

**THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT NO. II
KOLKATA**

**C.P. (CAA) No.29/KB/2024
IN
C.A.(CAA) No. 210/KB/2023**

A Petition under section 230 read with section 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions of law.

IN THE MATTER OF:

A Scheme of Amalgamation of (Final Motion):

KARNI PLAZA MAKERS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U45400WB2007PTC114567 and its registered office at Goldwin Ganapati Sparsha, 144, Narayan Roy Road, BL-B, 4th Floor, FL-4C, Kolkata- 700008, in the State of West Bengal.

... Petitioner Company No.1/Transferee Company

And

DHANRASHI DEALCOMM PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U51909WB2011PTC161102 and its registered office at Goldwin Ganapati Sparsha, 144 Narayan Roy Road, BL-B, 4th Floor, FL-4C, Kolkata- 700008, in the State of West Bengal.

... Petitioner Company No.2/Transferor Company No. 1

And

SUBHSHIV COMMOTRADE PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U51909WB2011PTC161275 and its registered

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office at 18/19 Abani Dutta Road, Shop No-4, P.S Golabari PO Salkia, Bally Jagachha, Howrah- 711106, in the State of West Bengal.

... Petitioner Company No.3/Transferor Company No. 2

And

TOUCHWIN DEALER PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U51109WB2012PTC176955 and its registered office at 84/3, Panchanantala Road, 2nd Floor, Liluah, Howrah-711204, in the State of West Bengal.

... Petitioner Company No.4/Transferor Company No. 3

And

TRIDEVA VINIMAY PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U52190WB2012PTC176452 and its registered office at 1/1, Meridith Street Room No .11, Kolkata- 700072, in the State of West Bengal.

... Petitioner Company No.5/Transferor Company No. 4

And

DHANGANGA COMMOTRADE PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U52190WB2012PTC176500 and its registered office at 7, Mango Lane, 3rd Floor, Room No.311, Kolkata - 700001, in the State of West Bengal.

... Petitioner Company No.6/Transferor Company No. 5

And

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QUALITY RETAILERS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U51101WB2010PTC143414 and its registered office at Goldwin Ganapati Sparsha, 144 Narayan Roy Road, BL-B, 4th Floor, FL-4C, Kolkata- 700008, in the State of West Bengal.

... Petitioner Company No.7/Transferor Company No. 6

And

- 1) Karni Plaza Makers Private Limited, Transferee Company**
- 2) Dhanrashi Dealcomm Private Limited, Transferor Company No. 1**
- 3) Subhshiv Commotrade Private Limited, Transferor Company No. 2**
- 4) Touchwin Dealer Private Limited, Transferor Company No. 3**
- 5) Trideva Vinimay Private Limited, Transferor Company No. 4**
- 6) Dhanganga Commotrade Private Limited, Transferor Company No.5**
- 7) Quality Retailers Private Limited, Transferor Company No. 6**

...Petitioner Companies

Date of Pronouncement : 2nd July,2024

CORAM:

Smt. Bidisha Banerjee, Member (Judicial)

Shri. D. Arvind, Member (Technical)

APPEARANCE

FOR THE PETITIONER: Shri Jnana Ranjan Dhal, Adv.

FROM THE OFFICE OF REGIONAL DIRECTOR (EASTERN REGION),

KOLKATA: Shri. Alok Tandon Ld. Joint Director, MCA, Kolkata

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ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Court congregated through hybrid mode.
2. This instant petition has been filed under Sub-section 6 of the Sections 230 read with Sub-section 3 of the Section 232 of the Companies Act, 2013 (hereinafter referred as “**Act**”) for sanction of the Scheme of Amalgamation proposed between the Transferor Companies and Transferee Company, of **Dhanrashi Dealcomm Private Limited** (Transferor Company No. 1), **Subhshiv Commotrade Private Limited** (Transferor Company No. 2), **Touchwin Dealer Private Limited** (Transferor Company No. 3), **Trideva Vinimay Private Limited** (Transferor Company No. 4), **Dhanganga Commotrade Private Limited** (Transferor Company No. 5), **Quality Retailers Private Limited** (Transferor Company No. 6) with **Karni Plaza Makers Private Limited** (Transferee Company), the Appointed Date, i.e., **April 1, 2023** pursuant to Sections 230-232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 made there under in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (hereinafter referred as “Scheme”). A copy of the Scheme has been annexed as “**Annexure-A-1**” from Page No. 30 to 52 of the Petition.

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The Detail of the Petitioner Companies as follows: -

SN	NAME OF THE COMPANY	COMPANY AS PER THE SCHEME	PARTY TYPE	RELEVANT ANNEXURE, PAGE NO. AND VOLUME OF THE COMPANY PETITION
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Appointed Date: 1st April, 2023				
1.	Karni plaza makers private limited	Transferee Company	Petitioner Company No. 1	Scheme is annexed to the Company Petition being - Annexure -A-1 from Page No. 30 to 52 of the Petition.
2.	Dhanrashi Dealcomm Private Limited	Transferor Company No. 1	Petitioner Company No. 2	
3.	Subhshiv Commotrade Private Limited	Transferor Company No. 2	Petitioner Company No. 3	
4.	Touchwin Dealer Private Limited	Transferor Company No. 3	Petitioner Company No. 4	
5.	Trideva Vinimay Private Limited	Transferor Company No. 4	Petitioner Company No. 5	

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6.	Dhanganga Commotrade Private Limited	Transferor Company No. 5	Petitioner Company No. 6
7.	Quality Retailers Private Limited	Transferor Company No. 6	Petitioner Company No. 7

3. The Petition has now come up for final hearing. Authorized Representative for the Petitioners submits as follows: -

- i.** The Board of Directors of the Petitioner Companies at their respective Board Meetings held on **30th September, 2023** had approved the Scheme of Amalgamation of **Dhanrashi Dealcomm Private Limited** (Transferor Company No. 1), **Subhshiv Commotrade Private Limited** (Transferor Company No. 2), **Touchwin Dealer Private Limited** (Transferor Company No. 3), **Trideva Vinimay Private Limited** (Transferor Company No. 4), **Dhanganga Commotrade Private Limited** (Transferor Company No. 5), **Quality Retailers Private Limited** (Transferor Company No. 6) with **Karni Plaza Makers Private Limited** (Transferee Company). The Board Resolutions approving the Scheme are annexed with Company Petition as **“Annexure A-22”** from Page No. 398 to 411 of the Petition.
- ii.** The circumstances which justify and necessitate the said Scheme of Amalgamation are, *inter-alia*, as follows:

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- a)** For the purpose of better, efficient and economical management, control and running of the business of the undertakings concerned and also for administrative convenience and to obtain advantage of economy of large scale and to broad base the present business, the present Scheme is proposed to amalgamate the Transferor Companies with the Transferee Company.
- b)** Simplification of corporate structure by reducing the number of legal entities and reorganizing the legal entities in the group structure.
- c)** Significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out;
- d)** Elimination of duplication in administrative costs and multiple record-keeping, thus resulting in cost savings;
- e)** Concentrated effort and focus by the senior management to grow the business by eliminating duplicative communication and burdensome coordination efforts across multiple entities.
- f)** Simplify the Shareholding of Transferee Company.

Thus, as a whole, amalgamation of the Transferor Companies with the Transferee Company in terms of the Scheme will be beneficial for all the companies, their shareholders, their creditors, employees, customers and

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all others concerned with all the companies.

- iii.** The Statutory Auditors of respective Petitioner Companies have by their respective certificates dated **26th October, 2023** confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 and the same is marked as “**Annexure A-19**” on Page No. 345 of the Petition.
- iv.** There are no proceedings pending under sections 235 to 251 of the Companies Act, 1956 and sections 217, 219, 221, 224 and 225 of the Companies Act, 2013 against any of the Petitioners Companies.
- v.** The exchange ratio of shares in consideration of the amalgamation has been fixed on the basis of the valuation report obtained from **CA Sanjay Jhalaria**, Registered Valuer, IBBI Regn. No. IBBI Registration No. IBBI/RV/06/2019/11595 and the same is marked as “**Annexure A-18**” from Page No. 325 to 344 of the Petition.
- vi.** The shares of the Petitioner Companies are not listed on any Stock Exchange.
- vii.** By an Order **dated 22nd January, 2024** in **Company Application (CAA) No.210/KB/2023**, this Tribunal made the following directions with regard to the meeting(s) of shareholders and creditors under Section 230(1) read with

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Section 232(1) of the Act in view of the fact that the Transferor Companies and Transferee Company having its registered office under the Jurisdiction of the Hon'ble National Company Law Tribunal, Kolkata bench, for considering the Scheme, Meetings of the Equity Shareholders of the Applicant No. 1 to 7 are dispensed-with under Section 230(1) read with Section 232(1) of the Act.

There are no secured and unsecured creditors in the Applicant Company No. 1 to 7. Therefore, the meetings of secured or unsecured creditors of the Applicant Company No. 1 to 7 are not applicable and dispensed with. The Order dated 22nd January, 2024 is annexed as "**Annexure A-2**" from Page No. 53 to 58 of the Petition.

viii. The Petitioners presented the instant petition for sanction of the Scheme. By an Order dated **23rd February, 2024** the instant petition was admitted by this Tribunal and fixed for final hearing on **14th May, 2024**.

ix. That all the Petitioner Companies has served the notice Vide hand delivery/speed post and e-mail pursuant to the provisions of Section 230(5) of the Companies Act, 2013 and Rule 16(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 read with the Order dated 23rd February, 2024 of this Hon'ble Tribunal upon the following statutory authorities:

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Company	Name of Statutory Authorities	Date of Service	Mode of Service
All Petitioner Companies	Regional Director – Eastern Region (Ministry of Corporate Affairs);	07.03.2024	By hand delivery
All Petitioner Companies	Registrar of Companies – of West Bengal;	07.03.2024	By hand delivery
All Petitioner Companies	Official Liquidator;	07.03.2024	By hand delivery
Petitioner Companies No. 1, 2, 3, 5, 6 & 7	Income Tax Authority	07.03.2024	By hand delivery
Petitioner Companies No. 4	Income Tax Authority	07.03.2024	By speed Post
All Petitioner Companies	Chief Commissioner of Income Tax Department(s)	07.03.2024	By hand delivery
All Petitioner Companies	All the above Statutory Authorities	12.03.2024	E-mail

- x. The Petitioner(s) Companies have published advertisements in the Bengali Newspaper i.e. “**Dainik Statesman**”, and English Newspaper i.e. “**The Statesman**” on **14th March 2024**. Also, notices were served to all the requisite statutory

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authorities.

- xi.** In compliance of the aforesaid orders an affidavit was filed on behalf of the Petitioner Companies along with speed post receipts through which notices were served upon the necessary statutory authorities was submitted to the Hon'ble Tribunal through e-filing on the NCLT Portal on 19th March, 2024 and served the same physically to the Hon'ble National Company Law Tribunal delivery on 1st April, 2024.
- xii.** All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.
- 4.** Pursuant to the said advertisements and notices, the Regional Director, Ministry of Corporate Affairs, Kolkata ("**RD**") and Official Liquidator, High Court of Calcutta ("**OL**") have filed their representations before this Tribunal.
- 5.** The Official Liquidator has filed his report dated 4th April, 2024 and concluded as under:

"That the Official Liquidator on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the

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provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is applicable. That in view of the submission made above the Hon'ble National Company Law Tribunal may like to pass such order/orders as deemed fit and proper in the facts and circumstance of the case."

6. The Regional Director, Eastern Region, Kolkata *Vide* his representation dated **28th March, 2024** ("**RD Representation**") which has been dealt with by the Petitioners by rejoinder/undertaking dated **2nd April, 2024** ("**Rejoinder**"). The same was e-filed through the NCLT Portal on **2nd April, 2024** *Vide* Filing No. **1908134004982024/3** and was physically submitted to the Hon'ble Tribunal on **4th April, 2024**. The observations of the RD and responses of the Petitioner(s) are summarized as under: -

(a) Paragraph No.2 (a) of RD Affidavit:

That it is submitted that on the examination of report of the Registrar of Companies, West Bengal, it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. Further, all the petitioner companies are updated in filing their Financial Statements and Annual Returns for the financial year ended 31/03/2023.

Paragraph No. 5. (a) of Rejoinder:

The contents of para 2.(a) of the RD Report [as reproduced in para 4.a above] are matter of record and need no reply or

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clarification.

(b) Paragraph No.2 (b) of RD Affidavit:

The Petitioner Companies should be directed to provide list/details of Assets, if any, to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the proposed Scheme.

Paragraph No. 5 (b) of Rejoinder:

With regard to the list/details of Assets, if any, to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the proposed Scheme, we hereby undertake that the List/details of Assets shall be duly provided by the transferee company as per the law.

(c) Paragraph No. 2 (c) of RD Affidavit:

That the Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.

Paragraph No. 5 (c) of Rejoinder:

With regard to the compliance of section 232(3)(i), We do hereby undertake that the Transferee Company will comply with the provisions of section 232(3)(i) of the Companies Act, 2013, and other applicable provisions, if any, with regard to the payment of balance fee on increase of authorised capital subsequent to the sanction of the Scheme of Amalgamation.

(d) Paragraph No.2 (d) of RD Affidavit:

That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable

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properties from the Transferor Companies to it.

Paragraph No. 5(d) of Rejoinder:

With regard to payment of stamp duty on the transfer of immovable properties from the Transferor Company to be transferred to the Transferee Company, we do hereby undertake to pay appropriate stamp duty that may arise on any transfer of immovable property from the Transferor Company to the Transferee Company.

(e) Paragraph No.2 (e) of RD Affidavit:

The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

Paragraph No. 5(e) of Rejoinder:

With regard to the confirmation that the Scheme enclosed to the Company Application and Company Petition are one and same, we do hereby submit and confirm that the Scheme enclosed to the Company Application and Company Petition are one and the same and that there is no discrepancy or changes made therein.

Paragraph No.2 (f) of RD Affidavit:

It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 06/03/2024 for their views/ observation in the matter. However, the report of the Income Tax Department is still awaited.

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Paragraph No. 5(f) of Rejoinder:

With regard to the comments of the Income Tax Department, we do hereby submit that we have not received any objection/ representation against the proposed scheme of amalgamation relating to the above mentioned petitioner companies from the Department of Income tax or any persons /stakeholders.

7. We have heard the submissions made by the Ld. Counsel appearing for the Petitioners and Regional Director (ER), MCA, Kolkata. Upon perusing the records and documents in the instant proceedings and considering the submissions and on being satisfied with the clarifications provided by the Petitioners, we allow the petition and make the following orders: -

- (a) The “**Scheme of Amalgamation**” mentioned in Paragraph 1 of the Petition, being **Annexure “A”** hereto, be and is hereby sanctioned with appointed date as **01st April, 2023** (“**Appointed Date**”) and shall be binding on **Dhanrashi Dealcomm Private Limited** (Transferor Company No. 1), **Subhshiv Commotrade Private Limited** (Transferor Company No. 2), **Touchwin Dealer Private Limited** (Transferor Company No. 3), **Trideva Vinimay Private Limited** (Transferor Company No. 4), **Dhanganga Commotrade Private Limited** (Transferor Company No. 5), **Quality Retailers Private Limited** (Transferor Company No. 6) with **Karni Plaza Makers Private Limited** (Transferee Company) and their respective shareholders and creditors and

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all concerned.

(b) TRANSFEROR COMPANIES	TRANSFeree COMPANY
APPOINTED DATE: 01ST APRIL, 2023	
DHANRASHI DEALCOMM PRIVATE LIMITED	KARNI PLAZA MAKERS PRIVATE LIMITED
SUBHSHIV COMMOTRADE PRIVATE LIMITED	
TOUCHWIN DEALER PRIVATE LIMITED	
TRIDEVA VINIMAY PRIVATE LIMITED	
DHANGANGA COMMOTRADE PRIVATE LIMITED	
QUALITY RETAILERS PRIVATE LIMITED	

- (c)** All the property, rights and powers of the Transferor Companies, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without any further act or deed, to the Transferee Company, and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013 be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme.
- (d)** All the debts, liabilities and duties and obligations of the Transferor Companies to be transferred from the said Appointed Date, without further act or deed, to Transferee

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Company and shall, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company.

- (e)** All the workmen and employees of the Transferor Companies shall be engaged by the Transferee Company, as provided in the Scheme. All the obligations/ liabilities of the Transferor Companies with regard to their workmen and employees shall be the responsibilities of the Transferee Company.
- (f)** All proceedings and/or suit and/or appeals now pending by or against the Transferor Companies shall be continued by or against Transferee Company, as provided in the Scheme; and the sanctioning of the scheme by this tribunal shall not come in the way of any proceedings pending/ contemplated against any of the petitioner companies, for which the relevant records shall be preserved by the Transferee company who is any way responsible for attending to any such proceedings on behalf of the constituent companies.
- (g)** With effect from the Appointed Date and up to and including the Effective Date, all legal, arbitration, and tax assessment proceedings/appeals of whatsoever nature by or against the Transferor Companies pending and/or arising on or after the Appointed Date shall be continued and/or enforced by or against the Transferee Company. Any compounding/

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penalties/ liabilities/ taxes required to be done on behalf of the Transferor Companies for any violation of the Companies' Act shall be the responsibility of the Transferee Company. The Transferee Company shall also preserve the necessary records in respect of any such pending proceedings, at least till the culmination of such proceedings.

- (h)** In case of any default, including in provisions of income tax in respect of transferred companies, the Income Tax Department, the Registrar of Companies, West Bengal, and all others statutory departments/authorities shall be at liberty to initiate appropriate proceedings against the transferee company which after the sanction of the scheme by this tribunal is in any case shall be responsible for the liabilities/non-compliances of the transferee companies as well. The transferee company shall preserve the relevant records of the transferor companies in this regard.
- (i)** The Transferee Company shall issue and allot shares to the shareholders of the Transferor Companies, the shares in the Transferee Company in accordance with the Scheme.
- (j)** Upon the Scheme being effective, the Transferor Companies shall stand dissolved without winding up from the date of the filing of the certified copy of this order upon the Registrar of Companies, West Bengal.

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- (k)** Leave is granted to the petitioners to file the Schedule of Assets & liabilities of the Transferor Companies in the form as prescribed in the Schedule to Form No. CAA-7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date the order.
- (l)** The Petitioner Companies do within 30 days after the receipt of the certified copy of this order, cause a certified copy thereof to be delivered to the Registrar of Companies, Kolkata for registration and on such certified copies being so delivered, the Transferor Company shall be dissolved with effect from the date or last of the dates of filing of the certified copies of the order, as aforesaid (Effective Date) and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said companies shall be consolidated accordingly.
- (m)** Any person interested shall be at liberty to apply to this Tribunal in the above matter for such directions so may be necessary.
- 8.** The Petitioners shall supply legible print out of the scheme and schedule of assets in acceptable form to the Registry and the Registry will append such printout, upon verification to the certified copy of the order.

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9. The **Company Petition (CAA) No. 210/KB/2023** connected with **Company Application (CAA) No. 29/KB/2024** is **disposed of** accordingly.

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

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This order signed on the 2nd day of July 2024.

Oindrila, K. (LRA)