

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Company Petition CP(CAA) No.445/KB/2017

IN THE MATTER OF:

An Application under Section 230 to 232 of the Companies Act, 2013 ;

-And-

IN THE MATTER OF:

BAAZAR RETAIL LIMITED, a company within the meaning of Companies Act, 2013, having its registered Office at 493 B, GT Road, Warehouse No. M7, BJM Industries Compound, Howrah – 711 102 in the State of West Bengal, within the aforesaid jurisdiction ;

And

METRO RETAIL PRIVATE LIMITED, a company within the meaning of Companies Act, 2013, having its registered Office at 97, Andul Road, GKW Compound, Shed No. 1, Howrah – 711103 in the State of West Bengal, within the aforesaid jurisdiction ;

And

UPSIDE VENTURES PRIVATE LIMITED, a company within the meaning of Companies Act, 2013, having its registered Office at P-128, Lake Town, Block-B, Kolkata – 700 089 in the State of West Bengal ;

And

OHIO PROPERTIES PRIVATE LIMITED, a company within the meaning of Companies Act, 2013, having its registered Office at 493 B, GT Road, BJM Industries Compound, Howrah – 711 102 in the State of West Bengal ;

And


GREENLAND COMMODITIES PRIVATE LIMITED, a company within the meaning of Companies Act, 2013, having its registered Office at 493B, GT Road, BJM Industries Compound, Howrah – 711 102 in the State of West Bengal

And

1. BAAZAR RETAIL LIMITED
2. METRO RETAIL PRIVATE LIMITED
3. UPSIDE VENTURES PRIVATE LIMITED
4. OHIO PROPERTIES PRIVATE LIMITED
5. GREENLAND COMMODITIES PRIVATE LIMITED

- Petitioners

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



For the Petitioners:

Mr. Ratnanko Banerji, Senior Advocate

Mr. Nirmalya Dasgupta, Advocate

Mr. Shaunak Mitra, Advocate

Ms. Pritha Basu, Advocate

Ms. Aryaa Chatterjee, Advocate

Ms. Rajshree Mukherjee, Advocate

Ms. Tia Inla, Deputy Director, C/o. Regional Director (Eastern Region),
Ministry of Corporate Affairs

Date of pronouncement of the Order : 13-02-18

Per Jinan K. R.

ORDER

The object of this petition is to obtain sanction of this Tribunal to a Scheme of Arrangement between Bazaar Retail Limited, Metro Retail Private Limited, Upside Ventures Private Limited, Ohio Properties Private Limited and Greenland Commodities Private Limited and their respective shareholders.

A copy of the Scheme of Arrangement is annexed with the Petition and marked letter "A".

Sd

The Board of Directors of each Company is of the opinion that the proposed restructuring would benefit their shareholders, creditors, employees and all these companies and the general public.

It has been submitted in the Petition that the present Scheme of Arrangement will result in competitive advantage for meeting future growth opportunities, providing greater cost savings and economics and thereby significantly enhancing the earnings potential of each respective company.

The Scheme will help to achieve better and more efficient and economical control and conduct of the Company.

It has further been submitted in the Petition that the Scheme of Arrangement would involve :

- a) Transfer and vesting of the "SSG Division" of Baazar Retail Limited into Metro Retail Private Limited on a going concern basis ;
- b) Transfer and vesting of the "Property Division-A" of Baazar Retail Limited into Upside Ventures Private Limited on a going concern basis ;
- c) Transfer and vesting of the "Property Division-B" of Baazar Retail Limited into Ohio Properties Private Limited on a going concern basis ;
- d) Issue and allotment of shares to the shareholders of Baazar Retail Limited by Upside Ventures Private Limited, Ohio Properties Private Limited and Metro Retail Private Limited ;

Sd

- e) Cancellation of specified shareholding in Bazaar Retail Limited, Metro Retail Private Limited, Upside Ventures Private Limited, Ohio Properties Private Limited and
- f) Issue and allotment of shares to the specified shareholders of Metro Retail Private Limited by Bazaar Retail Limited in lieu of cancellation of their shareholding in Metro Retail Private Limited pursuant to Sections 230 to 232 and the other relevant provisions of the Companies Act, 2013.

It has also been stated in the Petition that 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 are found or interpreted to be inconsistent with the said provisions at a 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.

Such modification will, however, not affect other parts of the Scheme of Arrangement.

The First motion seeking direction for convening the meetings of the Equity shareholders of all the Petitioners companies and the Unsecured creditors of the petitioner Company Nos. 1 and 2 and dispensation of the meetings of the Secured

Creditors of the Petitioner Company Nos. 1 and 2 was filed before this Tribunal as Company Application CA No. 55/ 2017 and based on such joint application moved under Sections 230-232 of the Companies Act, 2013 by an Order dated 11-05-2017, as subsequently modified by an order dated 31-05-2017, directions were issued by this Tribunal for the convening and holding of the meetings of the equity shareholders of all the Petitioner Companies and the Unsecured Creditors of the Petitioner Company Nos. 1 and 2 and dispensing the meetings of the secured creditors of the Petitioner Company Nos. 1 and 2 by reason of affidavits filed by such creditors of the Petitioner Company Nos. 1 and 2 and further rendering that the Petitioner Company Nos. 3, 4 and 5 had no secured or unsecured creditors in view of the statutory auditors' certificates certifying that there are no secured or unsecured creditors of the Petitioner Company Nos. 3, 4 and 5.

In compliance with the directions issued by this Tribunal vide the aforesaid Orders, the Petitioner Companies had held the meetings of the equity shareholders of all the Petitioner Companies and the Unsecured Creditors of the Petitioner Company Nos. 1 and 2, on 13-07-2017 and the Scheme of Arrangement had been approved in the said meetings.

The Chairperson appointed by this Tribunal had also filed his reports on the aforesaid meetings, verified by his affidavits dated 31-07-2017, and containing therein the resolution as above passed in the respective meetings.

The copies of the said affidavits with reports and the minutes filed, are collectively annexed with the Petition and marked with "O".

In compliance of proviso to Section 230(7) of the Act, the Statutory Auditor of all the Petitioner Companies, by a certificate dated 22-01-2018 certified that the accounting treatment proposed in the Scheme of Arrangement is in conformity with the Accounting Standards prescribed under Section 133 of the Act.

A copy of the said Certificate of the Statutory Auditor of the Petitioner Companies is annexed with the Petition and marked with letter "P".

It has been submitted by the Petitioners that the assets of the Petitioner Companies are sufficient to meet all their liabilities and the Scheme of Arrangement will not adversely affect the rights of any creditors of any of the petitioner companies in any manner whatsoever.

It has also been submitted that the petitioner companies have made due provisions for payment of all the liabilities as and when the same will fall due.

It is stated in the Petition that there are no proceedings pending under Sections 235 to 251 of the Companies Act, 1956 and/or under Sections 217, 219, 221, 224, 225 of the Companies Act, 2013 against the petitioner companies.

It is further stated in the Petition that no one will be prejudiced if the proposed Scheme of Arrangement is sanctioned and the sanction of the said Scheme will

benefit and is in the interest of the Petitioner Companies, their shareholders and all concerned.

After such due compliance, the petitioners have made the instant petition bearing No. CP(CAA) No.445/KB/2017 before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Arrangement and for orders facilitating and giving effect to the same, in terms of provisions of Sections 230 to 232 of the Companies Act, 2013, read with Rule 16 of the Companies(Compromise, Arrangements and Amalgamation) Rules, 2016.

This Tribunal had passed an Order dated 26-10-2017 in the said Petition, directing publication to be effected of the hearing of the Petition, issuance of notices of this Petition to the concerned authorities for their objections, if any.

It has been stated in the Petition that pursuant to the Order dated 26-10-2017, passed by this Tribunal, notices of this Petition were served upon the Central Government through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Income Tax Department having jurisdiction over the petitioners, the Registrar of Companies, West Bengal and the Official Liquidator having jurisdiction over the Petitioner Companies.

The advertisement of the hearing of the Petition was also published once in "The Business Standard", English daily and once in "Dainik Statesman", vernacular daily and affidavit was filed on 13-11-2017 in compliance of the said Order.

The Official Liquidator attached to the Hon'ble High Court, Calcutta submitted his report on the basis of the verification carried out by him in accordance with the generally accepted auditing practices and conventions including the test checks, and in his opinion the affairs of the Petitioner Companies have not been conducted in a manner prejudicial to the interest of its members or to public interest.

The Central Government had also filed a joint affidavit on behalf of all the Government and regulatory authorities on 20-11-2017 with certain observations and the Petitioners, vide their affidavit dated 18-12-2017, dealt with the said observations of the Central Government.

Subsequently, the Central Government required the petitioners to clarify on certain issues.

The Petitioners had duly clarified such issues and submitted their response to the Central Government.

In view of the submissions made by the Petitioners and the documents submitted by them, the Central Government, vide affidavit dated 07-02-2018, has stated that the Central Government has no objection to the Scheme of Arrangement.

Heard the arguments of the Ld. Counsel for the petitioner Companies.

In view the facts stated above, the following orders in terms of prayers made in the petition, with modifications by this Tribunal, are passed :

- a) The Scheme of Arrangement mentioned in paragraph 1 of the Petition being Annexure "A" with the Petition, is sanctioned by this Tribunal to be binding with effect from 01-08-2016, on Baazar Retail Limited, Metro Retail Private Limited, Upside Ventures Private Limited, Ohio Properties Private Limited and Greenland Commodities Private Limited and their shareholders, creditors and all concerned ;
- b) Leave is granted to the Petitioners to file the Schedule of assets of the i) "SSG Division" of Baazar Retail Limited, ii) "Property Division-A" of Baazar Retail Limited and iii) "Property Division-B" of Baazar Retail Limited as stated in paragraph 27 of the Petition within three weeks from the date of this Order ;
- c) Baazar Retail Limited, Metro Retail Private Limited, Upside Ventures Private Limited, Ohio Properties Private Limited and Greenland Commodities Private Limited, within 30 days from the date of receipt of the copy of this Order, cause a certified copy thereof to be delivered to the Registrar of Companies, West Bengal ;
- d) Any person interested, shall be at liberty to apply to this Tribunal in the above matter for such directions as may be necessary.

In the event of the petitioner Companies supplying the legible computerized print out of the Scheme of Arrangement, and the schedule of assets in acceptable form to the department, the department will append such computerized print-out, upon verification to be certified copy of the order without insisting on a hand-written copy thereof.

Sd

Accordingly, the Company Petition bearing CP(CAA) No. 445/KB/2017 stands disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.



(Jinan K.R.)

Member(Judicial)

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