

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH,

KOLKATA

T.P. No. 45 of 2017

Connected with

C.P. No. 710 of 2016

Connected with

CA No. 483 of 2016

In the matter of -

The Companies Act, 2013;

And

In the matter of -

SD

An application under Sections 230-232
of the Companies Act, 2013;

And

In the matter of –

Scheme of Amalgamation between

1. **M/s. COMET DEALCOM PRIVATE LIMITED**, a company incorporated under the Companies Act, 1956 and having its Registered Office at P-5, Kalakar Street, Regent Towers, Kolkata-700 007, within the aforesaid jurisdiction.

And

M/s. TANUSHREE PROMOTERS PRIVATE LIMITED, a Company incorporated under the Companies Act,

SD

1956 and having its Registered Office at
P-5, Kalakar Street, Regent Towers,
Kolkata-700 007, within the aforesaid
jurisdiction.

.... Petitioners.

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

For the Petitioners:

Mr. M.S. Tiwari, Advocate.

Mr. S,K. Tiwari, Advocate.

Ms. Ishani Pandya, Assistant Registrar of Companies, West Bengal,
Office of the Regional Director, Eastern Region, Ministry of Corporate
Affairs.

Date of pronouncement of the Order: 26.09.2018

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

Sd

ORDER

1. The object of this Petition is to obtain sanction of this Tribunal to the Scheme of Amalgamation of the Comet Dealcom Pvt. Ltd., the Transferor Company or the Amalgamating Company, with Tanushree Promoters Private Limited, the Transferee Company or the Amalgamated Company, where under the entire undertaking of the Transferor Company as going concern together with all its assets and liabilities will stand transferred to and vested in the Transferee Company with effect from 01.04.2015 in terms of the Scheme of Amalgamation.
2. The Petitioner Companies filed an application in the Hon'ble High Court, Calcutta under Section 391(1)(2) of the Companies Act, 1956 being C.A. No.483 of 2016 seeking dispensation of convening of the meeting of the shareholders since all the shareholders of the applicant companies gave consent for dispensing of and convening of the meeting and for approval of the scheme.



3. The Hon'ble High Court, Calcutta vide order dated 30.06.2016 dispensed the convening of the meeting of the applicant companies and disposed of the application being C.A. No. 483 of 2016 and granted leave to the Petitioner Companies to file another Petition under Section 391(1)(2) of the Companies Act, 1956 for confirmation of the scheme of amalgamation. A copy of the said order dated 30.06.2016 of the Hon'ble High Court, Calcutta is annexed hereto and marked with letter **"A"**.
4. The Petitioner Companies filed the Company Petition being C.A. No. 71 of 2016 on 29.07.2016 for confirmation of the scheme in the Hon'ble High Court, Calcutta. The Hon'ble High Court, Calcutta, hearing the said application passed an order directed the applicant companies to serve the copies of the petition upon the Regional Director, Eastern Region and also for publication of the notice in the two newspapers. A copy of the said order dated 29.07.2016 is annexed hereto and marked with letter **"B"**.



5. Pursuant to the said order the petition was served upon the Regional Director and also the publication was affected in the two newspapers namely "The Business Standard" and "Aajkal" on 17.07.2016 and after compliance of the said the applicant companies filed Affidavit of Service in the Hon'ble High Court, Calcutta.
6. In view of the promulgation of the National Company Law Tribunal, and in view of the notification and amendment of the Companies Act, the Petition being C.P. No.710 of 2016 was transferred to this Hon'ble Tribunal for completion of further proceeding.
7. The said Petition being C.P. No. 710 of 2016 after transfer to this Tribunal is numbered as T.P. No. 45 of 2017. This Tribunal vide order dated 14.07.2017 directed the Petitioner Companies to file two additional copies of the Petition in compliance of the Rules of the Tribunal. The Petitioner Companies have duly filed such Petition in the department.



8. The Regional Director, Eastern Regional filed their affidavit affirmed on 27th March, 2018 and made the following observations:-

- i) That it is submitted that on 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.
- ii) That it is further submitted that, on perusal of the proposed scheme of amalgamation, which is served by the petitioner companies with this Directorate, in part III under the consideration clause at 1(a) it has been stated that ".....the transferor company being M/s. Comet Dealcom Private Limited,.....() Equity shares of Rs.10/- each in the transferee company, credited as fully paid up, for every 1 (one) Equity share of Rs.10/- each fully paid up held by them in the said transferor company", so the



consideration clause is well defined, so it is prayed before the Hon'ble Tribunal to give necessary directions to the petitioner companies in this regard.

iii) That it is further submitted that, on perusal of the share valuation report of the valuer, the transferee company needs to increase its authorized share capital besides merger of authorised share capital of Transferor Company with the Transferee Company as per clause 5 of Part IV of the scheme.

iv) That it is further submitted that, the clause 3 of the part III of the scheme of amalgamation speaks about accounting treatment, however about companies of AS 14, the proposed scheme is silent.

v) 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 23.08.2016 with a request to forward their comments/observations/objections, if any, on the



proposed Scheme of Amalgamation within 15 days, however, no report has been forwarded by the said authority till date.

9. A copy of the said affidavit is annexed hereto and marked with letter "C".
10. The Ld. Counsel appearing for the Regional Director, Eastern Region in the hearing on 5th April, 2018 sought leave to file supplementary affidavit to rectify certain mistakes in the said affidavit affirmed on 27th March, 2018, which was duly allowed.
11. The Ld. Counsel appearing for the applicants obtained leave to file the reply to the said observations made by the Regional Director in the said affidavit.
12. This Tribunal also vide their order dated 5th April, 2018 directed the Petitioner Companies to furnish the report duly certified by the auditor and also consent letters of such creditors. The Petitioner Companies have filed the list of the creditors wherefrom it was found that the Transferee



Company had no creditors and the Transferor Company has only three creditors. A list has been annexed to the said supplementary affidavit filed on 27th June, 2018.

13. The Petitioner Companies have also filed the updated annual return in the Supplementary Affidavit filed on 27.06.2018 wherein it has been stated by the statutory auditor that the accounts have been maintained as per Accounting Standard Act, under Section 133 of the Companies Act, 2013.

14. The Petitioner Companies in the said affidavit also undertook to comply the observations made by the Regional Director as aforesaid and has served the copy of the Supplementary Affidavit filed on 27.06.2018 in the office of the Regional Director, Eastern Region.

15. The Regional Director, Eastern Region, Ministry of Corporate Affairs further submitted an affidavit on 10th September, 2018 wherein they agreed to such compliances proposed by the Petitioner Companies but,



however, has requested this Tribunal to direct the Petitioner Companies to comply the provisions of Section 232(3)(1) of the Companies Act, 2013 while increasing authorised capital of the Transferee Company. The copy of such affidavit affirmed by the Regional Director dated 10.09.2018 is annexed hereto and marked with letter 'D'.

16. Since the Petitioner Companies have undertaken to comply with the observations made by the Regional Director, Eastern Region, Ministry of Corporate Affairs, this Petition is allowed orders with direction to the Petitioner Companies to comply such observations as made in the affidavit affirmed on 27th March, 2018 and 10th September, 2018.

17. 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 :



- a) In view of the fact that there are no Creditors of the Transferee Company, the requirement of convening and holding of meeting of Creditors of the Transferee Company does not arise ;
- b) In view of the fact that the Creditors of the Transferor Company have consented by way of affidavit to the Scheme of Amalgamation and for dispensation of the meeting of the Creditors of the Transferor Company, the requirement of convening and holding of meeting of the Creditors of the Transferor Company is dispensed with ;
- c) That the Scheme of Amalgamation mentioned in paragraph 1 of the petition being Annexure "A" to the Petition is sanctioned by this Tribunal to be binding with effect from 31st

March, 2016, on the Transferee Company, the Transferor Companies, their shareholders, and all concerned ;

(d) That the Transferor Company with all their respective properties, rights and interest thereof be transferred to and vested without any further act or deed in the Transferee Company and accordingly the same shall pursuant to section 394 (2) 2nd proviso of the Companies Act 1956 be Transferred to and vested in the Transferee company for all the estates and interests of the said Transferor Company but subject



nevertheless to all charges, now affecting the same;

e) That all the liabilities and duties of the Transferor Company 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 Company shall



be continued by or against the Transferee Company.

g) That the Transferor Company shall within 30 days after the date of the receipt of the certified copy of the order to be made herein to be delivered to the Registrar of Companies, West Bengal for registration respectively.

h) That the Official Liquidator is directed to make and file in this Tribunal a Report under second proviso to section 394 (1) of the Companies Act 1956 on the affairs of the Transferor



Company within 2 months from the date of the order to be made herein;

i) The said Official Liquidator is directed to serve a copy of Report to be filed by him in terms of prayer (f) above upon the Advocate-on-Record of the petitioner companies immediately after filing the said report with this Tribunal ;

j) Leave is given to the Transferee Company to apply for dissolution of Transferor Company without winding up upon filing of the said report by the Official Liquidator ;



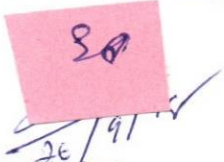
k) That any person interested shall be a liberty to apply to this Tribunal in the above matter for any directions that may be necessary;

l) That the schedule of assets in respect of the Transferor Company be filed in this Tribunal within a period of 60 days from the date of this order.

18. In the event of the petitioner companies 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 be certified copy of the order without insisting on a hand written copy thereof.



19. Accordingly, the Company Petition being T.P. No.45 of 2017, connected with CP No. 710 of 2016, connected with CA No. 483 of 2016, stands disposed of.


26/9/17 ✓
(Jinan K.R.)
Member(Judicial)

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