marked **ANNEXURE J**, page no 157 to 164 of the Application.

It has been submitted that the Transferee Company is having Nil Secured Creditors and 1 Unsecured Creditor as on 31ST May,2017 who has given his written consent in favour of the Scheme of Amalgamation.

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The certificate of the statutory auditor and the copy of the consent of the Unsecured Creditor of the Transferee Company, namely, Woolvest Merchandise Private Limited, are annexed and marked **ANNEXURE M**, page no 217 to 219 of the Application.

It has been further submitted that the Transferor Company is having Nil Secured Creditors and 1 Unsecured Creditor as on 31ST May,2017, who has given his written consent in favour of the Scheme of Amalgamation.

The copy of the certificate of the statutory auditor and the copy of the consent of the Unsecured Creditor of the Transferor Company, namely, Garemohan Tie-up Private Limited, are annexed and marked **ANNEXURE N**, page no 220 to 222 of the Application.

In view of above, the applicant companies has prayed for dispensing with the calling and holding of the respective meetings of the shareholders and unsecured creditors of both the applicant companies.

Heard the counsels for the applicants, perused the records , documents annexed to the application and affidavits filed in the instant proceedings and

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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 Company, convening and holding of the meetings of the shareholders of the Transferee Company is dispensed with .
- b) In view of the consents given in affidavit form by all the shareholders of the Transferor Company, convening and holding of the meetings of the shareholders of the Transferor Company is dispensed with .
- c) In view of the consent given in affidavit form by the unsecured creditor of the Transferee Company, convening and holding of the meeting of the unsecured creditor of the Transferee Company is dispensed with .
- d) In view of the consent given in affidavit form by the unsecured creditor of the Transferor Company, convening and holding of the meeting of the unsecured creditor of the Transferor Company is dispensed with .

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- e) In view of the fact that the Transferee Company and Transferor Company have NIL Secured Creditors and verified by Auditors' Certificate , the question of convening and holding of the meetings of the secured creditors of the Transferee Company and Transferor Company, does not arise .
- f) Let notice be served by the applicant companies , as per 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 Liquidators attached to the Hon'ble High Court, Calcutta, having jurisdiction over the Transferee and Transferor Company, Reserve Bank Of India 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 Email, 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) That the Transferee and Transferor Companies shall affirm by way of affidavit that no investigation or proceedings under the Companies Act 1956 or Companies Act , 2013 have been instituted or are pending in relation to the amalgamating and amalgamated companies .
- i) 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 Authorized Representative. If no such representation is received by the Tribunal within the said period , it shall be presumed that such authorities have no

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representations 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 and Amalgamation) Rules , 2016 with necessary variations incorporating the directions therein .

The Company Application bearing C.A(CAA) No 573 /KB/2017 is, accordingly, disposed of.

Urgent certified copies of this order, if applied for, be supplied to the parties upon compliances of all requisite formalities.



(Jinan K.R)
Member (Judicial)

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