

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

C.P. (CAA) No. 127/KB/2023

Connected with

C.A.(CAA) No. 60/KB/2023

In the Matter of the Companies Act, 2013 - Section 230(6) read with Section 232(3)

And

In the Matter of :

Sudershan Fincon 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. U65999WB2009PTC134191 and its registered office at No. AE-4, Flat No. 1A, 1st Floor, Krishnapur, Rabindrapally, Kolkata - 700101

.... Petitioner/1st Transferor Company

And

Subhdhristi Investment Consultants 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. U74140WB2008PTC130413 and its registered office No. AE-4, Flat No. 1A, 1st Floor, Krishnapur, Rabindrapally, Kolkata - 700101

.... Petitioner/2nd Transferor Company

And

Everlink Vanijya 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. U51909WB2009PTC134086 and its registered office at No. AE-4, Flat No. 1A, 1st Floor, Krishnapur, Rabindrapally, Kolkata - 700101

.... **Petitioner/3rd Transferor Company**

And

Narottamka Trade & Vyapaar 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. U51109WB1996PTC079534 and its registered office at No. AE-4, Flat No. 1A, 1st Floor, Krishnapur, Rabindrapally Kolkata - 700101

.... **Petitioner/Transferee Company**

In the matter of:

1. Sudershan Fincon Private Limited
2. Subhdhristi Investment Consultants Private Limited
3. Everlink Vanijya Private Limited
4. Narottamka Trade & Vyapaar Private Limited

. **Petitioner(s)**

Date of pronouncing the order: 25/04/2024

Coram:

Bidisha Banerjee : **Member (Judicial)**
D Arvind : **Member (Technical)**

Counsel on Record for the Petitioner(s):

1. Krishna Sharan Mishra, PCS

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 ("**Act**") for sanction of the Scheme of Amalgamation of Sudershan Fincon Private Limited, being the Petitioner No.1 abovenamed ("**1st Transferor Company**") Subhdhristi Investment Consultants Private Limited, being the Petitioner No. 2 abovenamed ("**2nd Transferor Company**"), Everlink Vanijya Private Limited, being the Petitioner No.3 abovenamed ("**3rd Transferor Company**"), with Narottamka Trade & Vyapaar Private Limited, being the Petitioner No.4 abovenamed ("**Transferee Company**") whereby and whereunder the Transferor Company(ies) is/are proposed to be amalgamated with the Transferee Company from the Appointed Date, i.e 1st April, 2022 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("**Scheme**").
2. The Petition has now come up for final hearing. Counsel(s) for the Applicants submits as follows:-
 - (a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on 15th February, 2023

- (b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-

The Board of Directors of the Transferor Companies and the Transferee Company are of the view that there are common interests and factors which compliment both the Companies. The rationale for the Scheme of Amalgamation would be as follows:

- a. The amalgamation would result in economies of scale, effective coordination and better control.*
- b. The amalgamation will enable consolidation of the business of the three entities into one entity which will facilitate in focused growth, operational efficiency, integration synergies and better supervision of the business of the group.*
- c. To increase the efficiency of combined business by pooling of resources and their optimum utilization, thereby availing synergies from combined resources which would be beneficial to all stakeholders.*
- d. The amalgamation would facilitate scaling of operations, reduce administrative costs and garner greater visibility in the market.*
- e. The amalgamation will result in reduction of multiplicity of entities, thereby reducing compliance cost of multiple entities viz., statutory filings, regulatory compliances, labour law/ establishment related compliances*
- f. The amalgamation will also enable smoother implementation of policy changes at a higher level from a management perspective and shall also help enhance the efficiency and control of the entities. There is no likelihood that interests of any shareholder or creditor of either the Transferor Company*

or the Transferee Company would be prejudiced as a result of the Scheme. The Amalgamation will not impose any additional burden on the members of the Transferor Company or the Transferee Company.

g. The banks, creditors and institutions, if any, are not affected by the proposed amalgamation as their security is maintained.

h. The combined managerial and technical expertise would enable the Transferee Company to develop a business model that would be competitive and cogent.

- (c) The Statutory Auditors of the Petitioner Companies have by their certificates 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) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).
- (e) 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 Report thereon of M/s. C. Ramkumar, Registered Valuers.
- (f) The shares of the Petitioner Companies are not listed on any Stock Exchange(s).
- (g) By an order dated 19-May-2023 in Company Application (CAA) No.60/KB/2023, this Tribunal made the following directions with regard to meeting(s) of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act:-

- “(a) In view of the fact that all the EQUITY SHAREHOLDERS of the Applicant Companies consented 100% in value, in writing by way of affidavits to the proposed Scheme of Amalgamation, the requirement of convening and holding of separate meetings of the equity shareholders of all the Applicant Companies are dispensed with.*
- (b) In view of the fact that 100% in value of the UNSECURED CREDITORS of the Applicant Company Nos. 1, 2 & 3 and 91.31% in value of the UNSECURED CREDITORS of the Applicant Company No. 4, have consented in writing by way of affidavits to the proposed Scheme of Amalgamation, the requirement of convening and holding of separate meetings of the Unsecured Creditors of all the Applicant Companies are dispensed with.*
- (c) In view of the fact that there are NIL SECURED CREDITORS of the Applicant Companies, convening and holding of separate meetings of the Secured Creditors are hereby dispensed with.”*
- (h) Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order 30-August-2023 the instant petition was admitted by this Tribunal and fixed for hearing on 16-October-2023 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 30-August-2023, the Petitioner(s) have duly served such notices as follows:

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S.No	Statutory/ Regulatory Authorities to whom Notice has been sent	Mode & Date of Service of Notice
1.	Notice to the Regional Director, Eastern Region	By Email on 18-September-2023; Hand delivery on 21-September-2023; Speed Post on 22-September-2023
2.	Notice to the Registrar of Companies, Kolkata	By Email on 18-September-2023; Hand delivery on 21-September-2023; Speed Post on 22-September-2023
3.	Notice to the Official Liquidator, Calcutta High Court	By Email on 18-September-2023; Hand delivery on 21-September-2023; Speed Post on 22-September-2023
4.	Notice to the Income Tax Assessing Officer(s), having jurisdiction over the Petitioner Companies	By Email on 18-September-2023; Hand delivery on 21-September-2023; Speed Post on 22-September-2023

- (i) The Petitioner(s) have also published such advertisements once each in the **Financial Express** (Kolkata Edition) in English and **Aajkaal** (Kolkata Edition) in Bengali in their respective issues dated 22-September-2023. An affidavit of compliance in this regard has also been filed by them on 04-October-2023.
- (j) All statutory formalities requisite for obtaining sanction of the Scheme have 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, Ministry of Corporate Affairs, Kolkata (“**RD**”) and Official Liquidator, Calcutta High Court have filed their representations before this Tribunal.

4. The Official Liquidator has filed his report dated 13-December-2023 and concluded as under:

10. That the Official Liquidator on the basis of information submitted by the Petitioner Companies 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.

11. 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 circumstance of the case.

5. The RD has filed his reply affidavit dated 06-February-2024 (“**RD affidavit**”) which has been dealt with by the Petitioner(s) by their Rejoinder/Joint affidavit dated 07-March-2024 (“**Jt. Affidavit**”). The observations of the RD and responses of the Petitioner(s) are summarised as under:-

(a) Paragraph No 2(a) of RD Affidavit

That it is submitted that on examination of report of the Registrar of Companies, West Bengal, it appears that no compliant and/or

representation has been received against the proposed scheme of Amalgamation. Further, all the petitioner companies have filed their Financial Statements and Annual Returns for the Financial year and Annual Returns for the financial year 31/03/2023.

Paragraph No.4 of Jt. Affidavit:

With reference to paragraph 2(a) of the said affidavit, the statements made in the said paragraph is self-explanatory, hence no comments are required to the said statements of the Learned Regional Director.

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

The Appointed Date stated in the Scheme is 1st April 2022. In terms of the Circular no. 09/2019 dated 21.08.2019 of the Ministry of Corporate Affairs, “where the ‘appointed date’ is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, if the appointed date is significantly ante dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest” It is not ascertainable from the documents provided by the Applicant whether the application for the scheme was filed before Hon’ble Tribunal within a year from the appointed date. If the application for the scheme was filed with Hon’ble Tribunal after more than one year from the appointed date, Hon’ble Tribunal may kindly direct the Applicant to bring out justification for the Appointed Date being more than one year before the date of filing of the Application for the scheme, in accordance with the said Circular.

Paragraph No.5 of Jt. Affidavit:

With reference to paragraph 2(b) of the said affidavit, save what are matters of record, I submit as follows:

- *That the Petitioner Companies has filed the Company Application under Sections 230 and 232 of the Companies Act, 2013 on 03-03-2023 vide filing number 1908134/00961/2023 which is within a year of the Appointed Date i.e. 01-04-2022 and is in accordance with MCA General Circular no. 9/2019 dated 21.08.2019.*

(c) Paragraph No.2(c) of RD Affidavit:

It is submitted that at Para 22 of the Directors' report dated 31/08/2023 annexed to financial statement as at 31/03/2023 of the Transferee Company, Narottamka Trade & Vyapaar Private Limited, it is, inter alia, stated that as on March 31, 2023, the company had 5 Indian Subsidiaries and 1 overseas wholly owned subsidiaries. However, in Form AOC-1 in pursuant to section 129(3) of the Companies Act, 2013 read with Rule 5 of the Companies Accounts (Rules), 2014 in respect of Statement containing salient features of the financial statements of the Subsidiaries/Joint Ventures/Associates Companies, as attached with the said Financial Statement as at 31/03/2023, the name of only three subsidiaries have been stated there. Therefore, the claim of the Company in its Directors; report to have 5 Indian subsidiaries and 1 overseas wholly owned subsidiary were not duly corroborated by the Form AOC-1 filed therewith. In view of this, Hon'ble Tribunal may direct the Petitioner Transferee Company to clarify the same and also to take necessary steps to rectify the defect at the earliest.

Paragraph No.6 of Jt. Affidavit:

With reference to paragraph 2(c) of the said affidavit, save what are matters of record, I submit as follows:

- *It is clarified that the Petitioner Transferee Company has three subsidiaries in India and one overseas wholly owned subsidiary. An unintentional clerical error has crept in the Directors Report and/or AOC-1 for the financial year 2022-23. It is humbly submitted that the said error is unintentional and that the Company is a private company and that no public is involved in the Company and that the error is not prejudicial to any public interest and has not caused any injury/damage to anyone. Since the matter pertains to the Transferee Company which will remain in existence even after the Scheme of Amalgamation is approved, the Transferee Company herewith undertakes that the defects shall be rectified in due course.*

(d) Paragraph No.2(d) of RD Affidavit:

Further, since the Directors of the Transferee Company in their report dated 31/08/2023 attached with the Financial Statement as at 31/03/2023 stated that the Company is having 5 Indian subsidiaries, the Transferee Company is required to file Consolidated Financial Statement in terms of the provisions of Section 137(1) read with section 129(3) of the Companies Act 2013. However, no consolidated Financial Statement for the year ended 31/03/2023 has been filed yet by the Transferee Petitioner company, Narottmaka Trade & Vyapaar Private Limited. Hon'ble tribunal may direct the Petitioner Transferee Company to take

necessary steps to rectify the defect and file Consolidated Financial Statement for the year ended 31/03/2023 at the earliest.

Paragraph No.7 of Jt. Affidavit:

With reference to paragraph 2(d) of the said affidavit, save what are matters of record, I submit as follows:

- *Pursuant to rule 6 of the Companies (Accounts) Rules, 2014, the requirement of consolidation of financial statements is not applicable if, inter alia, the ultimate holding company files consolidated financial statements with the Registrar. In the given case, M/s Greta Investments Private Limited being the ultimate holding company of this Transferee Company has filed consolidated financial statement for the financial year 2022-23 with the Registrar of Companies by way of "AOC-4 CFS". Therefore, the present Transferee Company is not required to prepare consolidated financial statements. Accordingly, the present Transferee Company is not required to consolidate the financial statements of its subsidiaries. A copy of the e-form "AOC-4 CFS" for the financial year 2022-23 alongwith payment challan as evidence of filing are enclosed as Annexure 1. It is further humbly submitted that the matter pertains to the Transferee Company, and therefore, any direction of the authorities can be complied with after the Scheme becoming effective.*

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

The Petitioner Companies should be directed to provide list/ details of Assests, if any, to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of proposed Scheme.

Paragraph No.8 of Jt. Affidavit:

With reference to paragraph 2(e) of the said affidavit, the statement(s) made in the said paragraph is self-explanatory and when directed, the list / details of assets, if any, to be transferred to the Transferee Company namely upon sanctioning of the proposed Scheme will be duly provided.

(f) Paragraph No.2(f) of RD Affidavit:

That the Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 appropriate affirmation.

Paragraph No.9 of Jt. Affidavit:

With reference to paragraph 2(f) of the said affidavit, save what are matters of record, I submit as follows:

- *That the Petitioner Transferee Company will comply with the provision of section 232(3)(i) of the Companies Act, 2013 in regard to adjustment of fees upon clubbing of Authorised Share Capital(s) of the Transferor Company(ies) with the Authorised Share Capital of the Transferee Company upon amalgamation becoming effective.*

(g) Paragraph No.2(g) of 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.10 of Jt. Affidavit:

With reference to paragraph 2(g) of the said affidavit, the Transferee Company will pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it pursuant to the Scheme of Amalgamation.

(h) Paragraph No.2(h) of 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 Petitioner are one and same and there is no discrepancy or no change is made.

Paragraph No.11 of Jt. Affidavit:

With reference to paragraph 2(h) of the said affidavit, I duly affirm on behalf of the Petitioner Companies that the Scheme enclosed to the Company Application and Company Petition are one and the same and there is no discrepancy or no changes is made.

(i) Paragraph No.2(i) of RD Affidavit:

It is submitted that the Income Tax Department vide its letter No. ITBA/COM/17/2023-24/1056755967(1) dated 04/10/2023 stated that that an outstanding arrear demand for Rs. 4,90,780/- u/ 154 in respect OF a.y. 2014-15 and Rs. 330/- u/s 143(3) FOR THE A.Y. 2017-18 are pending against the Transferee Company M/s. Narottamka trade & Vyappar Private Limited (Copy of the

said Letter of Income Tax Department marked as Annexure-I is enclosed herewith for perusal and read reference.

Paragraph No.12 of Jt. Affidavit:

With reference to paragraph 2(i) of the said affidavit, save what are matters of record, the arrear demand of the IT department cited by the learned Regional Director, Eastern Region in his affidavit pertains to the Transferee Company. It is humbly submitted that the IT demand for Rs. 330/- for the AY 2017-18 has been paid by the Transferee Company. The Challan in this regard is enclosed as Annexure 2. In respect of the IT demand for Rs. 4,90,780/- for the AY 2014-15, the same is under consideration by the Transferee Company with due regard to right to appeal and terms of the provisions of law in force and accordingly the same shall be paid by the Transferee Company or appropriate legal remedies will be undertaken, after the Scheme becoming effective.

6. Heard submissions made by the Ld. Counsel appearing for the Petitioner, RD. 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 Scheme of Amalgamation mentioned in paragraph 1 of the petition, being Annexure "A" hereto, be and is hereby sanctioned by this Tribunal to be binding with effect from 01-April-2022 ("**Appointed Date**") on Sudershan Fincon Private Limited, ("**1st Transferor Company**"), Subhdhristi Investment Consultants Private Limited ("**2nd Transferor Company**"), Everlink Vanijya Private Limited ("**3rd Transferor Company**") with Narottamka

Trade & Vyapaar Private Limited, ("**Transferee Company**"), their respective shareholders and creditors and all concerned;

- (b) All the property, rights and powers of the Transferor Company(ies), 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 Company(ies) therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme;
- (c) All the debts, liabilities, duties and obligations of the Transferor Company(ies) 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 Company(ies) be continued by or against the Transferee Company, as provided in the Scheme;
- (e) The Transferee Company(ies) do, without further application, issue and allot to the shareholders of the Transferor Company, the shares in the Transferee Company to which they are entitled in terms of the Scheme;
- (f) Leave is granted to the Petitioner(s) to file the Schedule of Assets of the Transferor Company in the form as prescribed in the Schedule to Form No. CAA7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 60 (sixty) days from the date of receiving a copy of this order;

- (g) The Transferor Companies namely Sudershan Fincon Private Limited, ("**1st Transferor Company**"), Subhdhristi Investment Consultants Private Limited ("**2nd Transferor Company**"), Everlink Vanijya Private Limited ("**3rd Transferor Company**") shall stand dissolved without winding up from the appointed Date.
- (h) The Transferor Company(ies) and the Transferee Company shall each within thirty days of the date of the receipt of this order, cause a certified copy thereof to be delivered to the Registrar of Companies for registration and on such certified copies being so delivered, the Transferor Company 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 documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said companies shall be consolidated accordingly.
7. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets in acceptable form to the department and the department will append such printout, upon verification to the certified copy of the order.
8. **Company Petition (CAA) No. 127/KB/2023** is **disposed of** accordingly.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
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9. Urgent Photostat 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)

Signed this, on the 25th day of April, 2024

NKS(LRA)