

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH I
KOLKATA**

**Misc App. No. 11/KB/2024
Arising Out Of
C.P (CAA) NO 40/ KB / 2023
Connected With
C.A.(CAA) NO 143/ KB / 2022**

A Petition under Section 230 to section 232 of the said Act and other applicable provisions of the Companies Act, 2013 read with Companies (Compromise, Arrangement and Amalgamation) Rules, 2016;

And

In the Matter of:

Rishi Securities & Finance Pvt Ltd., (hereinafter referred to as “Rishi Securities & Finance” or “Transferee Company”) is a company incorporated under the Companies Act, 1956 with CIN U17222WB1994PTC061850 and having its registered office at 21 Princept Street, Kolkata-700072 within the aforesaid jurisdiction.

... Applicant Company/Transferee Company

And

Fivestar Dealcom Private Limited, (hereinafter referred to as “**Transferor Company 1**”) is a company incorporated under the Companies Act, 1956 with CIN U51909WB2011PTC164840 and having its registered office presently at 21, Prince Street, Kolkata-700072 within the aforesaid jurisdiction.

... Transferor Company 1

And

Rama Laminators Private Limited, (hereinafter referred to as “**Transferor Company 2**”) is a company incorporated under the Companies Act, 1956 with CIN

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U29294OR1989PTC002313 and having its registered office at Power House Raod, Rourkela, Orissa, India, 769001, within the jurisdiction of NCLT Cuttack.

... Transferor Company 2

And

Happy Suppliers Private Limited (hereinafter referred to as “**Transferor Company 3**”) is a company incorporated under the Companies Act, 1956 with CIN U51109WB2007PTC117732 and having its registered office at 21, Princept Street, 2nd Floor, Kolkata-700072 within the aforesaid jurisdiction.

... Transferor Company 3

And

Kamakhya Packaging Private Limited (hereinafter referred to as “**Transferor Company 4**”) is a company incorporated under the Companies Act, 1956 with CIN U21010JH1989PTC003419 and having its registered office at Plot No.IV/C-5, (P) Bokaro Industrial Area, P.S.Balidih, Bokaro, Jharkhand- 827014 within the aforesaid jurisdiction.

...Transferor Company 4

And

Aastha Vincom Private Limited (hereinafter referred to as “**Aastha Vincom**” or “**Transferor Company 5**”) is a company incorporated under the Companies Act, 1956 with CIN U51109WB2008PTC121665 and having its registered office at White House, LIC Building, 21, C.R. Avenue, 1st Floor, Kolkata-700072 within the aforesaid jurisdiction.

...Transferor Company 5

And

Rishi Securities & Finance Pvt Ltd, a company incorporated under the Companies Act, 1956 with CIN U1722WB1994PTC061850 and having its registered office presently at

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Octavious Centre, 1st Floor, 15B, Hemant Basu Sarani, Telephone Bhawan, Kolkata, West Bengal, India, 700001 (Formerly-21 Princep Street, Kolkata-700072) within the aforesaid jurisdiction.

...Applicant Company

Order pronounced on:23/07/2024

Coram:

Bidisha Banerjee : **Member (Judicial)**
Balraj Joshi : **Member (Technical)**

Appearances (via video conferencing):

For the Petitioners : 1. Ms. Aditi Jhunjhunwala, PCS

ORDER

Bidisha Banerjee, Member (Judicial)

1. This Court convened through hybrid mode.
2. This Miscellaneous application has been filed by the applicant seeking certain changes/modifications in C.P (CAA) No.40/KB/2023 which are tabulated hereinafter:-

Original Clause	Revised Clause
(a) Paragraph 6 of Background And Description of Companies	
Rishi Securities & Finance Pvt Ltd (hereinafter referred to as “Rishi Securities” or “Tansferee Company”) is a company incorporated under the	Rishi Securities & Finance Pvt Ltd (hereinafter referred to as “Rishi Securities” or “Tansferee Company”) is a company incorporated under the Companies Act,

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<p>Companies Act, 1956 having CIN- U17222WB1994PTC061850 and having its registered office at 21, Princep Street Kolkata-700072. It was incorporated on 17th April, 1994</p>	<p>1956 having CIN- U17222WB1994PTC061850 and having its registered office at 21, Princep Street Kolkata-700072. It was incorporated on 17th February, 1994.</p>																				
(b) Paragraph 4.2 of the Scheme																					
<p>The share capital of Rama Laminators Private Limited as per the Audited Balance Sheet as at march 31, 2022 is as under-</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 60%;">Particulars</th> <th style="width: 40%;">As at march 31, 2022 (INR)</th> </tr> </thead> <tbody> <tr> <td>Authorized Share Capital</td> <td></td> </tr> <tr> <td>10,00,000 Equity Shares of Rs.10/- each</td> <td>1,00,00,000</td> </tr> <tr> <td>Issued, Subscribed and Paid Up</td> <td></td> </tr> <tr> <td>9,30,00 Equity Shares of Rs.10/- each</td> <td>93,00,000</td> </tr> </tbody> </table>	Particulars	As at march 31, 2022 (INR)	Authorized Share Capital		10,00,000 Equity Shares of Rs.10/- each	1,00,00,000	Issued, Subscribed and Paid Up		9,30,00 Equity Shares of Rs.10/- each	93,00,000	<p>The share capital of Rama Laminators Private Limited as per the Audited Balance Sheet as at march 31, 2022 is as under-</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 60%;">Particulars</th> <th style="width: 40%;">As at march 31, 2022 (INR)</th> </tr> </thead> <tbody> <tr> <td>Authorized Share Capital</td> <td></td> </tr> <tr> <td>10,00,000 Equity Shares of Rs.10/- each</td> <td>1,00,00,000</td> </tr> <tr> <td>Issued, Subscribed and Paid Up</td> <td></td> </tr> <tr> <td>9,30,300 Equity Shares of Rs.10/- each</td> <td>93,03,000</td> </tr> </tbody> </table>	Particulars	As at march 31, 2022 (INR)	Authorized Share Capital		10,00,000 Equity Shares of Rs.10/- each	1,00,00,000	Issued, Subscribed and Paid Up		9,30,300 Equity Shares of Rs.10/- each	93,03,000
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(c) Paragraph 4.3 of the Scheme																					
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	2022 (INR)		
Authorized Share Capital		Authorized Share Capital	
2,70,000 Equity Shares of Rs.10/- each	27,00,000	2,70,000 Equity Shares of Rs.10/- each	27,00,000
Issued, Subscribed and Paid Up		Issued, Subscribed and Paid Up	
1,00,317 Equity Shares of Rs.100/- each	10,03,170	1,00,317 Equity Shares of Rs.10/- each	10,03,170
(d) Paragraph 4.5 of the Scheme			
The Share Capital of Aastha Vincom Private Limited as per the Audited Balance Sheet as at March 31, 2022 is as under-		The Share Capital of Aastha Vincom Private Limited as per the Audited Balance Sheet as at March 31, 2022 is as under-	
Particulars	As at March 31, 2022 (INR)	Particulars	As at March 31, 2022 (INR)
Authorized Share Capital		Authorized Share Capital	
4,10,000 Equity Shares of Rs.10/- each	40,10,000	4,10,000 Equity Shares of Rs.10/- each	41,00,000
Issued, Subscribed and Paid Up		Issued, Subscribed and Paid Up	
4,02,750 Equity Shares of Rs.10/- each	40,02,750	4,02,750 Equity Shares of Rs.10/- each	40,27,500

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(e) Paragraph 8.2 of the Scheme	
<p>Further to the above, the Authorized Share Capital of the Transferee Company at present stands at Rs.2,25,00,000/- (Rupees Two Crore Twenty Five Lakhs Only) each divided into 2,25,000 (Two Lakhs Twenty Five Thousands) Equity Shares of Rs.100/- (Rupees Hundred) each and considering Clause 8.1 above, the Authorized Share Capital of the Transferee Company shall stand increased from Rs.2,25,00,000/- (Rupees Two Crore Twenty Five Lakhs Only) to Rs.18,00,00,000/- (Rupees Eighteen Crore only) each divided into 2,25,000 (Two Lakhs Twenty Five Thousands) Equity Shares of Rs.100/- and 15,75,00,000/- (Rupees Fifteen Crore Seventy Five Lakhs Only) preference share capital by creating 15,75,000 (Fifteen Lakh Seventy Five thousands) number of Optionally Convertible Preference Shares (OCRPS) of Rs.100/- (Rupees Hundred) each, which will rank pari passu in all respects with the existing shares of the Company and the</p>	<p>Further to the above, the Authorized Share Capital of the Transferee Company at present stands at Rs.2,25,00,000/- (Rupees Two Crore Twenty Five Lakhs Only) each divided into 2,25,000 (Two Lakhs Twenty Five Thousands) Equity Shares of Rs.100/- (Rupees Hundred) each and considering Clause 8.1 above, the Authorized Share Capital of the Transferee Company shall stand increased from Rs.2,25,00,000/- (Rupees Two Crore Twenty Five Lakhs Only) to Rs.7,64,05,800/- (Rupees Seven Crore Sixty Four Lakhs Five Thousand Eight Hundred only) divided into 2,25,000 (Two Lakhs Twnety Five Thousand) Class A Equity Shares of Rs.100/- each; 19,10,000 (Nineteen Lakh Ten Thousand) Class B Equity Shares of Rs.10/- each and 3,48,058 (Three Lakh Forty Eight Thousand and Fifty Eight) Optionally Convertible Redeemable Preference Shares (OCRPS) of Rs.100/- each. Accordingly, the Authorized Share Capital clause as appearing in the memorandum of association and the articles of association of the Transferee</p>

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Authorized Share Capital clause as appearing in the memorandum of association and the articles of association of the Transferee Company shall stand substituted accordingly.

Accordingly, the authorized share capital of the Transferee Company post giving effect to Clause 8.1 and 8.2 hereof shall stand to as under

Particulars	As at March 31, 2022 (INR)
Authorized Share Capital	
2,25,000 Equity Shares of Rs.100/- each	2,25,00,000
15,75,000 Optionally Convertible Preference Share of Rs.100/- each	15,75,00,000
Total	18,00,00,000

Company shall stand substituted and read as follows:

“The Authorised Share Capital of the Company is Rs.7,64,05,800/- (Rupees Seven Crore Sixty Four Lakhs Five Thousand Eight Hundred only) divided into 2,25,000 (Two Lakhs Twenty Five Thousand) Class A Equity Shares of Rs.100/- each; 19,10,000 (Nineteen Lakh Ten Thousand) Class B Equity Shares of Rs.10/- each and 3,48,058 (Three Lakh Forty Eight Thousand and Fifty Eight) Optionally Convertible Redeemable Preference Shares (OCRPS) of Rs.100/- each with the power to increase or reduce the same in accordance with the provisions of the Companies Act 1956 and to classify or reclassify the share capital.”

The authorized share capital of the Transferee Company post giving effect to Clause 8.1 and 8.2 hereof shall stand to as under:

Particulars	INR
Authorized Share Capital	

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	Class A- 2,25,000 Equity Shares of Rs.100/- each	2,25,00,000
	Class B- 19,10,000 Equity Shares of Rs.10/- each	1,91,00,000
	3,48,058 Optionally Convertible Redeemable Preference Shares (OCRPS) of Rs.100/- each	3,48,05,800
	Total	7,64,05,800

3. It has been averred on page no. 26 as under:

4. *We state that the present application for rectification in the scheme to the extent of the above typing errors does not change the basic fabric of the Scheme and is not a substantial modification. We further state that the amendment/correction/modification is necessary for the correct and proper working of the Scheme and that in order to carry out and/or implement the scheme such mistake needs to be rectified. We state that the above errors were completely a result of oversight. While the INC 28 Transferor*

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Companies have been filed and on detection of such error the Board of the Transferor Companies pending approval of e-form INC28 have resolved to file the present application and that the Transferee Company has not filed INC 28 till date. The Transferee Company will file the e-form INC 28 once the certified order copy of approval of present application with rectified Scheme will be received. Therefore, the Applicant Company also prays for condonation for the delay in filing of INC 28, if any.

5. We state that the above changes will not prejudice the shareholders or the creditors of the Applicant Company and the Transferor Companies in as much as the suggested changes are changes connected to the information which is also reflected in the balance sheet of the Applicant Company along with valuation report amongst others.

5. We have heard the Ld. Professional appearing for the petitioner and perused the documents on record. It has been submitted that the proposed changes do not affect the basic fabric of the scheme. In the written notes of arguments, the Petitioners have relied upon 1979 3 SCC 54 in the matter of SK Gupta and Anr Vs. KP Gupta and Anr to affirm the assertion that if the modifications do not result in altering the basic fabric of the scheme, the modifications shall be allowed.
6. It has been further submitted that the changes to the Authorised Share Capital after Amalgamation do not affect the interest of the Creditors as well as the shareholders who continue to get the same number of shares of the Transferee company.
7. In view of the above submissions and perusal of the record, we permit the petitioner to act on the “Revised Clause” mentioned hereinabove in a tabulated form.
8. Accordingly, the **Miscellaneous Application No.11 of 2024** is **allowed and disposed of.**
9. There shall be no order as to costs.

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10. A certified copy of this order shall be issued by the Registry upon request and fulfilment of all laid down requirements.

**Balraj Joshi
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Order signed on 23.07.2024.

BD