

NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

Company Petition CP(CAA) No.737/KB/2017

IN THE MATTER OF:

The Companies Act, 2013 - Section 230(6) read with
Section 232(3)

-And-

IN THE MATTER OF:

Shristi Infrastructure Development Corporation Limited, a
Company incorporated under the Companies Act, 1956
and being a Company within the meaning of the
Companies Act, 2013 having its registered office at Plot
No.X-1, 2 & 3, Block EP, Sector V, Salt Lake City, Kolkata
700 091 in the State of West Bengal.

.....Petitioner No.1

East Kolkata Infrastructure Development Private Limited, a
Company incorporated under the Companies Act, 1956
and being a Company within the meaning of the
Companies Act, 2013 having its registered office at Plot
No.X-1, 2 & 3, Block EP, Sector V, Salt Lake City, Kolkata
700 091 in the State of West Bengal.

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.....Petitioner No.2

-And-

Vipani Hotels & Resorts Limited (formerly Vipani Hotels & Resorts Private Limited), a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Plot No.X-1, 2 & 3, Block EP, Sector V, Salt Lake City, Kolkata 700 091 in the State of West Bengal.

.....Petitioner No.3

-And-

IN THE MATTER OF:

1. Shristi Infrastructure Development Corporation Limited
2. East Kolkata Infrastructure Development Private Limited
3. Vipani Hotels & Resorts Limited

..... PETITIONERS

Judgment delivered on : 4-1-2018

Coram : Mr. V.P. Singh, Member(Judicial)

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

For the Petitioners:

Mr D N Sharma, Advocate

Ms Rusha Saha, Advocate

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Per Jinan K. R.

ORDER

The instant Company Petition filed by the Petitioners, namely (1) Shristi Infrastructure Development Corporation Limited ("SIDCL"), (2) East Kolkata Infrastructure Development Private Limited ("EKIDPL") and (3) Vipani Hotels & Resorts Limited ("VHRL") in connection with proposed Scheme of Arrangement between the said Petitioner Nos.1 to 3 and their respective shareholders.

SIDCL is a well established infrastructure development and construction company, having interests primarily in the business of construction on contract basis for other parties and providing allied services, including consultancy; and infrastructure development and real estate, including hospitality.

EKIDPL is a real estate company which is pursuing a project for development of a housing and commercial complex in Kolkata. EKIDPL is a wholly owned subsidiary of SIDCL.

VHRL is another wholly owned subsidiary of SIDCL incorporated with the main object of undertaking hospitality business.

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is submitted in the petition that the hospitality business of SIDCL and the other businesses of SIDCL have good potential as independent businesses. The differing financial needs and strategic imperatives can be better addressed by separation of the hospitality business and the other businesses under two focussed entities.

Further, the real estate development business of EKIDPL can be combined and carried on together with the real estate development business of SIDCL more conveniently and advantageously since SIDCL is already pursuing such business on a much larger scale.

It is stated in the petition that in the circumstances, it is considered desirable and expedient to reorganise and reconstruct the said Companies by amalgamating EKIDPL with SIDCL and demerging the Hospitality Division of SIDCL to VHRL in the manner and on the terms and conditions stated in the said Scheme of Arrangement.

It is further stated in the petition that the respective businesses and interests will stand realigned appropriately in two companies pursuant to the Arrangement and demerger under the Scheme of Arrangement.

Such arrangement and demerger under the Scheme will enable the said respective businesses to be pursued and carried on more conveniently and advantageously with greater focus and attention through such two separate

companies, i.e., SIDCL and VHRL, each having their own management team and administrative set up.

The business considerations and factors applicable to the said businesses will be addressed more effectively and adequately by the respective companies.

It is stated in the petition that the arrangement will lead to such business of the amalgamated SIDCL being carried on more efficiently and economically with better operating parameters.

The same would result, inter alia, from pooling and more effective utilisation of their resources, elimination of duplication of work, and overall reduction of overheads and savings in costs which will be facilitated by and follow the Arrangement.

It is further submitted in the petition that the Scheme of Arrangement will facilitate optimum growth and development of the said hospitality business and other businesses as independent lines of business and better realisation of the potential thereof with independent evaluation and funding on the basis of their own strengths, risks and rewards, respectively applicable to them.

✓ It is stated in the Petition that the Scheme of Arrangement embodies the arrangement between the Petitioner Companies and their respective shareholders. No change in value or terms or any compromise or arrangement is proposed under the Scheme of Arrangement with any of the creditors of the

Petitioner Companies. All the Petitioner Companies are in sound financial condition and their aggregate assets far exceed their aggregate liabilities.

It is further stated in the petition that the Creditors of the Petitioner Companies are not affected in any manner by the Scheme of Arrangement. On the contrary, the Scheme of Arrangement will inure to their benefit and is in their interest.

The Scheme of Arrangement does not involve any capital or debt restructuring and therefore, the requirement to disclose details of capital or debt restructuring is not applicable.

It is stated in the Petition that there are no proceedings pending under Sections 235 to 251 of the Companies Act, 1956 or Section 210 to 227 of the Companies Act, 2013 against the Petitioner Companies.

It is also stated in the petition that no one will be prejudiced if the proposed Scheme of Arrangement is sanctioned and the said Scheme will benefit and is in the interest of the said Companies, their shareholders, creditors, employees and all concerned.

The Board of Directors of the Petitioner Companies at their respective meetings held on 14-02-2017 by resolutions passed unanimously, approved of the said Scheme of Arrangement between the Petitioner Companies and their respective Shareholders whereby and where under it is proposed to reorganise and

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reconstruct the said companies by amalgamating EKIDPL with SIDCL and demerging the Hospitality Division of SIDCL to VHRL on the terms and conditions fully stated in the said Scheme of Arrangement.

The Auditors of the Petitioner Companies have confirmed that the accounting treatment in the said Scheme of Arrangement is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.

The certificate issued by the Auditors of the Petitioners are annexed with the petition and collectively marked "Q".

EKIDPL and VHRL are unlisted Companies while SIDCL is a listed Company. The shares of SIDCL are listed on BSE Limited and The Calcutta Stock Exchange Limited. SIDCL duly filed the Scheme with the said Stock Exchanges for their approval, pursuant to the listing agreements entered into by it with the said Stock Exchanges.

Apart from the same, SIDCL has also submitted the Report of its Audit Committee on the Scheme and various other documents to the stock exchanges and also displayed the same on its website in terms of the SEBI Circular dated 10-03-2017 and addressed all queries on the said documents.

BSE and CSE, by their respective letters dated 12-05-2017 and 29-06-2017 have since confirmed that they have 'no adverse observation' on the Scheme pursuant to the said SEBI Circular.

The copies of the said letters dated 12-05-2017 and 29-06-2017 issued by the BSE and CSE, are annexed with the petition and collectively marked "R".

The provisions required to be incorporated by the Stock Exchanges in the Scheme of Arrangement are incorporated in clauses 19.6 and 19.7 of the Scheme of Arrangement annexed with the petition as Annexure "A"

By an order dated 06-09-2017 in Company Application CA(CAA) No.353/KB/2017 filed before this Tribunal, separate meetings of the equity shareholders, secured creditors and unsecured creditors of SIDCL and Equity shareholders and unsecured creditors of EKIDPL and VHRL were directed to be convened for the purpose of considering and, if thought fit, approving, with or without modification, the said Scheme of Arrangement.

In compliance with the said Order dated 06-09-2017 of this Tribunal, on 25-10-2017, separate meetings of the equity shareholders, secured creditors and unsecured creditors of SIDCL and equity shareholders and unsecured creditors of EKIDPL and VHRL were duly convened and held at India Power Convergence Centre, Plot No. X-1, 2& 3, Block-EP, Sector-V, Salt Lake City, Kolkata – 700 091.

The said meetings of the equity shareholders, secured creditors and unsecured creditors of SIDCL and equity shareholders and unsecured creditors of EKIDPL and

WHRL unanimously approved the said Scheme of Arrangement without any modification in terms of the aforesaid resolution.

In terms of the said order dated 06-09-2017, the Chairman of the meetings has filed his reports on the meetings along with his affidavits on 22-11-2017.

The declaration of the results of the meetings were also posted on the website of SIDCL and published in the "Business Standard" and "Aajkal" in their respective issues dated 01-11-2017.

In compliance with Section 230(5) of the Companies Act, 2013 and the Order dated 06-09-2017 of this Tribunal, the petitioners have duly served notices on the Regional Director, Ministry of Corporate Affairs, Eastern Region, Kolkata, the Registrar of Companies, West Bengal, Income-Tax Department having jurisdiction over the petitioners, the Securities and Exchange Board of India and the Official Liquidator.

No objection or representation has been made by them within the period of thirty days from the date of receipt of the notices by them or till date of filing of this petition.

By the aforesaid order dated 6th September, 2017 of this Tribunal, the Official Liquidator attached to Hon'ble High Court, Calcutta was directed to submit a report under section 232 of the Companies Act, 2013 about the affairs of EKIDPL.

In order to enable the Official Liquidator to make his report and give his opinion, the Official Liquidator attached to the Hon'ble High Court, Calcutta, appointed Mrs Nilima Joshi, Chartered Accountant, 60 Bentinck Street, Kolkata 700 069, a panel Auditor of the Hon'ble Calcutta High Court to examine the books, papers, records and documents of EKIDPL and to make report indicating clearly as to whether in opinion of the said Chartered Accountant the affairs of EKIDPL have been conducted in a manner prejudicial to the interest of its members or to public interest.

Accordingly, Mrs Nilima Joshi, Chartered Accountant had examined the books, records and other documents of EKIDPL and submitted her report dated 4th December, 2017.

On the basis of the above report of Mrs Nilima Joshi, Chartered Accountant, the Official Liquidator, attached to Hon'ble High Court, Calcutta has filed his report dated 20th December, 2017 wherein he has stated that on the basis of verification carried out in accordance with the generally accepted auditing practices and conventions including test checks, he is of the opinion that the affairs of EKIDPL have not been conducted in a manner prejudicial to the interest of its members or to public interest.

After such due compliance, the petitioners have made the instant petition bearing No. CP(CAA)/737/KB/2017 before this Tribunal, among other things, seeking final

sanction to the proposed Scheme of Arrangement and for orders facilitating and giving effect to the same.

Heard the arguments of the Ld. Counsel for the petitioners.

Let notice be served as per requirements of sub-section(5) of section 230 of the Companies Act, 2013 along with all the documents including a copy of the Scheme of Arrangement and the statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal and the concerned Assessing Officer along with the Chief Commissioner of Income-Tax with PAN numbers of the Applicant Companies, through E-mail and by Speed post, both, as also the Official Liquidator having jurisdiction of the transferor and the transferee companies and such other relevant sectoral regulators/authorities, if applicable, which are likely to be affected by the proposed scheme, by sending the same by hand delivery through Special Messenger or by registered post or speed post, both, within seven days from the date of this order for filing their representation, if any, on the petition within 30 days from the date of notice.

The petitioners are to file an affidavit, along with the copy of the notice within seven days regarding service of the notice.

The petitioners are further directed to send notice through e-mail also and filed copies of the mails along with an affidavit. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the petitioners and their Advocates. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Arrangement.

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Such notices shall be sent under Section 230(5) of the Companies Act, 2013 in Form No. CAA-3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein.

Let the advertisement of the hearing of this petition be published one in the English daily, "The Business Standard" and another in the Bengali daily newspaper, "Aajkal", same as was made earlier in 1st motion, stating the PAN numbers of all the Petitioner Companies, 10 days before the date fixed for hearing under Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016 with necessary variations.

The petition is fixed for hearing on 14-02-2018.

Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

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(K.R. Jinan)
Member(Judicial)

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(V.P. Singh)
Member(Judicial)

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