

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P.(CAA) No. 384 / KB/2017

Connected with CA No. 108/KB/2017

In the Matter of

A Petition for sanction of Scheme of Amalgamation made under Section 232 (3) of the companies Act, 2013 read with Rules 15 of the companies (compromises , Arrangements and Amalgamations) Rules, 2016.

- And -

IN THE MATTER OF:

1. MODERN MINING PRIVATE LIMITED. A company incorporated under the Companies Act, 1956; and having its Registered Office at Magurgadia, Keonjhar Keonjhar Garh Keonjhar-758001, in the state of Odisha within the aforesaid Jurisdiction.

- And -

2. K K PELLETS PRIVATE LIMITED. A company incorporated under the Companies Act, 1956; and having its Registered Office at N.H - 6 Near Bank Of Baroda Keonjhar-758001, in the state of Odisha within the aforesaid Jurisdiction.

- And -

3. BRM HI-TECH STEELS PRIVATE LIMITED. A company incorporated under the Companies Act, 1956; and having its Registered Office at

Sirajuddin Square Keonjhargarh Keonjhar-758001, in the state of Odisha within the aforesaid Jurisdiction

- And -

4. RAJESH IMPORTS PRIVATE LIMITED. A company incorporated under the Companies Act, 1956; and having its Registered Office at 26/5, Kabi Nabin Sen Road Nager Bazar, Dumdum Kolkata-700028, in the state of West Bengal within the aforesaid Jurisdiction.

- And -

5. SHOWHOUSE TRACON PRIVATE LIMITED. A company incorporated under the Companies Act, 1956; and having its Registered Office at 26/5, Kabi Nabin Sen Road Nager Bazar, Dumdum Kolkata-700028, in the state of West Bengal within the aforesaid Jurisdiction

WITH

KK RESOURCES PRIVATE LIMITED. A company incorporated under the Companies Act, 1956; and having its Registered Office at Magurgadia, Keonjhargarh Keonjhar-758001 in the State of Odisha, within the aforesaid Jurisdiction.

AND

IN THE MATTER OF:

1. MODERN MINING PRIVATE LIMITED
2. K K PELLETS PRIVATE LIMITED.
3. BRM HI-TECH STEELS PRIVATE LIMITED.
4. RAJESH IMPORTS PRIVATE LIMITED.

Sd

5. SHOWHOUSE TRACON PRIVATE LIMITED.
6. KK RESOURCES PRIVATE LIMITED.

.....PETITIONERS

Coram : Shri Madan B Gosavi, Member(Judicial)

For the Petitioner :

1. Mr Laxmi Dhar Sahoo, Advocate

Ms. Ishani Pandya, AROC, WB, Office of the Regional Director,
Eastern Region, Ministry of Corporate Affairs

Date of pronouncement of the Order :

Per Shri Madan B Gosavi, Member(Judicial)

ORDER

1. This petition has been filed by Modern Mining Private limited, K K Pellets Private Limited, BRM Hi-Tech Steels Private Limited, Rajesh Imports Private Limited, ShowHouse Tracon Private Limited, the Transferor companies, with K K Resources Private Limited the Transferee company for sanctioning of the Scheme of Amalgamation under the provisions of sections 230 to 232 of the companies Act 2013 read with the relevant rules made there under.
2. The object of this petition is to ultimately obtain sanction of the Tribunal to the proposed scheme of Amalgamation of Modern Mining Private limited,

K K Pellets Private Limited, BRM Hi-Tech Steels Private Limited, Rajesh Imports Private Limited, ShowHouse Tracon Private Limited, the Transferor companies, with K K Resources Private Limited, the Transferee company where all the properties assets, 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 as fully stated in the said Scheme of Amalgamation, a copy of which has been annexed and marked with Annexure A to this petition .

3. The petitioners submitted that this proposed amalgamation scheme shall result in consolidation of the business in one entity and strengthen the position of the merged entity . All the applicant companies belong to the same group and are managed and controlled by the same management. This amalgamation would lead to a more efficient utilization of capital for future growth of the amalgamated entity and result in administrative and operational rationalization, organization efficiencies reduction in overheads and other expenses and optimal utilization of various resources. it would also reduce the managerial overlaps involved in operating different entities ease and increase operational and management efficiency integrate business functions and eliminate duplication and rationalization of administrative expenses.

4. It is stated in the Petition that the Petitioner companies are Private Companies and none of the petitioner companies is listed with any stock exchange and that the proposed scheme of amalgamation will not attract the provisions of the Competition Act, 2002. Hence, no approval of the Competition Commission of India is required.

5. It has been further stated that two of the Petitioner companies, Transferor Companies, namely, Rajesh Imports Pvt. Ltd and Showhouse Tracon Pvt. Ltd are registered as non -deposit taking non-banking finance company.

6. The petitioners have also submitted that the Reserve Bank of India, vide their letter No.DNBS. RO.Kol.No. 10806/99.06.002/2017-18 dated March 26, 2018, advised that the Bank does not have any objection to the proposed amalgamation of Transferor Companies, namely, Modern Mining Private limited, K K Pellets Private Limited, BRM Hi-Tech Steels Private Limited, Rajesh Imports Private Limited, Showhouse Tracon Private Limited, with KK Resources Private Limited, the Transferee Company.
7. This Tribunal, vide Order dated 26th May 2017, passed in Company Application CA No. 108/KB/2017, have dispensed with the convening and holding of the meeting of the equity shareholders of the petitioners as the shareholders have given their consent to the proposed Scheme of Amalgamation.
8. Vide the aforesaid Order of this Tribunal dated 26th May, 2017, as none of the Petitioner Companies have any creditor, there were no requirement of convening and holding of separate meetings of the Creditors of the Petitioner Companies.
9. Pursuant to the said Order of this Tribunal dated 26th May, 2017, notice in form CAAA -3 along with the Company Petition and copy of the order were served upon the central Government through Regional Director, Kolkata, ROC Orissa and West Bengal the Official Liquidator, Orissa and West Bengal, Reserve Bank Of India Kolkata and the Income Tax Department within whose jurisdiction the assessment of the petitioners are made.
10. The Copies of the notices sent to different authorities along with Speed Post receipts at Annexure-A 18.
11. Pursuant to the said Order of this Tribunal dated 26th May, 2017 advertisement for hearing of the publication had been published in two leading newspapers in West Bengal and in Odisha on 07-06-2017 in English and in Oriya and on 08-06-2017 in Bengali.

12. The copies of the Advertisements are annexed with the Petition and marked as Annexure A-19.
13. The petitioners have also submitted that in compliance with section 230 (7) of the Act, statutory Auditor of the Transferee Company has certified that the Accounting treatment is in conformity with the Accounting standards under section 133 of the Act.
14. A copy of the said certificate is attached to the petition as Annexure -A 14 at page 339.
15. After such due compliance, the petitioners have made the instant petition bearing No. CP (CAA) NO. 384/KB/2017, connected with CA No. 108/KB/2017, before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Amalgamation and for orders facilitating and giving effect to the same.
16. Pursuant to Order dated 26th July, 2018 of this Tribunal, passed in CP(CAA) No. 384/KB/2017, connected with CA No. 108/KB/2017, the Petitioner Company has again despatched notice of hearing of the Petition on the Regional Director, Eastern Region, Kolkata, Registrar of Companies, Odisha and West Bengal, Securities Exchange Board of India, and the concerned Assessing Officer along with the Chief Commissioner of Income Tax having jurisdiction over the Petitioner Companies.
17. Further, Notice of hearing of Petition has been published once each in "Business Standard", Kolkata and Bhubaneswar edition on 15-08-2018 and in vernacular newspaper in the Oriya daily "Samaya" and Bengali daily "Dainik Statesman" on 14-08-2018 and 17-08-2018, respectively.

18. An Affidavit of Compliance affirmed on 3rd September, 2018 has been filed by the Petitioner Companies before this Tribunal.

19. The Regional Director, Eastern Region, Ministry of Corporate Affairs has filed Affidavit affirmed on 20th July, 2018 and the observations of the Regional Director, Eastern Region, Ministry of Corporate Affairs are as under :

"2. That the Central Government had given its observation on the Scheme vide affidavit dated 31-01-2018. Thereafter the Company through its advocate has submitted a reply dated 15-06-2018, wherein it is stated that the two Transferor Companies, namely, Rajesh Imports Private Limited and Showhouse Tracon Private Limited are registered as NBFC Companies with RBI. The said Companies are not required to amend their object clause as both the Transferor Companies will be liquidated and will not be in existence after merger. Both the Companies are regular in depositing all NBFC documents with RBI.

Further, in this regard, Petitioner Company submitted NOC received from RBI vide his letter dated 26-03-2018. In view of the same, the Central Govt. has no objection to the said Scheme.

A copy of letter dated 26-03-2018 is enclosed and marked as "Annexure-A"."

20. The Official Liquidator attached to Hon'ble High Court, Calcutta vide his report dated 15th January, 2018 has observed that after

scrutiny of the report submitted by the Chartered Accountant appointed by him and other relevant papers and records etc., the Official Liquidator is of the opinion that the affairs of the Transferor Companies, namely, Modern Mining Private limited, K K Pellets Private Limited, BRM Hi-Tech Steels Private Limited, Rajesh Imports Private Limited, ShowHouse Tracon Private Limited, have not been conducted in a manner prejudicial to the interest of their members or to public interest.

21. Heard the arguments of Ld. Counsels for the Petitioner Companies and the Ld. Assistant Registrar of Companies, West Bengal, Office of the Regional Director, Eastern Region, Ministry of Corporate Affairs.

22. 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, being Annexure A-1 to the Petition, is sanctioned by this Tribunal to be binding on all the equity shareholders of the petitioner companies and all concerned with effect from 1st April 2016.

(b) The whole of undertaking, assets, properties, interest and liabilities of the Transferor Companies are transferred without requirement of any further act or deed to Transferee Company, and become the assets and vest in the Transferee company with all the estate and interest of Transferor

Companies pursuant to section 232 read with section 230 of the companies Act 2013.

(c) Leave is granted to the Petitioners to file the Schedule of Assets of 'Transferor Companies' as stated in the Petition within twenty one (21) days from the date of this order ;

(d) All the liabilities and dues of the Transferor companies are transferred without further act or deed to the Transferee Company and shall become liabilities and dues of the Transferee Company pursuant to section 232 read with section 230 of the companies Act 2013.

(e) All employees of the Transferor Companies are transferred to the Transferee Company .

(f) All legal proceedings and/or suit and /or appeals now pending by or against the Transferor Companies shall be continued by or against the Transferee Company .

(g) The Petitioner Companies shall file a certified copy of this order within 30 days of receipt of this order to the Registrar of Companies Odisha and West Bengal for registration and on such certified copy being so delivered, the Transferor Companies, shall be dissolved without going through the process of winding up with effect from 1st April, 2016 and the ROC 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 relating to the said companies shall be consolidated accordingly and shall take all necessary consequential action in respect thereof.

(h) The Transferee Company shall allot to such members of the Transferor Companies as required under the Scheme of Amalgamation shares in the Transferee Company to which they are entitled under the said Scheme of Amalgamation .

(i) Post dissolution of the Transferor Companies, the fee paid by the Transferor Companies on their Authorized share capital to be set off against the fee payable by the Transferee Company on its increase in authorized share capital subsequent to the amalgamation.

(j) The Transferee Company and the Transferor Companies shall carry out all incidental, consequential and supplementary matters that are necessary to complete the process of amalgamation as envisaged in the Scheme of Amalgamation, fully and effectively.

(k) Any person interested shall be at liberty to apply before this tribunal in the above matter for such directions as may be necessary .

23. In the event, the petitioners supply a legible computerized print out of the scheme and the 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.

24. Accordingly C.P. (CAA) No.384/KB/2017, connected with CA No. 108/KB/2017, stands disposed of.

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

Sd _____ 19/02/18

Madan B Gosavi
Member(Judicial)

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