

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

Company Petition No. 393 of 2017

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

IN THE MATTER OF:

The Companies Act, 2013 - Section 230(6) read with Section 232(3)

And

IN THE MATTER OF:

Ratnabali Capital Markets Private Limited, a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having its registered office at FMC Fortuna, A-7 & A-8, 4th Floor, 234/3A, Acharya Jagadish Chandra Bose Road, Kolkata 700 020 in the State of West Bengal.Petitioner

No.1

And

Ratnabali Exports Private Limited, a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having its registered office at FMC Fortuna, A-7 & A-8, 4th Floor, 234/3A, Acharya Jagadish Chandra Bose Road, Kolkata 700 020 in the State of West Bengal.Petitioner

No.2

And

Ratnabali Leasings Private Limited, a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having its registered office at FMC Fortuna, A-7 & A-8, 4th Floor, 234/3A, Acharya Jagadish Chandra Bose Road, Kolkata 700 020 in the State of West Bengal.Petitioner

No.3

And

Ratnabali Securities Private Limited, a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having its registered office at FMC Fortuna, A-7 & A-8, 4th Floor, 234/3A, Acharya Jagadish Chandra Bose Road, Kolkata 700 020 in the State of West Bengal.Petitioner
No.4

And

Ratnabali Investment Private Limited, a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having its registered office at FMC Fortuna, A-7 & A-8, 4th Floor, 234/3A, Acharya Jagadish Chandra Bose Road, Kolkata 700 020 in the State of West Bengal.Petitioner
No.5

And

IN THE MATTER OF:

1. Ratnabali Capital Markets Private Limited
 2. Ratnabali Exports Private Limited
 3. Ratnabali Leasings Private Limited
 4. Ratnabali Securities Private Limited
 5. Ratnabali Investment Private Limited
- Petitioners

Counsel last attended:

- | | | |
|--|---|--------------------|
| 1. Mr. Ratnako Banerjee, Sr. Advocate |] | |
| 2. Mr. D. N. Sharma, Advocate |] | For the petitioner |
| 3. Ms. Urmila Chakraborty, Advocate |] | |
| 4. Mr. Aniket Agarwal, Advocate |] | |
| | | |
| 1. Mr. Tapas Kumar Das, Assistant Director |] | For R.D. (E.R.) |

ORDER

Heard the Ld. Counsel appearing on behalf of the petitioners.

The instant Company Petition filed by the petitioner Nos.1 to 5, namely (1) Ratnabali Capital Markets Private Limited ("RCMPL"), (2) Ratnabali Exports Private Limited ("REPL"), (3) Ratnabali Leasings Private Limited ("RLPL"), (4) Ratnabali Securities Private Limited ("the Resulting Company") and (5) Ratnabali Investment Private Limited ("the Transferee Company") has come up for admission and fixing date of hearing of the instant Company Petition for sanction of the Scheme of Arrangement between the aforesaid petitioner companies and their respective shareholders and publication of notice in the newspapers in relation thereto.

From the record it appears that pursuant to an order dated 20 April, 2017 read with order dated 25 April, 2017 passed by this Tribunal in C.A. No.124 of 2017, the petitioners had duly served notices of separate meetings of the Equity Shareholders and Secured Creditors and Unsecured Creditors of RCMPL on Statutory Authorities through hand delivery/speed post, including the Central Government, through the Regional Director, Kolkata; Registrar of Companies, West Bengal, Official Liquidator, Kolkata, Income Tax Department, having jurisdiction over the petitioners, the Reserve Bank of India and the Securities Exchange Board of India.

Further, notice of meetings was also published in the "Business Standard" in English and in "Aajkal" in Bengali on 18th May, 2017. An affidavit of compliance has also been filed by the petitioners in respect of said service and publication. Despite service of notices, as aforesaid in terms of orders dated 20 April, 2017, the petitioners and/or its advocates have not received any objection or representation under Rule 8 of Companies (Companies, Arrangements and Amalgamation) Rule, 2016.

Pursuant to the above order, meetings of the Equity Shareholders and creditors of the petitioner Nos. 2 to 5 were dispensed with in view of the written consents given by all the said shareholders and creditors of the said petitioner nos 2 to 5 and appointed Mr. Rupak Ghosh, Advocate, Bar Library Club as Chairperson to hold meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of RCMPL, petitioner no.1. (**Annexure R**)

Pursuant to the above order, meetings of the Equity shareholders, Unsecured Creditors and Secured Creditors of RCMPL, petitioner no.1 were duly held on 21st June, 2017 at the registered office of RCMPL and the Chairperson, Mr Rupak Ghosh, Advocate, who presided over the said meetings submitted his reports dated 19th July, 2017 (**Annexure T**) in respect of each of the said meetings and the same were filed with the Registry of this Tribunal within the stipulated date.

It appears from the reports that Equity Shareholders, Unsecured Creditors and Secured Creditors of RCMPL have unanimously approved the resolution favouring the said Scheme of Arrangement.

By the aforesaid order, the Official Liquidator was directed to submit a report under section 232 of the Companies Act, 2013 about the affairs of the Transferor Companies. In order to enable the Official Liquidator to make his report and give his opinion he appointed Mrs. Sunita Bhandari, Chartered Account, 863, Lake Town, Block – A, 4th Floor, Kolkata 700089, a panel Auditor of the Hon'ble Calcutta High Court to examine the Books, papers, records and documents of the above transferor companies and to make report indicating clearly as to whether in opinion of the said Chartered Accountant the affairs of the transferor companies have been conducted in a manner prejudicial to the interest of its members or to public interest. Accordingly, Mrs. Sunita Bhandari, Chartered Accountant has examined the books, records and other documents of the transferor companies and submitted his report dated 26/07/2017. On the basis of the above report of Mrs. Sunita Bhandari, Chartered Accountant, the Official Liquidator has filed his report dated 04/08/2017 wherein he has stated that on the basis of verification carried out in accordance with the generally accepted auditing practices and conventions including test checks, he is of the opinion that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of its members or to public interest.

The Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, representing the Central Government, has filed his affidavit dated

04/08/2017 wherein he has made certain observations at paragraphs 2(a) to 2(d) on the proposed scheme. However, no reply has come from the petitioners' side in respect of the observations made in the said affidavit of the Regional Director. From the above affidavit of Regional Director it appears that The Reserve Bank of India has expressed no objection to the proposed scheme as communicated vide their letter No. DNBS RO.KOI.No. 710/99.06.002/2016-17 dated 01/08/2017.

In view of the above it is ordered as follows:-

- (i) Petitioners are directed to submit within 7 days a reply affidavit on the observations contained in paragraphs 2(c) and 2(d) of the affidavit dated 04/08/2017 filed by the Regional Director, Eastern Region. A copy of the reply affidavit is to be sent to the Regional Director also.
- (ii) Notice on the Statutory Authorities have been served through hand delivery/Speed Post in terms of the order dated 20th April, 2017. However, apart from the letter dated 1st August, 2017 of the Reserve Bank of India giving its no objection to the Scheme of Arrangement, the other Statutory Authorities have not filed any objection/representation till date. In such circumstances, service of further notice under Rule 16(2) of Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 does not seem necessary.

- (iii) Notice of Petition shall be advertised once in the "Business Standard" in English and once in "Aajkal" in Bengali at least 10 days before the date fixed for hearing pursuant to Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016 with necessary variations. Petitioners shall file at least ten days before the date of hearing of the petition an affidavit of compliance in relation to publication in the newspapers.
- (iv) The next date of hearing of the Petition is fixed on 13.09.2017 for the consideration of the proposed Scheme of Arrangement.

Certified copy of the order be issued to the parties upon compliance of all requisite formalities.

Sd/- 11/8/17

(Vijai Pratap Singh)
Member (Judicial)

Signed on this the 11th day of Aug. 2017.