

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.A(CAA) No.18/ KB /2021

In the Matter of;

the Companies Act, 2013 - Section 230(1) read with Section 232(1)

And

In the Matter of:

NISSAN MERCHANDISE PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having Company Identification Number (CIN: U51109WB1996PTC078333) and having its Registered Office at 5F, EVEREST 46/C, CHOWRINGHEE ROAD, KOLKATA– 700071, in the State of West Bengal.

..... DEMERGED COMPANY/ APPLICANT NO 1

And

In the Matter of:

SIDHI VINIMAY PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having Company Identification Number (CIN: U51109WB1995PTC073911) and having its Registered Office at 5F EVEREST, 46/C CHOWRINGHEE ROAD, P.S. SSHAKESPEARE SARANI, KOLKATA – 700071, in the State of West Bengal.

..... RESULTING COMPANY / APPLICANT NO 2

And

In the matter of:

1. NISSAN MERCHANDISE PRIVATE LIMITED;
2. SIDHI VINIMAY PRIVATE LIMITED;

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.... APPLICANTS

Date of Hearing: 06 / 04/ 2022

Date of Pronouncing the Order: 27 / 04/ 2022

Coram:

Mr. Rohit Kapoor. : Member (Judicial)

Mr. Harish Chander Suri : Member (Technical)

Counsel/Authorised Representative appeared through video conference:

For the Petitioners : 1. Ms.Manju Bhuteria, Advocate
2. Mr. N. Gurumurthy, FCA
3. Mr. Madan Kumar Maroti,FCA
4. Ms. Aisha Amin, Advocate

ORDER

Per: Harish Chander Suri, Member (Technical)

1. 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 Arrangement between NISSAN MERCHANDISE PRIVATE LIMITED being the Applicant No. 1 above named (DEMERGED COMPANY or “APPLICANT NO 1”) and SIDHI VINIMAY PRIVATE LIMITED being the Applicant No. 2 above named (RESULTING COMPANY or “ APPLICANT NO 2 ”) whereby and where under the STRATEGIC INVESTMENT DIVISION of the DEMERGED COMPANY will be

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transferred to and vested in the RESULTING COMPANY from the Appointed Date, 01st April, 2021 in the manner and on the terms and conditions stated in the said Scheme of Arrangement ("Scheme").

2. It is submitted by Ld. Counsel appearing for the Applicant(s) that both the Applicant Companies are NBFC Companies.
3. It is submitted by Ld. Counsel appearing for the Applicant(s) that the Appointed Date is 01st April, 2021.
4. It is submitted by Ld. counsel appearing for the Applicant(s) that the Valuation has been carried out CA Vikash Goel, IBBI Registered Valuer.
5. It is submitted by Ld. counsel appearing for the Applicant(s) that the Applicant(s) have the following classes of shareholders and creditors: -

a. APPLICANT NO 1

Number of Equity Shareholders: 12 as on 15th SEPTEMBER, 2021

Number of Preference Shareholders: NIL as on 15th SEPTEMBER, 2021

Number of Secured Creditors: NIL as on 15th SEPTEMBER, 2021

Number of Unsecured Creditors: 2 as on 15th SEPTEMBER, 2021

b. APPLICANT NO 2

Number of Equity Shareholders: 19 as on 15th SEPTEMBER, 2021

Number of Preference Shareholders: NIL as on 15th SEPTEMBER, 2021

Number of Secured Creditors: NIL as on 15th SEPTEMBER, 2021

Number of Unsecured Creditors: 2 as on 15th SEPTEMBER, 2021

6. It is further submitted that all Equity Shareholders of the Applicant Companies have already given their consent to the Scheme by way of affidavits which are annexed to the application.

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7. It is further submitted that none of the Applicant Companies have Secured Creditors as verified by Auditors Certificate which are annexed to the application.
 8. It is further submitted that 100% in value of the Unsecured Creditors of Applicant No 1 have already given their consent to the Scheme by way of affidavits which are annexed to the application.
 9. It is further submitted that 100% in value of the Unsecured Creditors of Applicant No 2 have already given their consent to the Scheme by way of affidavits which are annexed to the application.
 10. Directions are sought accordingly for dispensing with the meeting of Equity Shareholders of the Applicant Companies, for dispensing with the meeting of Unsecured Creditors of the Applicant Companies and for recording that there is no requirement of meeting of Secured Creditors of Applicant Companies in view of NIL Creditors verified by auditors' certificate.
 11. 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:**

Equity Shareholders

Meeting of Equity Shareholders of the Applicant Companies for considering the Scheme are dispensed with in view of all shareholders of Applicant Companies having respectively given their consent to the Scheme by way of affidavits.

Unsecured Creditors

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Meeting of Unsecured Creditors of Applicant No 1 for considering the Scheme are dispensed with in view of consent by 100 % in value of Unsecured creditors of Applicant No 1 having respectively given their consent to the Scheme by way of affidavits.

Meeting of Unsecured Creditors of Applicant No 2 for considering the Scheme are dispensed with in view of consent by 100 % in value of Unsecured creditors of Applicant No 1 having respectively given their consent to the Scheme by way of affidavits.

b. **No requirement of Meetings**

Secured Creditors

Secured Creditors of Applicant Companies NIL Creditors verified by auditors' certificate.

c. **Meetings to be held**

No meeting is required to be held.

12. 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 the:

- a. **Regional Director, Eastern Region Ministry of Corporate Affairs, Kolkata;**
- b. **Registrar of Companies with whom the Applicant(s) are registered;**
- c. **Official Liquidator; High Court Calcutta**
- d. **Income Tax Department having jurisdiction over the Applicant(s)**
- e. **Reserve Bank of India**

by sending the same by hand delivery through special messenger/by courier, by post and by email within two weeks from the date of receiving this order. The notice shall specify that

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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 Authorized Representative of the said Applicant(s). 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. CAA3 of the said Rules with necessary variations, incorporating the directions herein.

13. The Applicant(s) to file an affidavit proving service of notices and compliance of all directions contained herein.

14. C.A (CAA) No. 18/KB/2022 is disposed of accordingly.

15. Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 27th day of April, 2022.

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