

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

TP No. 151/KB/2017

Arising out of Company Petition No.1055 of 2016
Connected with Company Application No. 771 of 2016

IN THE MATTER OF:

A Petition under Section 391(2) and 394 of the
Companies Act, 1956 ;

-And-

IN THE MATTER OF:

North Bengal Oncology Centre Private Limited, a
company incorporated under the provisions of the
Companies Act, 1956, having its registered Office at
Village and P.O. Rangapani, District Darjeeling, Siliguri,
West Bengal 734434, within the aforesaid jurisdiction ;

And

North Bengal Clinic Private Limited, a company
incorporated under the provisions of the Companies Act,
1956, having its registered Office at Pradhan Nagar,
Siliguri, Darjeeling, West Bengal 734 003, within the
aforesaid jurisdiction ;

And

1. North Bengal Oncology Centre Private Limited
2. North Bengal Clinic Private Limited

- Petitioners

Date of pronouncement of the Order : 05-03-2018

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

For the Petitioners:

Mr. Ravi S Asopa, Advocate
CS Kovid Mukherjee

Ms. Tia Inla, Deputy Director, C/o. Regional Director (Eastern Region),
Ministry of Corporate Affairs

Per Jinan K. R.

ORDER

1. The object of this petition is to obtain sanction of this Tribunal to the Scheme of Arrangement between North Bengal Oncology Centre Private Limited, being the Petitioner No.1, the Transferor Company and North Bengal Clinic Private Limited, being the Petitioner No.2, the Transferee Company, and their respective shareholders whereby and where under it is proposed to reorganise and reconstruct the Transferor Company by transferring its "Demerged

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 Scheme of Arrangement, a copy whereof is annexed with the Petition and marked "A".

2. It has been stated in the Petition that the Transferor Company is a subsidiary of the Transferee Company. Under the competitive environment, it is necessary for the Transferor Company to re-define its objectives to strengthen its business and operational activities. The Transferor Company has basically two divisions, namely, hospital division and the trading in pharmaceuticals division.

3. The Transferor Company is undertaking a large scale programme for expansion of its pharmaceutical division. To achieve optimum advantage and also to achieve greater efficiency and synergy in operations, it is desirable to reorganise the operation of the 'Hospital Division' into a separate entity.

4. under the Scheme. The Transferor Company shall retain its remaining division to itself.

5. The Demerged Undertaking has good prospect for growth and development of its business which requires induction of fresh finance which can be more conveniently and adequately raised in a separate company

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

7. The Scheme will enable the Transferee Company to acquire Demerged Undertaking as a going concern and to develop and expand the same independently.

8. The Scheme will result in independent growth and expansion of the respective business of the Transferor Company and will facilitate greater focus on the Transferor Company and to improve their profit potential.

9. The Arrangement will enable the Transferee Company to expand its business with an established division as a going concern.

10. The Scheme will have beneficial results for the companies concerned, their shareholders, employees and all concerned.

11. The Board of Directors of the Transferor Company and the Transferee Company have, at their respective meetings by resolutions passed unanimously, approved the said Scheme of Arrangement.

Sd

12. It has been stated in the Petition that the assets of the Transferee Company are more than sufficient to meet the aggregate liabilities of the 'Demerged Undertaking'.

13. The Scheme of Arrangement will not adversely affect the rights of any of the creditors of the Petitioner Companies in any manner.

14. By an Order made in the Company Application No. 771 of 2016 on the 5th October, 2016, the Hon'ble High Court, Calcutta was, inter alia, pleased to dispense with the meetings of the Shareholders of the Petitioner Companies since each and every shareholders of the Petitioner companies had considered the Scheme of Arrangement and on such consideration had given their consent in writing agreeing to the Scheme of Arrangement and further, also consented to waive the holding and convening of the meetings of the shareholders of the Petitioner company concerned.

15. A copy of the said Order dated 05-10-2016 of the Hon'ble High Court, Calcutta is annexed with the Petition and marked "G".

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

Sd

17. It has also been stated that in consideration of the Arrangement, the Transferee Company will, inter alia, issue and allot to the shareholders of the Transferor Company, equity shares in the ratio as stated in the said Scheme of Arrangement.

18. The said ratio has been fixed on a fair and reasonable basis and on the basis of the Valuation Report as prepared by the Chartered Accountants.

19. Further, pursuant to an Order dated 28-11-2016 of the Hon'ble High Court, Calcutta, the Petitioner Companies caused a true copy of the notice of the Petition to be published once each in "The Financial Express", Kolkata, in its issue dated 13-12-2016 and in "Pratidin", Kolkata, in the issue dated 13-12-2016.

20. As directed vide the said Order dated 28-11-2016 of the Hon'ble High Court, Calcutta, the petitioners also served the notice along with the copy of the Petition upon the Regional Director, Eastern Region, Ministry of Corporate Affairs.

21. In compliance of the said Order dated 28-11-2016 of the Hon'ble High Court, Calcutta, the Petitioners have submitted the affidavit of service and publication dated 16-12-2016.

22. The Regional Director, Eastern Region, Ministry of Corporation Affairs, Kolkata vide his Affidavit dated 03-07-2017 has observed as under :

"2. (a) That it is submitted that the Office of the deponent asked for some information, inter alia, with regard to list of shareholders, shareholding pattern and details of pending charges etc. created on the proposed demerged undertaking. The petitioner companies have furnished the information along with their reply. It is observed from point No.25 (copy enclosed and marked as Annexure-I) of the said reply of the petitioner demerged company i.e. M/s. North Bengal Oncology Centre Private Limited that the petitioner demerged company has pending charge. On perusal of the information provided by the petitioner Companies, it is observed that the charge amount of Rs. 8,50,00,000/- created on 30-11-2015 and subsequently modified on 01-06-2016, and the charge holder is Yes Bank Limited of 56A, Hemanta Basu Sarani, Kolkata - 700 001. A photo copy of the information provided by the petitioner companies is enclosed herewith for kind perusal of this Hon'ble Tribunal and marked as Annexure-II.

It is submitted that the Charge document(e-form) of the Demerged Company i.e. M/s. North Bengal Oncology Centre Private Limited which relates to the demerged undertaking cannot be shifted to e-record of the Transferee/Resulting Company i.e. M/s. North Bengal Clinic Private Limited.

It is, therefore, submitted that this Hon'ble Tribunal may be pleased to direct the Demerged Company(M/s. North Bengal Oncology Centre Private Limited) to satisfy the existing charge of the Demerged Company by filing e-Form CHG-4 in the office of the Registrar of Companies, West Bengal along with the NOC of the Bank and the Resulting Company be directed to create new charge by filing e-Form CHG-1 in this mater with the Registrar of Companies before approval of the Scheme.

(b) That it is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the Scheme was forwarded to the Income Tax Department on 15/16-12-2016 with a request to forward their comments/observations/objections, if any, on the proposed scheme of arrangement within 15 days. But, no reports from the said authority has been received by this Directorate in the matter."

23. Pursuant to the leave granted by this Tribunal on 04-07-2017, the Petitioner Companies have filed supplementary affidavit dated 19-07-2017 stating that the Transferee Company undertakes to comply with the observations as made in paragraph 2(a) of the Affidavit, as filed by the Regional Director, Ministry of Corporate Affairs, Kolkata on 03-07-2017 with respect to satisfaction of existing charge of the Demerged Company and the creation of new charge by the Resulting Company, only after approval of the Scheme of Arrangement, by this Tribunal.

24. In the said Affidavit, the Petitioner Companies have further stated that Clause 7 of the Scheme of Arrangement, as annexed with the Petition and marked Annexure 'A', inter alia, provides that transfer and vesting of the Demerged Undertaking pursuant to the Scheme shall be subject to the securities, charges, liens, guarantees, mortgages and other encumbrances, if any.

25. Further Clause 7.1.4 of the Scheme inter alia provides that :

"Without prejudice to the provisions of the foregoing clauses, upon the Scheme becoming effective, the Transferor Company and the Transferee Company shall execute all instruments or documents or do all the acts and deeds as may be required, including the filing of necessary particulars and/or modifications of charge with the Registrar of Companies, Kolkata to give formal effect to the above provisions, if required."

26. The copies of the minutes of the meetings of the Board of Directors of the respective Petitioner Companies approving the Scheme of Arrangement are annexed with the said supplementary affidavit dated 19-07-2017 , filed by the Petitioner Companies, collectively marked as Annexure "B".

27. In terms of the Circular of the Ministry of Corporate Affairs, present petition has been transferred from the Hon'ble High Court, Calcutta to file the same before the National Company Tribunal, Kolkata Bench.

28. Heard the arguments of the Ld. Counsels for the petitioner Company.

29. 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 :

a) The Scheme of Arrangement mentioned in paragraph 1 of this Petition being Annexure "A" with the Petition is sanctioned so as to be finding with effect from 01-04-2015 on the Transferor Company and the Transferee Company and their shareholders and all concerned ;

b) All the property, rights and powers of the Transferor Company relating to its 'Demerged Undertaking' be transferred to and vest without further act or deed in the Transferee Company and accordingly the same shall, pursuant to Section 394(2) of the Companies Act, 1956 be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Company relating to its 'Demerged Undertaking' therein, but subject nevertheless to all charges now affecting the same ;

c) The Demerged Company, M/s. North Bengal Oncology Centre Private Limited to satisfy the existing charge of the Demerged Company by filing e-Form CHG-4 in the office of the Registrar of Companies, West Bengal along with the NOC of the Charge Holder, Yes Bank Limited of 56A, Hemana Basu Sarani,

Kolkata - 700 001 and the Resulting Company is directed to create new charge by filing e-Form CHG-1 in this matter with the Registrar of Companies ;

d) All the debts, liabilities, duties and obligations of the Transferor Company relating to its 'Demerged Undertaking', be transferred without 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 debts, liabilities, duties and obligations of the Transferee Company ;

e) All legal proceedings and/or suits and/or appeals now pending by or against the Transferor Company relating to its 'Demerged Undertaking' be continued by or against the Transferee Company ;

f) Leave is granted to the Transferor Company to file Schedule of Assets relating to its 'Demerged Undertaking' as stated in paragraph 12 of the Petition within three weeks from the date of this Order ;

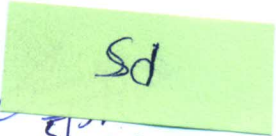
g) The Transferor Company and the Transferee Company, respectively, do, within 30 days after the date of this Order, cause a certified copy thereof to be delivered to the Registrar of Companies, West Bengal for registration ;

30. Any person interested shall be at liberty to apply to this Tribunal in the above matter for such directions as may be necessary.

31. In the event of the petitioner Companies supplying the legible computerized print out of the Scheme of Arrangement and the schedule of assets in acceptable form to the department, the department will append such computerized print-out, upon verification to be certified copy of the order without insisting on a hand-written copy thereof.

32. Accordingly, the Company Petition bearing TP No. 151/KB/2017, arising out of Company Petition No.1055 of 2016, connected with Company Application No. 771 of 2016, stands disposed of.

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


(Jinan K.R.)
Member(Judicial)

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