

In the National Company Law Tribunal,

Kolkata Bench, Kolkata

CP (CAA) No. 715/KB/2017

CA (CAA) No. 177/KB/2017

IN THE MATTER OF:

The Companies Act, 2013;

AND

IN THE MATTER OF:

Petition under Section 230 to 232 of
the said Act;

AND

IN THE MATTER OF:

**DHOOT INFRASTRUCTURE
PROJECTS LIMITED**, a company
incorporated under the Companies Act,
1956; and having its Registered Office
at 5, J.B.S. Halden Avenue, Silver
Arcade, 2nd Floor, Room No. S2,
Kolkata- 700105, within the aforesaid
Jurisdiction.

AND

IN THE MATTER OF:

**DHOOT INDUSTRIAL &
INVESTMENT COMPANY PRIVATE
LIMITED**, a company incorporated
under the Companies Act, 1956; and
having its Registered Office at 113,
N.S. Road, 1st Floor, Kolkata- 700001,
within the aforesaid Jurisdiction.

AND

IN THE MATTER OF:

- 1. DHOOT INFRASTRUCTURE
PROJECTS LIMITED**
- 2. DHOOT INDUSTRIAL &
INVESTMENT COMPANY PRIVATE
LIMITED**

.....PETITIONERS

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

Date of Pronouncement of the Order :

For the Petitioners :

Mr. A. K. Upadhyay, Advocate

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

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ORDER

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

1. The object of this Petition is to ultimately obtain sanction of this Tribunal to a Scheme of Amalgamation of the Transferor Company, namely Dhoot Industrial & Investment Company Private Limited with the Transferee Company, namely, Dhoot Infrastructure Projects Limited whereby and where under the entire undertakings of the Transferor Company as a going concern together with all its assets and liabilities relating thereto is proposed to be transferred to and vested in the Transferee Company on the terms and conditions stated in the Scheme of Amalgamation with effect from 01.04.2016. A copy of the Scheme of Amalgamation is annexed with the Petition and marked as Annexure "A-1".
2. It is stated in the application that the Transferor Company is engaged in the business of Real Estate, Infrastructure and construction.
3. The Transferee Company is to carry on the business of Real Estate, Infrastructure and construction.
4. The Petitioners further submitted that the proposed merger provides for overall business efficiency to combine their managerial and marketing strength, to integrate the fields of activities of the companies and for improving overall business efficiency, to streamline administration of the Companies and in the overall interest of future growth and diversification of the business of the Companies, to build a wider capital

and financial base and to promote and secure the overall interest growth and economics of all the companies. It is further submitted that the Scheme of Amalgamation will result in economies of scale, reduction in overheads and other expenses, and reduction in administrative procedural work, elimination of duplication of work, better and more productive and effective utilization of the combined resources of both the companies and more productive utilization of labour and other resources and have beneficial results for all the petitioners, their shareholders and employees.

5. It is submitted that the Board of Directors of the Petitioner Companies at the meetings unanimously approved the Scheme of Amalgamation of the Transferor Company with the Transferee Company and the same has been communicated to the respective equity shareholders and creditors of the companies.

6. A copy of the Audited balance sheets together with the Auditors Reports and related Profit and Loss Accounts for the year ended on 31st March, 2017 of both the Petitioner Companies is annexed with the reply dated 08.12.2017 and collectively marked as Annexure "C".

7. It appears from the record that vide order of the Tribunal dated 06.10.2017 in CA No.177/KB/2017 directions were issued to dispense with the meetings of the equity shareholders of the Petitioner Companies in view of the written consent given by all the shareholders.

8. As there are no secured Creditors of the Transferee Company, the requirement of convening and holding meeting of the Secured Creditors of the Transferee Company did not arise.
9. In view of the fact that all the Unsecured Creditors of the Transferee Company have given their consent, vide Order of this Tribunal dated 06-10-2017 in CA No. 177/KB/2017, meeting of the Unsecured Creditors of the Transferee Company was also dispensed with.
10. There are no secured or unsecured creditors in the Petitioner Company No. 2.
11. Pursuant to the Order dated 06-10-2017, passed in CA(CAA) No. 177/KB/2017, the Petitioner Companies had filed this Petition bearing CP(CAA) No. 715/KB/2017.
12. Further, the petitioner companies, in compliance of order dated 19th January, 2018 of this Tribunal, modified by Order dated 18-04-2018 and further rectified by Order dated 13-06-2018, passed in CP(CAA) No. 715/KB/2017, connected with CA(CAA) No. 177/KB/2017, filed Affidavit of Service affirmed on 5th September, 2018 evidencing publications of the hearing of this Petition in Form NCLT-3A in the newspapers "Financial Express" in English and "Aajkal" in Bengali on 04-05-2018 and 26-06-2018, respectively.
13. It has also been stated in the said Affidavit affirmed on 5th September, 2018 that after the said publications being made on 04-05-2018 and 26-06-2018, neither the Petitioner Companies nor their advocate

on record has received any objection/observation/suggestion within the prescribed time as provided in the said publication and till date, from the Central Government or Registrar of Companies, West Bengal or the Official Liquidator, High Court at Calcutta or the concerned Income Tax Authorities or shareholders or Creditors or general public or any other person regarding the Scheme of Amalgamation of Dhoot Industrial & Investment Company Pvt. Ltd., the Transferor Company and Dhoot Infrastructure Projects Ltd., the Transferee Company.

14. In terms of the said order of the Tribunal, it is stated in the Petition that notice of the petition need not be served on any person.

15. The instant petition has been made for sanction of the Scheme of Amalgamation which will be for the benefit of the petitioner companies.

16. The Regional Director, Eastern Region, Ministry of Corporate Affairs has filed Affidavit affirmed on 29th August, 2018 , stating as under :

"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 up-dated 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/shareholders and/or public. The

Central Government has, therefore, decided that the instant petition/scheme need not be opposed.

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 01.12.2018 with a request to forward their comments/observations/objections, if any, and the report sent by the said Department vide letter dated 20.02.2018 has made some comments/observations which is enclosed and marked as "Annexure A" for the kind consideration of the Tribunal."

17. In compliance of direction of this Tribunal vide Order dated 05-09-2018 for an undertaking of the Petitioners regarding compliance of the observations raised by the Income Tax Department, the Petitioner Companies has filed Affidavit affirmed on 5th September, 2018 stating that the Petitioners undertake to comply with the observations raised by the Income Tax Department in the Scheme of Amalgamation of Dhoot Industrial & Investment Company Pvt. Ltd, the Transferor Company and Dhoot Infrastructure Projects Ltd., the Transferee Company and undertake to discharge all the Income Tax liabilities according to the order of the concerned Income Tax Authorities.

18. The Official Liquidator attached to Hon'ble High Court, Calcutta vide his report dated 04-09-2018 has observed that on the basis of verification carried out in accordance with the generally accepted auditing practices and conventions including test checks, the Official

Liquidator is of the opinion that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of its members or to public interest.

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

20. 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) The Scheme of Amalgamation mentioned in paragraph 1 of this petition being Annexure "A-1" to the Petition is sanctioned by this Tribunal so as to binding with effect from the 1st day of April 2016 on the Transferor Company and the Transferee Company and their shareholders and all concerned;
- (b) All the properties, rights and interests of the Transferor Company, are transferred to and vest without further act or deed in the Transferee Company and accordingly the same pursuant to Section 232 of the Companies Act, 2013 are transferred to and vest in the Transferee Company for all the estate and interest of Transferor Company, but subject nevertheless to all charges now affecting the same ;

- (c) All the liabilities and duties of Transferor Company, are transferred without further act or deed in the Transferee Company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 are transferred to and become the liabilities and duties of Transferee Company ;
- (d) All proceedings and/or suits and/or appeals now pending by or against the Transferor Company, be continued by or against the Transferee Company ;
- (e) Leave is granted to the petitioners to file the Schedule of Assets of the Transferor Company within sixty days from the date of the order made herein ;
- (f) Leave is granted to the Transferee Company to allot without further application to such members of the Transferor Company as have not given such notice of dissent as is required by Clause 11 of the Scheme of Amalgamation the shares in the transferee company to which they are entitled under the said Scheme of Amalgamation ;
- (g) The Transferor Company and Transferee Company within 30 days of the date of receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies, West Bengal for registration and on such certified copy being so delivered the Transferor Company shall be dissolved and the Registrar of Companies, West Bengal shall

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place all documents relating to the Transferor Company and registered with him, on the file kept by him in relation to the Transferee Company and the files relating to the said Companies shall be consolidated accordingly ;

- (h) Any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

21. The Company Petition being CP (CAA) No. 715/KB/2017, connected with CA(CAA) No.177/KB/2017 is disposed of accordingly.

22. Urgent certified copies of this order, if applied for be supplied to the parties upon compliance of all requisite formalities.

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Jinan K.R.
Member (Judicial)

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