

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Before Shri Vijai Pratap Singh, Hon'ble Member (Judicial)

CA (CAA) No. 273 (KB) of 2017

In the matter of:

The Companies Act, 2013;

-And-

In the matter of:

Sections 230 to 232 of the Companies Act, 2013;

-And-

In the matter of:

The Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016;

-And-

In the matter of:

1. AIE VALLEY TRADERS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office at 22, Stephen House, 4E, BBD Bag, Kolkata-700001, West Bengal within the aforesaid jurisdiction.

.... Transferee Company

2. KAMDHENU COMMODITIES & TRADING PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office

at 22, Stephen House, 4E, BBD Bag, Kolkata-700001, West Bengal within the aforesaid jurisdiction.

.... **Transferor Company No.1**

3. GEOTECH SOLUTIONS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office at 22, Stephen House, 4E, BBD Bag, Kolkata-700001, West Bengal within the aforesaid jurisdiction.

.... **Transferor Company No. 2**

And

In the matter of:

1. AIE VALLEY TRADERS PRIVATE LIMITED
2. KAMDHENU COMMODITIES & TRADING PRIVATE LIMITED
3. GEOTECH SOLUTIONS PRIVATE LIMITED Applicants

Counsels on Record:

- | | |
|---------------------------------|----------------------|
| 1. Mr. Manoj Kumar Banthia, PCS |] For the Applicants |
| 2. Ms. Bidisha Achari, PCS |] |
| 3. Ms. Pritha Bose, PCS |] |

ORDER

This is an Application under Sections 230(1) and 232(1) of the Companies Act, 2013 read with the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 filed by the Applicant Nos. 1 to 3, namely, (1) Kamdhenu Commodities & Trading Private Limited (KCTPL) and (2) Geotech Solutions Private Limited (GSPL) ("Transferor Companies) and (3) AIE Valley Traders Private Limited (AVTPL) ("Transferee Company") and their respective shareholders

in connection with a proposed Scheme of Amalgamation (Annexure G) whereby and where under it is proposed to amalgamate Transferor Companies KCTPL, GSPL with the Transferee Company (AVTPL) with all assets and liabilities relating thereto as a going concern.

Ld. Counsel for the Applicants took us to the averments made in the Applications as well as the documents annexed to the Applications. Applicant Nos. 1 and 2 have unsecured creditors who have given their written consent (Annexure J-3) to the proposed Scheme of Amalgamation. The Applicant No. 3 has no creditors and a certificate from Auditor to the effect is provided as Annexure-I. The Counsels appearing for the Applicants seek directions and orders under Section 230(1) and 232(1) of the Companies Act, 2013 for dispensing with the convening of separate meetings of creditors of the Applicant Companies 1 to 3 in view of the aforesaid. All the applicant companies have prayed for direction by the Tribunal to convene and call the shareholders' meeting. Since none of the applicants have prayed for the dispensation of shareholders meetings, this aspect is not being considered.

It is observed that clause no. 16 of the Memorandum of Association of Applicant No.1, clause no. 16 of Applicant No.2, and clause no. 18 of the Applicant No. 3 empower them to amalgamate or enter into a merger with any company or companies.

The object of this application is to ultimately obtain sanction of this Tribunal to the proposed Scheme of Amalgamation to be made between the Transferor Companies, Transferee company and their respective shareholders whereby and whereunder the entire undertaking of the Transferor Companies with all assets and liabilities relating thereto as a going concern is proposed to be transferred to and vested in the Transferee Company.

I have pursued the documents annexed to the Application and have heard the submissions made on behalf of the Applicants and pass the following orders:

1. That a meeting of the Equity Shareholders of AIE Valley Traders Private Limited herein shall be convened and held at 22, Stephen House, 4E, BBD Bag, Kolkata-700001, West Bengal on 10/10/2017 at 10:00 A.M. for the purpose of considering, and if thought fit, approving, with or without modification, the proposed scheme of Amalgamation between AIE Valley Traders Private Limited, Kamdhenu Commodities and Trading Private Limited, and Geotech Solutions Private Limited and their shareholders.
2. That a meeting of the equity shareholders of Kamdhenu Commodities & Trading Private Limited herein shall be convened and held at 22, Stephen House, 4E, BBD

Bag, Kolkata-700001, West Bengal on 10/10/2017 at 11:00 A.M. for the purpose of considering, and if thought fit, approving, with or without modification, the proposed scheme of Amalgamation between AIE Valley Traders Private Limited, Kamdhenu Commodities and Trading Private Limited, and Geotech Solutions Private Limited and their shareholders.

3. That a meeting of the equity shareholders of Geotech Solutions Private Limited herein shall be convened and held at 22, Stephen House, 4E, BBD Bag, Kolkata-700001, West Bengal on 10.10.2017 at 12:00 NOON for the purpose of considering, and if thought fit, approving, with or without modification, the proposed scheme of Amalgamation between AIE Valley Traders Private Limited, Kamdhenu Commodities and Trading Private Limited, and Geotech Solutions Private Limited and their shareholders.

4. That at least 30 (thirty) clear days before the date of the said meetings an advertisement convening the same and stating that copies of the said Scheme of the Amalgamation and the statement containing necessary details required to be furnished pursuant to section 230 of the Companies Act, 2013 read with the Companies (Compromise, Arrangements & Amalgamation) Rules, 2016 and a prescribed form of proxy can be obtained free of charge at the Registered office of

the concerned Applicant Companies be inserted once each in the "Aajkaal" Bengali Newspaper and in "The Business Standard" English Newspaper as per requirements of section 230 of the Companies Act, 2013 in Form CAA 2 of the Companies (Compromise, Arrangements & Amalgamations) Rules, 2016.

5. That in addition, at least 30 (Thirty) clear days before the meetings to be held as aforesaid, a notice convening the said meetings at the place and time as aforesaid together with a copy of the said scheme, the statement disclosing necessary details required to be sent under the Companies Act, 2013 read with the Companies (Compromise, Arrangements & Amalgamations) Rules, 2016 and the prescribed form of proxy be sent by registered post or by speed post or by hand through Personal Messenger addressed to each of the equity shareholders of concerned Applicant Companies at their respective or last known addresses.
6. Let notice be served as per requirements of sub-section (5) of Section 230 of Companies Act, 2013 along with the documents including a copy of the scheme and the statement disclosing necessary details on the Central Government through Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal, Official Liquidator and Income Tax Department having jurisdiction over the Transferor and Transferee

Companies 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 representation, if any within 30 days from the date of notice. The notice shall specify that representations 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 applicants and/or 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 notice shall be sent pursuant to section 230 (5) of the Companies Act, 2013 in Form No. CAA.3 of the Companies (Compromise, Arrangements & Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein.

7. That Mr. Vinod Kumar Kothari (Con. No.: 033-2281/7715/1276) shall be the chairman for the said meetings of the equity shareholders of the applicant companies to be held as aforesaid.

8. The consolidated remuneration of Mr. Vinod Kumar Kothari as chairman for conducting the aforementioned meetings be fixed at Rs.60,000/- (Sixty thousand).
9. The chairman appointed for the said meetings or any person authorized by him or any of them do issue and send out the notice of the said meetings referred to above.
10. That the quorum for the meeting of the equity shareholders of the applicant companies is fixed in accordance with section 103 of the Companies Act, 2013 present either in person or by proxy.
11. That voting by proxy is permitted, provided that a proxy in the prescribed form duly signed by the person (s) entitled to attend and vote at the meeting, is filed with the concerned Applicant Companies at their Registered Offices not later than forty-eight hours before the meetings. The Chairman shall have the power to adjourn the meetings, if necessary, and to conduct the procedure for the adjourned meetings as deemed necessary under the Act.
12. That the value of each member shall be in accordance with the respective books of the concerned Applicant Companies and where entries in the books of the Concerned Applicant Companies are disputed, the chairman concerned shall determine the value for the purpose of the meeting.

13. That the chairmen do report to this Tribunal, the results of the said meetings within 2 weeks from the date of the conclusion of the respective meetings and their respective reports shall be in Form No. CAA.4 pursuant to Rule 13(2) and 14 of the Companies (Compromise, Arrangements & Amalgamations) Rules, 2016 verified by their respective affidavits.
14. The application being C.A. No. 273 of 2017 is disposed of accordingly.
15. Parties and the Chairman to act on the order.

There shall be no order as to costs.

Urgent certified copy of this order, if applied for may be issued upon compliance with all requisite formalities.

Sd/-
(Vijay Pratap Singh)
Member (J)

Signed on this, the 23rd day of August, 2017