

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH**

C.A. No. (CAA) No. 07/KB/2021

In the matter of :

The Companies Act, 2013

And

In the matter of :

Section 230 read with Section 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013

And

In the matter of:

Oban Fashions Private Limited, **CIN U18204MH2015PTC271385**, 102, VIP Plaza, B-7, Veera Industrial Estate Off Andheri Link Road, Andheri (West), Mumbai-400053, Maharashtra.

...Demerged Company

And

In the matter of:

Rupa & Co. Ltd., **CIN L17299WB1985PLC038517**, 1, Ho Chi Minh Sarani, Metro Plaza 8th Floor, Kolkata- 700071 West Bengal.

... Resulting Company

And

RUPA & CO. LTD.

... APPLICANT

Date of Hearing : 03/02/2021
Date of order : 03/02/2021

Coram:

Mr. Rajasekhar V.K., Member (Judicial)
Mr. Harish Chander Suri, Member(Technical)

Counsel Appeared through Video Conference:

1. Ms. Shruti Swaika, Advocate] For the Applicant
2. Ms. Iram Hassan, Advocate
3. Mr. Sanket Sarawgi, Advocate

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court convened by video conference today.
2. This application has been filed by the Applicant Company namely, Rupa & Co. Ltd. for obtaining sanction of this Tribunal regarding Scheme of Arrangement of the above mentioned companies. Copy of the Scheme is annexed as Annexure G at pg. 309 of the application.
3. The instant application has been filed under Section 230 read with Section 232 of the Companies Act, 2013 for direction for calling of the separate meetings of the equity shareholders, unsecured and secured creditors of the Applicant Company. The Applicant Company is the Resulting Company. Oban Fashions Private Limited is the Demerged Company and its registered office is in Maharashtra and it is submitted that a separate application has been filed under Section 230-232 in Mumbai NCLT on behalf of the Demerged Company.

4. Applicant submitted that the Board of Directors of the both the Demerged Company and the Resulting Company have, at their respective Board Meetings by a resolution passed unanimously approved the said Scheme of Arrangement which are **Annexure H annexed to the petition at pg 343.**

5. The Resulting Company/Applicant Company is a public listed company and its shareholding pattern as on 30th September, 2020, filed with Stock Exchanges is annexed as **Annexure J** at pg. 353 of the application. CA certified shareholding pattern of the Applicant Company is also annexed as **Annexure K at pg. 371** of the petition.

6. Separate list of secured and unsecured creditors are also certified by the chartered accountants and are annexed as **Annexure L at pg. 377** of the petition.

7. The certificate under proviso to Section 230(7) certifying that the accounting treatment proposed in the Scheme of Arrangement is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013 and is annexed to the petition as **Annexure M at pg. 417.** The Demerged Company is the wholly owned subsidiary of the Resulting Company hence no shares will be issued by the Resulting Company which is evident from the valuation report annexed to the petition as **Annexure N at pg. 422.**

8. Learned Counsel submits that the the proposed demerger of the Demerged Undertaking would help in:

- (i) Utilizing the current market presence and customer base of the Resulting Company which will lead to the presence of the Demerged Undertaking across various market segments leading to higher

growth/ top line for the Resulting Company

- (ii) Would enable consolidation of similar premium businesses and carry on the same more efficiently and effectively
- (iii) Under a liberalized, fast changing and highly competitive environment, the demerger shall strengthen the business of the Demerged Undertaking and of the Resulting Company, by pooling up resources for common purpose;
- (iv) Will rationalize the management structure, reduce overhead costs and ultimately lead to streamlining the operations structure of the Demerged Undertaking
- (v) The demerger will enable the future business activities to be carried on more conveniently and advantageously with enhanced flexibility in funding of expansion plans, improving profitability and stronger balance sheet of the Resulting Company
- (vi) Synergies expected to bring in cost savings in the marketing, selling and distribution expenses as well as give benefits of the economies of scale and elimination of duplication of administrative expenses
- (vii) The transfer and vesting of the Demerged Undertaking to the Resulting Company will enable better focus and management of the Remaining Undertaking of the Demerged Company and to achieve higher topline for the Remaining Undertaking.
- (viii) The Remaining Undertaking has significantly lower working capital requirement as compared to the Demerged Undertaking. Hence,

demerger of the Demerged Undertaking would help in managing the different funding requirements of the two business, both in terms of type of funds and amount of infusion required for the businesses.

- (ix) Beneficial results for the Companies concerned, their shareholders, employees and all concerned.

9. That the Demerged Company and the Resulting Company believe that this Scheme is in the best interest of the relevant companies and their respective shareholders and creditors, and other stakeholders, as it is expected to provide greater financial strength and flexibility.

10. Learned Counsel for the Applicant Company submits that the proposed Scheme is not within the purview of the Competition Act, 2002, that there are no proceedings pending under Sections 210 to 227 of the Companies Act, 2013 against any of the Applicant Companies and that no investigation under the Companies Act, 2013 is pending against the Applicant Companies.

11. Learned Counsel for the Applicant Company submits that the aggregate assets of the Applicant Company are more than sufficient to meet all their liabilities and the Scheme of Arrangement will not adversely affect the rights of any of the Creditors of the Applicant Company in any manner whatsoever and due provisions have been made for payment of all the liabilities as and when the same fall due in usual course.

12. Learned Counsel for the Applicant Company submits that it is necessary that separate meetings of equity shareholders, unsecured and secured creditors of the Resulting Company be called to consider and if thought fit, approve the said Scheme, with or without modification.

13. Heard the Learned Counsel for the Applicant Company, perused the records, documents annexed to the Application and after hearing the

submissions made on behalf of the Applicant Company and pass the following orders:

- i. A meeting of the **equity shareholders** of Resulting Company shall be convened via video conferencing or other audio-visual mode and held at the registered office of the Resulting Company on **26th March, 2021 at 11.30 A.M.** for the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme of Arrangement.
- ii. A meeting of the **unsecured creditors** of the Resulting Company shall be convened via video conferencing or other audio-visual mode and held at its registered office on **26th March, 2021 at 2.30 P.M.** for the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme of Arrangement.
- iii. A meeting of the **secured creditors** of the Resulting Company shall be convened via video conferencing or other audio visual mode and held at its registered office on **26th March, 2021 at 3.30 P.M.** for the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme of Arrangement.
- iv. The quorum of the aforesaid meeting shall be as prescribed under Section 103 of the Companies Act, 2013 and the relevant Rules thereunder.
- v. In the event no quorum is present within 30 minutes from the commencement of virtual meeting, then in such event the shareholders/ the creditors present shall constitute quorum.

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- vi. That at least 30 (thirty) clear days before the date of the said meetings an advertisement convening the same and stating that copies of the said Scheme of Arrangement and the Statement containing necessary details required to be filed pursuant to Section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 is being sent with notice, shall be published once each in the "AAjkal" Bengali newspaper and in "The Business Standard" English newspaper as per requirements of Section 230 of the Companies Act, 2013 in Form CAA 2 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.
- vii. That in addition, at least 30 (thirty) clear days before the meeting to be held as aforesaid, a notice convening the said meetings at the place/ mode and time as aforesaid together with a copy of the said Scheme, the Statement disclosing necessary details required to be filed pursuant to Section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 shall be sent by an e-mail to the shareholders, secured and unsecured creditors of the Applicant Company whose e-mail addresses are duly registered with the Applicant Company, addressed to each of the shareholder, secured and unsecured creditor, at their last known e-mail address as per the records of the Applicant Company. Shareholders, secured and unsecured creditors whose e-mail address are not available, shall be provided an opportunity by way of notice in the advertisement of notice mentioned in point 6 above

to register their e-mail address to receive the notice of the said respective meeting.

- viii. Notice as per requirement of Sub-Section 5 of Section 230 of the Companies Act, 2013 alongwith all the documents including a copy of the Scheme and the Statement disclosing necessary details on the Central Government through Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, Kolkata, Income Tax Authorities, Competition Commission of India and Stock Exchange(s) and such other sectoral regulators/authorities, if applicable within 14 days from the date of this order for filing their representation, if any, within 30 days from the date of notice. The notice shall specify that representation, if any should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Arrangement. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 in Form No. CAA.3 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein by e-mail or speed post or by personal messenger.
- ix. Presence of shareholders and secured and unsecured creditors are permitted to be recorded by the chairperson in the minutes of the

meeting instead of such attendance being recorded by way of attendance slip;

- x. The chairperson appointed for the said meetings is directed to accept scanned copies of Board Resolutions/Authority Letters/ by way of electronic mail.
- xi. **Mr. Soumitra Lahiri**, CA (Mob- 913323903644) email slahiri0207@gmail.com shall be the chairperson for the said meetings of the shareholders of and unsecured and secured creditors of Resulting Company to be held as aforesaid. The consolidated remuneration of Rs.60,000/- (Rupees Sixty Thousand only) for conducting the aforementioned meetings.
- xii. **Mr. Arnab Dutta**, (Mob- 9830079563), email advadutta@gamil.com shall be the scrutiniser for the said meetings of the shareholders and unsecured and secured creditors of the Resulting Company to be held as aforesaid. The consolidated remuneration of Rs. 50,000/- (Rupees Fifty Thousand only) for conducting the aforementioned meetings.
- xiii. That the chairperson do report to this Tribunal the results of the said meeting within 4 (four) weeks from the date of the conclusion of the meeting and the report shall be in Form CAA 4 pursuant to Rule 13(2) and 14 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016, verified by his/her affidavit.

14. The application being C. A (C.A.A) No. 07/KB/ 2021 is disposed of accordingly.

15. The Registry is directed to send e-mail copy of the order forthwith to all the parties inclusive of the counsel.

16. Urgent certified copy of this order, if applied for, be supplied to parties upon compliance of all formalities.

(Harish Chander Suri)
Member(Technical)

(Rajasekhar V.K.)
Member(Judicial)

Signed on this the 3rd day of February, 2021

PJ