

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

T.P. No.161 of 2017
connected with C.P. No.1073/2016

CORAM :

Shri Vijay Pratap Singh, Hon'ble Member (Judicial)
&
Shri Jinan K.R., Hon'ble Member (Judicial)

In the Matter of : The Companies Act, 1956;
-And-

In the Matter of: An application under Sections 391(2) and 394 of the said Act;
-And-

In the Matter of : G. S. Tradelink Private Limited, a Company incorporated under the Companies Act, 1956, and having its registered office at 19, Synagogue Street, Room No.701, 7th floor, City Centre, Kolkata – 700001, within the aforesaid jurisdiction;

Petitioner No. 1/Transferor Company

-And-

In the Matter of: Victorian Marketing Private Limited, a Company incorporated under the Companies Act, 1956, and having its registered office at 19, Synagogue Street, Room No.701, 7th floor, City Centre, Kolkata – 700001, within the aforesaid jurisdiction;

Petitioner No.2/Transferee Company

-And-

In the Matter of:

1. G S Tradelink Private Limited

2. Victorian Marketing Private Limited Petitioners

Counsel on Record

1. Mrs. Noelle Banerjee, Advocate]

For the Petitioners

Date of Pronouncing the order: 25/10/17

ORDER

Per Shri Jinan K.R., Member(J):

This Company Petition has been filed jointly by the Petitioners namely, M/s. G. S. Tradelink Private Limited and M/s. Victorian Marketing Private Limited (hereinafter referred to as the Petitioners) under Sections 391(2) and 394 of the Companies Act, 1956 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation proposed between M/s. G. S. Tradelink Private Limited ("the Transferor Company") and M/s. Victorian Marketing Private Limited ("the Transferee Company") and their respective shareholders. A copy of the Scheme has been annexed as **Annexure "A"** to the application.

The object of this petition is to ultimately obtain sanction of this Hon'ble Tribunal to a Scheme of Amalgamation (hereinafter referred to as "Scheme") of the Transferor Company, i.e., Petitioner no.1 with the Transferee Company, i.e., the petitioner no.,2 whereby and where under the entire undertakings of the Transferor Company as a going concern together with all the assets and liabilities relating thereto is proposed to be transferred to and be vested in the Transferee Company on the terms and conditions and in the manner fully stated therein.

On perusal of the records it appears that the Hon'ble Calcutta High Court vide order dated 21/11/2016 in C.A. No. 808 of 2016 has dispensed with the meetings of the shareholders of the Transferor and Transferee Companies and directed the applicants to file confirmation petition within four weeks from the date of the order, being **Annexure "F"** to the petition.

In compliance of the aforesaid order dated 21/11/2016 of the Hon'ble Calcutta High Court, petitioners have filed **Company Petition No. 1073/2016** before the Hon'ble Calcutta High Court, which was subsequently transferred to this **Tribunal** and re-numbered as **T.P.No. 161/2017**.

It further appears that the Hon'ble High Court at Calcutta vide order dated 28.11.2016 in Company Petition No. 1073/2016 has directed to serve notice on the Central Government through the Regional Director, Ministry of Corporate Affairs, Eastern Region, Kolkata by December 6, 2016. and publish advertisements of notice of the petition in two newspapers once in "Business Standard", Kolkata and once in "Bartaman", Kolkata by December 16, 2016.

In compliance of the aforesaid order dated 28/11/2016 of the Hon'ble Calcutta High Court, the petitioners duly served notice on the Central Government, through the Regional Director, Eastern Region, Kolkata on 30/11/2016 and made publication of notices of petition once in the English daily "Business Standard" on 08.12.2016 and once in the Bengali newspaper 'Bartaman' on 10.12.2016 and filed affidavit of service/compliance, duly affirmed on 14/12/2016.

The Regional Director, Eastern Region, Kolkata, representing the Central Government, by an affidavit affirmed on 18/07/2017 has made the following observations:

- "(a)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 up-dated 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)as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 15/12/2016 with a request to forward their comments/observations/objections, if any, on the proposed scheme of amalgamation and no reply received from the said authority till date."*

Upon scrutiny of the petition for sanction of the Scheme of Amalgamation, this Tribunal by an Order dated 31/07/2017 directed the petitioners to file a Supplementary Affidavit within 30 days annexing **(1)** Auditor's Certificate as per Section 232(3) of the Companies Act, 2013; **(2)** Valuation Report from the Chartered Accountant; **(3)** Reports from Director of merging Companies explaining the effect of Compromise/arrangement as per Section 232(2) read with Rule 16 of Companies (Compromise, Arrangements and Amalgamation) Rules, 2016; and **(4)** Vakalatnama along with authorization from Board of Directors of Petitioner Companies.

In compliance of the aforesaid Order dated 31/07/2017 of the Tribunal, the petitioners have duly filed a supplementary affidavit, affirmed on 28/08/2017, annexing all those documents.

In view of the provisions of section 230 to 232 of the Companies Act, 2013 as well as relevant Rules having been framed under which this Tribunal has now been vested with the power to consider the compromise or arrangement and reconstruction, which includes the approval of the scheme of arrangement/amalgamation. Hence, this Second Motion coming up before us for consideration is taken up and in terms of provisions of sections 230 to 232 of the Companies Act, 2013 read with Rule 16 of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2016 brought into effect on and from 15.12.2016, it is pertinent to mention that the Hon'ble Calcutta High Court vide its order dated 21.11.2016 had dispensed with the meeting of the shareholders but no such dispensation was granted regarding the meeting of the creditors. Under section 230(9) of the Companies Act, 2013, the Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditor or class of creditors, having at least 90% value, agree and confirm by way of affidavit to the scheme of compromise or arrangement. Therefore, by an Order dated 11/09/2017 petitioners were directed to file a Supplementary Affidavit annexing the list of creditors along with the consent of creditors with affidavit within 10 days from the date of the order.

In compliance of the aforesaid Order dated 11/09/2017 of the Tribunal, the petitioners have duly filed a supplementary affidavit, affirmed on 20/09/2017, annexing list of creditors along with consent of creditors in affidavit form. However, on perusal of the records we took note of non-filing of report by the Official Liquidator. This application being filed for sanction of the Scheme could not be disposed of without the report of the Official Liquidator. On going through the records it is also understood that the Hon'ble High Court, Calcutta not issued notice to the Official Liquidator calling report from him. Accordingly, we hereby issue

notice to the Official Liquidator directing him to file report within 1 month of the date of the order. Petitioner is directed to serve a copy of the application along with the Scheme to the Official Liquidator. Petitioner is further directed to serve a copy of this order on the Official Liquidator and file affidavit of service within 7 days.

The next date of hearing is fixed on 06/12/2017.

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

Sd/-
25/10/17

(Vijai Pratap Singh)
Member (Judicial)

Sd/-
25/10/17

(Jinan K. R.)
Member (Judicial)

Signed on this, the 25th day of October, 2017.