

IN 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. No.474/KB/2017 connected with C.A. No.123/KB/2017

In the Matter of :

Section 230(1) of the Companies Act, 2013 and other
applicable provisions of the said Act read with Rule 15(1)
Compromises Rules, 2016 ;

-And-

In the Matter of :

Scheme of Arrangement ;

Selwel Worldwide Trade Private Limited, a company
Incorporated under the provisions of the Companies Act,
1956 and having its registered office at 2G, Neelambar
Building, 28B, Shakespeare Sarani, Kolkata - 700017,
within the aforesaid jurisdiction;

-With-

Vishal Victory Metalengg Private Limited, a Company incorporated
under the provisions of the Companies Act, 1956 and having its
registered office at 2G, Neelambar Building, 28B, Shakespeare Sarani,
Kolkata - 700017, within the aforesaid jurisdiction;

1. Selwel Worldwide Trade Private Limited
2. Vishal Victory Metalengg Private Limited

... Petitioners

Counsel on Record

1. Mrs. Manju Bhuteria, Advocate]
2. Mr. S.K.Bajoria, Advocate] For Petitioners
3. Mrs. Moumita Sarkar, Advocate]
4. Shri K.S.Pradhan, Joint Director, R.D.(ER), MCA

Date of Pronouncing the Order : 29.11.2017

ORDER

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

This petition has been filed jointly by the petitioner nos.1 and 2, i.e., Selwel Worldwide Trade Private Limited (hereinafter referred to as the Transferor Company) and Vishal Victory Metalengg Private Limited (hereinafter referred to as the Transferee Company) for obtaining sanction of this Tribunal regarding Scheme of Arrangement of the petitioner no.1 with the petitioner no.2.

The object of this petition is to obtain sanction of this Tribunal to a compromise or arrangement whereby and whereunder all properties, investments, rights and powers and all debts, liabilities, duties and obligations comprised in and/or pertaining to and/or belonging to the Petitioner Company No.1 including all its respective assets and properties moveable and immoveable assets shall without any further act or deed stand transferred and/or vested to the Petitioner Company No.2 herein, namely, Vishal Victory Metalengg Private Limited and form part of Vishal Victory Metalengg Private Limited, a copy whereof has been annexed and marked with the letter "A" to the petition.

The authorized share capital of the petitioner company no.1 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each and the issued, subscribed and paid up share capital is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each all fully paid up having its registered office at 2G, Neelambar Building, 28B, Shakespeare Sarani, Kolkata- 700 017.

The authorized share capital of the petitioner company no.2 is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each and the issued, subscribed and paid up share capital is Rs.3,00,000/- divided into 30,000 equity shares of Rs.10/- each all fully paid up having its registered office at 2G Nilambar Building, 28B, Shakespeare Sarani, Kolkata- 700 017. Both the companies are unlisted.

It is observed from the records that pursuant to the order of this Tribunal dated 3rd July, 2017 in CA No.123/KB/2017, a supplementary affidavit has been affirmed on 28th July, 2017 and has been submitted before this Tribunal containing the following documents:

- (a) Separate notice issued to each and every creditor of both the Applicant companies. Copy of such notice alongwith the receipts have been annexed with the Supplementary Affidavit as Annexure "A".
- (b) The creditors of both the Applicant Companies have duly given their consent with affidavit, which have been annexed with the Supplementary Affidavit and collectively marked as Annexure "B".
- (c) Copies of necessary notices served upon the Regional

Director, Ministry of Company Affairs, Eastern Region, Registrar of Companies, West Bengal, Official Liquidator, Income Tax Authorities have been filed and marked as Annexure "C", "D", "E" and "F" respectively to the Supplementary Affidavit.

In response to communication dated 28th August, 2017 sent by the Registry of the Tribunal, the Applicant Companies submitted the following documents through Supplementary Affidavit dated 6th September, 2017.

(a) The latest available unaudited financial statement as on March 31, 2017 of both the petitioner companies have been annexed and marked as Annexure "X" and "Y" respectively to the Supplementary Affidavit.

(b) Copies of the relevant Board Resolutions have been annexed and marked as Annexure "XX" to the Supplementary Affidavit.

(c) A copy of the Auditor's Certificate, certifying the Accounting treatment of the Scheme in accordance with the provisions of section 232(2) of the Companies Act, 2013 has been annexed and collectively marked as Annexure "YY" to the Supplementary Affidavit.

(d) Necessary Court fees stamps has been affixed on the petition.

The Petitioner Companies have also submitted through the Supplementary Affidavit dated 6th September, 2017 that the petitioner company no.1 i.e. Selwel Worldwide Trade Private Limited is a wholly owned subsidiary of petitioner company no.2, i.e. Vishal

Victory Metalengg Private Limited. The entire share capital of the petitioner company no.1 is held by the petitioner company no.2. The same has also been declared in the Petition.

The petitioner companies have submitted their respective Permanent Account Numbers and also the list of dates and Synopsis.

It is also observed that by an order dated 3rd July, 2017 in CA No.123/KB/2017, this Tribunal dispensed with the meetings of the shareholders and the creditors of both the applicant companies, subject to filing of list of creditors along with the written consent by way of affidavit.

Pursuant to the order of this Tribunal dated 3rd July 2017 in CA No.123/KB/2017, the Official Liquidator has submitted his Report dated 11th October, 2017 along with the Report of the Chartered Accountant appointed by the Official Liquidator in connection with section 230 to 232 of the Companies Act, 2013.

Pursuant to the order of this Tribunal dated 3rd July 2017 in CA No.123/KB/2017, the Central Government through the Regional Director also has filed its 'no objection' affidavit before the Tribunal. Reply has been duly filed by the petitioners. None has objected to the scheme.

Subsequent to the above compliance, as per the Order of the Tribunal, this Second motion has been filed before this Hon'ble Tribunal and after having heard the Ld. Counsel for the Petitioners and having perused the documents submitted by the petitioners, the following orders are passed.

- a) The date of hearing of the Petition filed jointly by the Petitioners for the sanction of the Scheme is fixed on 1st 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 'Aajkal' 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 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.

The Company Petition No. 474/KB/2017 connected with C.A No.123/KB/2017 is directed to be listed for final hearing on 1st February, 2018.

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

Sd/-
(Jinan K.R.)
Member (J)

Sd/-
(V. P. Singh)
Member (J)

Signed on this, the 29th day of November, 2017

Mst/PS