

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C. P. (CAA) NO. 897/KB/2018

connected with

C. A. (CAA) NO. 98/KB/2018

In the Matter of: -

The Companies Act, 2013;

And

In the Matter of: -

Sections 230 to 232 of the Companies Act, 2013;

And

In the Matter of: -

Companies (Compromises, Arrangements and Amalgamations) Rules,
2016

And

In the Matter of: -

JSS Software & Parks Private Limited, a Company incorporated
under the provisions of the Companies Act, 1956 having its
Registered office at A-3/7, Gillander House, 8, N S Road,
Kolkata-700001, West Bengal, within the aforesaid jurisdiction;

~ And ~

In the matter of:

Sd

E - Mat Solutions Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at A-3/7, Gillander House, 8, N S Road, Kolkata-700001, West Bengal, within the aforesaid jurisdiction;

~ And ~

In the matter of:

Sahoo Projects Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at A-3/7, Gillander House, 8, N S Road, Kolkata-700001, West Bengal, within the aforesaid jurisdiction;

~ And ~

In the matter of:

1. JSS Software & Parks Private Limited;
2. E - Mat Solutions Private Limited;
3. Sahoo Projects Private Limited;

....Petitioners

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

For The Petitioners

Mr Shashi Agarwal, FCA

Shri Arun Kumar Mishra, Advocate

Sd

Mr. K. Pradhan, Joint Director, Office of the Regional Director,
Eastern Region, Ministry of Corporate Affairs

Date of Pronouncement of the Order : 06/9/18

ORDER

Per Shri Jinan K.R., Member (Judicial)

1. The object of this petition is to obtain sanction of this Tribunal to a Scheme of Amalgamation relating to amalgamation of E - Mat Solutions Private Limited, Sahoo Projects Private Limited, the "Transferor Companies" with JSS Software & Parks Private Limited, the "Transferee Company" where all the assets, properties, rights and claims whatsoever of the Transferor Companies and their entire undertaking together with all rights and obligations relating thereto are proposed to be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the Scheme of Amalgamation.

2. By an order dated 4th Day of May, 2018 in Company Application C.A. (CAA) No. 98/KB/2018, this Tribunal was pleased to dispense the meetings of the equity shareholders of the Petitioner Companies for the purpose of considering and if thought fit for approving with or without modification, the said Scheme of Amalgamation in view of the written consent

Sd

obtained from the Equity Shareholders of the respective companies.

3. Further there was no secured and unsecured creditors in the Transferor Companies , whereas meeting of the unsecured creditors of the Transferee Company was dispensed with, as the unsecured creditors have given no-objection to the Scheme of Amalgamation by way of affidavit. The Meeting of the secured creditor of the Transferee Company was held whereas it has given objection by way of letter and email. In terms of the said order, notices has been sent to Income Tax Department, Official Liquidator, Registrar of Companies and Regional Director, Eastern Region (MCA). Copy of Affidavit of Service/ compliance is annexed with Company petition and marked letter "H".

4. It is submitted that the Scheme of Amalgamation is in conformity with the Accounting Standards prescribed under section 133. A certificate from Chartered Accountant relating to compliance of Accounting standard is annexed with Company petition and marked letter "J".

5. The ratio of exchange stipulated under the Scheme of Amalgamation has been arrived at after careful consideration and after taking into account the book value of the assets, profitability and other relevant factors of both the Transferor Companies and the Transferee Company and is bona fide, fair, reasonable and equitable.

Sd

6. It is submitted by the petitioners that there are no proceedings pending under Sections 235 to 251 of the Companies Act, 1956 and/or corresponding provisions of Companies Act, 2013 against any of the petitioner companies.

7. It is further submitted by the petitioners that the Scheme does not contain any clause due to which there will be any reduction of share capital of Applicant Companies.

8. It is further submitted by the petitioners that the Scheme does not provide (contain any clause) for any kind of corporate debt restructuring.

9. It is further submitted by the petitioners that the assets of the applicant companies are sufficient to meet all their liabilities. The applicant companies have made due provisions for payment of all liabilities as and when the same will fall due. Further, the said Scheme of Amalgamation does not involve any compromise or composition with the creditors of the applicant companies and scheme will not affect the rights of the creditors of the applicant companies in any manner whatsoever.

Sd

10. Upon compliance of the directions of this Tribunal vide Order dated 04-05-2018, passed in CA(CAA) No. 98/KB/2018, the Petitioner Companies filed this Petition.

11. This Tribunal had passed an order 24th July, 2018 in the said Petition, bearing CP(CAA) No. 897/KB/2018, connected with CA(CAA) No. 98/KB/2018, and directed publication to be effected of the hearing of the Petition, issuance of the notices of this Petition to the concerned authorities for their objections, if any.

12. In compliance of the Order dated 24th July, 2018, passed in CP(CAA) No. 897/KB/2018, connected with CA(CAA) No. 98/KB/2018, the Petitioner Companies have filed affidavit of service affirmed on 3rd September, 2018 evidencing publication of notice in the newspapers and service of notice upon the Central Government, Statutory Authorities.

13. The Regional Director , Eastern Region , Ministry of Corporate Affairs has, vide his affidavit affirmed on 29th August, 2018 has reported as below :

" (a) That it is submitted that on the examination of the report of the Registrar of Companies , West Bengal it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation . The petitioner Companies are also updated in filing their statutory returns . It is further submitted that on examination of the proposed Scheme of Amalgamation , it appears that the proposed scheme is not prejudicial to the interest of members /

Sd

shareholders and/or public . The Central Government has, therefore , decided that the instant petition / scheme need not be opposed .

- (b) 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 05-06-2018 with a request to forward their comments / observations / objections, if any. However, the said authority has not forwarded their report to this Directorate till date."

14. The Official Liquidator attached to Hon'ble High Court, Calcutta vide his report dated 03-09-2018 has observed that after scrutiny of the report submitted by the Chartered Accountant appointed by him ,and other relevant papers and records etc., submitted by the Advocate-on-Record of the Petitioner, the Official Liquidator is of the opinion that the affairs of the Transferor Companies, namely, E-Mat Solutions Private Limited, Sahoo Projects Private Limited, have not been conducted in a manner prejudicial to the interest of their members or to public.

15. Heard the arguments of Ld. CA for the Petitioner Companies and the Ld. Joint Director, Office of the Regional Director, Eastern Region, Ministry of Corporate Affairs.

16. In view of the facts stated above and absence of any objection and since all requisite compliance has been fulfilled, the following orders in terms prayers made in the petition, with modification by this Tribunal are passed :

Sd

a) That the Scheme of Amalgamation is sanctioned by this National Company Law Tribunal to be binding with effect from appointed date on the Transferee Company, the Transferor Companies, their shareholders, and all concerned ;

b) That the said Transferor Companies with all their respective assets, properties, rights, powers, titles, and interest thereof are transferred to and vested without any further act or deed in the Transferee Company and accordingly the same shall pursuant to section 230 to 232 of the Companies Act 2013 be Transferred to and vested in the Transferee company for all the estates and interests of the said Transferor Companies therein but subject nevertheless to all charges, now affecting the same ;

c) That all the liabilities and duties of the Transferor Companies are transferred without any further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 230 to 232 of the Companies Act 2013 be transferred to and become the liabilities and duties of the said Transferee Company ;

d) 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 ;

Sd

e) That the transferee company do without further application allot to such members of the Transferor Companies herein the shares in the transferee company to which they are entitled as per the said scheme of amalgamations ;

f) That the Transferor Companies and the Transferee Company shall within 30 days after the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration respectively ;

g) The Transferor Companies shall be dissolved without winding up from the date of filing of the certified copy of this order with the Registrar of Companies, West Bengal and the Registrar of Companies shall place all documents relating to the Transferor Companies and registered with him on the file kept by him in relation to the transferee company and the files to the said transferee company and Transferor Companies shall be consolidated accordingly ;

h) That any person interested shall be a liberty to apply to this National Company Law Tribunal in the above matter for any directions that may be necessary;

i) That the schedule of assets in respect of the Transferor Companies be filed in this National Company

Sd

Law Tribunal within a period of 60 days from the date of this order.

17. In the event of the petitioners supply legible computerized print out of the scheme and 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.

18. Accordingly, C.P. (CAA) No. 897/KB/2018, connected with C.A.(CAA) No. 98/KB/2018, stands disposed of.

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

Sd

(Jinan K.R.)
Member(Judicial)