

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

C.P. (CAA) No. 14/KB/2018

connected with

CA (CAA) No. 125(KB)/2017

In the matter of:

An Application under Sections 230
and 232 of the Companies Act, 2013;

And

In the matter of:

EAST INDIA COMMERCIAL CO LTD, a
company incorporated under the
Indian Companies Act, 1913, and
having its registered office at 1, Old
Court House Corner, 4th Floor,
Kolkata - 700 001, in the State of
West Bengal within the aforesaid
jurisdiction ;

SRI BAJRANG JUTE MILLS PRIVATE
LIMITED, a company incorporated

sd

sd

under the Companies Act, 1956, and
having its registered office at 1, Old
Court House Corner, Kolkata - 700
001, in the State of West Bengal
within the aforesaid jurisdiction ;

And

1. EAST INDIA COMMERCIAL CO LTD
2. SRI BAJRANG JUTE MILLS PRIVATE
LIMITED

.... APPLICANTS

CORAM: Shri V.P. Singh, Member(Judicial)

Shri Jinan K.R., Member (Judicial)

For the Petitioners:

1. Ms. Vineeta Gulgulia, Pr. CS
2. Ms. Khushboo Gulgulia, Pr. CS

Date of pronouncement of the Order : 09-02-2018

ORDER

Per Shri V.P. Singh

The object to this petition is to obtain sanction of this Tribunal to the Scheme of Amalgamation whereby it is proposed to merge, amalgamate and vest M/s. EAST INDIA COMMERCIAL CO LTD , the Transferor Company in M/s. SRI BAJRANG JUTE MILLS PRIVATE LIMITED, the Transferee Company as a going concern.

It has been stated in the Petition that the businesses carried out by both the Transferor Company and the Transferee Company is the same.

Therefore, for the purpose of better, efficient and economical management, control and running of the business of the undertaking concerned and / or administrative convenience and to obtain advantages of economies of scale, the Scheme of Amalgamation is proposed to amalgamate the Transferor Company with the Transferee Company.

The Scheme of Amalgamation would ensure higher retained earning leading to enhanced intrinsic value of shareholding to the investors.

It has also been stated in the Petition that the Scheme of Amalgamation shall take effect from the appointed date i.e. 01-04-2016 and the

undertaking of the Transferor Company shall, pursuant to the sanction of the Scheme of Amalgamation by this Tribunal and pursuant to the provisions of Sections 230 to 232 of the Companies Act, 2013, stand transferred to and vested in and/or deemed to have been transferred to and vested in the Transferee Company, as a going concern, without any further act, instrument, deed, matter or thing so as to become as and from the appointed date, the undertaking of the Transferee Company.

The transfer of assets and the liabilities of the Transferor Company will be in the manner detailed in the Scheme of Amalgamation.

It is submitted in the Petition that all the employees of the Transferor Company in service on the effective date shall become the employees of the Transferee company on such date without any break or interruption in service and on the terms and conditions not in any way less favourable to them than those subsisting with reference to the Transferor Company, as the case may be, on the said date.

The Board of Directors of both the Petitioner Companies, have, at their respective meetings on 24-02-2017, by resolutions passed unanimously, approved the Scheme of Amalgamation.

sd

sd

It is submitted in the Petition that there are no investigations or proceedings pending under the provisions of the Companies Act, 2013 against any of the applicant companies.

The Applicant companies have obtained certificates from their respective Auditors to the effect that the Accounting treatment proposed under the Scheme, is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013.

It has also been submitted that the aggregate assets of the Transferor Company and the Transferee Company are more than sufficient to meet their liabilities and the said Scheme will not adversely affect the rights of any of the creditors of the Transferor Company or the Transferee Company in any manner whatsoever.

It has been further submitted in the Petition that the Scheme of Amalgamation is not violative of any existing laws or regulations.

By an Order of this Tribunal dated 31-07-2017, in the Company Application CA(CAA) No. 125/2017, the petitioner companies were directed to convene meetings of the equity shareholders and the secured and the unsecured creditors of the companies for the purpose of considering and if thought fit approving with or without modifications the said Scheme of Amalgamation.

Notice of the respective meetings as above, was sent individually to the equity shareholders and the secured and the unsecured Creditors of the Petitioner Companies and to the Central Government through the Regional Director, Eastern Region, Ministry of Corporate Affairs/Registrar of Companies, Kolkata and the Income-Tax Department, having jurisdiction over the Petitioner Companies as was required by the said Order of this Tribunal dated 31-07-2017, together with a copy of the Scheme of Amalgamation and of the Statement required by Section 231, 232 read with Section 230 of the Act and a form of proxy.

The notice of the meeting was also advertised on 19-08-2017, as was directed by the said Order of this Tribunal dated 31-07-2017, in Financial Express, an English newspaper and Aajkal, a Bengali newspaper.

The meetings of the equity shareholders and the secured and the unsecured creditors of the Petitioner companies were duly convened and held on in accordance with the said Order of this Tribunal dated 31-07-2017 and the Scheme was unanimously approved/sanctioned in the respective meetings of the Equity shareholders and the Secured and the Unsecured Creditors of both the Petitioner Companies.

The Chairman, appointed by this Tribunal vide its aforesaid Order dated 31-07-2017, had duly reported the results of the respective meetings on 18-10-2017.

In compliance with Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, the Chairman filed an affidavit of service dated 14-09-2017, to this Tribunal.

After such due compliance, the petitioners have made the instant petition bearing C.P. (CAA) No. 14/KB/2018 before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Amalgamation.

Heard the arguments of the Ld. Pr. CS 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 concerned Assessing Officer, Income-Tax along with the Chief Commissioner of Income Tax with PAN numbers of the Petitioner Companies, by hand delivery through personal messenger or by Speed post, or by registered post and E mail, both, and also on the Official Liquidator 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 personal messenger or by Speed post or by

registered post, E-Mail, both, within seven days from the date of this order for filing their representation, if any, on the petition with 30 days from the date of notice.

The petitioners are to file an affidavit, along with the copy of the notice within 7 days of serving of notice regarding service of the notice.

The petitioners are further directed to send notice through e-mail also and file 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 authorized representative, 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.

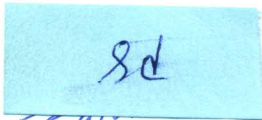
Such notices shall be set under section 230(5) of the companies act, 2013 in Form no. CAA.3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein.

Let the advertisement of the hearing of this petition be published once in Financial Express, an English newspaper and Aajkal, a Bengali newspaper, same as was earlier made in first motion, stating the PAN numbers of all

the Petitioner Companies, 10 days before the date fixed for hearing under Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016 with necessary variations.

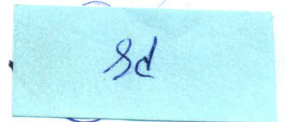
The petition is fixed for hearing on 26-03-2018.

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



(Jinan K.R.)

Member(Judicial)



(V.P. Singh)

Member(Judicial)

GOUR_STENO