

In the National Company Law Tribunal

Kolkata Bench

C.A.(CAA)No.244/KB/2017

In the matter of:

**An application under Section 230 and 232 (1) of
the Companies Act, 2013**

And

In the matter of:

**Bhumika Vyapaar Private Limited, Registered
Office at 8B, Camac Court, 25B, Camac Street,
8th Floor, Kolkata-700016.**

(Transferor Company / First Applicant)

With

**Shyamsukla Builders Private Limited,
Registered Office at Poddar Court, Gate No. 2,
18, Rabindra Sarani, Ground Floor, Kolkata
700001,**

(Transferee Company / Second Applicant)

For the Petitioner(s) : 1. Mrs. Noelle Banerjee, Advocate

Coram

Ms Manorama Kumari, Member (J)

Order delivered on: 26th of July, 2017

ORDER

The instant Joint Application filed by the Applicant Companies namely, Bhumika Vyapaar Private Limited, Registered Office at 8B, Camac Court, 25B, Camac Street, 8th Floor, Kolkata-700016. (Applicant No. 1) and Shyamsukla Builders Private Limited, Registered Office at Poddar Court, Gate No. 2, 18, Rabindra Sarani, Ground Floor, Kolkata 700001, (Applicant No. 2) with regard to approved the proposed scheme of Amalgamation.

The Learned Advocate submitted that the Applicant Company No.1 was in incorporated on 22.11.2012 under Companies Act, 1956. And Applicant Company No.2 was incorporated on 09.06.2014 under Companies Act, 1956.

Regd. Office of both the applicant companies are situated in the State of West Bengal, under the jurisdiction of this Bench.

The authorized share capital of the Applicant Company No.1 is Rs.1, 00,000/- divided in to 10,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the Transferor Company (applicant company No.1) is Rs.1,00,000/- divided into 10,000 equity shares of fully paid up shares of Rs.10/-.

The authorized capital of the applicant company No.2 is Rs.1,01,00,000/- divided in to 10,000 equity shares of Rs.10/- each. And 10,00,000 6% optionally convertible redeemable preference shares of Rs. 10/- each. The Issued, Subscribed and Paid up Share Capital of the Transferee Company (Applicant Company No. 2) is Rs. 1,01,00,000/- divided into 10,000 Equity Shares of Rs. 10/- each and 10,00,000 6% Optionally Convertible Redeemable Preference Shares of Rs. 10/- each all fully paid up.

The Learned Advocate has filed the joint application under Section 230 and Section 232 (1) of the Companies Act, 2013 for direction to convene separate meetings of equity shareholders including preferential shareholders as well as unsecured creditors meeting of Transferor and Transferee Company. It has also been submitted that there are no secured creditor in both the Applicant Companies.

1. The joint application has been moved in accordance with Rule 3(2) of the Companies (Compromise, Arrangement and Amalgamations) Rules, 2006.
2. The principal objects of the Transferor Company and Transferee Company have been submitted in para-D at page-3 and page-6 respectively of the application.
3. The Registered Office of Transferor Company is situated at 8B, Camac Court, 25B, Camac Street, 8th Floor, Kolkata-700016 and Registered Office of Transferee Companies is situated at Poddar Court, Gate No. 2, 18, Rabindra Sarani, Ground Floor Kolkata 700001.
4. The applicant Company No.1 is authorised by Clause 20 of the Article of Association incidental or ancillary objects to amalgamate with any company. The applicant company No.2 is authorised by Clause 9 of the Article of Association incidental or ancillary objects to amalgamate with any other

5. The scheme of amalgamation is annexed and marked as Annexure-E.
6. The Necessary Board Resolution dated 31.03.2017 of both applicant companies have been annexed at pages 127-130 and marked as Annexure-E.
7. The applicant company no. 1 is having 5 equity shareholders and applicant company no. 2 is having 2 equity shareholders and 2 preferential shareholders the list of shareholders has been annexed and marked as Annexure-K

There are also unsecured creditors in both the applicant company and the list of unsecured creditors are annexed and marked as Annexure-H

In view of the above facts, the applicants pray for convening separate meetings of the equity / preferential shareholders / member as well as unsecured creditors of both the applicant companies be held at 6A, Kiran Shankar Roy Road, Ground Floor, Kolkata 700001 and or such other place or places as may be determined by this Hon'ble Tribunal and on such date or dates and at such times as this Hon'ble Tribunal may direct and that a Chairperson may be appointed for each of the meetings to be held.

Heard petitioner, perused the records and documents annexed therein, so far as convening the meetings of member / shareholders / preferential shareholders and unsecured creditors are concerned the following order is passed

- (1) That a meeting of the Equity Shareholders of Bhumika Vyapaar Private Limited, being the applicant no. 1 herein shall be convened and held at 6A, K. S. Roy Road, Ground Floor, Kolkata 700001, on Friday 15th of September, 2017 at 4:00 P.M. for the purpose of considering, and if thought

fit, approving, with or without modification, the proposed Scheme of Arrangement between the Applicants and their respective shareholders.

- (2) That a meeting of the Equity Shareholders of Shayamsukha Builders Private Limited, being the applicant no. 2 herein shall be convened and held at 6A, K S Roy Road, Ground Floor, Kolkata 700001, on Friday 15th of September, at 4:15 P.M. for the purpose of considering, and if thought fit, approving, with or without modification the proposed Scheme of Arrangement between the applicants and their respective shareholders.
- (3) That a meeting of the Preference Shareholders of Shaymsukha Builders Private Limited, being the applicant no. 2 herein shall be convened and held at 6A, K. S. Roy Road, Ground Floor, Kolkata 700001, on Friday 15th of September, at 4:30 P.M. for the purpose of considering, and if thought fit, approving, with or without modification the proposed Scheme of Arrangement between the Applicants and their respective shareholders.
- (4) That a meeting of the unsecured creditors of Applicant No. 1 and 2, shall be convened and held separately at 6A, K. S. Roy Road, Ground Floor, Kolkata 700001, on Friday 15th of September, at 4:45 & 5.00 P.M. respectively for the purpose of considering, and if thought fit, approving, with or without modification the proposed Scheme of Arrangement between the Applicants and their respective shareholders.
- (5) Both the Applicant Companies to serve the notice upon the Regional Director – Eastern Region (Ministry of Corporate Affairs), Registrar of Companies – West Bengal, Income tax Authority within whose jurisdiction the assessments of the Applicant Companies are made and the Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013 read with

Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with suitable changes in the notice relating to and creditors is concerned.

- (6) The notices to be served under Section 230(5) of the Companies Act, 2013 as aforesaid shall contain all disclosures as mentioned in Rule 6(3) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- (7) Joint Advertisement of dispatch of notices to the creditors as above shall be published in accordance with Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with suitable changes as may be practicable.
- (8) Both the Applicant Companies shall furnish copy of the Scheme free of charge within 1 day of any requisition for the same made by every creditor as mentioned above or member of the concerned Applicant Company.
- (9) Both the Applicant Companies to file an affidavit in compliance of all the conditions laid down herein along with original proof of service to all the authorities and creditors.
- (10) Liberty is given to file a joint application by both the applicant companies in accordance with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 15 days after the expiry of the period of 30 days as mentioned in Section 230(5) of the Companies Act, 2013 and mention the matter for further directions.
- (11) That Mr. Ravi Asopa, Advocate (Mobile No. 9830161201) shall be the Chairperson for the said meetings of the Equity Shareholders and creditors

of the Applicants to be held as aforesaid at a consolidated remuneration of Rs. 30,000/- (Thirty thousand only).

- (12) That Chairperson appointed for the said meetings or any person authorized by him/her do issue and send out the notice of the said meetings referred to above.
- (13) The quorum for meeting of the Equity Shareholders of the applicant companies be fixed in accordance with Section 103 of the Companies Act, 2013 present either in person or by proxy.
- (14) That voting by proxy be 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 Office not later than forty eight hours before the meetings. The Chairperson shall have the power to adjourn the meeting, if necessary, and to conduct the procedure for the adjourned meeting as deemed necessary under the Act.
- (15) That the value of each member / creditor shall be in accordance with the respective books of the concerned Applicant Companies and where entries in the books are disputed, the Chairperson concerned shall determine the value for the purpose of the meeting.
- (16) That the Chairperson do report to this Court the result of the said meetings within four weeks from the date of the conclusion of the respective meetings and his report shall be verified by way of affidavit
- (17) Parties and the Chairpersons to act on the order.
- (18) Both the companies shall affirm by way of affidavit that no investigation or proceedings under the Companies Act, 1956 or Companies Act, 2013

have been instituted or are pending in relation to the amalgamating and amalgamated companies.

The prayer stands allowed.

sd.
(MANORAMA KUMARI)
MEMBER (J)