

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH : C-IV**

**CA(CAA)/63/MB/2022**

*In the matter of*

*Under Section 230 to 232 and other relevant  
provisions of the Companies Act, 2013.*

AND

*In the matter of*

*Scheme of Merger by absorption of*

**FORTUITY INVESTMENTS**

**PRIVATE LIMITED**

(CIN: U67100MH2017PTC299289)

....Applicant Company-1

Transferor Company/

with

**PROFITEX SHARES & SECURITIES**

**PRIVATE LIMITED**

(CIN: U67120MH2000PTC123921)

....Applicant Company-2

Transferee Company/

Mr. Manoj Kumar Dubey

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Order pronounced on : 10.11.2022

*Appearances (via videoconferencing):*

For the Applicants

: Mr. Haresh Shah, PCS.

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**O R D E R**

*Per: Manoj Kumar Dubey, Member (T)*

1. The Bench is convened by videoconference on 12.10.2022.
2. The Representative for the Applicant Companies states that the proposed Scheme is Scheme of Merger by absorption of Fortuity Investments Private Limited (*'Applicant Company 1/ Transferor Company'*) with Profitex Shares & Securities Private Limited (*'Applicant Company 2/ Transferee Company'*) and their respective shareholders.
3. The Representative for the Applicant Companies submits that the proposed Scheme of Merger by absorption was approved by the Board of Directors of Fortuity Investments Private Limited, the Transferor Company and Profitex Shares & Securities Private Limited, the Transferee Company in their respective Board Meeting held on 4<sup>th</sup> March 2022 and annexed to Company Scheme Application as Annexure F-1 & F-2.
4. The Representative for the Applicant Companies submits that Applicant Company-2 is holding 100% shares of the Applicant Company-1.
5. The Representative for the Applicant Companies submits that the Appointed Date for the Scheme of Merger by absorption is 1<sup>st</sup> April 2021.
6. The Applicant Company 1 is carrying on the activities to acquire and hold and otherwise deal with and in shares, stocks, debentures, debenture-stocks, bonds, obligations and securities. The Applicant Company 2 is engaged in the activity of investments and trading of securities.

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7. The rational for the Scheme of Merger by absorption are as follows: -
  - a. The merger will achieve greater financial strength and flexibility, to maximize the stakeholder's value.
  - b. Since both the Companies are into similar businesses, the consolidation will help to have full integration of activities.
  - c. Transferor company is wholly owned subsidiary of transferee company and with a view to maintain a simple corporate structure and eliminate duplicate corporate procedures it is desirable to merge the transferor company with transferee company.
  - d. The merger will provide for more productive and optimum utilization of various resources by pooling of financial resource of the Transferor Company and Transferee Company.
  - e. The merger will lead to greater efficiency including operational rationalization, organizational efficiency, cash flow management and access to cash flow of combined business which can be deployed more efficiently, eliminate inter corporate dependencies, minimize the administrative expenses and compliances and to maximize shareholders value.
  - f. The merger will result in a reduction in the multiplicity of legal and regulatory compliances required at present to be separately carried out by the transferor company and the Transferee company.
  
8. The counsel for the Transferor Company submits that the Authorized, Issued and Paid-up Share Capital of the Applicant Company as on 31.03.2021:

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Particulars	Amount in INR
Authorized Share Capital 10,000 equity shares of INR 10 each;	1,00,000
TOTAL	1,00,000
Issued Subscribed and paid-up share capital 10,000 equity shares of INR 10 each;	1,00,000
TOTAL	1,00,000

9. The counsel for the Transferee Company submits that the Authorized, Issued and Paid-up Share Capital of the Applicant Company as on 31.03.2021:

Particulars	Amount in INR
Authorized Share Capital 12,50,000 equity shares of INR 10 each;	1,25,00,000
TOTAL	1,25,00,000
Issued Subscribed and paid-up share capital 10,50,000 equity shares of INR 10 each;	1,05,00,000
TOTAL	1,05,00,000

10. The financial details/summary of the Transferor Company as on 31.01.2022 is as under:

Year	Net worth in Lakhs	Total Revenue in Lakhs	Profit /(Loss) in Lakhs
2019-2020	(5,00,93.85)	114.52	(49,474.87)
2020-2021	22,713.75	74,566.44	72,807.60
2021-2022	5,44,67,45,287	3,17,68,86,141	3,17,53,69,952

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11. The financial details/summary of the Transferee Company as on 31.01.2022 is as under:

Year	Net worth in Lakhs	Total Revenue in Lakhs	Profit /(Loss) in Lakhs
2019-2020	32,984.79	1,367.64	(17,316.62)
2020-2021	76,497.87	53,654.61	43,513.08
2021-2022	11,75,61,10,640	3,17,68,86,141	4,10,63,23,421

12. That the meeting of the Equity Shareholders of the Applicant Company 1 is not required to be convened in view of the Applicant Company 1 having procured the written consent affidavits agreeing to the Scheme of Merger from all Equity Shareholders constituting 100% of shareholding which are annexed as Annexure– ‘H-2’ to the joint Company Scheme Application. In view of the above, the convening and holding of the meetings of the Equity Shareholders of the Applicant Company 1 is dispensed with.
13. That the meeting of the Equity Shareholders of the Applicant Company 2 is not required to be convened in view of the Applicant Company 2 having procured the written consent affidavits agreeing to the Scheme of Merger from all Equity Shareholders constituting 100% of shareholding which are annexed as Annexure– ‘I-2’ to the joint Company Scheme Application. In view of the above, the convening and holding of the meetings of the Equity Shareholders of the Applicant Company 2 is dispensed with.
14. The Representative for the Applicant Company 1 submits that there are no Secured Creditors, thus meeting of Secured Creditors is not required to be convened.

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15. The Representative for the Applicant Company 2 submits that there are no Secured Creditors, thus meeting of Secured Creditors is not required to be convened.
16. The Representative for the Applicant Company 1 submits that there no Unsecured Creditors except professional tax payable amounting to Rs.1800/- (One Thousand Eight Hundred Only) as on 31<sup>st</sup> January 2022. In view of the above, the convening and holding of the meeting of the Unsecured Creditors of the Applicant Company 1 is dispensed with.
17. The Representative for the Applicant Company 2 submits that as stated in paragraph 28 of the Company Scheme Application there is 1 (One) Unsecured Creditor of the value of Rs 6,13,31,521 /- (Rupees Six Crore Thirteen Lakh Thirty-One Thousand Five Hundred Twenty-One) as on 31<sup>st</sup> January 2022. That the meeting of the Unsecured Creditors of the Applicant Company 2 is not required to be convened in view of the Applicant Company 2 having procured the written consent affidavits agreeing to the Scheme of Merger from the sole unsecured creditor which are annexed as Annexure– ‘M-2’ to the joint Company Scheme Application. In view of the above, the convening and holding of the meeting of the Unsecured Creditors of the Applicant Company 2 is dispensed with.
18. The Applicant Companies shall submit details of Corporate Guarantee, Performance Guarantee, Bank Guarantee and Other Contingent Liabilities; if any.

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19. The Applicant Companies shall submit list of pending IBC cases, if any, along with all other litigation pending against the Applicant Companies having material impact on the proposed Scheme.
20. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any.
21. The Applicant Companies are directed to serve notices by Registered - AD/Speed Post & Hand Delivery and also by E-mail (whose mail-Ids are available with the Applicant Companies) along with copy of Scheme upon:
- (i) The Regional Director, Western Region,
  - (ii) Registrar of Companies, Mumbai;
  - (iii) Income Tax Authorities; i.e. in case of First Applicant Company - having PAN- AADCF1932A, and in case of Second Applicant Company - PAN- AACCP1832A
  - (iv) Concern GST Authorities;
  - (iv) Ministry of Corporate Affairs; and
  - (v) the Securities and Exchange Board of India
- to any other applicable regulatory authority with a direction that they may submit their representations, if any, If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice it will be presumed that they have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
22. The Applicant Company 1 is directed to serve notice along with copy of Scheme upon Official Liquidator, High Court, Bombay pursuant to section

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230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal is appointing M/s. Ashra & Company, Chartered Accountants having address at D-205, Kailash Esplanade, Opp. Shreyas Cinema, LBS Marg, Ghatkopar (W), Mumbai – 400 086, Mobile No: ph.: 022-25001872/25001590, Email ID: info@ashra.co.in, to assist the Official Liquidator to scrutinize the books of accounts of the said Transferor Company and submit its representation/report to the Tribunal. The aforesaid Company to pay fees of Rs. 2,00,000/- (Rupees Two lakh Only) plus applicable taxes if any for this purpose. If no representation / response is received by the Tribunal from Official Liquidator, High Court, Bombay within a period of thirty days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation/objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

23. The Applicant Companies shall host notices along with the copy of the Scheme on their respective websites, if any.
24. The Applicant Company may file an affidavit of service/ compliance report within 10 working days with the Registry in regard to the directions given in this Order in lieu of the customary affidavit of service.
25. With the above directions, CA(CAA)/63/2022 is hereby **allowed**.

**Sd/-**

**Manoj Kumar Dubey**  
**Member (Technical)**  
**10/11/2022**

**Sd/-**

**Kishore Vemulapalli**  
**Member (Judicial)**



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