

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

COMPANY PETITION (CAA)-100/ (ND)/2021
(Under Section 230, 232 of the Companies Act, 2013)

In the Matter of:

1. M/S. VARDHAN FINVEST LTD.

Registered office at: KCI Plaza, 7th Floor, 23C,

Ashutosh Chowdhury Avenue, Kolkata – 700019

...Transferor Company/ Non-Applicant Company

With

2. M/S. KPL INTERNATIONAL LTD.

Registered office at: 212A, 216 & 222, 2nd Floor,

Indraprakash, 21, Barakhamba Road, New Delhi 110001

...Transferee Company/ Applicant Company

CORAM:

SHRI. PRAVEEN GUPTA, MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Counsel for Applicant: Karishma, CS

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 25.01.2023

1. This application has been filed by the Applicant Company under Sections 230 to 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation of the Transferor Company into the Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred as the “Scheme”), has been placed on record.
2. The Transferor Company - M/s. Vardhan Finvest Limited was incorporated under the provisions of the Companies Act, 1956, as a private limited company vide Certificate of Incorporation dated 20.03.2006, having its registered office at KCI Plaza, 7th Floor, 23C, Ashutosh Chowdhury Avenue, Kolkata – 700019.

- 3.** The Transferee Company-M/s. KPL International Ltd. was incorporated under the provisions of Companies Act, 1956 vide Certificate of Incorporation dated 17.04.1974 with Registrar of Companies, NCT of Delhi & Haryana and having its registered office at 212A, 216 & 222, 2nd Floor, Indraprakash, 21, Barakhamba Road, New Delhi 110001.
- 4.** From the records, it is seen that the First Motion application was filed before this Tribunal vide C.A.(CAA)/26/(ND)2021. As per the averments made in the application, the registered office of the Transferor Company is situated in Kolkata, hence NCLT, Kolkata Bench has the jurisdiction to entertain the same. In view thereof, the NCLT, Kolkata Bench has sanctioned the scheme vide order dated 24.03.2022. The Transferee Company has 31 Shareholders, 3 Secured Creditors and 308 Unsecured Creditors. Vide order dated 12.03.2021, the Transferee Company was directed to convene meetings of its Shareholders, Secured Creditors and Unsecured Creditors. The meetings as directed vide

order dated 12.03.2021 were convened and reports of respective chairpersons were placed on record.

- 5.** The Applicant Companies were directed to carry out publication in the newspapers. It is seen from the records that the petitioners have filed an Affidavit affirming compliance and disclosing that the applicants have effected publication in 'Indian Express' English edition as well as 'Jansatta' Hindi edition, both dated 16.11.2021. In addition to the public notice, notices were served on to the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other relevant sectoral regulators.
- 6.** Pursuant to the notice issued to the Regional Director, RoC, and Official Liquidator, they have filed their response/reply in the matter.
- 7.** The Regional Director had raised certain objections to the scheme which were duly addressed by the Petitioner Company. In daily order dated 06.01.2023, it has been noted as follows: "the proxy counsel for the RD has

appeared and submitted that they have no objection in the matter.”

- 8.** The Official Liquidator has filed its report dated 26.04.2022, stating as follows:

“That the Official Liquidator has not received any complaint from any shareh olders, creditors and other stakeholders of the respective companies with regard to the proposed Scheme of Amalgamation till the date of filing of this Report. However, while going through the petition/ and annexure thereto, it has emerged that the Registered Office of the Transferor Company is situated in Kolkata, West Bengal, hence, the Hon'ble National Company Law Tribunal, Kolkata Bench have the jurisdiction to entertain the same.

That the proposed scheme of amalgamation envisages amalgamation of Transferor Company with the Transferee Company. Since in the instant case, the Transferor Company falls under the jurisdiction of the Official Liquidator at Kolkata and Transferee Company which is having its Registered Office in NCT of Delhi is not going to be dissolved upon the sanction of the proposed scheme of amalgamation, the Official Liquidator, Delhi is of the view that no report/ representation in the matter under section 230(5) of the Companies Act, 2013 and Rules made thereunder is desired on the part of this office!. However, the Hon'ble

Tribunal may pass order(s) as may deem fit and proper in the present circumstances.”

- 9.** The Income Tax Department has submitted its report dated 14.09.2021 w.r.t the Transferee Company stating that there is an outstanding demand against the Transferee Company. The Transferee Company, however, has filed an affidavit-cum-undertaking dated 18.06.2022 whereby it has undertaken that the Transferee Company shall pay any outstanding dues towards income tax and shall meet the tax liability if any demanded from the Transferor Company or the Transferee Company as per laws.
- 10.** In this petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Company.
- 11.** Certificate of the Statutory auditor of the Petitioner Company has been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting

Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.

12. The shareholders of the applicant company are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme, of which sanction is sought under Section 230-232 of the Companies Act of 2013, will not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors.

- i.* It has also been affirmed in the petition that the Scheme is in the interest of the Transferor Company and the Transferee Company, including their shareholders, creditors, employees and all concerned.
- ii.* In view of the foregoing, upon considering the approval accorded by the members and creditors

of the Petitioner Companies to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and the report of official liquidator, there appears to be no impediment in sanctioning the present Scheme.

- A.** Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.
- B.** The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.
- C.** Notwithstanding the above, if there is any deficiency found or, violation committed, qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit in accordance with law, against the concerned persons, directors and officials of the petitioners.
- D.** While approving the Scheme as above, we further clarify that this order should not be construed as an

order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

E. THIS TRIBUNAL DO FURTHER ORDER:

1. *That the Transferor Company shall stand dissolved without following the process of winding-up; and*
2. *That all the property, rights and powers of the Transferor Company, be transferred without further act or deed, to the Transferee Company and accordingly the same shall, pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee Company.*
3. *That all the liabilities and duties of the Transferor Company, be transferred without further act or deed, to the Transferee Company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee Company; and*

4. *That all proceedings now pending by or against the Transferor Company, be continued by or against the Transferee Company; and*
5. *That all the employees of the Transferor Company in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date, shall become the employees of the Transferee Company on such date, without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the concerned Transferor Company on the said date.*
6. *That Petitioner companies shall, within thirty days of the date of the receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file, kept by him in relation to the Transferee Company*

and the files relating to all the petitioner companies shall be consolidated accordingly; and

7. *That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.*

The petition stands disposed of on the above terms.

Let copy of the order be served to the parties.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(PRAVEEN GUPTA)
MEMBER (JUDICIAL)