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**(2025) 01 NCLAT CK 0672**

**In the National Company Law Appellate Tribunal**

**Case No : CA (CAA) NO. - 03/(ND)/2025**

**Wendy Marketing Private Limited @APPELLANT @NA**

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**Date of Decision : 21-01-2025**

**Acts Referred:**

Companies Act 2013 — Section 230, 231, 232, 133

**Citation : (2025) 01 NCLAT CK 0672**

**Hon'ble Judges :** Sanjeev Ranjan, Member (T); Mahendra Khandelwal, Member (J)

**Bench :** Division Bench

**Advocate :** Naresh Kumar

**Final Decision :** Allowed

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**Judgement**

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1.This is joint application filed by the applicant companies herein, M/s Wendy Marketing Private Limited, M/s Lavier Fab-Tex Private Limited, M/s

Quemble Clothing Private Limited, M/s Pole Star Securities Private Limited, M/s DNS Capital Services Private Limited, (for brevity â??Transferor

Companiesâ?) with M/s H. V. Text and Garments Private Limited (for brevity â??Transferee Companyâ?) under Section 230-232 of Companies

Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations)

Rules, 2016 in relation to the Scheme of Arrangement in the nature of amalgamation (hereinafter referred to as the â??SCHEMEâ?) proposed

between the applicants.

2.The Applicant No. 1/ Transferor Company No. 1, M/s Wendy Marketing Private Limited (CIN- U51909DL2002PTC116676) having its registered

office at B-44, Ground Floor, Defence Colony, South Delhi, New Delhi-110024 was originally incorporated under the provisions of the Companies Act,

1956 as a Private Limited company under the name and style of PJK Network Marketing Private Limited on 23.08.2002. Subsequently, the

name of the Transferor Company No. 1 was changed from PJK Network Marketing Private Limited to its present name Wendy

Marketing Private Limited on 18.10.2011. The Authorized Share Capital of the Transferor Company No. 1 is Rs. 1,00,000/- divided into 10,000

Equity Shares of Rs. 10/- each. The present issued, subscribed and paid-up share capital of the Applicant No. 1/Transferor Company No. 1 is Rs.

1,00,000/- divided into 10,000 Equity Shares of Rs. 10/- each. The Applicant No. 1/Transferor Company No. 1, vide their meeting of the Board of

Directors held on 05.12.2024 have unanimously approved the proposed Scheme of Amalgamation as contemplated above. Copies of said resolutions

passed in the said board meetings have been placed on record. Affidavit in support of the above application sworn by Mr. Inderpal Singh Arora being

the authorized signatory of the Applicant No. 1, who has been authorized vide Board Resolution dated 05.12.2024 for the Transferor Company No. 1,

was duly filed, along with the application. It was also represented that the registered office of the Applicant No. 1 is under the domain of Registrar of

Companies, NCT of New Delhi & Haryana and therefore within the territorial jurisdiction of this Tribunal.

3. The Applicant No. 2/ Transferor Company No. 2, M/s Lavier Fab-Text Private Limited (CIN- U74110DL2007PTC171125) having its registered

office at B-44, Defence Colony, South Delhi, New Delhi-110024 was originally incorporated under the provisions of the Companies Act, 1956 as a

Private Limited company with the name and style of AKS Portfolios Private Limited on 06.12.2007. Subsequently, the name of the Transferor

Company No. 2 was changed from AKS Portfolios Private Limited to its present name Lavier Fab-Text Private Limited on

17.10.2022. The Authorized Share Capital of the Transferor Company No. 2 is Rs. 10,00,000/- divided into 1,00,000 Equity Shares of Rs. 10/- each.

The present issued, subscribed and paid-up share capital of the Applicant No. 2/ Transferor Company No. 2 is Rs. 9,00,000/- divided into 90,000 Equity

Shares of Rs. 10/- each. The Applicant No. 2/Transferor Company No. 2, vide their meeting of the Board of Directors held on 05.12.2024 have

unanimously approved the proposed Scheme of Amalgamation as contemplated above. Copies of said resolutions passed in the said board meetings

have been placed on record. Affidavit in support of the above application sworn by Mr. Inderpal Singh Arora being the authorized signatory of the

Applicant No. 2, who has been authorized vide Board Resolution dated 05.12.2024 for the Transferor Company No. 2, was duly filed, along with the

application. It was also represented that the registered office of the Applicant No. 2 is under the domain of Registrar of Companies, NCT of New

Delhi & Haryana and therefore within the territorial jurisdiction of this Tribunal.

4.The Applicant No. 3/ Transferor Company No. 3, M/s Quemble Clothing Private Limited (CIN- U74999DL2004PTC128477) having its registered

office at B-44, Defence Colony, South Delhi, New Delhi-110024 was originally incorporated under the provisions of the Companies Act, 1956 as a

Private Limited company with the name and style of "Vasu Fabrics Private Limited" on 20.08.2004. Subsequently, the name of the Transferor

Company No. 3 was changed from "Vasu Fabrics Private Limited" to its present name "Quemble Clothing Private Limited" on

02.09.2019. The Authorized Share Capital of the Transferor Company No. 3 is Rs. 10,00,000/- divided into 1,00,000 Equity Shares of Rs. 10/- each.

The present issued, subscribed and paid-up share capital of the Applicant No. 3/ Transferor Company No. 3 is Rs. 1,00,000/- divided into 10,000 Equity

Shares of Rs. 10/- each. The Applicant No. 3/Transferor Company No. 3, vide their meeting of the Board of Directors held on 05.12.2024 have

unanimously approved the proposed Scheme of Amalgamation as contemplated above. Copies of said resolutions passed in the said board meetings

have been placed on record. Affidavit in support of the above application sworn by Mr. Deshpal Singh Kohli being the authorized signatory of the

Applicant No. 3, who has been authorized vide Board Resolution dated 29.01.2024 for the Transferor Company No. 3, was duly filed, along with the

application. It was also represented that the registered office of the Applicant No. 3 is under the domain of Registrar of Companies, NCT of New

Delhi & Haryana and therefore within the territorial jurisdiction of this Tribunal.

5.The Applicant No. 4/ Transferor Company No. 4, M/s Pole Star Securities Private Limited (CIN- U67120DL1994PTC063930) having its registered

office at D-229, G/F, Defence Colony, Behind Petrol Pump, South Delhi, New Delhi-110024 was originally incorporated under the provisions of the

Companies Act, 1956 as a Public Limited company on 13.12.1994. Subsequently,

the status of the Transferor Company No. 4 was changed from Public Limited Company to Private Limited Company on 18.05.2020. The Authorized Share Capital of the Transferor Company No. 4 is Rs.

50,00,000/- divided into 5,00,000 Equity Shares of Rs. 10/- each. The present issued, subscribed and paid-up share capital of the Applicant

No.4/Transferor

Company No. 4 is Rs. 30,00,000/- divided into 3,00,000 Equity Shares of Rs. 10/- each. The Applicant No. 4/ Transferor Company No. 4, vide their

meeting of the Board of Directors held on 05.12.2024 have unanimously approved the proposed Scheme of Amalgamation as contemplated above.

Copies of said resolutions passed in the said board meetings have been placed on record. Affidavit in support of the above application sworn by Mr.

Srikanta Swain being the authorized signatory of the Applicant No. 4, who has been authorized vide Board Resolution dated 05.12.2024 for the

Transferor Company No. 4, was duly filed, along with the application. It was also represented that the registered office of the Applicant No. 4 is

under the domain of Registrar of Companies, NCT of New Delhi & Haryana and therefore within the territorial jurisdiction of this Tribunal.

6.The Applicant No. 5/ Transferor Company No. 5, M/s DNS Capital Services Private Limited (CIN- U67120DL2007PTC160637) having its

registered office at D-229, G/F, Defence Colony, Behind Petrol Pump, South Delhi, New Delhi-110024 was incorporated under the provisions of the

Companies Act, 1956, as a private limited company on 16.03.2007. The Authorized Share Capital of the Transferor Company No. 5 is Rs. 5,00,000/-

divided into 50,000 Equity Shares of Rs. 10/- each. The present issued, subscribed and paid-up share capital of the Applicant No. 5/Transferor

Company No. 5 is Rs. 5,00,000/- divided into 50,000 Equity Shares of Rs. 10/- each. The Applicant No. 5/Transferor Company No. 5, vide their

meeting of the Board of Directors held on 05.12.2024 have unanimously approved the proposed Scheme of Amalgamation as contemplated above.

Copies of said resolutions passed in the said board meetings have been placed on record. Affidavit in support of the above application sworn by Mr.

Srikanta Swain being the authorized signatory of the Applicant No. 5, who has been authorized vide Board Resolution dated 05.12.2024 for the

Transferor Company No. 5, was duly filed, along with the application. It was also

represented that the registered office of the Applicant No. 5 is under the domain of Registrar of Companies, NCT of New Delhi & Haryana and therefore within the territorial jurisdiction of this Tribunal.

7.The Applicant No. 6/ Transferee Company, M/s - H. V. Text and Garments Private Limited (CIN- U52322DL1993PTC054754) having its

registered office at B-44, Ground Floor, Defence Colony, South Delhi, New Delhi-110024 was originally incorporated under the provisions of the

Companies Act, 1956 as a Private Limited company with the name and style of "Grover Garments Private Limited" on 05.08.1993.

Subsequently, the name of the Transferee Company was changed from "Grover Garments Private Limited" to its present name "H. V. Text

and Garments Private Limited" on 08.11.2011. The Authorized Share Capital of the Transferee Company is Rs. 1,00,00,000/- divided into

10,00,000 Equity Shares of Rs. 10/- each. The present issued, subscribed and paid-up share capital of the Applicant No. 6/Transferee Company is Rs.

1,00,00,000/- divided into 10,00,000 Equity Shares of Rs. 10/- each. The Applicant No. 6/ Transferee Company, vide their meeting of the Board of

Directors held on 05.12.2024 have unanimously approved the proposed Scheme of Amalgamation as contemplated above. Copies of said resolutions

passed in the said board meetings have been placed on record. Affidavit in support of the above application sworn by Mr. Deshpal Singh Kohli being

the authorized signatory of the Applicant No. 6, who has been authorized vide Board Resolution dated 05.12.2024 for the Transferee Company, was

duly filed, along with the application. It was also represented that the registered office of the Applicant No. 6 is under the domain of Registrar of

Companies, NCT of New Delhi & Haryana and therefore within the territorial jurisdiction of this Tribunal.

8.The Transferor Companies as well as the Transferee Company have filed their respective Memorandum and Articles of Association inter alia

delineating their object clauses, as well as their last Audited Annual Accounts for the Financial Year 31.03.2024.

9. It has been stated that the Applicant No. 1/Transferor Company No. 1 has 03 (Three) Equity Shareholders. Certificate from Chartered

Accountants certifying list of shareholders was annexed and all of them represented that the Applicant No. 1 has nil Secured Creditors and 10 (Ten)

Unsecured Creditors. Certificate from Chartered Accountants certifying that the Transferor Company No. 1 has nil Secured Creditors has been

annexed. Further, Certificate from Chartered Accountants certifying list of Unsecured Creditors of the Applicant No. 1 was annexed and all of them

have given their respective consents by way of affidavits which were annexed to the application. Since the Applicant No. 1 has nil Secured Creditors,

therefore, the necessity of convening/holding a meeting does not arise.

10. It has been stated that the Applicant No. 2/Transferor Company No. 2 has 02 (Two) Equity Shareholders. Certificate from Chartered

Accountants certifying list of shareholders was annexed and all of them have given their respective consents by way of affidavits which were

annexed to the application. It was further represented that the Applicant No. 2 has nil Secured Creditors and 01 (One) Unsecured Creditor.

Certificate from Chartered Accountants certifying that the Transferor Company No. 2 has nil Secured Creditors has been annexed. Further,

Certificate from Chartered Accountants certifying list of Unsecured Creditors of the Applicant No. 2 was annexed and all of them have given their

respective consents by way of affidavits which were annexed to the application. Since the Applicant No. 2 has nil Secured Creditors, therefore, the

necessity of convening/holding a meeting does not arise.

11. It has been stated that the Applicant No. 3/Transferor Company No. 3 has 02 (Two) Equity Shareholders. Certificate from Chartered

Accountants certifying list of shareholders was annexed and all of them have given their respective consents by way of affidavits which were

annexed to the application. It was further represented that the Applicant No. 3 has nil Secured Creditors and 02 (Two) Unsecured Creditors.

Certificate from Chartered Accountants certifying that the Transferor Company No. 3 has nil Secured Creditors has been annexed. Further,

Certificate from Chartered Accountants certifying list of Unsecured Creditors of the Applicant No. 3 was annexed and all of them have given their

respective consents by way of affidavits which were annexed to the application. Since the Applicant No. 3 has nil Secured Creditors, therefore, the

necessity of convening/holding a meeting does not arise.

12. It has been stated that the Applicant No. 4/Transferor Company No. 4 has 11 (Eleven) Equity Shareholders. Certificate from Chartered

Accountants certifying list of shareholders was annexed and all of them have given their respective consents by way of affidavits which were

annexed to the application. It was further represented that the Applicant No. 4 has nil Secured Creditors and 01 (One) Unsecured Creditors.

Certificate from Chartered Accountants certifying that the Transferor Company No. 4 has nil Secured Creditors has been annexed. Further,

Certificate from Chartered Accountants certifying list of Unsecured Creditors of the Applicant No. 4 was annexed and all of them have given their

respective consents by way of affidavits which were annexed to the application. Since the Applicant No. 4 has nil Secured Creditors, therefore, the

necessity of convening/holding a meeting does not arise.

13. It has been stated that the Applicant No. 5/Transferor Company No. 5 has 05 (Five) Equity Shareholders. Certificate from Chartered Accountants

certifying list of shareholders was annexed and all of them have given their respective consents by way of affidavits which were annexed to the

application. It was further represented that the Applicant No. 5 has nil Secured Creditors and 03 (Three) Unsecured Creditors. Certificate from

Chartered Accountants certifying that the Transferor Company No. 5 has nil Secured Creditors has been annexed. Further, Certificate from

Chartered Accountants certifying list of Unsecured Creditors of the Applicant No. 5 was annexed and all of them have given their respective

consents by way of affidavits which were annexed to the application. Since the Applicant No. 5 has nil Secured Creditors, therefore, the necessity of

convening/holding a meeting does not arise.

14. It has been stated that the Applicant No. 6/Transferee Company has 05 (Five) Equity Shareholders. Certificate from Chartered Accountants

certifying list of shareholders was annexed and all of them have given their respective consents by way of affidavits which were annexed to the

application. It was further represented that the Applicant No. 6 has nil Secured Creditors and 02 (Two) Unsecured Creditors. Certificate from

Chartered Accountants certifying that the Transferee Company has nil Secured Creditors has been annexed. Further, Certificate from Chartered

Accountants certifying list of Unsecured Creditors of the Applicant No. 6 was annexed and all of them have given their respective consents by way

of affidavits which were annexed to the application. Since the Applicant No. 6 has

nil Secured Creditors, therefore, the necessity of convening/holding a meeting does not arise.

15. The appointed date as specified in the Scheme is 01.04.2024 or such other date as prescribed by this Tribunal.

16. The Applicant Companies confirmed that the provisions relating to the accounting treatment for the proposed merger, as contained in the Scheme, were in conformity with the applicable provisions of the Companies Act, 2013. Certificates from respective Statutory Auditors of the Companies on the accounting treatment, as proposed in the Scheme, were annexed to the application and it is clearly stated that the Accounting Treatment is in conformity with the applicable prescribed under Section 133 of Companies Act, 2013.

17. The Applicant Companies have filed affidavits, each dated 26.12.2024, stating that no proceedings for inspection, inquiry or investigation were pending against any of the Applicant Companies.

18. Taking into consideration the submissions and the documents filed therewith, the following directions are issued with respect to convening/holding or dispensing with the meetings of the Shareholders,

A. In relation to the Applicant Company-1:

- a) With respect to Equity shareholders: In view of consent affidavits from 03 equity shareholders, having 100% voting share, been filed, convening the meeting of shareholders/members is dispensed with.
- b) With respect to Secured Creditors: There are nil Secured Creditor, therefore the necessity of convening a meeting does not arise.
- c) With respect to Unsecured Creditors: In view of consent affidavits from all 10 Unsecured Creditors, been filed, convening the meeting of Unsecured Creditors is dispensed with.

B. In relation to the Applicant Company-2:

- a) With respect to Equity shareholders: In view of consent affidavits from 02 equity shareholders, having 100% voting share, been filed, convening the meeting of shareholders/members is dispensed with.
- b) With respect to Secured Creditors: There are nil Secured Creditor, therefore the necessity of convening a meeting does not arise.
- c) With respect to Unsecured Creditors: In view of consent affidavit from sole

(01) Unsecured Creditor, been filed, convening the meeting of Unsecured Creditors is dispensed with.

C. In relation to the Applicant Company-3:

a) With respect to Equity shareholders: In view of consent affidavits, from 02 Equity Shareholders, having 100% voting share, been filed,

convening the meeting of shareholders/members is dispensed with.

b) With respect to Secured Creditors: There are nil Secured Creditors, therefore the necessity of convening a meeting does not arise.

c) With respect to Unsecured Creditors: In view of consent affidavits from all 03 Unsecured Creditors, been filed, convening the meeting of

Unsecured Creditors is dispensed with.

D. In relation to the Applicant Company-4:

a) With respect to Equity shareholders: In view of consent affidavits, from 11 Equity Shareholders, having 100% voting share, been filed,

convening the meeting of shareholders/members is dispensed with.

b) With respect to Secured Creditors: There are nil Secured Creditors, therefore the necessity of convening a meeting does not arise.

c) With respect to Unsecured Creditors: In view of consent affidavits from sole (01) Unsecured Creditor, been filed, convening the meeting of

Unsecured Creditors is dispensed with.

E. In relation to the Applicant Company-5:

a) With respect to Equity shareholders: In view of consent affidavits from 05 equity shareholders, having 100% voting share, been filed,

convening the meeting of shareholders/members is dispensed with.

b) With respect to Secured Creditors: There are nil Secured Creditors, therefore the necessity of convening a meeting does not arise.

c) With respect to Unsecured Creditors: In view of consent affidavits from all 03 Unsecured Creditors, been filed, convening the meeting of

Unsecured Creditors is dispensed with.

F. In relation to the Applicant Company-6:

a) With respect to Equity shareholders: In view of consent affidavits, from 05 Equity Shareholders, having 100% voting share, been filed,

convening the meeting of shareholders/members is dispensed with.

b) With respect to Secured Creditors: There are nil Secured Creditors, therefore the necessity of convening a meeting does not arise.

c) With respect to Unsecured Creditors: In view of consent affidavits from all 02 Unsecured Creditors, been filed, convening the meeting of

Unsecured Creditors is dispensed with.

19. Notice of this application shall be served on the following:

i. Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2 Floor, Paryawaran Bhavan, CGO Complex, New Delhi-110003;

ii. Registrar of Companies at 4th floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;

iii. The Official Liquidator attached to Delhi High Court;

iv. Income Tax Department, Income Tax Office, Additional Commissioner of Income Tax, Special Range 4, Central Revenue Building, IP

Estate, New Delhi-110002. The notices to Income Tax Authorities shall disclose sufficient details like PAN, ward numbers and assessing

officers so that timely and proper reply may be filed.

v. Any other sectoral regulators required to be served.

The application stands allowed on the aforesaid term and disposed of.