

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II**

COMPANY APPLICATION (CAA) NO. 88 /KB /2024

An 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 Scheme of Amalgamation of (First Motion):

CAIRFUL SUPPLIERS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 (CIN: U51909WB2010PTC154895) and having its Registered Office at Paridhan Garment Park, SDF-11, Module No. B-303 & 304, Next Leather Collage, 19 Canal (S) RD, Chingrihata, Kolkata, West Bengal, India-700015 in the State of West Bengal within the aforesaid jurisdiction.

.... Transferor Company No.1 / Applicant No. 1

KAILASHPATI MERCHANDISE PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 (CIN: U51909WB2010PTC154896) and having its Registered Office at Paridhan Garment Park, SDF-11, Module No. B-303 & 304, Next Leather Collage, 19 Canal (S) RD, Chingrihata, Kolkata, West Bengal, India-700015 in the State of West Bengal within the aforesaid jurisdiction.

.... Transferor Company No.2 / Applicant No. 2

PUSHPAK DEALER PRIVATE LIMITED, a company incorporated

under the provisions of the Companies Act, 1956 (CIN: U51909WB2010PTC146544) and having its Registered Office at Paridhan Garment Park, SDF-11, Module No. B-303 & 304, Next Leather Collage, 19 Canal (S) RD, Chingrihata, Kolkata, West Bengal, India-700015 in the State of West Bengal within the aforesaid jurisdiction.

.... Transferor Company No.3 / Applicant No. 3

MANISH FASHIONWORLD PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act,1956 (CIN: U18101WB2006PTC111881) and having its Registered Office at 5TH Floor, Office No. 1,2 & 3, Block-2, 29/1, Kalabagan Lane, Chatterjee Hat, Howrah, West Bengal, India-711104 in the State of West Bengal within the aforesaid jurisdiction.

... Transferee Company / Applicant No. 4

IN THE MATTER OF:

1. CAIRFUL SUPPLIERS PRIVATE LIMITED
2. KAILASHPATI MERCHANDISE PRIVATE LIMITED
3. PUSHPAK DEALER PRIVATE LIMITED
4. MANISH FASHIONWORLD PRIVATE LIMITED

..... Applicants

Date of pronouncement:3/7/2024

CORAM

Smt. Bidisha Banerjee : **Hon'ble Member (Judicial)**

Shri D. Arvind : **Hon'ble Member (Technical)**

Appearances:

Mr. Sunil Choraria, Authorised Representative

.....For the applicants

ORDER

Per: Bidisha Banerjee, Member (Judicial):

1. This Court is convened through hybrid mode.
2. 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 ("**the Act**") for orders and directions with regard to meetings of shareholders and creditors in connection with the "**Scheme of Amalgamation**" (hereinafter referred as "**Scheme**") for **amalgamation** of:

SN	NAME OF THE COMPANY	COMPANY AS PER THE SCHEME	PARTY TYPE	RELEVANT ANNEXURE, PAGE NO. AND VOLUME OF THE COMPANY PETITION
Appointed Date: 01st April, 2023				
I.	CAIRFUL SUPPLIERS PRIVATE LIMITED	Transferor Company No. 1	Applicant No. 1	A copy of the said Scheme is annexed to the Company Application marked
II.	KAILASHPATIMERCHANDISE PRIVATE LIMITED	Transferor Company No. 2	Applicant No. 2	- Annexure - L in VOL III at Page No. 437 to 466.

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III.	PUSHPAK DEALER PRIVATE LIMITED	Transferor Company No. 3	Applica nt No. 3	
IV.	MANISH FASHIONWO RLD PRIVATE LIMITED	Transferee Company	Applicant No. 4	

3. It is submitted by Ld. counsel appearing for the Applicants that the **Appointed Date** as per the Scheme is **01st April, 2023**.
4. It is submitted by Ld. counsel appearing for the Applicants that the Board of Directors of the Applicant Companies have passed resolution at the meeting held on 26th February, 2024 approving the Scheme of Amalgamation. A copy of the said resolution passed by the Board are annexed to the Company Application marked as **Annexure – N Colly in VOL III at page no 478 to 486**.
5. It is submitted by Ld. counsel appearing for the Applicants that the Valuation Report dated 21st February, 2024 recommending the Swap Ratio, has been prepared by Smt. Rashmi Chhawchharia, IBBI Registered Valuer. A copy of the said Valuation Report is annexed to the Company Application marked as **Annexure – K in VOL III at page No 418 to 436**.
6. It is submitted by Ld. counsel appearing for the Applicants that the **Statutory Auditors** of the Applicants Companies have by their certificate **dated 28th February, 2024** have confirmed that the accounting treatment mentioned in the Scheme of Amalgamation is in conformity with Accounting Standard prescribed under Section 133 of the Companies Act, 2013 and Rules made there under. Copy of the said certificates are all annexed to the Company Application being **–Annexure M Colly in VOL III at Page No 467 to 477**.
7. It is submitted by the Ld. Authorized Representative appearing for the Applicants that the shares of all the Applicants are not listed on the stock exchanges. Further, the Applicants have the following classes of shareholders and creditors: -

PARTICULARS	EQUITY SHAREHOLD ERS AS ON 31-01-2024	SECURED CREDITORS AS ON 31-01- 2024	UNSECURE D CREDITORS AS ON 31- 01-2024
TRANSFEROR R COMPANY No. 1 / APPLICANT NO. 1	2	NIL	1
TRANSFEROR R COMPANY No. 2 / APPLICANT NO. 2	2	NIL	1
TRANSFEROR R COMPANY No. 3 / APPLICANT NO. 3	5	NIL	4
TRANSFEREE COMPANY / APPLICANT NO. 4	10	3	185

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

EQUITY SHAREHOLDERS

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PARTICULARS	NO (S).	% OF CONSENT	AUDITORS CERTIFICATE		AFFIDAVIT OF CONSENTS	
			ANNEXURE	PAGE NO	ANNEXURE	PAGE NO
TRANSFER OR COMPANY NO 1 / APPLICANT NO 1	2	100	I1	VOL III PAGE NO 355 TO 356	J1 COLLY	VOL III PAGE NO 363 TO 368
TRANSFER OR COMPANY NO 2 / APPLICANT NO 2	2	100	I2	VOL III PAGE NO 357 TO 358	J2 COLLY	VOL III PAGE NO 369 TO 378
TRANSFER OR COMPANY NO 3 / APPLICANT NO 3	5	100	I3	VOL III PAGE NO 359 TO 360	J3 COLLY	VOL III PAGE NO 379 TO 394
TRANSFERE COMPANY / APPLICANT NO 4	10	100	I4	VOL III PAGE NO 361 TO 362	J4 COLLY	CONSENT OF 6 (Six) SHAREHOLDERS VOL III PAGE NO

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						395 TO 417 AND CONSEN T OF 4 (FOUR) SHAREH OLDERS IN AFFIDAVI T DATED 13 TH APRIL, 2024 PAGE NO 10 TO 21.
SECURED CREDITORS						
PARTICULARS	NO (S).	% OF CONSENT	AUDITORS CERTIFICATE		AFFIDAVIT OF CONSENTS	
			ANNEXURE	PAGE NO	ANNEXURE	PAGE NO
TRANSFER OR COMPANY NO 1 / APPLICANT NO 1	NIL	NA	F1	VOL II PAGE NO 306 TO 307	NA	NA

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TRANSFER OR COMPANY NO 2 / APPLICANT NO 2	NIL	NA	F2	VOL II PAGE NO 308 TO 309	NA	NA
TRANSFER OR COMPANY NO 3 / APPLICANT NO 3	NIL	NA	F3	VOL II PAGE NO 310 TO 312	NA	NA
TRANSFERE E COMPANY / APPLICANT NO 4	3	NA	F4	VOL II PAGE NO 313 TO 321	NA	NA
UNSECURED CREDITORS						
PARTICULARS	NO (S).	% OF CONSENT	AUDITORS CERTIFICATE		AFFIDAVIT OF CONSENTS	
			ANN EXURE	PAGE NO	ANN EXURE	PAGE NO
TRANSFER OR COMPANY NO 1 / APPLICANT NO 1	1	100	F1	VOL II PAGE NO 306 TO 307	H1	VOL II PAGE NO 328 TO 331

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TRANSFER OR COMPANY NO 2 / APPLICANT NO 2	1	100	F2	VOL II PAGE NO 308 TO 309	NA	VOL II PAGE NO 332 TO 335
TRANSFER OR COMPANY NO 3/ APPLICANT NO 3	4	100	F3	VOL II PAGE NO 310 TO 312	H2	VOL II PAGE NO 336 TO 347
TRANSFERE E COMPANY / APPLICANT NO 4	185	NA	F4	VOL II PAGE NO 313 TO 321	NA	NA

9. Directions are sought accordingly for:
- a) Dispensing with meetings of the Equity Shareholders of all the Applicant Companies.
 - b) Dispensing with meetings of the Secured and Unsecured Creditors of all the Transferor Companies.
 - c) Convening and holding of meeting of the Secured and Unsecured Creditors of the Transferee Company / Applicant Company No. 4.
10. 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:

Meetings of Equity Shareholders of all the Applicant Companies, Secured and Unsecured Creditors of the Applicant No. 1, Applicant No. 2 and Applicant No.3 being the Transferor Company are dispensed with under Section 230(1) read with Section 232(1) of the Act.

b) Meetings called:

The meeting of the Secured and Unsecured Creditors of the Applicant No. 4 being the Transferee Company shall be convened and held physically at the registered office of the Transferee Company at 5TH Floor, Office No. 1,2 & 3, Block-2, 29/1, Kalabagan Lane, Chatterjee Hat, Howrah, West Bengal, India-711104, on **13th August 2024** at **1 PM** for the purpose of considering, and, if thought fit, approving the said Scheme, with or without modification, in compliance with the applicable provisions of the Companies Act, 2013 and the Companies (Management and Administration) Rules, 2014, read with applicable circulars issued by Ministry of Corporate Affairs from time to time.

c) Notice of the Meeting:

i. Advertisement:

At least 30 (thirty) clear days before the meeting to be held, as aforesaid, an advertisement of the notice of meeting, stating that copies of the Scheme and the statement containing necessary details required to be filed pursuant to section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 is being sent with the notice of meeting, be published once each in the **“Financial Express” in English and**

“Aajkal” in Bengali, both circulated in the state of West Bengal as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

ii. Individual Notices:

At least 30 (thirty) clear days before the date of the meeting to be held, as aforesaid, notice convening the said meeting, along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Companies Act, 2013, disclosing necessary details and the prescribed form of proxy, shall be sent to each of the Secured and Unsecured Creditor of the Applicant No. 4 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, by post or air mail or courier or email or through personal messenger at their respective or last known addresses.

d) Chairperson:

Adv Rites Goel ,Email: replyrites@gmail.com , Phone: **9831029805**, is appointed as the Chairperson of the meeting of both Secured and Unsecured Creditors to be held, as aforesaid. The Chairperson shall be paid a sum of **Rs. 85,000 (Rs eighty five thousand only)** for conducting the aforesaid meeting as Chairperson.

e) Scrutinizer:

CA Neha Agarwal ,Email: Nehabagarwalandco@gmail.com,
Phone: 9831966642 is appointed as the Scrutinizer of the meeting of both Secured and Unsecured Creditors to be held, as aforesaid. The Scrutinizer shall be paid a sum of **Rs. 75,000 (Rs Seventy five thousand only)** for conducting the aforesaid meeting as Chairperson.

f) Quorum and Attendance:

That the quorum for the said meeting of persons entitled to attend the same shall be determined in accordance with Section 103 of the Companies Act, 2013. For the meeting to be held physically, only attendance of such persons physically at the venue shall be counted for quorum. In case the quorum of any meeting is not present within half an hour (30 minutes) from the time appointed for the meeting, the Chairperson may adjourn and hold the meeting to any other date and time and take a decision on the quorum in the adjourned meeting.

g) Mode of Voting:

Voting in the meeting shall be conducted by postal ballot/by show of hands since the meeting would be held physically.

h) Proxies & Board Resolution:

A person, including a Body Corporate, entitled to attend and vote at the venue of a meeting, as aforesaid, may do so personally or by proxy, provided the proxies in the prescribed form duly signed by such person and/or the certified copy of resolution of the Board of Directors or other governing body of such person, where it is a Body Corporate, authorizing its representative to attend and vote at such meeting on its behalf, as the case may be, is deposited at the registered office of the respective Applicant Companies not later than 48 (forty eight) hours before the time for holding the meeting.

i) That the Chairperson appointed for the said meeting or any person authorized by the Chairperson do issue and send the notices of the aforesaid meeting and shall have all powers as per the Articles of Association of the Applicant Company No. 4 and also under the Companies Act, 2013 read with the

Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, as may be applicable, in relation to the conduct of the meeting, including for deciding procedural questions that may arise at the meeting or at any adjournments thereof or any other matter including, an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).

j) Scrutinizer's Report/Declaration of Result:

The votes cast by the Secured and Unsecured Creditor of the Applicant Company No. 4 shall be scrutinized by the Scrutinizer. The Scrutinizer shall prepare and submit the report on the meeting held along with all papers relating to the voting to the Chairperson of the meeting within 3 days of the conclusion of the meeting. The Chairperson shall declare the results of the meeting after submission of the report of the Scrutinizer.

- k) The resolution for approval of the Scheme put to meeting shall be deemed to have been duly passed on the date of such meeting under the provisions of Section 230(1) read with Section 232(1) of the Companies Act, 2013 and other applicable provisions.
- l) The Chairperson shall report to this Tribunal, the results of the said meeting within four weeks from the date of the conclusion of the said meeting. Such report shall be in Form No. CAA-4 as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.
- m) The applicant to serve a 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:

- a. **Regional Director**, Eastern Region, Ministry of Corporate Affairs, Kolkata;
- b. **Registrar of Companies** with whom the Applicants are registered;
- c. **Income Tax Department** having jurisdiction over the Applicants;
- d. **Official Liquidator**, High Court at Calcutta;
- e. Other sectoral regulators that are likely to be affected by the scheme.

These notices shall be sent by delivery through special messenger, by hand delivery, 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 (thirty) 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 Applicants. If no such 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, Amalgamations and Amalgamations) Rules 2016 in Form No. CAA 3 of the said Rules with necessary variations, incorporating the directions herein.

11. The Applicant Companies shall file an affidavit proving service of notices for meeting and publication of advertisement and

compliance of all the directions contained herein within two weeks after such services.

12. The application being **Company Application (CAA) No. 88/KB/2024** is **disposed of** accordingly.
13. 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)

This Order signed on the 3rd day of July, 2024

NKS(LRA)