

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

T.P. NO.188/KB/ 2017
CONNECTED WITH
COMPANY PETITION No.514 OF 2014

In the matter of:

An application under sections 230 to 232 and other applicable provisions of the Companies Act, 2013; (erstwhile an application under sections 391(1) and 393 of the Companies Act, 1956)

And

In the matter of:

SIMPRO VANIJYA LIMITED, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 7/1A, Grant Lane, 4th Floor, Room No.4, Kolkata-700012 within the aforesaid jurisdiction;

And

CHETNA SUPPLIERS PRIVATE LIMITED, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 7/1A, Grant Lane, 4th Floor, Room No.4, Kolkata-700012 within the aforesaid jurisdiction;

And

BANPHOOL SALE PRIVATE LIMITED, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 7/1A Grant Lane, 4th Floor, Room No.4 Kolkata-700012 within the aforesaid jurisdiction;

And

HANUMAN EXPORTS & RESOURCES PRIVATE LIMITED, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 7/1A Grant Lane, 4th Floor, Room No.4 Kolkata-700012 within the aforesaid jurisdiction;

And

MARSHALL COMMODITIES PRIVATE LIMITED, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 7/1A, Grant Lane, 4th Floor, Room No.4, Kolkata-700012 within the aforesaid jurisdiction;

And

PRAGATI DISTRIBUTORS PRIVATE LIMITED, a Company incorporated

under the provisions of the Companies Act, 1956 having its Registered Office at 333/1 Belious Road, Howrah - 711101 within the aforesaid jurisdiction;

And

1. SIMPRO VANIJYA LIMITED : (TRANSFEREE COMPANY)
2. CHETNA SUPPLIERS PRIVATE LIMITED : (TRANSFEROR COMPANY NO 1)
3. BANPHOOL SALE PRIVATE LIMITED : (TRANSFEROR COMPANY NO 2)
4. HANUMAN EXPORTS & RESOURCES PRIVATE LIMITED : (TRANSFEROR COMPANY NO 3)
5. MARSHALL COMMODITIES PRIVATE LIMITED : (TRANSFEROR COMPANY NO 4)
6. PRAGATI DISTRIBUTORS PRIVATE LIMITED : (TRANSFEROR COMPANY NO 5)

.... APPLICANTS

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

For the Petitioners :

1. Ms. Manju Bhuteria , Advocate ,
2. Mr. N.Gurumurthy , FCA

Date of pronouncement of order: 08/03/2018

ORDER

Per Mr. Jinan K.R.

1. This Petition have been filed by the Petitioner Companies for sanctioning an Arrangement in the nature of Amalgamation of Companies of CHETNA SUPPLIERS PRIVATE LIMITED; BANPHOOL SALE PRIVATE LIMITED; HANUMAN EXPORTS & RESOURCES PRIVATE LIMITED; MARSHALL COMMODITIES PRIVATE LIMITED and

PRAGATI DISTRIBUTORS PRIVATE LIMITED, the TRANSFEROR COMPANIES with SIMPRO VANIJYA LIMITED, the Transferee Company.

2. It is stated in the Petition that the Transferee Company is engaged in the business of Non-Banking Finance & Investment and the Transferor Companies are mainly engaged in the business of trading of commodities and investing activities.
3. The business of the Transferor Companies and the Transferee Company can be combined and carried forward conveniently with combined strength.
4. The amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources.
5. The Scheme of Amalgamation will have beneficial results for the companies concerned, their shareholders, employees and all concerned.
6. The Board of Directors of the Transferee Company and the Transferor Companies have, at their respective Board meetings, approved and resolved to carry out the said Scheme of Amalgamation.
7. It is also stated in the Petition that the respective Auditors of the Transferee Company and the Transferor Companies, have not made any adverse remark or comment in their Report. The respective Auditors' report does not disclose any irregularity or

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mismanagement in the affairs of the Transferee Company and the Transferor Companies.

8. Subsequent to the date of the Audited Balance Sheet made up to 31-03-2013, there has been no substantial change in the financial position of the Transferee Company except those arising or resulting from the normal course of business.

9. No petition under Section 397 or 398 of the Companies Act, 1956 has, at any point of time, been filed against the Transferee Company.

10. It has further been stated that the assets of the Petitioner Companies are sufficient to meet all their liabilities.

11. Further, the said Scheme of Amalgamation does not involve any compromise or composition with the creditors of the Petitioner companies. The Scheme of Amalgamation will not affect the rights of the creditors of the Petitioner Companies in any manner whatsoever.

12. It has also been stated that there are no proceedings pending under Sections 235 to 251 of the Companies Act, 1956 against any of the Petitioner Companies.

13. By an Order passed on 16th May, 2014, in Company Application C.A.NO 341 of 2014, the Hon'ble High Court, Calcutta was pleased to waive the meetings of the shareholders of the Transferee Company as well as the Transferor Companies for the purpose of considering and if thought fit approving with or without modification, the Scheme of Amalgamation.

14. A copy of the downloaded Order of the Hon'ble High Court, Calcutta dated 16-05-2014 is annexed with the Petition and marked with letter "N".

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15. Vide the said Order of the Hon'ble High Court, Calcutta, the applicants were directed to file a petition under Sections 391(1) and 394 of the Companies Act in respect of the proposed Scheme of Amalgamation, within four weeks from date.

16. The petitioner companies, thereafter, filed the Company Petition No.514 of 2014 before the Hon'ble High Court Calcutta.

17. Upon admission of the Company Petition No. 514 In compliance of the Order dated 05-06-2014 passed by the Hon'ble High Court, Calcutta, in the Company Petition No. 514 of 2014, the Petitioner Companies had served the copy of the Petition on Central Government and made newspaper publication in Business Standard and Dainik Statesman on 30-11-2016.

18. No affidavit was filed by the Central Government before 15-07-2014, the date on which the matter appeared before the Hon'ble High Court, Calcutta.

19. Upon directions of filing the affidavit in opposition within four weeks and reply thereafter, if any, to be filed within a week, the then Regional Director , Eastern Region , Ministry Of Corporate Affairs had, vide his affidavit made on 30th July, 2014, stated :

- a) That the authorized share capital of the Transferee Company i.e M/S SIMPRO VANIJYA LIMITED is not sufficient to enable it to allot shares to the members of the Transferor Companies . The Transferee Company may , therefore , be directed by the Hon'ble court to increase its authorized share capital to enable it to allot shares to the members of the Transferor Companies only after complying with prescribed procedure as laid down in the Companies Act , 2013 and filing of

requisite forms and fees with the office of the Registrar of Companies

- b) It is submitted that as per instructions of Ministry of Corporate Affairs , New Delhi , a copy of the Scheme was forwarded to the Income Tax Department on 17.06.2014 with a request to forward their comment / observations /objects, if any, on the proposed Scheme of Amalgamation. The Income Tax Department ,Kolkata vide letter no ITO, WD-9(1)/Kol/Amalgamation/201-2015 /109 dated 01.07.2014 has raised objection to the proposed scheme of amalgamation between the transferor companies and the Transferee Company .

20. The Petitioners had filed affidavit duly sworn on 11Th July,2016 before the Hon'ble High Court, Calcutta in response to the above observations made by the Regional Director, Eastern Region , Ministry of Corporate Affairs, wherein it has been stated that the Petitioners are agreeable to modify paragraph 4 of Part III of the Scheme of Amalgamation, in the manner as indicated in paragraph 2(a) of the said Affidavit of the Regional Director and are also agreeable to comply with the observation made by the Central Government vide paragraph 2(b) of the said affidavit of the Regional Director.

21. However, with reference to paragraph 2(c) of the Affidavit of the Regional Director dated 30-07-2014, the petitioners denied and disputed that the Scheme of Amalgamation of the Petitioner No.5, namely, Marshall Commodities Private Limited with the Transferee Company has been proposed with the mala fide intention of adjustment of brought forward loss as alleged or at all.

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22. It has also been stated in the affidavit of the petitioners dated 11-07-2016 that the petitioners are not claiming any Income Tax benefit under Section 72A of the Income Tax Act, 1961 and as such, the question of Scheme of Amalgamation being proposed with the intention of adjustment of brought forward loss, does not and cannot arise.

23. With reference to paragraph 2(d) of the affidavit filed by the Regional Director, it has further been stated by the Petitioners in their affidavit dated 11-07-2016 that the Transferee Company has already replied to the queries raised by the Reserve Bank of India and hence there cannot be any supervisory concerns in respect of the Petitioner No.1, Simpro Vanijya Limited.

24. It has been denied that the petitioner No.1 is required to take prior approval from the Reserve Bank of India, as alleged or at all and that CA No. 341 of 2014 was filed in 14-05-2014, prior to Circular dated 26-05-2014, hence circular dated 26-05-2014 is not applicable in the instant case. In any event circular dated 26-05-2014 stands repealed by Circular dated 09-07-2015.

25. The Hon'ble High Court, Calcutta transferred the Company Petition No 514 of 2014 Connected with Company Application C.A No 341 of 2014 to this Tribunal in view of Rule 3 of the Companies (Transfer of Pending Proceedings) Rules, 2016.

26. Pursuant to the order of this Tribunal dated 12th January, 2018 in the Company Petition bearing TP(CAA) No. 188/KB/2017, arising out of Company Petition No. 514 of 2014, connected with Company Application CA No. 341 of 2014, the Petitioner Company on 24-01-2018, served upon the Reserve Bank of India, a copy of the Petition together with order, for making their representations, if any, before this Tribunal.

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27. Since no response has been filed by the Reserve Bank of India before this Tribunal within 30 days of the date of receipt of the notice, it shall be presumed that such authority has no representation to make on the Scheme of Amalgamation.

28. Further, the petitioners vide their Supplementary Affidavit filed on 22-11-2017 have stated the following :

- i) That there are NIL Secured Creditors and 3 Unsecured Creditors in the TRANSFEREE COMPANY as on 01st November, 2017 . All the 3 Unsecured creditors have given their consents by way of affidavit aggregating to 100 % of the total Unsecured creditors.
- ii) That there are NIL Secured Creditors and 1 Unsecured Creditors in the TRANSFEROR COMPANY No 1 as on 01st November, 2017 . The said 1 No Unsecured creditor have given their consents by way of affidavit aggregating to 100 % of the total Unsecured creditors.
- iii) That there are NIL Secured Creditors and 1 Unsecured Creditors in the TRANSFEROR COMPANY No 2 as on 01st November, 2017 .The said 1 No Unsecured creditor have given their consents by way of affidavit aggregating to 100 % of the total Unsecured creditors.
- iv) That there are NIL Creditors in the TRANSFEROR COMPANY No 3, TRANSFEROR COMPANY No 4 and TRANSFEROR COMPANY No 5 as on 01st November, 2017.

29. The following documents, inter alia, amongst others, are annexed to the supplementary affidavit :

- (i) The List of Secured and Unsecured Creditors of the Transferee Company duly certified by the Statutory Auditor together with the written consent of Unsecured Creditors by way of affidavit is at page 12 and 21 to the Supplementary affidavit and marked - ANNEXURE - C

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- (ii) The List of Secured and Unsecured Creditors of the Transferor Company No 1 duly certified by the Statutory Auditor together with the written consent of Unsecured Creditors by way of affidavit is at page 22 and 25 to the Supplementary affidavit and marked - ANNEXURE - D
- (iii) The List of Secured and Unsecured Creditors of the Transferor Company No 2 duly certified by the Statutory Auditor together with the written consent of Unsecured Creditors by way of affidavit is at page 26 to 29 to the Supplementary affidavit and marked - ANNEXURE - E
- (iv) NIL Creditors duly certified by the Statutory Auditor of the Transferor Company No 3 is at page No 30 to the Supplementary affidavit and marked - ANNEXURE - F
- (v) NIL Creditors duly certified by the Statutory Auditor of the Transferor Company No 4 is at page No 31 to the Supplementary affidavit and marked - ANNEXURE - G
- (vi) NIL Creditors duly certified by the Statutory Auditor of the Transferor Company No 5 is at page No 32 to the Supplementary affidavit and marked - ANNEXURE - H
- (vii) Certificate from the Statutory Auditor of the Transferee Company confirming that the Accounting procedures that will be followed as per the Scheme is in conformity with the accounting standard is at page 33 to 34 to the Supplementary affidavit and marked - ANNEXURE - I
- (viii) Copy of Board Resolution adopting the Scheme by the Petitioner Companies is at page 35 to 40 to the Supplementary affidavit and marked - ANNEXURE - J
- (ix) Report under Sec 232(2) of the Companies Act , 2013 adopted by the Directors of the Petitioner Companies is also filed along with supplementary affidavit sworn on 11.01.2018 is at page no 06 to 23. marked - ANNEXURE - A to F.

30. Heard the arguments of the Ld. Counsel for the petitioner Companies and perused the documents annexed to the petition.

31. In view of the facts stated above, the following orders in terms of prayers made in the petition, with modifications by this Tribunal, are passed :

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- a) That the Scheme of Amalgamation is sanctioned and to be binding with effect from 1st April, 2013, on the Transferee Company, the Transferor Companies, their shareholders, and all concerned ;
- b) The Petitioner Companies to modify Paragraph 4 of Part III of the Scheme of Amalgamation by inserting a statement "subject to compliance of the provisions of Indian Stamp Act, 1899 as applicable for the State Government of West Bengal and procedures laid thereunder", at the end of said para of the Scheme of Amalgamation ;
- c) The Transferee Company is directed to increase its Authorised share capital to enable it to allot shares to the members of the transferor companies, after complying with the prescribed procedure as laid down in the Companies Act, 2013 and filing of requisite forms and fees with the Office of the Registrar of Companies ;
- d) That the Transferor Companies with all their respective assets, properties, rights, titles and interest thereof be transferred to and vested without any further act or deed in the Transferee Company and accordingly the same, pursuant to section 394(2) of the Companies Act 1956, shall be transferred to and vested in the Transferee Company for all the estates and interests of the said Transferor Companies but subject nevertheless to all charges, now affecting same ;
- e) That all the liabilities and duties of the Transferor Companies be transferred without any further act or deed to the Transferee Company and accordingly the same shall pursuant to section 394(2) of the Companies Act 1956 be transferred to and become the liabilities and duties of the Transferee Company ;
- f) That all proceedings and / or suits and / or appeals now pending by or against the Transferor Companies shall be continued by or against the Transferee Company ;

- g) That the Transferor Companies and the Transferee Company shall within 30 days after the date of receipt of the certified copy of this order cause a copy of the same to be delivered to the Registrar of Companies, West Bengal for registration respectively ;
- h) That the Official Liquidator is directed to make and file before this Hon'ble Tribunal a Report under second proviso to section 394(1) of the Companies Act 1956 on the affairs of the Transferor Companies within 2 months from the date of this order.
- For the purpose, the Official Liquidator may entrust the work of verification of the books of accounts and the financial statements of the Petitioner Companies to a Chartered Accountant Firm, the cost of which shall be borne by the Petitioner Companies depending upon the volume of work ;
- i) That leave is given to the Transferee Company to apply for dissolution without winding up of the Transferor Companies upon filing of the said report by the Official Liquidator ;
- j) The said Official Liquidator be directed to serve a copy of Report to be filed by him in terms of Prayer (h) above on the Advocate-on-Record of the petitioners immediately after filing the said report with this Tribunal ;
- k) That the schedule of assets in respect of the Transferor Companies be filed in this Tribunal within a period of 60 days from the date of the order to be made herein.

32. In the event of the petitioners supplying the legible computerized print out of the scheme of Amalgamation and the schedule of assets in acceptable form to the department, the department will append such computerized print out, upon verification to the certified copy of the order without insisting on a hand-written copy thereof.

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33. Accordingly, T.P. No. 188/KB/2017 arising out of Company Petition No C.P 514 of 2014 connected with Company Application CA No. 341 of 2014, stands disposed off.

34. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

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(Jinān K.R)
Member (Judicial)

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