

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Company Application No. CP(CAA) No.450/KB/2017

In the matter of:

The Companies Act, 2013.

And

In the matter of:

An application under Sections 230 and 232 of the said Act and Rule 15 of the Companies(Compromises, Arrangements And Amalgamations) Rules, 2016 ('The Rules')

And

In the matter of:

Tega Industries Limited, a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at 147, Block-G, New Alipore, Kolkata, West Bengal - 700 053, within the aforesaid jurisdiction ;

.... (' Transferee Company' or ' Amalgamated Company')

And

In the Matter of:

Tega Industries(SEZ) Limited, a company incorporated under the

provisions of the Companies Act, 1956, having its Registered Office at Plot No.Z/103/J, Dahej SEZ, Phase-II, Taluka - Vagra, Dahej, Bharuch, Gujarat - 392130, outside the aforesaid jurisdiction ;

....Transferor Company or Amalgamating Company'

And

In the matter of :

Tega Industries Limited

..... Petitioner Company

For the Petitioner :

Mr. SK Tiwari

...For the Petitioner

Date of Pronouncing the order : 16-10-2017

Per Shri VP Singh, Member(Judicial)

ORDER

The Petitioner has filed the instant petition to obtain sanction of the Scheme of Amalgamation of Tega Industries(SEZ) Limited('Transferor Company or Amalgamating Company' with Tega Industries Limited ('

Transferee Company' or ' Amalgamated Company') where under the entire Undertaking of the Amalgamating Company as going concern together with all its assets and liabilities will stand transferred to and vested in the Amalgamated Company with effect from 01-10-2016.

The petitioner stated in the petition that the Transferee Company, was incorporated on 15-05-1976, under the provisions of the Companies Act, 1956, as a public limited Company, in the State of West Bengal.

- The Transferee Company is presently engaged in the activity of manufacturing, buying, selling, exporting, importing, designing, installation,. Servicing and dealing in all kinds of wear resistant components, moulded wear resistant products, process equipment's and accessories etc. to cater the mineral processing, mining, material handing and environment industries.

The petitioner further stated that the Transferor company is a wholly owned subsidiary of the Transferee Company, and as a manufacturing facility located at Dahej SEZ, in Bharuch, Gujarat.

It is stated in the petition that the Transferor Company was incorporated on 26-08-2010 under the provisions of the Companies Act, 1956, as a Public Limited company. The registered office of the Transferor Company is in the State of Gujarat.

The petitioner submitted in the petition that the rationale, which led the management of both the Companies to decide for amalgamation lies in several positive factors like greater financial strength and flexibility for the amalgamated entity, enable better and efficient management, control and running of the businesses to attain operational efficiencies,

simplified corporate structure, etc. All these factors will culminate in maximizing overall shareholders' value. The amalgamation is envisaged to bring multiple benefits to both the Companies. Thus, the amalgamation would be to the mutual advantage of both the Amalgamating and Amalgamated Companies. The amalgamation shall not be in any manner prejudicial to the interest of the concerned members, creditors, employees or general public at large.

No one will be prejudiced if the said Scheme of Amalgamation is sanctioned and the sanction thereof will benefit and is in the interest of the Transferor and Transferee Companies and their shareholders, creditors, employees and all concerned.

The petitioner submitted that as the Applicant Company beneficially holds 100% of the equity and preference shares of the Amalgamating Company, no share shall be issued by the Applicant company on amalgamation. Hence, the rights of the equity shareholder and preference shareholders of the Applicant Company shall remain the same before.

The petitioner further submitted that as far as the Secured and Unsecured Creditors of the Applicant company are concerned, they will not be affected by the proposed Scheme of Amalgamation since post Scheme, the assets of the Applicant Company will be sufficient to discharge its liabilities and further, it also does not involve any compromise or arrangement with any creditors or the Applicant Company.

The Scheme of Amalgamation was approved by the Board of Directors of both the Companies in their respective Board meetings.

By an Order dated 24th April, 2017 passed by this Tribunal in the Company Application No. 89/2017, the petitioner Company was directed, inter alia, to convene meetings of its Equity shareholders, secured Creditors and Unsecured Creditors at its Registered Office on 30-05-2017.

Following the said Order dated 24-04-2017 of this Tribunal, notices were issued to Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferee Company. Notices of the said meetings were also served on 28-04-2017 on the Statutory Authorities, namely, the Central Government i.e. Regional Director (Eastern Region), Registrar of Companies, Kolkata and the Assistant Commissioner of Income-tax, Kolkata for filing their representation, if any, within 30 days of the notice.

Further, following the said Order dated 24-04-2017 of this Tribunal, the newspaper advertisement was published on 28-04-2017 in English Daily "The Business Standard" and "the Aajkal", the Bengali Daily, for holding of meeting of equity shareholders, secured creditors and the unsecured creditors.

Affidavit of service of notice by the petitioner Company was filed on 18-05-2017 before the Tribunal

On 30th May, 2017, respective meetings of the equity shareholders, Secured creditors and Unsecured Creditors of the Transferee Company were duly held.

The Chairperson, Mr. Atul Kumar Labh, PCS, who was appointed by the Tribunal vide order dated 24-04-2017, to act as a Chairperson of the said meetings with direction to report the result of the said meetings to the Tribunal, presided over the said meetings and made Reports of results of each of the said meetings, which have been filed with the Registry of this Tribunal within the stipulated time of four weeks of the conclusion of the meeting.

Meeting of the equity shareholders was attended by 10(ten) shareholders present in person and/or proxy, entitled together to 57,513,040 equity shares amounting to Rs. 575,130,400, representing 99.85% of the total value of the equity shares of the petitioner company.

Meeting of the Secured Creditors was attended by 3(three) number of Secured Creditors present in person and/or proxy entitled together to Rs. 4,457 lakhs, representing 47.29% of the total value of the secured creditors of the petitioner company.

Meeting of the Unsecured Creditors was attended by 26(Twenty six) number of Unsecured Creditors present in person and/or proxy entitled together to Rs. 21,490,773, representing 4.28% of the total value of the Unsecured Creditors of the petitioner company.

All the Equity Shareholders, secured creditors and the unsecured creditors who attended the meeting, have casted their votes unanimously in favour of the Scheme of Amalgamation.

The petitioner stated that the Regional Director, Kolkata has sent notice dated 03-05-2017 to the petitioner company asking to furnish

information along with the copy of relevant documents. The petitioner Company has duly furnished relevant information/documents to the Regional Director, Kolkata vide its letter dated 12-05-2017, submitted on 18-05-2017.

The Regional Director, Kolkata has not issued any further notice and the period of 30 days has already been elapsed from the date of receipt of notice by the relevant statutory authorities and as on date they have not sent any further representations to the petitioner company.

In compliance of the proviso to Section 230(7) of the Act, M/s. Price Waterhouse & Co., Bangalore, LLP, chartered Accountants, who is the Auditor of the petitioner company certified that accounting treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards prescribed under Section 133 of the Act.

The Regional Director, Eastern Region, Ministry of Corporate Affairs, at Kolkata vide his affidavit dated 10th October, 2017 has 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 transferee company also up-dated in filing the statutory returns.

The Regional Director in his above affidavit further submitted that a copy of the Scheme of Amalgamation was forwarded to the Income-Tax Department on 03-05-2017 with a request to forward their comments/observations/objections, if any, but the said authority did not made any reply about the proposed scheme till the date of the affidavit.

The petitioner company has also filed the supplementary affidavit enclosing a copy each of the Annual Report(including the Balance sheet, the related Profit and Loss Account and the Auditors' and Directors' Report) of the Applicant company as also of the Transferor Company, namely, Tega Industries(SEZ) Limited as on 31-03-2016,

One copy each of the provisional Financial Statement of the Applicant company as also of the Transferor Company, namely, Tega Industries(SEZ) Limited for the period from 01-04-2016 upto 30-09-2016, are also enclosed with the Supplementary Affidavit by the Petitioner Company.

After such due compliance, the petitioners have made the instant petition bearing No. CP(CAA)/450/KB/2017 before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Amalgamation.

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

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 Amalgamation 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 Income-tax department 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 he same by hand delivery through Special Messenger or by registered post or speed post 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 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 Amalgamation.

Such notices shall be set under Section 230(5) of the Companies Act, 2013 in Form No. CAA-34 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 20126 with necessary variations incorporating the directions therein.

Let the advertisement of the hearing of this petition be published one in the English daily, "Business Standard" and another in the Bengali daily newspaper, "Aajkal" same as was made earlier in 1st motion, 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 28th November, 2017.

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

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(KR Jinan)
Member(Judicial)

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(VP Singh)
Member(Judicial)