

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH: GUWAHATI

CP(CAA) NO.02/GB/2018

Under Section: 230 and 232 of the Companies Act, 2013

In the matter of:

1. Ligripookri Tea Company Pvt. Ltd.
2. Dhriti Eden Greens Pvt. Ltd.
3. Ramya Vedic Pvt. Ltd. ...Petitioners

Order delivered on 24th August, 2018

Coram:

Hon'ble Mr. Justice P. K. Saikia, Member (J)

For the petitioners : Mr. Aditya Vikram Varma, Chartered Accountant

ORDER

Heard Mr. Aditya Vikram Varma, Chartered Accountant appearing for the petitioners. I have perused the petition. The reliefs, sought for, in the petition are reproduced below: -

"v. Relief(s) sought:

The petitioners therefore pray that the Petition may be admitted and direction be issued for issue of notice of petition to the regulators namely (i) Regional Director, North Eastern Region, Ministry of Corporate Affairs, (ii) Registrar of Companies, Assam, Meghalaya etc. and (iii) the Income Tax Department and to the general public by publication of the notice of petition in one English Newspaper and one vernacular newspaper. And upon hearing the petitioners and other persons be pleased to sanction: -

- a. *The Scheme of Arrangement mentioned in this petition being **Annexure: A** hereto, to be binding on the transferee companies, the transferor company, their shareholders and secured and unsecured creditors respectively with effect from 1.4.2017.*
- b. *That the "Demerged Undertaking" i.e. the Indore Division and the Delhi Division of Ligripookrie Tea Company Private Limited, the transferor company, with all its respective properties, rights and interest thereof be transferred to and vested without further act or deed, in the transferee company No.1 Dhriti Eden Greens Pvt. Ltd. and the transferee company No.2 Ramya Vedic Pvt. Ltd. respectively and accordingly same shall pursuant to section 230 to 232 of the Companies Act, 2013, be transferred to and vested in the transferee company No.1 and the transferee No.2 respectively for all the estate*

and interest of the said transferor company but subject nevertheless to all charges now affecting the same;

- c. That all the liabilities and duties of the transferor company in respect of the "Demerged Undertaking" i.e. the Indore Division and the Delhi Division of the Ligripookrie Tea Company Private Limited be transferred without further act or deed, to the transferee company No.1 Dhriti Eden Greens Pvt. Ltd. and the transferee company No.2 Ramaya Vedic Pvt. Ltd. respectively and accordingly the same shall pursuant to section 230 and 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the transferee company No.1 and the transferee company No.2 respectively.
- d. That all the proceedings and/or suits and/or appeal now pending by or against the "Demerged Undertaking" i.e. the Indore Division and the Delhi Division of the Ligripookrie Tea Company Private Limited of the transferor company shall be continued by or against the transferee company No.1 and the transferee company No.2 respectively.
- e. That the transferor company and the transferee companies shall within thirty days after the date of the order to be made herein, cause a certificate copy of this order to be delivered to the Registrar of the Companies, Shillong for registration and
- f. Such order may be made in the premises as to the Tribunal shall deem fit."

2. This is a petition filed under Section 230/232 of the Companies Act, 2013 read with Rule 15(1) of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2016, by the aforementioned three petitioners, seeking sanction of Scheme of Arrangement, by way of demerger of all the demerged units of Transferor Company. On hearing the parties, this Bench, on 27-06-2018, had rendered the following order in CP (CAA)/2/GB/2018: -

ORDER

This is a petition filed under Section 230/232 of the Companies Act, 2013 read with Rule 15(1) of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2016, by the aforementioned three petitioners, seeking sanction of Scheme of Arrangement, which was already approved by the shareholders and creditors of the petitioner companies.

2. Heard Mr. Aditya Vikram Varma, Chartered Accountant appearing for the petitioners. I have perused the petition. The reliefs, sought for, in the petition are reproduced below: -

"v. Relief(s) sought:

The petitioners therefore pray that the Petition may be admitted and direction be issued for issue of notice of petition to the regulators namely (i) Regional Director, North Eastern Region, Ministry of Corporate Affairs, (ii) Registrar of Companies, Assam, Meghalaya etc. and (iii) the Income Tax Department and to the general public by publication of the notice of petition in one English Newspaper and one vernacular newspaper. And upon hearing the petitioners and other persons be pleased to sanction: -

g. The Scheme of Arrangement mentioned in this petition being **Annexure: A** hereto, to be binding on the transferee companies, the transferor company, their shareholders and secured and unsecured creditors respectively with effect from 1.4.2017.

- h. That the "Demerged Undertaking" i.e. the Indore Division and the Delhi Division of Ligripookrie Tea Company Private Limited, the transferor company, with all its respective properties, rights and interest thereof be transferred to and vested without further act or deed, in the transferee company No.1 Dhriti Eden Greens Pvt. Ltd. and the transferee company No.2 Ramya Vedic Pvt. Ltd. respectively and accordingly same shall pursuant to section 230 to 232 of the Companies Act, 2013, be transferred to and vested in the transferee company No.1 and the transferee No.2 respectively for all the estate and interest of the said transferor company but subject nevertheless to all charges now affecting the same;
- i. That all the liabilities and duties of the transferor company in respect of the "Demerged Undertaking" i.e. the Indore Division and the Delhi Division of the Ligripookrie Tea Company Private Limited be transferred without further act or deed, to the transferee company No.1 Dhriti Eden Greens Pvt. Ltd. and the transferee company No.2 Ramaya Vedic Pvt. Ltd. respectively and accordingly the same shall pursuant to section 230 and 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the transferee company No.1 and the transferee company No.2 respectively.
- j. That all the proceedings and/or suits and/or appeal now pending by or against the "Demerged Undertaking" i.e. the Indore Division and the Delhi Division of the Ligripookrie Tea Company Private Limited of the transferor company shall be continued by or against the transferee company No.1 and the transferee company No.2 respectively.
- k. That the transferor company and the transferee companies shall within thirty days after the date of the order to be made herein, cause a certificate copy of this order to be delivered to the Registrar of the Companies, Shillong for registration and
- l. Such order may be made in the premises as to the Tribunal shall deem fit."

3. It needs to be stated here that the petitioner No.1 company Ligripookrie Tea Company (P) Ltd. (petitioner No.1) is a private limited company with its registered office at Jalan Nagar, Dibrugarh, Assam. The petitioner No.1 got three divisions, (i) Kolkata Division, having tea business, (ii) Indore Division having real estate business and (iii) Delhi Division having real estate business. The petition was filed for demerger of Indore Division and Delhi Division of Ligripookhrie Tea Company (P) Ltd. into Dhriti Eden Greens Pvt. Ltd. (petitioner No.2) and Ramaya Vedic Pvt. Ltd. (petitioner No.3) respectively as per Scheme of Arrangements in terms of provisions of Section 230 and 232 of the Companies Act, 2013 to come into force from the effective date.

4. By the Scheme of Arrangement by the way of demerger, the Indore Division is proposed to be transferred to the petitioner No.2 (Dhriti Eden Greens Pvt. Ltd.), whereas the Delhi Division is proposed to be transferred to the petitioner No.3 (Ramaya Vedic Pvt. Ltd.). The petitioner No.1, 2 and 3 have their respective registered offices at Jalan Nagar, Dibrugarh, Assam.

5. The proposed Scheme of Arrangement was approved by all the shareholders as well as creditors of the petitioner companies and, therefore, the convening and holding of the meetings of shareholders as well as creditors were dispensed with on the request of shareholders and creditors of the petitioner companies, vide order dated 28-03-2018 rendered in Dy. No.729 of 2017.

6. It has also been stated that the arrangement would enable the companies to carry out their respective business more economically and efficiently. The proposed of Scheme of Arrangement is considered inevitable since it would pull all the resources of the petitioner companies resulting in optimum growth and development of the business on exploiting the potential thereof.

7. The Scheme of Arrangement, if carried out properly, would enable the transferee company to carry out its business more economically and more effectively with greater capacity to raise funds necessary for growth and expansion of the business. Further, the proposed Scheme of Arrangement would be more beneficial to the petitioner companies in particular and the public in general.

8. It has also been submitted that the scheme does not involve any reduction of share capital. It also does not involve any corporate debt restructure. More importantly, no investigation or proceeding is pending against any of the petitioner companies under Section 206 to 209 of the Companies Act, 2013. On considering the prayers, made by the petitioners in Dy. No.729 of 2017, as stated above, the convening and holding of meetings of the shareholders and creditors of the companies were dispensed with.

9. However, it may be stated that while accepting the prayer made by the petitioner companies, this Bench inadvertently did not require the petitioners to send the Scheme of Arrangement and other connected documents to the Regulatory Authorities as required under Section 230 (5) read with Rule 8 (1) (i) of the Companies (Compromise, Arrangements etc.) Rules, 2016.

10. Therefore, in the interest of justice, it is hereby ordered that the petitioners would send notice in prescribed form (Form No.CCA-3) along with the proposed Scheme of Arrangement and all other connected documents to the Central Government, concerned ROC, concerned Income Tax Department and Reserve Bank of India, directing them to submit their representations, if any, against the prayers, made in the petition further requiring them to submit their representations, within a period of 30(Thirty) days from the date of receipt of notice, failing which, it shall be presumed that they have no representations to make. Such notice shall be sent by registered post or speed post or by courier or by hand delivery in the office of the aforesaid authorities.

11. Further, the petitioners are directed to advertise notice of hearing of the petition in two daily newspapers, one vernacular (The Pratidin) and one English (The Sentinel) and such advertisement shall be made at least 10(ten) days before the date, fixed, for the hearing.

12. The petitioners are further directed to submit an affidavit confirming the compliance of various directions rendered hereinbefore and same needs to be filed before the Registry at least 10(ten) days ahead of the date fixed for hearing. They are also required to produce the copies of the newspaper advertisements aforesaid as well as the copies of postal receipts evidencing the service of notice to the authorities aforesaid.

13. The petitioners are directed to take steps within 5 (five) days from today.

14. List this matter on 24th August, 2018."

3. However, there were some typographical mistakes and some omission in the aforesaid order. Accordingly, a corrigendum was issued on the same day. For ready reference, the corrigendum dated 27th June, 2018 is also reproduced herein below: -

"CORRIGENDUM

1. It has been noticed that in the Order dated 27-06-2018 passed in CP(CAA) NO.02/GB/2018, there occurred a typographical omission through oversight in paragraph 11 of the said order in mentioning the name of vernacular daily newspaper.

2. The name of the vernacular daily newspaper should have been written as "Axomiya Pratidin". But the same has been written as (The Pratidin). The said paragraph 11 of the order dated 27-06-2018, has now been retyped by replacing "Axomiya Pratidin" against "The Pratidin" and be read as under: -

"11. Further, the petitioners are directed to advertise notice of hearing of the petition in two daily newspapers, one vernacular (Axomiya Pratidin) and one English (The Sentinel) and such advertisement shall be made at least 10(ten) days before the date, fixed, for the hearing."

3. It has further been noticed that in paragraph 7 of the aforesaid, by inadvertent omission the following sentence has left out to be inserted: -

"The petitioners have also stated in the petition that the affairs of the company are not being conducted in a manner, prejudicial to the public interest or to the interest of the petitioner companies."

4. The same is now inserted and the said paragraph of the order dated 27-06-2018, after insertion of the aforesaid left out sentence, be read as under: -

"7. The Scheme of Arrangement, if carried out properly, would enable the transferee company to carry out its business more economically and more effectively with greater capacity to raise funds necessary for growth and expansion of the business. Further, the proposed Scheme of Arrangement would be more beneficial to the petitioner companies in particular and the public in general. The petitioners have also stated in the petition that the affairs of the company are not being conducted in a manner, prejudicial to the public interest or to the interest of the petitioner companies."

5. The Registry is directed to send a copy of this Corrigendum to the parties concerned."

4. As required, the petitioners submitted affidavit stating that all the directions rendered in the order dated 27-06-2018 in CP (CAA)/2/GB/2018 have been complied with. Further, copies of the advertisements publishing notice of final hearing, one in The Sentinel and the other in Axomiya Pratidin both dated 10-07-2018 are also annexed with the affidavit.

5. I have seen the Registry's note dated 23-08-2018, wherefrom it appears that despite service of notice on ROC, Shillong, Reserve Bank of India and other authorities, no response has been received from those authorities. In this situation, one may look into the provisions of Section 230 to 235 of the Companies Act, 2013. For ready reference, Section 235 of the Act of 2013 is reproduced herein below: -

"235. power to acquire shares of shareholders dissenting from scheme or contract approved by majority. —

(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has, within four months after making of an offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies, the transferee company

may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

(2) Where a notice under sub-section (1) is given, the transferee company shall, unless on an application made by the dissenting shareholder to the Tribunal, within one month from the date on which the notice was given and the Tribunal thinks fit to order otherwise, be entitled to and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.

(3) Where a notice has been given by the transferee company under sub-section (1) and the Tribunal has not, on an application made by the dissenting shareholder, made an order to the contrary, the transferee company shall, on the expiry of one month from the date on which the notice has been given, or, if an application to the Tribunal by the dissenting shareholder is then pending, after that application has been disposed of, send a copy of the notice to the transferor company together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferor company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which, by virtue of this section, that company is entitled to acquire, and the transferor company shall— (a) thereupon register the transferee company as the holder of those shares; and (b) within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company.

(4) Any sum received by the transferor company under this section shall be paid into a separate bank account, and any such sum and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sum or other consideration were respectively received and shall be disbursed to the entitled shareholders within sixty days.

(5) In relation to an offer made by a transferee company to shareholders of a transferor company before the commencement of this Act, this section shall have effect with the following modifications, namely:— (a) in sub-section (1), for the words —the shares whose transfer is involved other than shares already held at the date of the offer by, or by a nominee of, the transferee company or its subsidiaries,|| the words —the shares affected|| shall be substituted; and (b) in sub-section (3), the words —together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferor company shall be omitted.

Explanation. —For the purposes of this section, —dissenting shareholder|| includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

6. It is evident that if no response is received within 30 days from the date of receipt of the notice, the Court shall presume that the authority has no objection in this regard. From the materials on record, it appears that the Scheme of Arrangements by way of demerger of undertakings of the Transferor Company appears to be fair and reasonable and it is also not violative of any provisions of law and/or is contrary to any public policy.

7. Since the present petition was in connection with a scheme by the way of demerger, no action was required to be from the side of the Official Liquidator and as such no notice was ordered to be issued to be issued to the Official Liquidator.
8. Accordingly, this petition is allowed in terms of the prayer made in Para V (a) to (e) of the petition.
9. The Registry of this Bench shall forthwith send a copy of this order to the Official Liquidator for his needful. The parties hereto shall be at liberty to apply to this Tribunal for any direction (s) that may be necessary with regard to the implementation of the Scheme of Arrangements.
10. The petitioner shall file with ROC a certified copy of this order within 30 days from the date of receipt of the same.
11. The Registry of this Bench shall draw necessary order in Form No.CAA-7 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016, with necessary variation, if any.
12. The Schedule of properties of the demerged units of Transferor Company shall be furnished by the Transferor Company to the Registry of this Tribunal in accordance with Form No.CAA-7 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016, within 30 days.
13. Any person, interested, shall be at liberty to apply to this Bench in the above matter for any direction that be necessary.
14. With the aforesaid directions, the present application is allowed and disposed of.



Member (Judicial)
National Company Law Tribunal
Guwahati Bench: Guwahati.

Dated, Guwahati, the 24th August, 2018
Deka/24=08=2018

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