

NARSINGH

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH
KOLKATA**

C.A.(CAA) No.414/KB/2018

Coram: Shri Madan B. Gosavi, Member (Judicial)

In the matter of:

An application under Section 230 to 232 of the Companies Act, 2013 and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

In the matter of:

NARSINGH ISPAT LIMITED, a Company incorporated under the Companies Act, 1956 and having its registered office at Diamond Heritage, 16 Strand Road, Fairley Place, B.B.D Bag, 15th Floor, Room No.-1512, Kolkata-700001, West Bengal within the aforesaid jurisdiction;

.....Transferee Company

And

In the matter of:

RELIABLE COMMODEAL PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956 and having its registered office at 50 J.L. Nehru Road, Kolkata-700071, West Bengal within the aforesaid jurisdiction;

.....Transferor Company-1

And

In the matter of:

SEAVIEW AGENCIES PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956 and having its registered office at 50 J.L. Nehru Road, Kolkata-700071, West Bengal within the aforesaid jurisdiction;

.....Transferor Company-2

And

In the matter of:

1. NARSINGH ISPAT LIMITED
2. RELIABLE COMMODEAL PRIVATE LIMITED
3. SEAVIEW AGENCIES PRIVATE LIMITED

.....Applicants

Sd

Counsels on Record :

1. Ms. Bidisha Achari, PCS] For the Applicants

Date of pronouncing the order: 20th July, 2018

ORDER

1. This is an application filed by the Applicants namely, M/s Reliable Commoddeal Private Limited and M/s Seaview Agencies Private Limited ("Transferor Companies") and M/s Narsingh Ispat Limited ("Transferee Company") under Section 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in connection with a proposed Scheme of Amalgamation of the Transferor Companies and the Transferee Company whereby and where under it is proposed to amalgamate the Transferor Companies with the Transferee Company with all assets and liabilities relating thereto as a going concern. The aforesaid Scheme is annexed as Annexure "E" to the application.
2. The object of this Application is to ultimately obtain sanction of this Tribunal to the proposed Scheme of Amalgamation to be made between the Transferor Companies, Transferee company and their respective shareholders whereby and whereunder the entire undertaking of the Transferor Company with all assets and

liabilities relating thereto as a going concern is proposed to be transferred to and vested in the Transferee Company.

3. It is stated in the Application that the Transferee Company, Narsingh Ispat Limited, is engaged in the business of manufacturing of pig iron and allied products whereas the Transferor Companies, namely, Reliable Commodeal Private Limited and M/s Seaview Agencies Private Limited are engaged in the business of investment and trading in shares and other securities.
4. It is submitted that since the Applicant Companies, namely, Reliable Commodeal Private Limited, Seaview Agencies Private Limited and Narsingh Ispat Limited, have common shareholders and management, therefore it would be beneficial for the Transferor Companies to merge with the Transferee Company and thus strengthen the position of the merged entity.
5. The Board of Directors of the Transferor Companies and Transferee Company have their respective meeting held on 12th February, 2018, have unanimously passed resolution approving the Scheme of Amalgamation of RCPL and SAPL with NIL. A copy of the resolution passed by the of Directors of the Transferor Company and Transferee Company approving the Scheme of Amalgamation is annexed to this Application as Annexure "D".

Sd

6. It is stated in the Application that the assets of the Applicant Companies are sufficient to meet all their liabilities and the said Scheme will not adversely affect the rights of any of the creditors of any of the Applicant Companies in any manner whatsoever.
7. In the application, all the Applicant Companies have annexed consents by way of affidavits of all the equity shareholders. The Applicant No. 1 has both secured and unsecured creditors. The Applicant No. 2 has no secured creditors and only unsecured creditors whose consents by way of affidavits are also annexed. The Applicant No. 3 does not have any creditors respectively.
8. It is stated in the Application that the valuation of the shares of the Applicant Companies, based on which the share entitlement ratio has been arrived at, has been carried out and approved by the M/s ARSK & Associates, Chartered Accountants and stated to be bonafide and reasonable. Such valuation report is annexed to this Application and marked as Annexure I.
9. There are no investigations or proceedings pending under Section 235 to 251 of the Companies Act, 1956 and/or applicable provisions of the Companies Act, 2013 against the Applicant Companies..
10. As stated in the Application, the Transferee Company has 18 shareholders all of whom have duly consented in writing by way of

an affidavit and have agreed to the terms and conditions of the proposed scheme. Both the Transferor Companies have 3 shareholders each. In as much as all the shareholders of all the Applicant Companies have duly consented in writing by way of an affidavit to the proposed Scheme of Amalgamation, the requirement of convening and holding a meeting to ascertain the wishes of the shareholders of all the Applicant Companies be dispensed with.

11. None of the Applicant Companies have any debenture holders or preference shareholders; therefore, the question of consent from them does not arise.
12. It is stated in the Application that as on 31st December, 2017, the Transferee Company, NIL, has 3 Secured Creditors and 218 Unsecured Creditors. The Applicant Company 2 has 7 unsecured creditors and the Applicant Company 3 does not have any secured or unsecured creditors, which is certified by statutory auditors of the Company and annexed as Annexure I to the application.
13. In as much as 98.66% in value of the unsecured creditors of the Applicant Company 2 have duly confirmed and agreed to the terms and conditions of the proposed scheme, it is therefore prayed that the requirement of convening and holding of a meeting of creditors of the Applicant Company 2 be dispensed with.

14. The Applicant Company have prayed for necessary directions for convening the meeting of secured and unsecured creditors of the Transferee Company, NIL, at Diamond Heritage, 16 Strand Road, Fairley Place, B.B.D. Bag, 15th Floor, Room No, 1512, Kolkata – 700001 or such other place as the Tribunal may deem fit.
15. It is stated in the Application that the accounting treatment, proposed in Clause 14 in the Scheme of Amalgamation, is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013.

I have pursued the documents annexed to the Applications and have heard the submissions made on behalf of the Applicants and pass the following orders:

1. In view of the facts mentioned above, the requirement of convening and holding of separate meetings of Equity Shareholders of all the Applicant Companies and meeting of the Creditors of the Applicant Company 2 are hereby dispensed with;
2. That a meeting of the secured and unsecured creditors of Applicant Company No. 1, Narsingh Ispat Limited, shall be convened and held at Diamond Heritage, 16 Strand Road, Fairley Place, B.B.D Bag, 15th Floor, Room No.-1512, Kolkata-700001, West Bengal on Thursday, 23/08/2018 at 10.00 A.M. and 11:00 A.M. respectively for the purpose of considering and if thought fit, approving with or without modification, the proposed

Scheme of Amalgamation between the transferee and the transferor companies and their respective shareholders;

3. That at least 30 clear days before the date of the said meeting an advertisement convening the same and stating that the copies of the said Scheme of Amalgamation and the statement disclosing necessary details required to be furnished pursuant to section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and a prescribed form of proxy can be obtained free of charge at the Registered office of the concerned Applicant Company be inserted once each in "Aajkal", a Bengali newspaper and in the "Business Standard", an English newspaper, as per the requirements of section 230 of the Companies Act, 2013 in form CAA. 2 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
4. That in addition, at least 30 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, statement disclosing necessary details required to be furnished pursuant to section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the prescribed form of proxy be sent by registered post or speed post or by hand delivery through personal messenger addressed to each of the secured and unsecured creditors of concerned Applicant Company at their respective or last known addresses.

5. Let the notice be served by the Applicant Companies, as per requirements of sub-section (5) of Section 230 of the Companies Act, 2013 along with a copy of the Scheme and statement disclosing necessary details on the Central Government through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal and the concerned Income Tax Assessing officer along with the Chief Commissioner of Income Tax with PAN Numbers of the Applicant Companies as also the Official Liquidator having jurisdiction over the Transferee and the Transferor Companies by sending the same by hand delivery through special messenger or by registered post or speed post within seven days from the date of this order for filing their representation, if any, within 30 days from the date of the notice;

6. The Applicant Companies are further directed to send notice through e-mail also and file copies of the mails along with an affidavit. 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 Applicant Companies and/ or their Authorised Representative in advance. If no such representations are received by the Tribunal within the said period, it shall be presumed that such authorities have no representations to make on the scheme of Amalgamation. Such notice shall be sent pursuant to section 230 (5) of the Companies Act, 2013 in form No. CAA. 3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein;

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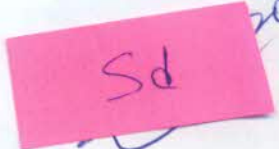
7. That Mr. Mohan Ram Goenka (Con. No. 9831074332) shall be the chairman for the said meetings of the secured and unsecured creditors of the Applicant Company No. 1 to be held as aforesaid.
8. The consolidated remuneration of Mr. Mohan Ram Goenka as chairman for conducting the meeting be fixed at Rs. 35,000/- (Rupees Thirty Five Thousand only).
9. The chairman appointed for the said meetings or any person authorized by him or any of them do issue and send out the notice of the said meeting referred to above;
10. That the quorum for the meeting of the unsecured creditors of the Applicant Company 1 is fixed in accordance with section 103 of the Companies Act, 2013 present either in person or by proxy;
11. That the quorum for the meeting of the secured creditors of the Applicant Company 1 be 2 secured creditors present either in person or by proxy;
12. That voting by proxy is 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 Company at its registered office not later than forty-eight hours before the meetings. The chairman 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;

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13. That the value of each of the creditors shall be in accordance with the books of the concerned Applicant Company and where entries in the books of the Applicant Company is disputed, the chairman concerned shall determine the value for the purpose of the meeting;
14. That the chairman does report to this Tribunal the results of the said meetings within two weeks from the date of the conclusion of the meeting and the report shall be in form CAA. 4 pursuant to Rule 13 (2) and 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 verified by affidavit.

The C.P. (CAA) No.414/KB/2018 is disposed of accordingly.

Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.


(Madan B. Gosavi)
Member (J)

Signed this day of 20th July, 2018.

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