

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (COURT NO. – I)
KOLKATA**

C.A. (CAA) No. 125 /KB/2024

*An application under Section 230(1) read with Section 232(1) 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 of (First Motion):

-And-

UDYOGI PLASTICS 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. U24139WB1982PTC035062 and its registered office at 294, B.B. Ganguly Street, Kolkata-700012, West Bengal.

..... Applicant Company No. 1/ Transferee Company

-And-

AROHI VINCOM 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. U51909WB2008PTC127908 and its registered office at 294, B.B. Ganguly Street, 1st Floor, Kolkata-700012, West Bengal

..... Applicant Company No. 2/Transferor Company No.1

-And-

INSPIRE COMMOALES 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. U52100WB2010PTC147414 and its registered office at 294, B.B. Ganguly Street, 1st Floor, Kolkata-700012, West Bengal.

..... Applicant Company No. 3/Transferor Company No.2

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-And-

PROMISE DISTRIBUTORS 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. U52100WB2010PTC147413, and its registered office at 294, B.B. Ganguly Street, 1st Floor, Kolkata-700012, West Bengal.

..... Applicant Company No. 4/Transferor Company No.3

-And-

UDYOGI INTERNATIONAL 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. U70109WB1994PTC066329 and its registered office at 294, B.B. Ganguly Street, Kolkata-700012, West Bengal.

..... Applicant Company No. 5/Transferor Company No.4

-And-

WELLMAN MERCANTILES PVT LTD, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having Corporate Identification No. U51909WB1993PTC057903 and its registered office at 294, B.B. Ganguly Street, 2nd Floor, Kolkata-700012, West Bengal.

..... Applicant Company No. 6/Transferor Company No.5

IN THE MATTER OF:

- 1. UDYOGI PLASTICS PVT LTD**
- 2. AROHI VINCOM PRIVATE LIMITED**
- 3. INSPIRE COMMOALES PRIVATE LIMITED**
- 4. PROMISE DISTRIBUTORS PRIVATE LIMITED**
- 5. UDYOGI INTERNATIONAL PRIVATE LIMITED**
- 6. WELLMAN MERCANTILES PVT LTD**

.....APPLICANTS

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Date of pronouncing the order: 01.07.2024

CORAM:

Smt. Bidisha Banerjee **Member (Judicial)**

Shri Balraj Joshi **Member (Technical)**

Appearances (via Video Conferencing/Physical)

Ms. Neha Somani, PCS.] For the Applicants

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court convened through hybrid mode today.
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 ("Act") for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Amalgamation which provides for amalgamation of Arohi Vincom Private Limited being the Applicant Company No. 2 ("Transferor Company No. 1"), Inspire Commosales Private Limited, being the Applicant Company No. 3 ("Transferor Company No. 2"), Promise Distributors Private Limited being the Applicant Company No. 4 ("Transferor Company No. 3"), Udyogi International Private Limited being the Applicant Company No. 5 ("Transferor Company No. 4"), Wellman Mercantiles Private Limited being the Applicant Company No. 6 ("Transferor Company No. 5") with **Udyogi Plastics Pvt Ltd**, being the **Applicant Company No. 1 ("Transferee Company")** and whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the **Appointed Date. i.e. 1st April, 2023** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme"). The Copy of the said Scheme of Amalgamation is

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annexed to the Company Application in **Annexure H** in **Volume III** at **Page No(s). 390-431**.

3. The Board of Directors of all the Applicant Companies at their Board Meetings held on 22nd January, 2024 approved and resolved to carry on the said Scheme of Amalgamation. The copies of the resolution passed by the applicant companies are annexed with the Company Application being **Annexure -G** in **Volume – III** at **Page No(s). 372 -389**.
4. It is further submitted by the Ld. Authorised Representative appearing for the Applicant Companies that the shares of all the Applicant Companies are not listed on any stock exchange. Further, the Applicant Companies have the following classes of shareholders and creditors: -

Applicant Company No.	Number of Equity Shareholders as on 15th March, 2024	Number of Secured Creditors as on 15th March, 2024	Number of Unsecured Creditors as on 15th March, 2024
Applicant No. 1	16	3	457
Applicant No. 2	3	NIL	NIL
Applicant No. 3	19	NIL	2
Applicant No. 4	19	NIL	2
Applicant No. 5	10	2	152
Applicant No. 6	3	NIL	2

5. The Ld. Authorised Representative appearing for the Applicant Companies submits that the Valuation Report regarding recommendation of equity share exchange ratios for the proposed merger of Arohi Vincom Private Limited, Inspire Commosales Private Limited, Promise Distributors Private Limited, Udyogi International Private Limited, Wellman Mercantiles Private Limited with Udyogi Plastics Pvt. Ltd. dated

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22.01.2024 has been prepared by Mr. Ritesh Kumar Gupta, Registered Valuer having Registration No. IBBI/RV/06/2019/11473 which is annexed with the Company Application being **Annexure I** in **Volume III** at **Page No. 432 – 443**.

6. The Ld. Authorised Representative appearing for the Applicant Companies submits that 100% of the Equity Shareholders of Transferor Company 1, Transferor Company 2, Transferor Company 3, Transferor Company 4, Transferor Company 5, and the Transferee Company have given their consent to the Scheme in writing by way of affidavits for the approval of the proposed Scheme of Amalgamation which is annexed with the Company Application being **Annexure M** in **Volume IV** at Page No. **535–684**.
7. The Ld. Authorised Representative appearing for the Applicant Companies submits that 100% in value of the unsecured creditors of the Applicant No. 3, 100 % in value of the unsecured creditors of the Applicant No. 4, 100% in value of the unsecured creditors of the Applicant No. 6 have given their consent to the Scheme in writing by way of affidavits for the approval of the proposed Scheme of Amalgamation which is annexed with the Company Application being **Annexure J** in **Volume III** at **Page No.493 to 498, 499 to 504 and 509 to 514**.
8. The Ld. Authorised Representative appearing for the Applicant Companies submits that 98.58% in value of the Secured creditors of the Applicant No. 1, 100 % in value of the Secured creditors of the Applicant No. 5 have given their consent to the Scheme in writing by way of affidavits for the approval of the proposed Scheme of Amalgamation which is annexed with the Company Application being **Annexure J** in **Volume III** at **Page No. 491 to 492 and 505 to 508**.
9. The certificate by the Chartered Accountant in respect of the Transferee Company verifying conformity with Accounting Standard under Section 133 of the Companies

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Act, 2013 is annexed with the Company Application in **Annexure N** in **Volume V** at **Page No. 685 -686**.

- 10.** Ld. Authorised Representative appearing for the Applicant Companies submits that there is no requirement of meeting of Creditors of Applicant Company No. 2 in view of Nil Creditors as on 15th March, 2024 as evidenced by the Chartered Accountant's certificates of the Companies, which is annexed to the Company Application and marked as **Annexure K** in **Volume III** at **Page No. 515 – 516**.
- 11.** Directions are sought accordingly for:
- i.** Dispensing with the meetings of Equity Shareholders of all the Applicant Companies.
 - ii.** Dispensing with the meeting of the Unsecured Creditors of the Applicant Company No.3, Applicant Company No.4 and Applicant Company No.6,
 - iii.** Dispensing with the meeting of the Secured Creditors of the Applicant Company No.1 and Applicant Company No.5
 - iv.** Holding the meeting of Unsecured Creditors of the Applicant Company No.1 and Applicant Company No.5
- 12.** Heard the Ld. Authorised Representative for the Applicant Companies and upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicants, we allow the instant application and make the following orders:

A. Meeting Dispensed:

Meeting of the Equity Shareholders of all the Applicant Companies and of the Unsecured Creditors of the Applicant Company No. 3, Unsecured Creditors of the Applicant Company No. 4 and Unsecured Creditors of the Applicant Company No. 6 are dispensed with under section 230 (1) read with Section 232

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(1) of the Act and of the Secured Creditors of the Applicant Company No. 1 and Secured Creditors of the Applicant Company No. 5 are dispensed with under section 230 (1) read with Section 232 (1) of the Act.

B. No requirement of meetings:

There is no requirement of holding meetings of Secured Creditor and Unsecured Creditor of Applicant Company No. 2 as there are Nil creditors verified by Chartered Accountant's certificates.

C. Meetings to be held/Date and Time:

The meeting of the Unsecured Creditors of the Applicant Company No.1 being the Transferee Company as on 15th March, 2024 duly certified by the Chartered Accountant shall be convened **on or before 12-08-24 at 11 A.M** at the **registered office of the Applicant Company No.1** for the purpose of considering, and, if thought fit, approving the said scheme, with or without modification.

The meeting of the Unsecured Creditors of the Applicant Company No.5 being the Transferor Company No.4 as on 15th March, 2024 duly certified by the Chartered Accountant shall be convened on or before **12-08-24 at 1 P.M** at the **registered office of the Applicant Company No.5** for the purpose of considering, and, if thought fit, approving the said scheme, with or without modification

D. Mode of Meeting:

The meeting as above, shall be held at Registered office of the Company at 294, B.B. Ganguly Street, Kolkata-700012, West Bengal, India.

E. 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

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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 "**Business Standard**" in English and "**Aajkaal**" in Bengali as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

F. 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 the 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 shall be sent to each of the Unsecured Creditors of the Applicant No. 1 and 5 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, by registered post or air mail or courier or by email or through personal messenger at their respective or last known addresses. The said notice along with accompanying documents shall also be displayed on the notice board of concerned Applicant at its registered office and shall also be posted on the website, if any, of such Applicants.

G. Chairperson: Mr. Avik Chaudhuri, Adv. Mob No. 9836289855 is appointed as the Chairperson of the meetings to be held, as aforesaid. The Chairperson shall be paid a sum of **Rs. 90,000/-** [**Rupees Ninety thousand**] for conducting the aforesaid meeting as Chairperson.

H. Scrutinizer: Mr. Arun Kumar Jaiswal is appointed as the Scrutinizer of the meetings to be held, as aforesaid. The Scrutinizer shall be paid a consolidated sum of **Rs. 80,000 /-** [**Rupees Eighty thousand**] for acting as Scrutinizer for both the meetings, by the respective companies.

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I. Quorum and Attendance: 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 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, provided that in such an event the meeting shall not be adjourned by more than 3 months from the original date of the meeting as set herein.

J. Cut-off date:

The cut - off date for determining the eligibility to vote and value of votes shall be 15th March, 2024 for the meeting of Unsecured Creditors of the Applicant No.1 and Applicant No. 5. The value of the votes cast shall be reckoned and scrutinized with reference to the said dates.

K. Mode of Voting:

At the venue of the meeting held physically, voting shall be conducted physically by polling paper, shall be in accordance with the Companies (Management & Administration) Rules, 2014, and the forms thereunder shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.

L. Proxies & Board Resolutions:

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

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and vote at such meeting on its behalf, as the case may be, is deposited at the registered office of the Applicant Company No. 1 and Applicant Company No. 5 not later than 48 (forty eight) hours before the time for holding the meeting.

- M.** That the Chairperson appointed for the said meeting or any person authorized by the Chairperson do issue and send the notices of the aforesaid meetings.

- N.** The resolution for approval of the Scheme of Amalgamation put to a meeting shall, if passed by a majority in number representing three-fourths in value of the Unsecured creditors of the Applicant No. 1 and Applicant No.5 casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of such meeting under Section 230(1) read with Section 232(1) of the Companies Act, 2013.

- O.** The Chairperson do 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 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

- P.** The votes cast shall be scrutinized by the Scrutinizer. The Scrutinizer shall prepare and submit the respective report on the meeting along with all papers relating to the voting to the chairperson of the meeting at the Scrutinizer's earliest convenience and in any case 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. The declaration of result by the Chairperson shall also be displayed on the Notice Board of the concerned Applicant at its registered office and shall also be posted on the website, if any, of such Applicant.

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- Q.** The value of each of the Unsecured Creditors of the Applicant Company no. 1 and Applicant Company no.5 shall be in accordance with its books and records, where entries in the books are disputed, the chairperson shall determine the value for purpose of the said meeting.
- R.** The Applicant Companies 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:
- i.** the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;
 - ii.** the Registrar of Companies, Kolkata, West Bengal with whom the Applicants are registered;
 - iii.** the Official Liquidator, High Court, Calcutta;
 - iv.** the Income Tax Department having jurisdiction over the Applicants
 - v.** Jurisdictional GST authorities.

These notices shall be sent through hand delivery against a stamped receipt or by speed 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 Authorised 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, Arrangements and Amalgamations) Rules, 2016 in Form No. CAA 3 of the said Rules with necessary variations, incorporating the directions herein.

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S. The Applicant Companies shall file an affidavit of service with the Registry in regard to the directions given in this order to report to this Tribunal that the directions regarding the issuance of notices have been duly complied with.

- 13.** The application being **Company Application (CAA) No. 125/KB/2024** is **disposed of** accordingly.
- 14.** Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on 01.07.2024.

A.D[Steno]