

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

C.P. (CAA) No. 83/KB/2024

Connected with

C.A. (CAA) No. 48/KB/2024

A Petition under Section 230(6) read with Section 232(3) of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations Rules), 2016 and other applicable provisions of the law.

IN THE MATTER OF:

A Scheme of Amalgamation (Second Motion):

RATNABALI EQUITY PRIVATE LIMITED (formerly Nishtha Investment And Consultancy Services Private Limited) (CIN: U74140WB1991PTC053207), a Company incorporated under the provisions of the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having its registered office at 5A, Wood Burn Park Road, Woodburn Central, 3rd Floor, Kolkata – 700020, West Bengal;

**...Transferee
Company**

AND

ASHWAMEDH PROPERTIES PRIVATE LIMITED (CIN: U70109WB1993PTC058911), a Company incorporated under the provisions of the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having its registered office

at 5A, Woodburn Park Road, Woodburn Central, 3rd Floor, Kolkata – 700020, West Bengal,;

...Transferor Company 1

AND

BHOODHAN FARM FRESH PRODUCTS PRIVATE LIMITED (CIN: U01100WB2016PTC216677), a Company incorporated under the provisions of the Companies Act, 2013 and having its registered office at 5A, Wood Burn Park Road, Woodburn Central, 3rd Floor, Kolkata – 700020, West Bengal;

....Transferor Company 2

AND

RATNABALI SECURITIES PRIVATE LIMITED (CIN: U65100WB2012PTC183212), a Company incorporated under the provisions of the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having its registered office at Woodburn Central, 3rd Floor, 5A, Wood Burn Park Road, Kolkata – 700020, West Bengal;

....Transferor Company 3

IN THE MATTER OF:

1. Ratnabali Equity Private Limited (*formerly Nishtha Investment And Consultancy Services Private Limited*)
2. Ashwamedh Properties Private Limited
3. Bhoodhan Farm Fresh Products Private Limited
4. Ratnabali Securities Private Limited

...PETITIONERS

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Shri D. Arvind, Member (Technical)

Appearances:

1. Mrs. Manju Bhuteria, Advocate: For the Petitioners
2. Ms. Uttara Mitra, Practicing Company Secretary: For the Petitioners

Date of Pronouncement: 5/7/2024

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The instant Petition has been filed under Section 230 read with Section 232 and other applicable provisions of the Companies Act, 2013 (**Act**) for sanction of the Scheme of Amalgamation (**Scheme**) of the following Transferor Companies:

Sl. No.	Name of the Companies
Transferor Company 1	Ashwamedh Properties Private Limited
Transferor Company 2	Bhoodhan Farm Fresh Products Private Limited
Transferor Company 3	Ratnabali Securities Private Limited

with **Ratnabali Equity Private Limited (formerly Nishtha Investment And Consultancy Services Private Limited)** being the Transferee Company whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee

Company from the Appointed Date i.e. 01.04.2023 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation.

2. The Petition has now come up for final hearing. The Ld. Counsel appearing for the Petitioners submits as follows:-
- a) The Scheme was approved unanimously by the respective Board of Directors of the Transferor Companies and the Transferee Company at their meetings held on 15.01.2024 respectively.
 - b) The circumstances and/or reasons and/or grounds that have necessitated the said Scheme of Amalgamation and the benefits of the same, are inter-alia as follows:
 - (i) The amalgamation will enable appropriate consolidation of the undertakings of the Transferor Companies and the Transferee Company.
 - (ii) The amalgamation will lead to the businesses of the merged entity being carried on more efficiently and economically. The same would result, inter alia, from pooling and more effective utilization of all available resources, consolidation, elimination of duplication of work, and overall reduction of overheads and considerable savings in costs which will be facilitated by and follow the amalgamation.
 - (iii) The business of the Transferor Companies and the Transferee Company can be conveniently and advantageously combined together and in general, business of the companies concerned will be carried over economically and profitably under the said scheme.

- (iv) The said Scheme will contribute in furthering and fulfilling the objects of both the Companies concerned in the growth and development of their business.
- (v) The said Scheme will strengthen and consolidate the position of the Transferee Company to participate more vigorously and profitably in a competitive market.
- (vi) The amalgamation will lead to the cancellation of cross shareholdings among the Transferor Companies and Transferee Company, if any, thereby leading to direct control by way of shareholding.
- (vii) The Scheme is proposed to the advantage of the Transferor Companies and the Transferee Company and will have beneficial results for the said Companies, their shareholders, employees and all concerned.
- c) The Statutory Auditor of the Transferee Company and the Transferor Companies by way of their certificate dated 08.03.2024 have confirmed that the accounting treatment in the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013.
- d) The exchange ratio of shares in consideration of the amalgamation has been fixed on a fair and reasonable basis and on the basis of the Valuation Report prepared by Ms. Meena Sureka, Registered Valuer – Securities or Financial Assets.
- e) By an order dated 25.04.2024 in C.A. (CAA) No. 48/KB/2024, this Tribunal has dispensed with the convening and holding of the meeting of the shareholders (equity and/or preference) and

creditors (secured and/or unsecured) of the Transferor Companies and the Transferee Company in view of written consent by way of affidavit given by all the shareholders (equity and/or preference) of the Transferee Company and the Transferor Companies and all the unsecured creditors of the Transferor Company 2 and not less than 90% of the unsecured creditors in value of the Transferee Company (99.99%), Transferor Company 1 (99.99%) and Transferor Company 3 (99.98%) and whereas the Petitioners have NIL secured creditor.

- f) Consequently, the Petitioners presented the instant Petition for sanction of the Scheme. By an order dated 22.05.2024 in C.P. (CAA) No. 83/KB/2024 connected with C.A. (CAA) No. 48/KB/2024, the instant Petition was admitted by this Tribunal and fixed for hearing on 01.07.2024 upon issuance of notices to the Statutory Authorities and advertisement of date of hearing. In compliance with the said order dated 22.05.2024, the Petitioners have duly served notices on the following Statutory Authorities dated 30.05.2024 & 05.06.2024.
- (i) The Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs;
 - (ii) The Registrar of Companies, Kolkata;
 - (iii) The Official Liquidator having jurisdiction over the Petitioners;
 - (iv) The concerned Assessing Officer along with the Chief Commissioner of Income Tax with PAN of the Petitioners
 - (v) The Reserve Bank of India and;
 - (vi) The Goods and Service Tax Department

Further, the Petitioners have also published advertisements once in English newspaper **“The Statesman”** and another in Bengali newspaper **“Dainik Statesman”** dated 29.05.2024. An affidavit of

compliance in this regard has also been filed by them on 11.06.2024.

g) All statutory formalities requisite for obtaining sanction of the Scheme has been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.

3. Pursuant to the said advertisements and notices, the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata (**RD**), the Official Liquidator attached to the Hon'ble High Court Calcutta, (**OL**) and other Authorities and persons, as the case may be, have filed their representations before this Tribunal.

4. The Official Liquidator has filed its report dated 11.06.2024 and concluded as under:

(i) That the Official Liquidator on the basis of information submitted by the Petitioners 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 provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is applicable.

(ii) 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 circumstances of the case.

5. The Regional Director (**RD**) has filed his reply affidavit affirmed on 28th day of June, 2024 (**RD Affidavit**) which has been dealt with by the Petitioners by their Rejoinder Affidavit dated 29th day of June, 2024

(Rejoinder). The observations of the RD and reply of the Petitioner(s) are summarized as under:

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

That it is submitted that as per available records in MCA BO Portal, 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 31/03/2023.

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

It is submitted that the Petitioner Transferee Company namely Ratnabali Equity Private Limited having its Certificate of Registration No. B.05.05834 dated 14/12/2023 and Transferor Company, Ashwamedh Properties Private Limited having its Certificate of Registration No. B05.05081 dated 29/05/2003 are registered with Reserve Bank of India (RBI) as NBFC Companies. However, the RBI vide its letter no. KOL.DOS.RSG.No.S3391/99-06-002/2023-24 dated 26.03.2024 addressed to the Board of Directors of Ratnabali Equity Private Limited (Transferee Company) issued their No-Objection” to the proposed Scheme of Amalgamation. Further, the RBI has also stated in the said letter that this ‘No Objection’ is valid for six months from the date of issuance of that letter.(A copy of the said letter of RBI marked as Annexure-I is annexed herewith for kind perusal and ready reference)

(c) Paragraph No. 2(c) of the 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. 3 of the Rejoinder:

That in reply to the statement made in paragraph No. 2(c), it is to state that the list of assets of the Transferor Companies which are to be transferred from the Appointed Date i.e. 01st day of April, 2023 to the Transferee Company upon sanction of the Scheme of Amalgamation is annexed with the Rejoinder and marked as **“Annexure – B”**.

(d) Paragraph No. 2(d) of the 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. 4 of the Rejoinder:

That in reply to the statement made in paragraph No. 2(d) it is to state that the Petitioners will comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 and the same is already mentioned in Clause 1.11 of Part – C of the Scheme of Amalgamation. A copy of the Scheme of Amalgamation is attached with the Rejoinder and marked as **“Annexure – C”**. Hence, the Transferee Company undertake to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013. The Registrar of Companies (ROC) fees payable, if any, will be paid by the Transferee Company on sanctioning of the Scheme of Amalgamation.

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

That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

Paragraph No. 5 of the Rejoinder:

That in reply to the statement made in paragraph No. 2(e) it is to state that the Transferee Company undertake that it will pay the applicable stamp duty on the transfer of immovable properties from the Transferor Companies to the Transferee Company.

(f) Paragraph No. 2(f) of the 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. 6 of the Rejoinder:

That in reply to the statement made in paragraph No. 2(f) it is to state that the Transferee Company undertake that the Scheme of Amalgamation enclosed in Company Application as well as in Company Petition is one and same and no changes made therein.

(g) Paragraph No. 2(g) of the 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 09/05/2024 for their views/observation in the matter. However, no such views/observation in the matter from the Income Tax Department has been received yet. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.

6. Heard submissions made by the Ld. Counsel appearing for the Petitioners and the Joint Director, Office of the Regional Director, Eastern Region, Ministry of Corporate Affairs. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the Petition and make the following orders:

- (a) The said Scheme of Amalgamation being “**Annexure – 1**” to the Petition is sanctioned by the Tribunal with the Appointed Date fixed on **01.04.2023**.
- (b) With effect from the Appointed Date, all the properties, rights and powers of the Transferor Companies, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without 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 said Scheme;
- (c) With effect from the Appointed Date, all the debts, liabilities, duties and obligations of the Transferor Companies be transferred from the said Appointed Date, without 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 become the debts, liabilities, duties and obligations of the Transferee Company;
- (d) All proceedings and/or suits and/or appeals now pending by or against the Transferor Companies be continued by or against the Transferee Company, as provided in the Scheme;

- (e) The employees of the Transferor Companies, if any, shall be engaged by the Transferee Company as provided in the Scheme;
 - (f) The Transferee Company without further application, issue and allot to the shareholders of the Transferor Companies, the shares in the Transferee Company to which they are entitled in terms of the Scheme.
 - (g) Leave is granted to the Transferor Companies to file the Schedule of Assets and 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 3 (Three) weeks from the date of receiving a copy of this order;
 - (h) The Transferor Companies and the Transferee Company shall each within 30 (Thirty) days of the date of receipt of this order cause a certified copy thereof to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Companies 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 the documents relating to the Transferor Companies and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said Transferor Companies shall be consolidated accordingly.
7. The Petitioner(s) shall supply legible print out of the Scheme and Schedule of Assets and Liabilities in acceptable form and will append such printout, upon verification to the certified copy of the order.
8. The Company Petition being **C.P. (CAA) No. 83/KB/2024 Connected with C.A. (CAA) No. 48/KB/2024** is disposed of accordingly.

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

**C.P. (CAA) No. 83/KB/2024
Connected with
C.A. (CAA) No. 48/KB/2024**

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

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Order dated 5/7/2024

NKS(LRA)