

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (COURT-II)
C.A. (CAA)/140(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 :

In the Scheme of Amalgamation (First Motion):

A P FASHIONS 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. U51909WB1991PTC051934 and its registered office at 227, A J C Bose Rd, Kolkata 700020, in the State of West Bengal.

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

AND

IN THE MATTER OF :

A D EXPORTS 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. U70101WB1991PTC053651 and its registered office at Anandlok Building, Block B, 3rd Floor, Room No. 303, 227, A.J.C Bose Road, Kolkata 700020, in the State of West Bengal.

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

AND

IN THE MATTER OF :

- 1) A P Fashions Private Limited, **Transferee Company**
- 2) A D Exports Private Limited, **Transferor Company**

..... Applicant Companies

Date of pronouncing the order: 18/7/2024

CORAM:

Smt. Bidisha Banerjee, Member (Judicial)

Shri D. Arvind, Member (Technical)

**Counsel on Record for the Applicants appeared Physically /through
Video Conferencing:**

Shri Jnana Ranjan Dhal, Advocate

.....For the Applicant (s)

ORDER

Per: D. Arvind, Member (Technical)

1. This Court is congregated 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 (hereinafter referred as "Act") for orders and directions with regard to dispensation of meeting of shareholders of both the applicant companies and dispensation of meeting of unsecured creditors of both the applicant companies and directions with regard to meetings of secured creditors of applicant company no. 1 in connection with the Scheme of Amalgamation of **A D Exports Private Limited**, being the Applicant No. 2 above named ("Transferor Company") with **A P Fashions Private Limited** being the Applicant No. 1 above named ("Transferee Company") whereby and where under the Transferor Company is proposed to be amalgamated with the Transferee Company from the Appointed Date **1st Day of April, 2023** in

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C.A. (CAA)/140(KB)/2024

the manner and on the terms and conditions stated in the said Scheme of Amalgamation (hereinafter referred as “Scheme”). The Copy of the Scheme of Amalgamation is annexed to the Company Application being **Annexure – E** on page 116-134 of Vol. I.

3. It is submitted by Ld. Counsel appearing for the Applicant(s) submit that the shares of the Applicant No. 1 and 2 are not listed in any stock exchanges. Further, the Applicant(s) have the following classes of shareholders and creditors:-

Sl. No.	Name of Applicant Companies	Equity Shareholders (Nos)	Preference Shareholders (Nos)	Secured Creditors (Nos)	Unsecured Creditors (Nos)
1	A P Fashions Private Limited (Applicant No. 1)	6	Nil	6	111
2	A D Exports Private Limited (Applicant No. 2)	3	Nil	Nil	7

4. The board of directors of the applicant companies have approved the scheme in their respective board meeting held on 29th February, 2024. Copy of the Board Resolution is annexed to the Company Application being **Annexure – F** on Page 135- 138 of Vol. I.

5. It is submitted that 100 percent of the Equity Shareholders of the Applicant No. 1 and 2 have already given their consent to the Scheme by way of affidavits which are annexed to the application being **Annexure – “K”** on Page 189-200 of Vol. II.

6. It is further submitted that unsecured creditors of the Applicant No. 1 and 2 more than 90% in value, have already given their consent to the Scheme by way of affidavits which are annexed to the application being **Annexure – “M & N”** on Page 208-255 of Vol. II.

7. It is further submitted that Applicant No. 2 have no secured creditors and therefore convening and holding of separate meetings of Secured Creditors of the Applicant No. 2 does not arise.

8. Directions are sought accordingly for dispensing with meetings of the shareholders and unsecured creditors of the Applicant No. 1 and 2 who have already given their consent to the Scheme and directions with regard to meetings of secured creditors of applicant company no. 1.

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:

Meetings of the Equity Shareholders and Unsecured Creditors of the Applicant No. 1 and 2 are dispensed with under Section 230(1) read with Section 232(1) of the Act.

There are no secured creditors in the Applicant Company No. 2. Therefore, the meetings of secured creditors of the Applicant Company No. 2 are not applicable and dispensed with.

B. Meetings to be held:

The following meeting(s) shall be convened and held at the following time(s) on 30th August, 2024 for the purpose of considering, and, if thought fit, approving the said Scheme, with or without modification:-

- (i) Meeting of Secured Creditors of Applicant No. 1 at 2.00 P.M.

In the event any meeting, as aforesaid, spills over and is concluded after the time fixed for commencement of the succeeding meeting, such succeeding meeting shall be held immediately after such conclusion of the prior meeting.

- (ii) Mode of meetings: The meetings, as above, shall be convened and held physically at the Registered office of the Company or at some other place within the city, town in which the registered office of the Company is situated.
- (iii) Advertisement: At least 30 (thirty) clear days before the meeting(s) to be held, as aforesaid, an advertisement of the notice of meeting(s) 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.
- (iv) Individual Notices: At least 30 (thirty) clear days before the date of the meeting(s) to be held, as aforesaid, notices convening the said meeting(s), 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 Act disclosing necessary details and the prescribed form of proxy, shall be sent to each of the said creditors of the Applicant no. 1 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. The said notices along with accompanying documents shall also be posted on the websites of the Applicant(s).
- (v) Chairperson: **Mr. Kuldip Mallick** Advocate, M-9836042886 is appointed as the Chairperson of the meeting(s) to be held, as aforesaid. The Chairperson shall be paid a consolidated sum of

Rs. 80,000/- for conducting the aforesaid meeting(s) as Chairperson.

- (vi) Scrutinizer: **Ms. Madhuri Pandey** PCS Mobile No. 8697530112 is appointed as the Scrutinizer of the meeting(s) to be held, as aforesaid. The Scrutinizer shall be paid a consolidated sum of Rs.75,000/- for acting as Scrutinizer.
- (vii) Quorum and Attendance: The quorum for the said meeting(s) of persons entitled to attend the same shall be determined in accordance with Section 103 of the Companies Act, 2013. For the meeting(s) to be held physically, only attendance of such persons physically present 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 such meeting to any date/time and take a decision on the quorum for the adjourned meeting.
- (viii) Mode of Voting: At the venue of the meeting(s) held physically, voting shall be conducted physically by polling paper / electronically by e-voting.
- (ix) Cut-off date: The cut-off date for determining the eligibility to vote and value of votes shall be 29.02.2024 for the meeting(s) of creditors. The value of the votes cast shall be reckoned and scrutinized with reference to the said dates.
- (x) Voting procedure: Subject to the directions and matters dealt with herein, the procedure for voting by polling paper and conduct of voting, in so far as the same is prescribed by the Companies (Management & Administration) Rules, 2014 (“the said Rules”), 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.
- (xi) That the Chairperson appointed for the said meeting(s) or any person authorised by the Chairperson do issue and send the notices of the aforesaid meeting(s).

- (xii) The votes cast shall be scrutinized by the Scrutinizer. Votes cast in all the modes shall be consolidated. The Scrutinizer shall prepare and submit the respective reports on the meeting(s) along with all papers relating to the voting to the Chairperson of the meeting(s) within 3 days of the conclusion of the meeting(s). The Chairperson shall declare the results of the meetings after submission of the reports of the Scrutinizer. The declaration of results by the Chairperson shall also be posted on the website of the Applicant(s) and in case an Applicant does not have a website, the declaration of results shall be published in the same newspapers in which notice of the meetings were advertised.
- (xiii) The value of each creditor shall be in accordance with the books and records of the Applicant(s) and, where entries in the books are disputed, the chairperson shall determine the value for purposes of the said meeting(s).
- (xiv) The resolution for approval of the Scheme of Amalgamations put to a meeting shall, if passed by a majority in number representing three-fourths in value of the respective creditors 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.
- (xv) The Chairperson do report to this Tribunal the results of the said meeting(s) within four weeks from the date of the conclusion of the said meeting(s). Such report shall be in Form No. CAA4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.
- C.** Let the notice be served by the Applicant Companies as per the requirement of sub-section (5) of Section 230 of the Companies

Act, 2013 along with a copy of the Scheme and statement disclosing necessary details upon: -

- i. Central Government, through Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;**
- ii. Registrar of Companies, West Bengal;**
- iii. Official Liquidator, High Court, Calcutta;**
- iv. Concerned Income Tax Assessing Officer along with the Chief Commissioner of Income Tax with PAN Numbers of the Applicant Companies having jurisdiction over the Transferee Companies by sending the same by hand delivery, by speed post and by electronic mail;**

- D.** The Applicant Companies shall file affidavit of service, to report to this Tribunal that the directions regarding the issuance of notices have been duly complied with.
- E.** The notice shall specify that representations, if any, should be filed before the Tribunal within 45 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the Applicant Companies and/or their Authorised Representatives in advance.
- F.** If no such requirements are received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation;
- G.** That an affidavit of Compliance of all the conditions laid down herein along with original proof of service to all authorities to be filed jointly by the Transferor Company and the Transferee Company.
- H.** Liberty is given to file joint application by the Transferee and Transferor Company in accordance with Rule 15 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016

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

C.A. (CAA)/140(KB)/2024

within a period of 45 days as mentioned in Section 230(5) of the Companies Act, 2013.

- I.** If consent affidavits/letters of the members and creditors annexed with the application are found to be false/dubious at any stage, then necessary actions for committing fraud under Section 447 and 448 of the Companies Act, 2013 shall be initiated against the Transferee and Transferor Company and all its directors for punishment under Section 449 of the Companies Act, 2013.

12. Hence, the application being **C.A. (CAA)/140(KB)/2024** is **allowed** and **disposed of** accordingly.

13. Urgent certified copies of this Order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This order signed on the 18th day of July, 2024.

NKS(LRA)