

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

CP (CAA) No. 204/KB/2023

Connected with

CA (CAA) No. 90/KB/2023

In the matter of:

Sections 230 to 232 and other applicable provisions of the Companies Act, 2013;

-And-

In the matter of:

The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

-And-

In the matter of:

PRECISION WARPS & FLYERS PVT. LTD., bearing CIN: U29264WB1981PTC033347 (hereinafter referred to as the “Transferor Company”) is an Unlisted Private Limited Company, incorporated under the Companies Act, 1956 on 07th February, 1981 in the State of West Bengal. The registered office of the Company is situated at 41, Chowringhee Road, 4th Floor, Kolkata - 700071.

...Transferor Company /Petitioner Company No. 1

-And-

DEVANSHI FINVEST PRIVATE LIMITED, bearing CIN: U67110WB1995PTC068079 (hereinafter referred to as the “Transferee Company”) is an Unlisted Private Limited Company, incorporated under the Companies Act, 1956 on 06th February, 1995 in the State of West Bengal. The registered office of the Company is situated at Flat No. 22, 6th Floor 9. Rowdon Street, Kolkata, 700017.

...Transferee Company/Petitioner Company No. 2

In the matter of:

1. PRECISION WARPS & FLYERS PVT. LTD.

... Transferor Company /Petitioner Company No. 1

2. DEVANSHI FINVEST PRIVATE LIMITED

... Transferee Company /Petitioner Company No. 2

Coram:

Smt. Bidisha Banerjee: Member (Judicial)

Shri. D. Arvind: Member (Technical)

Appearances:

For the Petitioners : **Meenakshi Manot, Advocate**
Kiran Sharma, Advocate
Shristi Garg, PCS

Order pronounced on: 18/04/2024

ORDER

Per: D. Arvind, Member (Judicial):

1. Ld. Counsel for the Petitioners is present. The court convened through hybrid mode.
2. 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 Precision Warps & Flyers Pvt Ltd ('Transferor Company /Petitioner Company No. 1') into and with Devanshi Finvest Private Limited ('Transferee Company/Petitioner Company No. 2') (collectively referred to as "Petitioner Companies") whereby and whereunder the Transferor Company is proposed to be amalgamated into and with the Transferee Company from the *Appointed Date, viz. April 1, 2022* in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ('Scheme of Amalgamation/Scheme'). (**Annexure A at pages 53 to 88 of the Petition**).
3. The Petition herein has now come up for final hearing. Learned Counsel for the Petitioners submits as follows:

- a. The Scheme was approved unanimously by the Board of Directors of the Petitioner Companies, respectively at their meetings held on March 10, 2023.
- b. The circumstances and/or grounds that have necessitated and/or justified the Scheme of Amalgamation and the advantages thereof as detailed in the Scheme of Amalgamation *inter alia* include:
 - i. ensuring a streamlined group structure by reducing the number of legal entities in the group structure which will significantly reduce multiplicity of legal and regulatory compliance requirements and costs and will enhance the business oversight and eliminate duplicative communication and co-ordination efforts across multiple entities;
 - ii. realization of benefits of greater synergies and economies of scale for the businesses of the Transferee Company, yielding beneficial results and pooling and optimal utilization of financial resources as well as managerial, technical, distribution and marketing resources of each other in the interest of maximizing value to their shareholders and other stakeholders. It will further enable greater efficiency in cash management and unfettered access to cash flow generated by the combined businesses, which can be deployed more efficiently for better debt management;
 - iii. simplification of management structure, better administration and a reduction in administrative and operational costs over a period of time, standardization and simplification of business processes, better utilization of common facilities, sharing of best practices and cross-functional learning, the elimination of duplication and multiplicity of compliance requirements and rationalization of administrative expenses;
 - iv. The amalgamation will result in simplification of the group structure which will significantly reduce multiplicity of legal and regulatory compliance requirement, costs and enhance business oversight;

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- v. enable better tax planning at a combined level and also assist in leveraging resources of the overall downstream combined entity;
 - vi. reducing time and efforts for consolidation of financials at the group level; and
 - vii. create value for stakeholders including respective shareholders, customers, lenders and employees.
- c. The assets of the Transferee Company/Petitioner Company No. 2 and the Transferor Company /Petitioner Company No. 1 are sufficient to meet all their liabilities and the Scheme of Amalgamation shall not prejudicially affect the rights or interests of the creditors of the Petitioner Companies, in any manner.
- d. The number and exchange ratio of shares which, shall be issued and allotted to the equity shareholders of Transferor Company for implementation of the terms of the Scheme are based on the Valuation Report, issued by Mr. Mohit Jhunjunwala, a Registered Valuer bearing registration number IBBI/RV/01/2020/13487. [**Annexure K at at pages 216 to 226 of the Petition**]
- e. The Scheme of Amalgamation does not contain or provide for corporate debt restructuring. The present Scheme of Amalgamation does not provide for any compromise with the creditors of the Petitioner Companies.
- f. The Statutory Auditors of the Transferee Company/Petitioner Company No. 2 have confirmed that the accounting treatment contained in the Scheme is in compliance with applicable Accounting Standards specified under Section 133 of the Companies Act, 2013 and other generally accepted accounting principles. (**Annexure L at pages 227 to 228 of the Petition**).
- g. No investigation proceedings are pending against any of the Petitioner Companies, including but not limited to proceedings under Sections 235 to 251 of the Companies Act, 1956, or Sections 217, 219, 221, 224 and 225 of the Companies Act, 2013.
- h. The shares of the Petitioner Companies are not listed on any of the stock exchanges.

- i. By an Order dated September 22, 2023 passed in Company Application C.A. (CAA) No. 90/KB/2023, this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) of the Act:-

i. Meetings dispensed:

Meeting of Equity Shareholders and Preference Shareholders of the Petitioner Company No.1 /Transferor Company and Transferee Company for considering the Scheme were dispensed with in view of all shareholders of the Petitioner Company No.1 /Transferor Company and Transferee Company having respectively given their consent to the Scheme by way of affidavits.

Meeting of Secured Creditors of the Petitioner Company No. 1 /Transferor Company and Transferee Company for considering the Scheme were dispensed with in view of NIL Secured creditors of the Petitioner Company No. 1 /Transferor Company and Transferee Company.

Meeting of Unsecured Creditors of the Petitioner Company No. 1 /Transferor Company and the Transferee Company for considering the Scheme were dispensed with in view of NIL Unsecured Creditors of the Petitioner Company No. 1 /Transferor Company and Transferee Company.

ii. Meetings required to be convened:

No Meeting is required to be convened.

4. Thereafter, the Petitioner Companies have filed the instant Company Petition being C.P. (CAA) No. 90/KB/2023 for sanctioning the Scheme of Amalgamation. This Tribunal heard the Ld. Counsel for the Petitioner Companies and passed Order dated December 15, 2023 whereby this Tribunal directed the Petitioner Companies to serve notice under Section 230(5) of the Act along with all the accompanying documents, including a copy of the aforesaid Company Petition with the Scheme of Amalgamation annexed thereto, and explanatory statement

under the applicable provisions of the Act upon the Regional Director, Eastern Region, Ministry of Corporate Affairs; Registrar of Companies and Income Tax Department having jurisdiction over the Petitioner Companies and the Official Liquidator, High Court at Calcutta by sending the same by hand delivery through special messenger or by post and by email.

5. In the aforesaid Order dated December 15, 2023, this Hon'ble Tribunal also directed the Petitioner Companies to publish the advertisement of the hearing of the aforesaid company petition in "Aajkal" Bengali daily newspaper in vernacular language (Bengali) and in the "Business Standard", English newspaper in English as per Rule 16(1) of the CAA Rules.
6. The Ld. Counsel for the Petitioner Companies submits that in compliance of the Order dated December 15, 2023, notice under Section 230(5) of the Act along with all accompanying documents, including a copy of the aforesaid Company Petition with the Scheme of Amalgamation annexed thereto and explanatory statement under the applicable provisions of the Act have been served upon the (i) Regional Director (Eastern Region), Ministry of Corporate Affairs, Kolkata; (ii) Registrar of Companies, West Bengal; (iii) Official Liquidator High Court, Calcutta; and (iv) Assistant Commissioner of Income Tax, Circle 1(1), Kolkata through email and through speed-post dated January 11, 2024.
7. The Ld. Counsel for the Petitioner Companies has caused the publication of the advertisement of the hearing as directed by this Tribunal in "Aajkal" Bengali daily newspaper in vernacular language (Bengali) and in the "Business Standard", English newspaper in English on January 10, 2024 in compliance of Order dated December 15, 2023.
8. The Ld. Counsel for the Petitioner Companies has also duly filed Affidavit of Compliance on January 18, 2024 with respect to said Order dated December 15, 2023.

9. A report dated February 19th, 2024 has been filed by the Office of Official Liquidator, High Court of Calcutta before this Tribunal, where it has been stated that no complaint and/or representation has been received against the proposed Scheme of Amalgamation so far in respect of the Petitioner Companies.
10. An affidavit has been filed by the Regional Director's Office, Eastern Region, Ministry of Corporate Affairs ('RD') dated February 21, 2024 ('RD Affidavit') before this Tribunal with a copy marked to the Petitioner Companies. The observations of the RD have been dealt with by the Petitioner Companies by their Affidavit-in-Rejoinder dated February 22, 2024 ('Rejoinder'). The observations made in the RD affidavit and the corresponding response of the Petitioner Companies are summarized as under:-

(a) Paragraph No. 2 (a) of RD affidavit:-

That it is submitted that as per available record, it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. Further, both the Petitioner Companies have filed their Financial Statements and Annual Returns for the financial year ended 31/03/2023.

Paragraph No. 2 of Rejoinder: -

With regard to point 2(a) of the Affidavit of the Regional Director (Eastern Region), MCA, the said is self-explanatory.

(b) Paragraph No. 2 (b) of RD affidavit:-

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

Paragraph No. 3 of Rejoinder: -

With regard to point 2(b) of the said Affidavit, I affirm that the Transferee Company will provide a list of Assets to be transferred from the Transferor Company upon sanctioning of scheme.

(c) Paragraph No. 2 (c) of 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 Rejoinder: -

With regard to point 2(c) of the said Affidavit, I affirm that the Petitioners will comply with the provisions of section 232(3)(i) of the Companies Act, 2013.

(d) Paragraph No. 2 (d) 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 Company to it.

Paragraph No. 5 of Rejoinder: -

With regard to point 2(d) of the said Affidavit, I affirm that the Transferee Company will pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it as applicable pursuant to approval of scheme of amalgamation.

(e) Paragraph No. 2 (e) 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 Petition are one and same and there is no discrepancy, or no change is made.

Paragraph No. 6 of Rejoinder: -

With regard to point 2(e) of the said Affidavit, I affirm that there is no discrepancy or change in the scheme as filed before the Hon'ble Tribunal in the Company Application and Company Petition.

(f) Paragraph No. 2 (f) of 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 09/11/2023 for their views/observation in the matter. 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.

Paragraph No. 7 of Rejoinder: -

With regard to point 2(f) of the Affidavit, the said is self-explanatory.

11. Ld. Counsel for the Petitioner Companies further submits that the instant Scheme of Amalgamation is to the benefit and advantage of the Transferor Company /Petitioner Company No.1 and the Transferee Company/Petitioner Company No. 2, their respective shareholders, employees and all concerned. The Scheme of Amalgamation is just, fair and reasonable and is not contrary to any provisions of law and does not violate any public policy. The Scheme of Amalgamation has also been approved by the shareholders of the Petitioner Companies.
12. Heard submissions made by the Ld. Counsel appearing on behalf of the Petitioner Companies and the representative of RD(ER). Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the followings orders:-
 - a) The Scheme of Amalgamation mentioned in this Petition being Annexure "A" hereto, be sanctioned by this Hon'ble Tribunal and be binding on with effect from April 1, 2022 on Precision Warps & Flyers Pvt. Ltd with Devanshi Finvest Private Limited and their shareholders and all concerned;

Transfer of Assets

- b) All the properties, rights and interest of Precision Warps & Flyers Pvt. Ltd. be transferred to and vested in Devanshi Finvest Private Limited without further act or deed and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and vested in Devanshi Finvest Private Limited for all the

estate and interest of the Precision Warps & Flyers Pvt. Ltd. therein but subject nevertheless to all charges now affecting the same;

Transfer of Liabilities

- c) All the liabilities and duties of Precision Warps & Flyers Pvt. Ltd. be transferred without further act or deed to Devanshi Finvest Private Limited and accordingly, the same shall pursuant to Section 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and become the liabilities and duties of Devanshi Finvest Private Limited;

Transfer of Legal Proceedings

- d) That all the proceedings and/or suit appeals now pending by or against Precision Warps & Flyers Pvt. Ltd., if any, shall be continued by or against Devanshi Finvest Private Limited;

Filing of Schedule of Assets

- e) The schedule of assets in respect of Precision Warps & Flyers Pvt. Ltd. be filed within a period of 60 (sixty) days from the date of the order to be made herein;
- f) The Transferor Company, namely Precision Warps & Flyers Pvt. Ltd., shall stand dissolved without winding up in accordance with the Scheme of Amalgamation;
- g) Precision Warps & Flyers Pvt. Ltd. and Devanshi Finvest Private Limited shall within 30 (thirty) days after the date of obtaining the certified copy of the order to be made herein, or within such time permitted by this Hon'ble Tribunal, cause certified copies of this order to be delivered to the jurisdictional Registrar of Companies, West Bengal for registration respectively;

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- h) The Registrar of Companies, West Bengal upon receiving such certified copy of this order be directed to place all documents relating to the Transferor Company and registered with him, in the files kept by him in relation to the Transferee Company and the files relating to the Transferor Company and the Transferee Company shall be consolidated accordingly;
 - i) All concerned authorities to act on certified copy of this order along with the sanctioned Scheme of Amalgamation;
 - j) Any person interested be at liberty to apply to this Hon'ble Tribunal in the above matter for any direction that may be necessary; and
 - k) Such further or other order or orders be made, and directions be given as this Hon'ble Tribunal may deem fit and proper.
13. The Petitioner Companies shall supply legible printout of the Scheme and schedule of assets and liabilities in acceptable form to the registry and the registry will, upon verification, append such printout, to the certified copy of the order.
14. **The Company Petition C.P. (CAA) No. 204/KB/2023** connected with Company **Application C.A. (CAA) No. 90/KB/2023** is *disposed of* accordingly.
15. Certified copy of this order, if applied for, be issued to the parties, subject to compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this 18th day of April, 2024

NKS(LRA)