

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH - II, CHENNAI**

CA(CAA)/4(CHE)/2022

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of *Scheme of Amalgamation*

Between

Ms/. CUNINGHAM VENTURES PRIVATE LIMITED

CIN.NO. U70109TN2021PTC146353

Reg. Off.,

88, Mount Road Guindy,
Chennai - 600032...

...Applicant/Transferor Company 1

M/s. SAHOJ VENTURES PRIVATE LIMITED

CIN NO. U70109TN2021PTC146355

Reg. Off.,

88, Mount Road Guindy,
Chennai - 600032...

... Applicant/Transferor Company 2

M/s. WILLINGDON VENTURES PRIVATE LIMITED

CIN NO. U70100TN2021PTC146402

Reg. Off.,

88, Mount Road Guindy,
Chennai - 600032

... Applicant/Transferor Company 3
With

M/s. MERCANTILE VENTURES LIMITED

CIN NO. L65191TN1985PLC037309

Reg. Off.,

88, Mount Road Guindy,
Chennai - 600032

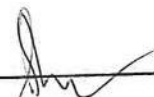
..... Applicant/Transferee Company

Order Pronounced on April 13th 2022

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**Justice (Retd) RAMALINGAM SUDHAKAR, PRESIDENT
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Applicant(s): B. Chandra, PCS




ORDER

Per: Justice (Retd.) RAMALINGAM SUDHAKAR, PRESIDENT

This is a joint application filed by the Applicant Companies, namely ***M/s. Cuningham Ventures Private Limited*** (for brevity "Transferor Company 1"), ***M/s. Sahoj Ventures Private Limited*** (for brevity "Transferor Company 2"), and ***M/s. Willingdon Ventures Private Limited*** (for brevity "Transferor Company 3"), with ***M/s. Mercantile Ventures Limited*** (for brevity "Transferee Company") 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 Amalgamation (hereinafter referred to as the "SCHEME") proposed by M/s. Cuningham Ventures Private Limited (for brevity "Transferor Company 1"), M/s. Sahoj Ventures Private Limited (for brevity "Transferor Company 2"), and M/s. Willingdon Ventures Private Limited (for brevity "Transferor Company 3"), with M/s. Mercantile Ventures Limited (for brevity "Transferee Company"). The said Scheme is also annexed as Annexure at page -318 to 339 (Vol.II) to the CA(CAA)/4(CHE)/2022. The Registered Office address of the Applicant Companies is 88, Mount Road Guindy, Chennai – 600032.

2. The Applicant Companies thorough this Company Application has prayed for seeking directions:



- (a) *For dispensing with convening, holding and conducting of meeting of Equity Shareholders of the **Transferor and Transferee companies (1,2,3);***
- (b) *For dispensing with convening, holding and conducting of meeting of Unsecured Creditors of **Transferor and Transferee companies (1,2,3);***
- (c) *It is prayed that this Hon'ble Tribunal may order notices to the Statutory Authorities as per the provisions of section 230(5) of the Companies Act, 2013 and rule 8 of the Companies (Compromise, Arrangement and Amalgamations) Rules, 2016.*
- (d) *It is prayed that this Hon'ble Tribunal may issue directions by way of an order for publication of notice in Newspapers in connection with hearing of petition.*
- (e) *It is prayed to fix a date for presentation of the Company petition and pass such other Order or Orders as may be deem fit and proper in the circumstances of the case and render justice*

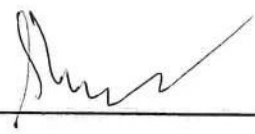
3. An affidavit in support of the above application is sworn for and behalf of the Transferee company has been filed by one Mr.E.N.Rangaswami in his capacity as Director of the Transferee Company along with the application and it is also represented that the Registered office of the Applicant Company is situated within the territorial jurisdiction of the Bench of this Tribunal and falling within the purview of Registrar of Companies, Chennai.

4. MERCANTILE VENTURES LIMITED - (TRANSFEREE COMPANY)

- I. There are 50,931 (Fifty Thousand Nine Hundred) Equity Shareholders. The shareholding pattern of the company as on 30.09.2021 as filed with the stock exchange

isplaced at pages 23 to 28 (Vol.I) to the type set filed along with the application.

- II. There are Nil Secured Creditors as on 30.09.2021 and the certificate issued by the Chartered Accountant to this effect is placed at page 126 (Vol.I).
 - III. There are Nil Unsecured Creditors as on 30.09.2021 and the certificate issued by the Chartered Accountant to this effect is placed at page 126 (Vol.I).
 - IV. There are 11 Rent deposit holders as on 30.09.2021 amounting to Rs. 3.08 crore and the certificate issued by the Chartered Accountant to this effect containing the value and number is placed at page 124 (Vol.I). Consent affidavits from all the deposit holders have been obtained by the company and placed at page 127 to 156
5. From the certificate of incorporation filed, it is evident that the Transferee Company is a listed company originally incorporated under the provisions of Companies Act 1956 on 23.12.1985 under the name and style of 'Excel Finance Limited'. The Company later changed its name to 'MCC Finance Limited' effective from 13.05.1997 and again amended object clause of the Memorandum of Association as well as changed the Name of the Company to 'Mercantile Ventures Limited' vide Certificate dated 27.03.2013.



6. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferee Company as on 31.03.2021 and 30.09.2021 is as under:

Particulars	Rupees in Lakh
<u>Authorised:</u>	
11,50,00,000 Equity Shares of Rs.10/- each	11,500.00
1,50,00,000 Preference Shares of Rs.10/- each	1,500.00
Total	13,000.00
<u>Issued, Subscribed and Paid-up:</u>	
11,19,18,195 Equity Shares of Rs.10/- each fully paid up	11,191.82

7. The Transferee Company has filed its Memorandum and Articles of Association inter alia delineating its object clauses as well as their last available Audited Annual Accounts for the year ended 31.03.2021 and Unaudited Financial Statements upto 30.09.2021.

8. CUNINGHAM VENTURES PRIVATE LIMITED - (TRANSFEROR COMPANY 1)

- I. There are 02 (Two) Equity Shareholders. The list of shareholders of the company as on 30.09.2021 certified by Chartered Accountant is placed at page 238 (Vol.I). Consent affidavits from the Equity Shareholders have been obtained by the company and are placed at pages 289 to 294 (Vol.II) to the type set filed along with the application.
- II. There are Nil Secured Creditors as on 30.09.2021 and the certificate issued by the Chartered Accountant to this effect is placed at page 265D (Vol.II).

III. There are 1 (One) Unsecured Trade Creditor and 1 (One) Unsecured Loan Creditor amounting to Rs. 10,030 and Rs. 21,14,28,563 respectively in the Transferor Company 1 as on 30.09.2021. The certificate issued by the Chartered Accountant to this effect is placed at page 265A (Vol.II). Consent affidavits from the Unsecured Creditors have been obtained by the company and are placed at pages 266 to 271 (Vol.II) to the type set filed along with the application.

9. From the certificate of incorporation filed, it is evident that the Transferor Company 1 is a company registered under part 1 of Chapter XXI of Companies Act 2013 as a private limited company limited by shares and was incorporated on 23.09.2021.

10. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferor Company 1 as on 30.09.2021 is as under:

Particulars	Amount in Rupees
<u>Authorised:</u> 30,000 Equity Shares of Rs.10/- each	3,00,000
<u>Issued, Subscribed and Paid-up:</u> 30,000 Equity Shares of Rs.10/- each fully paid up	3,00,000

11. The Transferor Company 1 has filed its Memorandum and Articles of Association inter alia delineating its object clauses



as well as their Provisional Audited Financial Statements as on 30.09.2021.

12. SAHOJ VENTURES PRIVATE LIMITED – (TRANSFEROR COMPANY 2)

- I. There are 02 (Two) Equity Shareholders. The list of shareholders of the company as on 30.09.2021 certified by Chartered Accountant is placed at page 239 (Vol.I). Consent affidavits from the Equity Shareholders have been obtained by the company and are placed at pages 296 to 302 (Vol.II) to the type set filed along with the application.
- II. There are Nil Secured Creditors as on 30.09.2021 and the certificate issued by the Chartered Accountant to this effect is placed at page 265E (Vol.II).
- III. There is 1 (One) Unsecured Trade Creditor and 1 (One) Unsecured Loan Creditor amounting to Rs. 10,030 and Rs. 30,99,56,717 respectively in the company as on 30.09.2021 and the certificate issued by the Chartered Accountant to this effect is placed at page 265B (Vol.II). Consent affidavits from the Unsecured Creditors have been obtained by the company and are placed at pages 274 to 279 (Vol.II) to the type set filed along with the application.

13. From the certificate of incorporation filed, it is evident that the Transferor Company 2 is a company registered under part 1 of Chapter XXI of Companies Act 2013 as a private

company limited by shares and was incorporated on 23.09.2021.

14. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferor Company 2 as on 30.09.2021 is as under:

Particulars	Amount in Rupees
<u>Authorised:</u> 30,000 Equity Shares of Rs.10/- each	3,00,000
<u>Issued, Subscribed and Paid-up:</u> 30,000 Equity Shares of Rs.10/- each fully paid up	3,00,000

15. The Transferor Company 2 has filed its Memorandum and Articles of Association inter alia delineating its object clauses as well as their Provisional Audited Financial Statements as on 30.09.2021.

16. WILLINGDON VENTURES PRIVATE LIMITED – (TRANSFEROR COMPANY 3)

- I. There are 02 (Two) Equity Shareholders. The list of shareholders of the company as on 30.09.2021 certified by Chartered Accountant is placed at page 240 (Vol.I). Consent affidavits from the Equity Shareholders have been obtained by the company and are placed at pages 303 to 308 (Vol.II) to the type set filed along with the application.



- II. There are Nil Secured Creditors as on 30.09.2021 and the certificate issued by the Chartered Accountant to this effect is placed at page 265F (Vol.II).
- III. There is 1 (One) Unsecured Trade Creditor and 1 (One) Unsecured Loan Creditor amounting to Rs. 10,030 and Rs. 23,06,71,434 respectively in the company as on 30.09.2021 and the certificate issued by the Chartered Accountant to this effect is placed at page 265C (Vol.II). Consent affidavits from the Unsecured Creditors have been obtained by the company and are placed at pages 282 to 287 (Vol.II) to the type set filed along with the application.
17. From the certificate of incorporation filed, it is evident that the Transferor Company 3 is a company registered under part 1 of Chapter XXI of Companies Act 2013 as a private limited company limited by shares and was incorporated on 23.09.2021.
18. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferor Company 3 as on 30.09.2021 is as under:

Particulars	Amount in Rupees
<u>Authorised:</u> 30,000 Equity Shares of Rs.10/- each	3,00,000
<u>Issued, Subscribed and Paid-up:</u> 30,000 Equity Shares of Rs.10/- each fully paid up	3,00,000



19. The Transferor Company 3 has filed its Memorandum and Articles of Association inter alia delineating its object clauses as well as their Provisional Audited Financial Statements as on 30.09.2021.
20. We have perused the application and the connected documents / papers filed therewith including the Scheme contemplated between the Applicant companies.
21. The Board of Directors of the Transferor Companies (1,2,3) vide meeting held on 08.11.2021 and Transferee Company vide meeting held on 12.11.2021, respectively has approved the proposed Scheme as contemplated above and copies of resolutions passed thereon have been placed on record by the Applicant companies
22. The Appointed date as specified in the Scheme is 01.10.2021
23. The Statutory Auditors of the Applicant Companies have examined the Scheme in terms of provisions of Sec. 232 of Companies Act, 2013 and the rules made thereunder and certified that the method of accounting for merger are in compliance with the Indian Accounting Standards/Accounting Standards prescribed under Section 133 of the Companies Act, 2013. The Certificate of the Statutory Auditors issued in



this regard is placed at pages 340 to 343 of the typed set filed along with the Application.

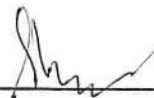
24. Taking into consideration the application filed by the Applicant Company and the documents filed therewith as well as the position of law, this Tribunal propose to issue the following directions : -

A. IN RELATION TO THE TRANSFeree COMPANY:

i. With respect to Equity shareholders:

Considering that the Transferee Company is a listed entity and interests of numerous shareholders are involved it is hereby directed to conduct meeting of Equity Shareholders of the Transferee Company on **04.06.2022 at 11:00 AM** at the registered office address of the Company or through video conferencing or if not convenient at any other suitable place for which prior approval shall be sought from this tribunal within a period of 7 days from the date of this order and prior to the issuance of notices.

Further, as the company's shares are listed in stock exchange and there are not less than 1000 members, the company shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at the meeting by electronic means. Voting through electronic means shall take place in accordance with the procedure as specified in Rule 20 of Companies (Management and Administration) Rules, 2014.



The quorum for the meeting of the Equity Shareholders of the Transferee Company shall be 15. In case the quorum as noted above, for the above meeting of the Applicant Companies is not present at the meeting, then the meeting shall be adjourned by half an hour, and thereafter the person(s) present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the Transferee Company at least 48 hours before the meeting.

The Chairperson appointed for the above said meeting shall be **Mr. S. Manickavasagam** (Mob: 9444112465 Email id: vasagam1277@gmail.com) and the alternate chairperson appointed for the above said meeting shall be the Managing Director of the Company who has sworn in affidavit on behalf of the respective Applicant Companies. The consolidated fee of the Chairperson for the aforesaid meeting shall be **₹1,25,000/- (Rupees One Lakh Twenty Five Thousand Only)** in addition to meeting his incidental expenses. The Chairperson(s) will file the reports of the meeting within a week from the date of holding of the above said meetings.

Ms. Rohini Varma.K, Company Secretary (Mob: 9444814831) is appointed as a Scrutinizer and would

be entitled to consolidated fee of **₹75,000/- (Rupees Seventy Five Thousand)** for services in addition to meeting incidental expenses.

In case the quorum as noted above, for the above meetings of the Applicant Companies is not present at the meeting, then the meeting shall be adjourned by half an hour, and thereafter the person(s) present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the Transferee Company at least 48 hours before the meeting.

The meeting shall be conducted either by way of physical means or by video or other audio visual means enabled with e-voting as per applicable procedure prescribed under the MCA Circular MCA General Circular Nos.(i) 20/2020 dated 5th May, 2020 (AGM Circular), (ii) 14/2020, dated 08.04.2020 (EGM Circular-I) and (iii) 17/2020 dated 13.04.2020 (EGM Circular-II).

That individual notices of the above said meetings shall be sent by the Applicant Companies through registered post or speed post or through courier or e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, the place and the time as aforesaid, together with a copy of

Scheme, copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall also be sent along and in addition to the above any other documents as may be prescribed under the Act or rules may also be duly sent with the notice.

ii. With respect to Secured Creditors:

Since it is represented by the Transferee Company that there are NIL secured creditors and hence the necessity of convening a meeting does not arise.

iii. With respect to Unsecured Creditors:

Since it is represented by the Transferee Company that there are NIL Unsecured creditors and hence the necessity of convening a meeting does not arise.

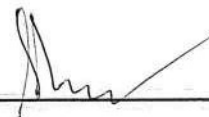
iv. With respect to Rent Deposit Holders:

Since it is represented by the Transferee Company that there are 11 rent deposit holders in the company whose consent by way of affidavits have been obtained and placed on record, and hence the necessity of convening a meeting is *dispensed with*.

B. IN RELATION TO THE TRANSFEROR COMPANIES:

i. With respect to Equity Shareholders:

Since it is represented by the Transferor Companies(1,2,3) that there are 2 (Two) Equity Shareholders in each of the Transferor Companies whose consent by way of affidavits have been



obtained and are placed on records, the necessity of convening and holding the meeting is *dispensed with*.

ii. With respect to Secured Creditors:

Since it is represented by the Transferor Companies (1,2,3) that there are NIL secured creditors and hence the necessity of convening a meeting does not arise.

iii. With respect to Unsecured Trade Creditor and Unsecured Loan Creditor:

Since it is represented by the Transferor Companies (1,2,3) that there are One Unsecured Trade Creditor and One Unsecured Loan Creditor in each of the Transferor Companies (1,2,3) whose consent by way of an Affidavit have been obtained and are placed on records, the necessity of convening and holding the meeting is *dispensed with*.

25. That the Applicant Companies shall publish advertisement with a gap of atleast 30 clear days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in the English Daily "Trinity Mirror" and "Makkal Kural" Tami (in Vernacular stating the copies of Scheme, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the respective Applicant Companies.



26. Voting shall be allowed on the proposed Scheme by voting in person. The Chairperson shall be responsible to report the result of the meeting within a period of 3 days of the conclusion of the meeting with details of voting on the proposed scheme.
27. The companies shall individually send notice to concerned Regional Director, MCA, the Income Tax Authorities, Registrar of Companies Chennai, Official Liquidator, as well as other Sectoral regulators who may have significant bearing on the operation of the applicant companies or the Scheme *per se* along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.
28. The applicant companies shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every creditor of the applicant companies entitled to attend the meetings as aforesaid.
29. The Authorized Representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions

contained herein at least a week before the proposed meetings.

30. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

31. The Application stands **Allowed** on the aforesaid terms.

-Sd-

B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-

Justice RAMALINGAM SUDHAKAR
Hon'ble PRESIDENT

Sudhir

NATIONAL COMPANY LAW TRIBUNAL
VACATION BENCH – II
CHENNAI

3

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 13-05-2022 AT 10.30 A.M THROUGH
VIDEO CONFERENCING:**

**PRESENT: JUSTICE (RETD.) SMT. S. RAMATHILAGAM, MEMBER (JUDICIAL)
SHRI B. ANIL KUMAR, MEMBER (TECHNICAL)**

APPLICATION NUMBER : IA(Comp.Act)/39/CHE/2022

PETITION NUMBER : CA(CAA)/4/CHE/2022

NAME OF THE PETITIONER : Cuningham Ventures Pvt Ltd

NAME OF THE RESPONDENTS : Mercantile Ventures Pvt Ltd

UNDER SECTION : Rule 11 of NCLT Rules 2016

3)IA(Companies Act)/39(CHE)/2022 IN CA(CAA)/4/CHE/2022

ORDER

Counsel for Applicant is represented by Ld. PCS Ms. B. Chandra.

IA(Companies Act)/39(CHE)/2022 is filed by the Applicant company under Rule 11 of NCLT Rules, 2016 seeking reliefs as follows:

“It is humbly prayed that extension for holding the meeting of the equity shareholders of the transferee company may be granted on the date not earlier than 45 days of receiving the order on this Application, with all other conditions of the order dated 13.04.2022 remaining the same”

The Ld. Counsel appearing on behalf of the Applicant Company submitted that this Tribunal vide order dated 13.04.2022 in CA(CAA)/4/CHE/2022 had passed an order for the meeting of equity shareholders of the transferee company to be held on 04.06.2022 at 11.00 A.M.

The Ld. Counsel appearing on behalf of the Applicant Company further submitted that the order directing meeting of the equity shareholders of the Transferee Company to be held on 04.06.2022 was received by them only on 04.05.2022. The said Order requires a notice of at least 45 days before the date fixed for the meeting. It is further submitted that the delay in noticing the order dated 13.04.2022 is way beyond the control of the Applicant herein. Hence, considering Rule 11 of the Companies (Arrangement and Amalgamations) Rules, 2016, the notice of the meeting is required to be not less than 30 days before the date fixed for the meeting. Thus, considering the number of equity shareholders and the difficulties of the Applicants to serve notice, the applicant has come up with the instant application.

Under the said circumstances, the Applicant herein had prayed for change in the date of the meeting. Taking in to consideration and the submissions made by Ld. Counsel / Ld. PCS the date of the meeting of the equity shareholders of the transferee company is fixed as 03.07.2022 at 11.00 A.M. The rest of the order dated 13.04.2022 passed in CA(CAA)/4/(CHE)/2022 remains the same.

The Registry and the Applicant herein, is directed to issue a copy of this order to the Chairperson and Scrutiniser appointed in the order dated 13.04.2022.

Accordingly, IA(CA)/39/CHE/2022 stands **Allowed**.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

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