

In the National Company Law Tribunal,
Kolkata Bench, Kolkata

CP No.145/KB/2017

In the matter of:

An application under Sec.230 read with Sec.232(3), and other applicable sections and provisions of the Companies Act, 2013 (Compromises, Arrangements and Amalgamation) Rule 2016.

And

In the matter of:

1. Navaketan Vyapar Pvt. Ltd., having its registered Office at Shree Balajee Sadan, 14, S.P. Mukherjee Road, Kolkata – 700 025, West Bengal.
2. Satyashanti Commercial Pvt. Ltd., having its registered Office at Shree Balajee Sadan, 14, S.P. Mukherjee Road, Kolkata – 700 025, West Bengal.

.....Petitioners

Order Delivered on 13th September 2017

Coram:

Vijai Pratap Singh, Member (J)

Jinan K.R., Member (J)

For the Petitioners: Ms Noelle Banerjee, Advocate

JUDGMENT/ORDER

It is an application under Sec.230 read with Sec. 232(3) of the Companies Act, 2013 jointly filed by Navaketan Vyapar Pvt. Ltd. and Satyashanti Commercial Pvt. Ltd. The object of this petition is to obtain sanction from National Company Law Tribunal to a scheme of arrangement of M/s Navaketan Vyapar Pvt. Ltd., the demerged company with M/s Satyashanti Commercial Pvt. Ltd. the resulting company herein whereby and whereunder the transferred assets of the demerged company as a going concern together with liabilities relating thereto is proposed to be transferred to and be vested in the resulting company on the terms and

conditions and in the manner given under the scheme. A copy of the said scheme of arrangement is annexed with the petition as Annexure A, and a copy of the valuation certificate is annexed herewith and marked as Annexure B.

2. The applicant No.1 Navaketan Vyapar Pvt. Ltd. (from now on referred to as demerged company) was incorporated on 5/3/1993 as a company limited by shares under the provisions of Companies Act, 1956. Copy of the Memorandum and Articles of Association of the demerged company is annexed with the petition and marked as Annexure C. Registered office of the demerged company is situated in West Bengal within the jurisdiction of this Tribunal.

3. The demerged company has an authorized share capital of Rs.1,80,00,000/- divided into 18,00,000 equity shares of Rs.10 each and issued, subscribed and paid up capital of Rs.1,78,56,000/- divided into 17,85,600 equity shares of Rs.10 each. Copy of the balance sheet for the financial year ending 31/3/2016 is annexed with the application as Annexure D. It is on record that demerged company has long term loan and advance amounting to Rs.7,44,448.32.

4. The applicant No.2 Satyashanti Commercial Pvt. Ltd. (from now on referred to as resulting company) was incorporated on 26/5/2015 as a company limited by shares under the provisions of Companies Act, 2013. Memorandum and Articles of Association of resulting company are annexed with the application as Annexure E, and registered office of the resulting company is in West Bengal, i.e. within the jurisdiction of this Tribunal.

5. The resulting company has an authorized share capital of Rs.20,00,000/- divided into 2,00,000 equity shares of Rs.10 each and issued, subscribed and paid up capital of Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10 each. Balance sheet for the year ending 31/3/2016 filed by the resulting company along with the application is Annexure F.

6. Petitioner has filed this application to obtain sanction of this Tribunal to a scheme of arrangement of demerged company with the resulting company herein

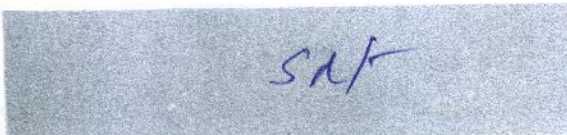
whereby and whereunder the transferred assets of the demerged company as a going concern together with liabilities relating thereto is proposed to be transferred to and be vested in the resulting company on the terms and conditions and in the manner fully stated in the scheme.

7. Applicant petitioner has made a prayer that the scheme of arrangement be sanctioned by the Tribunal to be binding on the demerged company and with the resulting company. It is on record that the company Application No.872/2016 was earlier filed before the Hon'ble High Court whereby the Hon'ble High Court has dispensed with the meeting of shareholders of the applicants, given the written consent of all the shareholders of the applicants.


8. Hon'ble High Court further directed to file confirmation petition within four weeks from the date of the order. Before sanctioning the scheme by the Hon'ble High Court, jurisdiction vested with National Company Law Tribunal and, therefore, petitioner has filed this CP for sanctioning the scheme.

9. We have perused the joint application and connected documents, papers along with the scheme of amalgamation. After the filing of the CP, notice was issued to the Central Govt. and other relevant sectoral regulators and further notice was published in the newspaper and objection were invited, and in compliance, to that, the petitioner has published the notice in the newspaper and served notice on all the sectoral regulators. At the time of issuing notice, inadvertently, it was not brought to our notice that the creditors have neither given consent nor any notice have been issued on the creditors and as per provision of Sec.230 to 232 of the Companies Act, 2013 creditors meeting can be dispensed with on the basis of consent of all the creditors in the form of affidavit. Till date, it is not clear that creditors have given their consent or not.


10. It is, therefore, directed to file a supplementary affidavit annexing the consent of creditors in affidavit form.

SATSAT

List on 30/10/2017 for filing consent of the creditors, if any, in the form of
a supplementary affidavit.



Jinan K.R.
Member (J)



Vijai Pratap Singh,
Member (J)

Signed on13th.....September 2017