

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM

Shri V. P. Singh
Hon'ble Member(J)
&
Shri Jinan K.R.
Hon'ble Member (J)

**C.P.(CAA) No.604/KB/2017 arising out of CA
No.244/KB/2017**

In the matter of :

A petition made under Sections 230 and 232 of the
Companies Act, 2013;

-And-

In the matter of:

Scheme of Amalgamation;

Bhumika Vyapaar Private Limited, a company incorporated
under the provisions of the Companies Act, 1956, having its
registered office at 8B, Camac Court, 25B, Camac Street, 8th
floor, Kolkata- 700 016, in the State of West Bengal, within
the aforesaid jurisdiction, PAN: AAFCB 2590J;
CIN: U51909WB2012PTC188508

-With-

Shyamsukha Builders Private Limited, a company
incorporated under the provisions of the Companies Act,
2013, having its registered office at Poddar Court,
Gate no.2, 18, Rabindra Sarani, Ground Floor, Kolkata-
700 001, in the state of West Bengal, within the aforesaid
jurisdiction, PAN: AAUCS5910J; CIN:U45400WB2014PTC202066

1. Bhumika Vyapaar Private Limited
2. Shyamsukha Builders Private Limited

... Petitioners

Counsels on Record:

1. Mr. Ravi Asopa, Advocate] For the Petitioners
2. Mr. Deepak Jain, Advocate]

1. Mr. K.S. Pradhan, Joint Director for R.D., ER

Date of Pronouncing the order : 21-12-17

O R D E R

Per Shri V. P. Singh, Member (J)

This petition has been filed for sanctioning of the proposed Scheme of Amalgamation of Bhumika Vyapaar Private Limited, the petitioner no.1 above-named and Shyamsukha Builders Private Limited, being the Petitioner No.2 above-named (hereinafter referred to as the "Transferee Company").

The object of this petition is to obtain sanction of this Tribunal to the proposed Scheme of Amalgamation of Bhumika Vyapaar Private Limited, the petitioner no.1 above-named (hereinafter referred to as the Transferor Company) with Shyamsukha Builders Private Limited, being the Petitioner No.2 above-named (hereinafter referred to as the "Transferee Company") whereby all the properties, assets, rights and claims whatsoever of the Transferor Companies and their entire undertakings together with all their rights and obligations relating thereto are proposed to be transferred to and vest 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.

The Authorised Share Capital of the Transferor Company i.e. the Petitioner no.1 is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each. This is not a listed company.

The Authorised share capital of the Transferee Company, i.e. Petitioner No.2 herein is Rs.1,01,00,000/- divided into 10,000 equity shares of Rs.10/- each and 10,00,000 6% Optionally Convertible Redeemable Preference Shares of Rs.10/- each. The Issued, subscribed and paid up share capital of the Transferee Company is Rs.1,01,00,000/- divided into 10,000 equity shares of Rs.10/- each and 10,00,000 6% Optionally Convertible Redeemable Preference Shares of Rs.10/- each all fully paid up.

The petitioner no.1 is having 5 equity shareholders and the petitioner no.2 is having 2 equity shareholders and 1 preference shareholder. Copies of the list of shareholders of the petitioner companies have been annexed and marked as Annexure "M" to the petition.

As per order of this Tribunal dated 26th July, 2017 in CA No.244 of 2017, the Chairperson, Mr. Ravi Asopa, Advocate convened, held and conducted separate meetings of the equity/preference shareholders and unsecured creditors of the Transferor Company and the Transferee Company on 15th September, 2017. Notice of the said meetings was served

individually by hand upon each of the said equity/preference shareholders and unsecured creditors of the petitioner companies as required by the said order together with a copy each of the scheme of Amalgamation and of the statement required under section 230 of the Companies Act, 2013 and a form of Proxy.

The said meeting of the shareholders approved the above Scheme without any modification. The meeting of the unsecured creditors of the Transferor Company was attended through authorized representative by three unsecured creditors having a total claim of Rs.13,43,92,930/-. The said meeting of the unsecured creditors of the Transferor Company approved the above Scheme without any modification.

With regard to the meeting of the unsecured creditor of the Transferee Company, there was only one creditor having a claim of Rs.3,000/-. Since the Transferee company had paid the dues of the said creditor before the meeting and produced a certificate to this effect from the Auditor, the meeting of the unsecured creditor of the Transferee Company was not held. Such certificate was submitted to the Chairperson for his record.

The Chairperson of the aforesaid meetings has reported the results of the said meetings to this Tribunal. True copies of the said reports together with their affidavits have been annexed and collectively marked as Annexure "J" to the petition.

Notice of the said meetings was also advertised, separately, as directed by the said order in "The Business Standard", Kolkata and in "Pratidin", Kolkata in their respective issues both dated 14th August, 2017.

The petitioner companies have now come before the Tribunal with this Company Petition i.e., this Second Motion and filed the following documents along with the Company Petition.

- i) Copies of Audited Accounts as on 31st March, 2017 of the Transferor Company as well as Transferee Company marked as Annexures "C" and "E" to the petition. The petitioner companies have also submitted the Copies of the Balance Sheet, the related Profit & Loss Account and the Auditor's Reports with the audited Accounts.
- ii) Copies of Memorandum & Articles of Association of all the Petitioner companies marked as Annexures "B" and "D" of the petition.
- iii) Copies of Board Resolutions approving the scheme and collectively marked as Annexure "F" to the petition.
- iv) Auditor's certificate for unsecured creditors along with the list marked as Annexure "G" to the petition.
- v) Copy of Auditor's certificate certifying no unsecured creditor in the transferee company annexed and marked as "I" to the petition.
- vi) Copies of Chairman Reports of the meetings of the shareholders of the petitioner companies marked as Annexure "J" to the petition.
- vii) Copy of the Share Valuation Report annexed and marked as Annexure "K" to the petition.

- viii) Copies of certificate from the Company's Auditors in terms of section 133 of the Companies Act marked as Annexure "L" to the petition.
- ix) List of shareholders marked as Annexure "M"
- xi) Two Affidavits verifying the petition marked as Annexure "N".

Now, after filing the petition before this Hon'ble Tribunal and perusing the documents submitted by the petitioner and as per norms enunciated in Motion II format, it is ordered as follows:

- a) The date of hearing of the Petition filed jointly by the Petitioner for the sanction of the Scheme is fixed on 26th of February, 2018.
- b) Notice of the hearing of this petition in form NCLT 3A shall be advertised once in English daily 'Business Standard' and in Bengali 'Pratidin' daily newspaper, not less than 10 days before the aforesaid date fixed for hearing.
- c) In addition to the above public notice, the petitioner companies shall serve notice of the petition on the following authorities namely (a) Central Government through Regional Director, Eastern Region, Ministry of Corporate Affairs, (b) Registrar of Companies, West Bengal (c) The Income Tax Department of the office having jurisdiction over the respective petitioner companies, (d) the Official Liquidator, (e) Reserve

Bank of India 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 within 7 days from the date of this order for filing their representations, if any on the petition. Notice along with the copy of the application and other related documents with PAN Numbers of the applicant companies should be served upon the Chief Commissioner of Income-Tax and the Assessing Officer of the Income Tax Department by Mail and Speed Post or by Messenger. Applicant Companies are also directed to mention their respective PAN Nos. everywhere.

- d) The notice shall specify that representations, if any should be filed before this Tribunal within 30 days of date of receipt of the notice with a copy of such representations being sent simultaneously to the petitioners and/or their Authorized Representatives. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representations to make on the Scheme of Amalgamation.
- e) All the petitioner companies shall at least 7 days before the date of hearing of the petition file an affidavit of service in relation to the Paper Publication as well as service of notices on the Authorities specified above including the Sectoral Regulators.

Sd

Sd

The Company Petition No. 604 of 2017 connected with C.A No.244 of 2017 is directed to be listed for further hearing on 26th February, 2018.

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

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(Jinan ²¹K.R.)
Member (J)

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(V. P. Singh)
Member(J)

Signed on this *21st* the day of December, 2017