

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. 375/KB/2017 connected with C.A No.113 /2017

In the matter of:

An Application under Sections 232 (3) of the Companies
Act, 2013 read with Rule 15 of the Companies
(Compromise, Arrangements and Amalgamations)
Rules, 2016;

-And-

In the matter of:

Scheme of Amalgamation

AMPI FINANCE LIMITED, a company incorporated
under the Companies Act, 1956 and having its registered
office at 22, R.N. Mukherjee Road, 3rd Floor, Kolkata-
700001, West Bengal within the aforesaid jurisdiction;

...Petitioner Company-1

AMPI PROJECTS PRIVATE LIMITED, a company
incorporated under the Companies Act, 1956 and
having its registered office at 22, R.N. Mukherjee
Road, 3rd Floor Kolkata-700001, West Bengal
within the aforesaid jurisdiction;



...Petitioner Company-2

PKD PROJECTS PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956 and having its registered office at 22, R.N. Mukherjee Road, 3rd floor, Kolkata-700001, West Bengal within the aforesaid jurisdiction;

...Petitioner Company-3

ATLANTIC VINTRADE PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956 and having its registered office at 22, R.N. Mukherjee Road, 3rd Floor, Kolkata-700001, West Bengal within the aforesaid jurisdiction;

...Petitioner Company-4

And

In the matter of:

1. AMPI FINANCE LIMITED
2. AMPI PROJECTS PRIVATE LIMITED
3. PKD PROJECTS PRIVATE LIMITED
4. ATLANTIC VINTRADE PRIVATE LIMITED

.... Petitioners

Counsels on Record:

1. Ms. Pritha Bose, PCS] **For the Applicants**

Date of pronouncing the order: 5-12-17

ORDER

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

This Company petition filed by the petitioner companies is coming before us for admission and for fixing a date of hearing of the

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Main Company Petition as well as for a direction in relation to publication in press to be effected and notices to be issued to the authorities concerned in relation to date of hearing of the Petition and calling of the objections, if any, to the Scheme of Amalgamation (hereinafter referred to as "SCHEME" for brevity) contemplated between the petitioner companies.

The object of this petition is to sanction of this Hon'ble Tribunal to a Scheme of Amalgamation (hereinafter referred as "said Scheme" or "Scheme") proposed to be made between the Transferee Company (AMPI Finance Ltd.) and Transferor Companies, (AMPI Projects Private Limited, PKD Projects Private Ltd., Atlantic Vintrade Private Ltd. and their respective shareholders whereby and whereunder the entire undertaking of the Transferor Companies as a going concern together with all its assets and liabilities will stand transferred to and vested in the Transferee Company with effect from 1st April, 2016 in a manner as provided in the scheme of amalgamation, duly approved by the shareholders of the petitioner companies at their respective meetings presided over by the Chairperson appointed under the order dated 4th April, 2017 passed by the Hon'ble Tribunal in C.A. No.113 of 2017. Copies of said scheme of amalgamation and said order dated 4th April, 2017 have been annexed with the petition and marked as Annexures "A" and "B".

From the records it is seen that the First Motion seeking dispensation from conducting the meeting of the creditors of the petitioner companies were filed before the Hon'ble Bench vide Company Application 113/2017 and based on such joint Application moved under Section 230-232 of the Companies Act, 2013, directions were issued by the Hon'ble Bench on 4th of April, 2017, wherein the meeting of the secured and unsecured creditors of the Petitioner

Companies were dispensed with as written consent by way of affidavit has been obtained by all the petitioner Companies for the approval of the Scheme. However, in relation to the equity shareholders of the petitioner companies, Directions were given to convene the meeting of the equity shareholders of all the petitioner Companies on 8th of May, 2017 at their respective registered offices for the purpose of obtaining their approval for the proposed scheme of Amalgamation, as prayed for.

In compliance with the order dated 4th of April, 2017 passed by the Hon'ble Bench in CA 113 of 2017, the petitioners have served notices of the meeting on statutory authorities, the Central Government through Regional Director, Registrar of Companies, West Bengal, Income Tax Department, Kolkata through registered post. Further, notice was also published in the English daily "Business Standard" and in Bengali daily, "AAJKAL" on 8th of April, 2017. Individual notices were served by personal messenger to the respective equity shareholders of the petitioner companies. An affidavit dated 1st May, 2017 was filed with the registry in respect of service and publication. Despite service of notices, as aforesaid in terms of the order, the petitioner and/or their authorized representatives have not received any objection or representation under Rule 8 of Companies (Compromise, Arrangements and amalgamation) Rules, 2016.

Pursuant to the aforesaid order, meeting of the equity shareholders of the respective petitioner companies was duly held and convened on 8th of May, 2017 at their registered office at the stipulated time and the Court appointed chairman Mr. Soumabho Ghosh, Advocate, who presided over the meetings submitted his

reports in respect of each of the said meetings and the same was filed with the registry within the stipulated time period.

It appears from the records that the equity shareholders of all the petitioner companies have unanimously approved the resolution favoring the scheme of amalgamation.

In terms of the directions of the Hon'ble Tribunal, notices were again served to the sectoral regulators and affidavit of service in respect of the same was filed with the registry on the 17th of October, 2017.

The Regional Director, Ministry of Corporate Affairs, Eastern Region has submitted in his affidavit affirmed on 22nd November, 2017, the observations on Central Government on the scheme as under:

- a) 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. 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.
- b) 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 25-07-2017 with a request to forward their comments/observations/objections, if any, on the proposed scheme of amalgamation and the reply

dated 04.08.2017 received from the said department with regard to one of the Transferor Company namely, M/s. PKD Projects Private Limited is enclosed with the affidavit as Annexure "A" which states that scrutiny assessment for the financial year 2015-16 is pending.

- c) It is further submitted that the petitioner companies reported that the Transferee Company is registered with Reserve Bank of India as NBFC, and the proposed scheme of amalgamation has been forwarded to RBI and a No Objection letter has been obtained from the RBI to the proposed scheme. The said NOC is enclosed with the affidavit as Annexure "B".

The Petitioner Companies have complied with the proviso to Section 230 (7) by filing certificate of the Company's Auditor relating to compliance with Accounting Standards prescribed under section 133 of the companies Act, 2013.

In view of the above, it is ordered as follows:

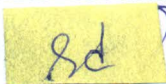
- a. The date of hearing of the petition filed by the petitioners for sanction of scheme is fixed on 01/01/2018.
- b. Notice of the hearing of this petition in form NCLT 3A shall be advertised once in English daily "Business Standard" and in Bengali daily "Aajkal" newspaper as was made earlier in 1st motion not less than 10 days before the aforesaid date fixed for hearing.
- c. Since the petitioner companies have already served notices to the sectoral regulators and obtained Central Government's approval to the proposed scheme of amalgamation, serving notices to the sectoral regulators are dispensed with.

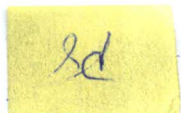
d. Objections, if any, to the scheme contemplated by the authorities to whom notice has been given on or before the date of hearing fixed herein may be filed, failing which it will be considered that there is no objection to the approval of the Scheme on the part of the authorities by this Tribunal and subject to other condition being satisfied as may be applicable under the Companies Act, 2013 and relevant rules made thereunder.

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

f. The next date of hearing of the petition shall be on 01.01.2018.

Certified copy of the order may be issued upon compliance of all requisite formalities.


(V. P. Singh)
Member (J)


(Jinan K.R.)
Member (J)

Dated, this, the 5th day of December, 2017