

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

Company Application (CAA) No. 108 / KB /2024

Application 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 Composite Scheme of Arrangement (First Motion):**

-And-

In the Matter of:
SUNLIGHT STRUCTURALS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 (CIN: U45208WB2009PTC133769) and having its Registered Office at 3rd Floor 67, Burtalla Street, Kolkata - 700007 in the State of West Bengal.

...Transferor Company No 1 for Section A / Applicant No 1

-And-

In the Matter of:
VAISHNAVI BARTER PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 having (CIN: U51909WB2009PTC135973) and having its Registered Office at 3rd Floor 67, Burtalla Street, Kolkata - 700007 in the State of West Bengal.

...Transferor Company No 2 for Section A / Applicant No 2

-And-

In the Matter of:
FASHION EARTH GARMENTS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 (CIN: U18100WB2009PTC135615) and having its Registered Office at 9, Narayan Prasad Babu Lane, 02nd Floor, Kolkata - 700007 in the State of West Bengal.

**...Transferee Company for Section A and Demerged Company
for Section B / Applicant No 3**

-And-

In the Matter of:

MAY REFRACTORIES PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 (CIN: U74900WB2011PTC166656) and having its Registered Office at 85A, Burtalla Street 2nd Floor, Kolkata – 700007 in the State of West Bengal.

...Resulting Company for Section B / Applicant No 4

-And-

In the matter of:

1. **SUNLIGHT STRUCTURALS PRIVATE LIMITED**
2. **VAISHNAVI BARTER PRIVATE LIMITED**
3. **FASHION EARTH GARMENTS PRIVATE LIMITED**
4. **MAY REFRACTORIES PRIVATE LIMITED**

.... APPLICANTS.

Date of pronouncing the order: 14/05/ 2024

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**
Shri D. Arvind : **Member (Technical)**

For the Applicants : 1. Ms. Manju Bhuteria, Advocate
2. Ms. Aisha Amin, Advocate

ORDER

Per: Arvind Devanathan, Member (Technical)

1. The instant application has been filed in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 (“Act”) for orders and directions with regard to meetings of shareholders and creditors in connection with the Composite Scheme of Arrangement which provides

(a) for Amalgamation of

Sunlight Structurals Private Limited	Transferor Company No 1 / Applicant No.1
Vaishnavi Barter Private Limited	Transferor Company No 2 / Applicant No.2

With Fashion Earth Garments Private Limited - Transferee Company / Applicant No 3, from the **Appointed Date 01st April, 2023 in Section A of the Scheme.**

(b) for Demerger of Warehouse Division of

Fashion Earth Garments Private Limited	Demerged Company / Applicant No.3
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by transfer and vesting of the same in the May Refractories Private Limited – Resulting Company / Applicant No 4 from the **Appointed Date 01st April,2023 in Section B of the Scheme.**

A copy of the said Composite Scheme of Arrangement (“**Scheme**”) is annexed to the Company Application marked – **Annexure – I** in VOL II at Page No 211 to 247.

2. It is submitted by Ld. counsel appearing for the Applicant(s) that as per the Scheme the **Appointed Date 01st April,2023.**

3. It is submitted by Ld. Counsel appearing for the Applicant(s) that **none** of the Applicant Companies involved in the Scheme are NBFC Companies.
4. It is submitted by Ld. counsel appearing for the Applicant(s) that the Board of Directors of the Applicant Companies have at their respective meeting held on 24TH February, 2024 have passed resolution adopting the proposed Composite Scheme of Arrangement. A copy of the Resolution passed by the Board of Directors of the Applicant Companies are all collectively annexed to the Company Application marked – **Annexure – J** in VOL II at Page No 248 to 251.
5. It is submitted by Ld. counsel appearing for the Applicant(s) that the Valuation Report dated 15TH February, 2024 recommending the Swap Ratio has been prepared by CA Mukesh Banka, IBBI Registered Valuer. A copy of the said Report is annexed to the Company Application marked – **Annexure – K** VOL II at Page No 252 to 268.
6. It is submitted by Ld. counsel appearing for the Applicant(s) that the statutory auditors of the Applicant Companies have all by their certificate dated 27-02-2024 confirmed that the Accounting Treatment proposed in the Composite Scheme of Arrangement is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013 and Rules made there under. A copy of the said Certificate issued by Statutory Auditor of the Applicant Companies are all collectively annexed to the Company Application marked – **Annexure – N** in VOL III at Page No 471 to 478.
7. It is submitted by Ld. counsel appearing for the Applicant(s) that, the Applicant(s) have the following classes of shareholders and creditors:-

PARTICULARS	EQUITY SHARE HOLDERS 31-01-2024 AND	PREFERE NCE SHARE HOLDER	SECURE D CREDIT ORS	UNSECU RED CREDITO RS
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	10-02-2024	S	15-02-2024	15-02-2024
APPLICANT NO.1	6	NIL	NIL	NIL
APPLICANT NO.2	7	NIL	NIL	NIL
APPLICANT NO.3	9	NIL	1	73
APPLICANT NO.4	2	NIL	NIL	1

8. It is submitted by Ld. counsel appearing for the Applicant(s) that, the Auditors Certificate, the Affidavit of Consents, the calculation of percentage of consents are as below :

	Nos	% of Consent	Annexure	Auditors Certificate Page no	Affidavit Of Consent Page no
EQUITY SHAREHOLDERS					
APPLICANT NO.1	6	100	L	VOL II PAGE NO 269	VOL II PAGE NO 270 to 291
APPLICANT NO.2	7	100	L1	VOL II PAGE NO 292	VOL II PAGE NO 293 to 316
APPLICANT NO.3	9	100	L2	VOL II PAGE NO 317	VOL II PAGE NO 318 to 348
	Nos	% of Consent	Annexure	Auditors Certificate Page no	Affidavit Of Consent Page no

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APPLICANT NO.4	2	100	L3	VOL II PAGE NO 349	VOL II PAGE NO 350 to 355
SECURED CREDITORS					
APPLICANT NO.1	NIL	N.A	M	VOL III PAGE NO 356	N.A
APPLICANT NO.2	NIL	N.A	M1	VOL III PAGE NO 357	N.A
APPLICANT NO.3***	1	N.A	M2	VOL III PAGE NO 358	N.A
APPLICANT NO.4	NIL	N.A	M3	VOL III PAGE NO 468	N.A
NOTE : *** 100% PAID OFF ON 15-02-2024 , Page No 361 to 363					
UNSECURED CREDITORS					
APPLICANT NO.1	NIL	N.A	M	VOL III PAGE NO 356	N.A
APPLICANT NO.2	NIL	N.A	M1	VOL III PAGE NO 357	N.A
APPLICANT NO.3***	73	92.89	M2	VOL III PAGE NO 358 to 360	VOL III PAGE NO 369 to 467
APPLICANT NO.4	1	100	M3	VOL III PAGE NO 468	VOL III PAGE NO 469 to 470

NOTE: % CALCULATION AT PAGE NO 364 to 368

9. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicant(s), we allow the instant application and make the following orders:-

a. Meetings dispensed:

Equity Shareholders

Meeting of Equity Shareholders of the Applicant Companies for considering the Scheme are dispensed with in view of shareholder representing 100% in value of shares of Applicant Companies having respectively given their consent to the Scheme by way of affidavits without seeking modification(s).

Unsecured Creditors

Meeting of Unsecured Creditors of Applicant No 3 for considering the Scheme are dispensed with in view of consent by Unsecured Creditors representing 92.89% in value of Unsecured Debt of Applicant No 3 having respectively given their consent to the Scheme by way of affidavits without seeking modification(s).

Meeting of Unsecured Creditors of Applicant No 4 for considering the Scheme are dispensed with in view of consent by Unsecured Creditors representing 100% in value of Unsecured Debt of Applicant No 4 having respectively given their consent to the Scheme by way of affidavits without seeking modification(s).

b. No requirement of Meetings

Secured Creditors

No requirement of Meeting of Secured Creditors of Applicant No 1 and Applicant No 2 – NIL Creditors duly verified by auditor’s certificate.

Unsecured Creditors

No requirement of Meeting of Unsecured Creditors of Applicant No 1 and Applicant No 2 – NIL Creditors duly verified by auditor’s certificate.

c. No requirement of Meetings

No requirement of meeting of Secured Creditors of Applicant No 3 as 100% Secured Creditors has been paid off on 15-02-2024 as evidenced by auditor’s certificate.

10. Notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013 shall also be served on the:

- a. Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;
- b. Registrar of Companies, West Bengal, Kolkata
- c. Official Liquidator; High Court Calcutta
- d. Income Tax Department having jurisdiction over the Applicant(s)

by sending the same by hand delivery through special messenger or by post and also by email within two weeks from the date of receiving this order. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Authorized Representative of the said Applicant(s). If no such

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representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme of Amalgamation. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA3 of the said Rules with necessary variations, incorporating the directions herein.

11. The Applicant(s) to file an affidavit proving service of notice and compliance of all directions contained.
12. The application being **Company Application CA (CAA) No. 108 / KB / 2024** is **disposed of** accordingly.
13. Urgent Certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 14th day of May, 2024.

NKS(LRA)