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IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Company Application CA(CAA) No. 91/KB/2018

In the matter of :

A petition made under Sections
230 and 232 of the said Act ;

And

PH TRADING LIMITED, a
company incorporated under the
provisions of the Companies Act,
1956 having its Registered
Office at Poddar Point, 113 Park
Street, Block B, 10th Floor,
Kolkata 700 016, within the
aforesaid jurisdiction.

CIN L51109WB1982PLC035011

PAN AAACL4603M ;

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And

DHYANESHWAR TRADERS
PRIVATE LIMITED, a Company
incorporated under the
provisions of the Companies Act,
2013 having its registered office
at 113 Park Street, 10th Floor,
B- Block, Kolkata- 700016,
within the aforesaid jurisdiction.
CIN U51909WB2014PTC202428
PAN AAFCD2151B ;

1. PH TRADING LIMITED
 2. DHYANESHWAR TRADERS
PRIVATE LIMITED
- Applicants

Coram : Mr. Jinan K.R., Member(Judicial)

For the Applicant :

Mr. Ravi Asopa, Advocate

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Date of Pronouncement of the Order : 12-03-2018

Per Mr. Jinan K.R.

ORDER

1. The object of this application is to ultimately obtain sanction of this Tribunal to the proposed Scheme of Arrangement between the Transferor Company, namely, PH Trading Limited, and the Transferee Company, namely, Dhyaneshwar Traders Private Limited, whereby and where under it is proposed to reorganise and reconstruct the Transferor Company by transferring its "Outgoing Business Undertaking" together with its assets and liabilities to the Transferee Company for the consideration and in the manner and on terms and conditions as fully stated in the said Scheme of Arrangement, a copy whereof is annexed as annexure "E" to the application.
2. It has been stated in the Application that the Transferee Company is a wholly owned subsidiary of the Transferor Company.
3. The Transferor Company is listed with CSE and BSE. Under the competitive environment, it is necessary for the Transferor Company

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to re-define its objectives to strengthen its business and operational activities. The Transferor Company has several units to carry on the business.

4. The Transferor Company has various divisions.
5. The Transferor Company is engaged in the business of trading of Chemicals and Sugar including Steel through its various divisions.
6. Under the liberalized, fast changing and highly competitive environment, it is necessary for the Transferor Company to re-define its objectives for strengthening its business and operational activities.
7. The Transferor Company has undertaken a scale programme for development and expansion of its business.
8. To achieve the optimum advantage and also to achieve greater efficiency and synergy in operations, it is desirable to reorganize and restructure the operation of the Transferor Company into a separate entity.
9. The Board of Directors of the Transferor Company felt that greater focus and attention on the operation of its "K.Kumar & Co." being the "Outgoing Business Undertaking" is required, which would make substantial development of the business activities of the said unit.

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10. To enable the Transferor Company to provide adequate and timely resources for such programme and to meet the working capital requirement of its divisions more effectively and conveniently, it is considered desirable and expedient to transfer the said "Outgoing Business Undertaking" of the Transferor Company to the Transferee Company as a going concern, which would independently finance the capital investment needed for business activities of "Outgoing Business Undertaking" and separately develop the same.

11. "Outgoing Business Undertaking" has good prospect for growth and development of its business, which requires induction of substantial finance which can be more conveniently and adequately raised in a separate company.

12. Under the present Scheme of Arrangement, it is proposed to transfer the "Outgoing Business Undertaking" of the Transferor Company to the Transferee Company in the manner and on the terms and conditions contained in the Scheme of Arrangement.

13. It has been further stated in the Application that the Scheme of Arrangement will enable the Transferor Company to reduce the pressure on its liquidity and enable the Transferee Company to acquire the running business of "Outgoing Business Undertaking" as a going concern.

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14. The Scheme will allow the Transferor Company to develop exclusively its remaining Division and expand the same independently.

15. The Scheme of Arrangement will result in independent growth and expansion of the respective business of the Transferor Company and will facilitate greater focus and attention to all the Divisions of Transferor Company and to improve their profit potentials.

16. The Scheme of Arrangement will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.

17. The Board of Directors of the Applicant Companies have approved unanimously, the scheme in their respective board meetings held on 15th April 2017 being annexure "F" to the Application.

18. The Auditors of the Transferee Company have also given a certificate under Section 133 of the Companies Act, 2013 dated 15th April 2017 being annexure "I".

19. The share exchange ratio of the Applicant Companies have been fixed on a fair and reasonable basis and on the basis of the Valuation Report dated 15.4.2017 prepared by a firm of Chartered Accountants, a copy whereof is annexed as annexure "H".

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20. It has further been stated in the Application that the aggregate assets of the Applicant Companies are more than sufficient to meet all their liabilities and the said Scheme will not adversely affect the rights of any of the creditors of the Applicant Companies 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.

21. It has also been stated in the Application that there are no proceedings pending under Sections 206 to 213 of the Companies Act, 2013 against any of the Petitioner Companies.

22. There are also no proceedings pending under Sections 241 and 242 of the said Act or any other proceedings whatsoever.

23. There are also no proceedings pending under the Companies Act, 1956 or the Companies Act, 2013 against any of the Companies.

24. The Scheme of Arrangement does not attract the provisions of Competition Commission of India.

25. There is, as at present, no scheme of corporate debt restructuring ongoing or pending in relation to the Companies.

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26. The Scheme of Arrangement does not contemplate reduction of capital.

27. The applicant no.1 is having 48 Equity Shareholders and the applicant no.2 is having 2 Equity Shareholders.

28. The copies of the list of shareholders of the applicant companies along with the respective auditor's certificates are annexed with the Application and collectively marked as "J".

29. There are no secured creditors in the Transferee Company as is evident from the annual accounts.

30. The Transferor Company is having secured and unsecured creditors.

31. A list of creditors of both the Companies along with an auditor's certificate for both the applicants are annexed with the Application and marked as "G".

32. Since the Transferor Company is a listed company, it has also obtained a NOC from the relevant stock exchange which is annexed with the Application and marked as "M".

33. The Applicant Companies have made prayers for holding and convening separate meetings of the Equity Shareholders of the

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Applicant Companies and for the meetings of the Creditors of the applicant no.1.

34. Heard the learned Counsel for the applicants, perused the records, documents annexed to the Application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants, the following orders are passed :

- i) That a meeting of the Equity Shareholders of PH Trading Limited, being the applicant no.1 herein shall be convened and held at Poddar Point, 113 Park Street, Block B, 10th Floor, Kolkata 700 016, on Friday the 4th May, 2018 at 4:00 P.M. for the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme of Arrangement between the Applicants and their respective shareholders.
- ii) That a meeting of the Equity Shareholders of DHYANESHWAR TRADERS PRIVATE LIMITED, being the applicant no.2 herein shall be convened and held at Poddar Point, 113 Park Street, Block B, 10th Floor, Kolkata 700 016, on Friday the 4th May, 2018 at 4:15 P.M. for the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme of Arrangement between the Applicants and their respective shareholders.

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- iii) That a meeting of Secured creditors of PH Trading Limited, being the applicant no.1 herein shall be convened and held at Poddar Point, 113 Park Street, Block B, 10th Floor, Kolkata 700 016, on Friday the 4th May, 2018 at 4:30 P.M. for the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme of Arrangement between the Applicants and their respective shareholders.
- iv) That a meeting of Unsecured creditors of PH Trading Limited, being the applicant no.1 herein shall be convened and held at Poddar Point, 113 Park Street, Block B, 10th Floor, Kolkata 700 016, on Friday the 4th May, 2018 at 4:45 P.M. for the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme of Arrangement between the Applicants and their respective shareholders.
- v) 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 of the Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and a form of proxy can be obtained free of charge at the Registered Office of the concerned Applicant companies or at the office of their Advocate Mr. Ravi Asopa, Advocate Ground Floor, 7C, K S Roy Road, Kolkata 700 001 be inserted once each in the "Pratidin" Bengali newspaper



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and in "The Business Standard" English newspaper.

- vi) That in addition, at least 30 (thirty) clear days before the meetings to be held as aforesaid, a notice convening the said meetings at the place and time as aforesaid together with a copy of the said Scheme, a copy of the Statement required to be sent under the Act and the prescribed form of Proxy be sent by registered post or by hand through Personal Messenger or by courier or by email, both, addressed to each of the Equity Shareholders and creditors of the concerned Applicant Companies at their respective or last known addresses.
- vii) To serve the notice as per requirements of sub-section (5) of Section 230 of the Companies Act, 2013 along with all the documents including a copy of the Scheme of Arrangement and the Statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal, concerned Stock Exchange, concerned Assessing Officer, Income Tax, the Chief Commissioner of Income Tax with PAN Numbers of the Applicant Companies, having jurisdiction over the Transferor company and the Transferee Company and such other relevant sectoral regulators/ authorities, if applicable, which are likely to be affected by the proposed scheme, by sending the same by hand delivery through special messenger or by registered post or speed

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post, by E-mail, both, within 14 days from the date of this order for filing their representation, if any, within 30 days from the date of notice.

- viii) 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 to the applicants and/or their Advocates. 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 and Companies (Compromises, Arrangements & Arrangement) Rules, 2016 with necessary variations incorporating the directions therein.
- ix) Mr. SIDDHARHA MURARKA, (Mobile Number 9903377959) shall be the Chairperson for the said meetings of the Equity Shareholders and the Creditors of the Applicant Companies to be held as aforesaid at a consolidated remuneration of Rs. 50,000/- (Rupees Fifty thousand only).
- x) That Chairperson appointed for the said meetings or any person authorised by him/her do issue and send out the notice of the said meetings referred to above.

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- x i) The quorum for meetings be fixed in accordance with Section 103 of the Companies Act, 2013 present either in person or by proxy. In case where there is only one or two creditor the quorum shall be only one person present in person or proxy.

- x ii) That voting by proxy be permitted, provided that a proxy in the prescribed form duly signed by the person(s) entitled to attend and vote at the meeting, is filed with the concerned Applicant Companies at their Registered Office not later than forty eight hours before the meetings. The Chairperson shall have the power to adjourn the meeting, if necessary, and to conduct the procedure for the adjourned meeting as deemed necessary under the Act.

- x iii) That the value of each member/creditor shall be in accordance with the respective books of the concerned Applicant Companies and where entries in the books are disputed, the Chairperson concerned shall determine the value for the purpose of the meeting in consultation with the records.

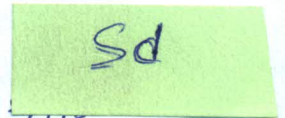
- x iv) That the Chairperson do report to this Court the results of the said meetings within five weeks from the date of the conclusion of the respective meetings and his report shall be verified by his affidavit. Confirmation petition to be filed within one week thereafter.

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xv) In addition to voting at physical meeting u/s. 230 of the Companies Act, 1956 separate notice of the resolution will be given to all the shareholders of the Transferor Company to consider the same by postal ballot/e-voting pursuant to Section 110 of the Companies Act, 2013 read with Rules 20 and 22 of Companies (Management & Administration) Rules, 2014. The scheme shall be acted upon only if the votes cast by the public shareholders in favour of the proposal are more than the number of votes cast by the public shareholders against it.

35. The Company Application bearing CA(CAA) No. 91/KB/2018 is, accordingly, disposed of.

36. The certified copy of this Order may be issued, if applied for, upon compliance of all requisite formalities.



(Jinan K.R.

Member(Judicial)

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