

**In The National Company Law Tribunal
Kolkata Bench
Kolkata**

C.P.(CAA) No.768/KB/2017

Coram: Shri Jinan K.R, Hon'ble Member (Judicial)

In the matter of :

An Petition under Sections 230-232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations Rules), 2016.

And

In the matter of :

SETHIA AGROTECK LIMITED, a company incorporated under the provisions of the Companies Act, 1956, and being a Company within the meaning of the Companies Act, 2013 having its Registered Office at 143, Cotton Street, Kolkata 700 007; in the state of West Bengal within the aforesaid jurisdiction;

.....Petitioner No.1

And

SETHIA VINIMAY PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having its Registered Office at 143, Cotton Street, 3rd Floor, Kolkata 700 007; in the state of West Bengal within the aforesaid jurisdiction;

.....Petitioner No.2

Sd

And

SETHIA AGRO PRODUCTS LIMITED, a company incorporated under the provisions of the Companies Act, 1956, and being a Company within the meaning of the Companies Act, 2013 having its Registered Office at 143, Cotton Street, Kolkata 700 007; in the state of West Bengal within the aforesaid jurisdiction;

.....Petitioner No.3

In the matter of :

Sethia Agroteck Limited Applicant No.1 –	Transferee Company
Sethia Vinimay Private Limited	Applicant No.2 -	Transferor Company No.1
Sethia Agro Products Limited	Applicant No.3 -	Transferor Company No.2

Judgement / Order delivered on : 08:02:2018

Counsels on Record :

Mrs. Manju Bhuteria, Advocate	} For the Petitioners
Mr. Gurumurthy, FCA	

ORDER

Per Shri Jinan K.R., Member (Judicial)

1. The instant joint Petition filed under Sections 230-232 of the Companies Act, 2013 filed by the Petitioner Nos.1 to 3, namely:

- | | | |
|----|--------------------------------|-------------------------|
| 1. | SETHIA VINIMAY PRIVATE LIMITED | .. (Transferor Company) |
| 2. | SETHIA AGRO PRODUCTS LIMITED | (Transferor Company) |
| 3. | SETHIA AGROTECK LIMITED | .. (Transferee Company) |

Sd

2. This is a petition under Sections 230-232 of the Companies Act, 2013 praying for sanctioning the Scheme of Amalgamation of the two transferor companies namely Sethia Vinimay Private Limited, Petitioner No.1 abovementioned, Sethia Agro Products Limited, Petitioner No.2 abovementioned, and Sethia Agroteck Limited, Petitioner No.03 (hereinafter referred to as "the transferee company") attached with the petition being Annexure "A".

3. The object of this Petition is to obtain sanction of the Tribunal to the Scheme of Amalgamation whereby the entire undertaking of the Transferor Companies together with all assets and liabilities relating thereto ongoing concern basis are proposed to be transferred to and vested in the Transferee Company with transfer date or appointed dated being 1st April, 2017 on the terms and conditions fully stated in the Scheme of Amalgamation.

4. The petitioners prayed for an Order that:

- a. The Scheme of Amalgamation mentioned in the petition being Annexure -A be sanctioned by the Tribunal to be binding with effect from 1st day of April, 2017 on SETHIA VINIMAY PRIVATE LIMITED and SETHIA AGRO PRODUCTS LIMITED with SETHIA AGROTECK LIMITED and their shareholders and all concerned;
- b. All the properties, rights and interest of SETHIA VINIMAY PRIVATE LIMITED and SETHIA AGRO PRODUCTS LIMITED be transferred to and vested in without further act or deed in SETHIA AGROTECH LIMITED and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises,

Arrangements and Amalgamation) Rules, 2016 be transferred to and vested in SETHIA AGROTECK LIMITED for all the estate and interest of SETHIA VINIMAY PRIVATE LIMITED and SETHIA AGRO PRODUCTS LIMITED but subject nevertheless to all charges, now affecting the same;

- c. All the liabilities and duties of SETHIA VINIMAY PRIVATE LIMITED and SETHIA AGRO PRODUCTS LIMITED be transferred without further act or deed to SETHIA AGROTECK LIMITED and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and become the liabilities and duties of SETHIA AGROTECK LIMITED;
- d. That all the proceedings and/or suit appeals now pending by or against SETHIA VINIMAY PRIVATE LIMITED and SETHIA AGRO PRODUCTS LIMITED shall be continued by or against SETHIA AGROTECK LIMITED;
- e. The Transferee Company do issue and allot shares to the shareholders of SETHIA VINIMAY PRIVATE LIMITED and SETHIA AGRO PRODUCTS LIMITED as envisaged in the said Scheme of Amalgamation and for that, if necessary, to increase the authorized share capital;
- f. The schedule of assets in respect of SETHIA VINIMAY PRIVATE LIMITED and SETHIA AGRO PRODUCTS LIMITED be filed within a period of 60 days from the date of the order to be made herein;
- g. The Transferor Companies of SETHIA VINIMAY PRIVATE LIMITED and SETHIA AGRO PRODUCTS LIMITED shall stand

Sd

dissolved without winding up from the appointed date;

- h. SETHIA AGROTECK LIMITED, SETHIA VINIMAY PRIVATE LIMITED and SETHIA AGRO PRODUCTS LIMITED shall within 30 days after the date of obtaining the Certified Copy of the order to be made herein cause certified copies of this order to be delivered to be Registrar of Companies, West Bengal for registration respectively;
- i. Any person interested be at liberty to apply to this Hon'ble Tribunal in the above matter for any direction that may be necessary.

5. The equity shareholders of the Transferor Companies and Transferee Company have given their written consent by way of affidavit adopting the Scheme of Amalgamation without modification which was filed along with the application. The Transferor Companies and the Transferee Company had Nil Creditors as on 30th May, 2017. A Certificate from the Statutory Auditor of the Petitioner Companies certifying Nil Creditors have been annexed to the Company Application filed before the Hon'ble Tribunal. The Tribunal vide its order passed on 22nd November, 2017 in Company Application No.CA(CAA) No.453/KB/2017 has dispensed with the holding meeting of shareholders of Transferor Companies and the Transferee Company and also recording that there is no requirement of holding meeting of creditors as there being NIL creditors.

6. SETHIA AGROTECK LIMITED, the Transferee Company, was incorporated on 21.02.2006 (CIN : U15143WB2006PLC108159) as a Public Limited Company limited by shares in the name and style of

'Devansh Agro Limited'. Thereafter, its name was changed from 'Devansh Agro Limited' to Sethia Agroech Limited w.e.f. 15.10.2009. The present share capital of the Company is 3,35,000 issued, subscribed and paid up Equity Shares of Rs.10/- each totaling Rs.33,50,000/-. The objects of the Transferee Company is to carry on the business as manufacturers and dealers in paper of all kinds including plastic or any other materials. To carry on the business as byers, sellers of leather goods, jewellery, automobile parts etc. also include their businesses.

7. SETHIA VINIMAY PRIVATE LIMITED, Transferor Company No.1 was originally incorporated on 04.03.2010 (CIN:U51909WB2010PTC142873) as a Private Company limited by shares under the provisions of the Companies Act, 1956 in the state of West Bengal. The Company has issued, subscribed and paid up 9,30,000 Equity Shares of Rs.10/- each fully paid up totaling an amount of Rs.93,00,000/-. The object of the Company is to carry on the business of buyers, sellers, traders of all kinds of wood, timber gems and jewellery etc. As per the application, the affairs of the Transferor Company No.1 have been conducted prudently and no petition der Section 397 or 398 of the earlier Companies Act, 1956 or under Section 240 or 242 of the Companies Act, 2013 has at any point of time been filed against the Transferor Company No.1.

8. SETHIA AGRO PRODUCTS LIMITED, the Transferor Company No.2 was originally incorporated on 05.04.2016 (CIN:U15421WB2006PLC108870) as a Public Company limited by shares under the provisions of the Companies Act, 1956 in the state of

West Bengal as "Sethia Sugar Industries Limited". Subsequently, the name of the Company was changed from "Sethia Sugar Industries Limited" to "Sethia Agro Products Limited" and a fresh Certificate of Incorporation was issued by the ROC on 24.09.2009. The Company has issued, subscribed and paid up 14,70,000 equity shares of Rs.10/- each totaling Rs.1,47,00,000/-. The main objects of the Company is to carry on the business as manufacturers and dealers in paper of all kinds, craft paper, media paper and materials such as bags, cartons, containers and boxes whether made of paper, plastic or any other materials. The applicant stated that the affairs of the Transferor Company No.2 have been conducted prudently and properly and no petition under Section 397 or 398 of the earlier Act, 1956 or under Section 240 or 242 of the Companies Act, 2013 has at any point of time been filed against the Transferor Company No.2.

9. The proposed amalgamation will enable the Transferee Company to consolidate its line of business by restructuring and re-organizing its business activities and capital structure. The proposed amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources, among other benefits.

10. The statutory auditors of the Transferee Company have certified that the accounting treatment proposed in terms of Clause 11 Part IV of the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013.

11. It is further stated in the application that there are no proceedings pending under Section 235 to 251 of the Companies Act, 1956 and Section 217, 219, 221, 224 and 225 of the Companies Act, 2013 against any of the applicant companies.\

12. It is stated in the application that the assets of the Petitioner Companies are sufficient to meet all their liabilities and the said scheme of amalgamation will not adversely affect the rights of any of the creditors of any of the Petitioner Companies in any manner whatsoever.

13. It is stated in the petition that the applicant companies have made due provisions for payment of all liabilities as and when the same will fall due. In this connection, all the Petitioner Companies crave leave to refer to the accounts book and records of the Petitioner Companies at the time of hearing, if necessary.

14. Copies of necessary Board resolutions dated 9th day of June, 2017 of the TRANSFEREE COMPANY and of the TRANSFEROR COMPANIES approving the Scheme of Amalgamation has been annexed to the petition and marked as **ANNEXURE "M"** at pages 275 to 277 of the petition .

15. Pursuant to this Tribunal order dated 22ND t November , 2017 the holding of meeting of the equity shareholders of the of the Petitioner Companies and the holding of meeting of unsecured creditors of the of the Petitioner Companies were dispensed with and the Tribunal also recorded that there was no requirement for holding of meeting of the secured creditors as there was No Secured Creditors .

16. The petitioners Companies have come before the Tribunal with this Company Petition i.e; this Second Motion and submitted the following documents along with the Company Petition.

- i) Copies of Audited Balance Sheet as on **31ST MARCH, 2017** of **TRANSFEREE COMPANY** as well as the Transferor Company have been annexed and marked as **ANNEXURE “ C ”** , **ANNEXURE “ E ”** and **ANNEXURE “ G ”** at pages 114 to 126 , pages 153 to 163 and pages 212 to 224 of the petition.
- ii) Copies of Memorandum and Articles of Association of all Petitioner Companies have been annexed and marked as **ANNEXURE “ B ”** **ANNEXURE “ D ”** and **ANNEXURE “ F ”** at pages 63 to 113, at pages 127 to 152 and pages 164 to 211 of the petition.
- iii) Copy of the share valuation report has been annexed and marked as **ANNEXURE “ J ”** at pages 257 to 266.
- iv) Copy of Certificate from the Company's Chartered Accountants prescribed in terms of Sec 133 of the Companies Act have been annexed and marked as **ANNEXURE “ K ”** at pages 267 to 268.
- v) List of shareholders of the Transferee Company and Transferor Companies and Nil Creditors of Transferee Company and Transferor Companies duly certified by

the statutory Auditor have been annexed and marked as **ANNEXURE “ L ”** at pages 269 to 274.

- vi) Evidence for service upon the Regulatory authorities have been annexed and marked as **ANNEXURE “ I ”** at pages 234 to 256.

17. Now, after filing the petition before this Hon'ble Tribunal and perusing the documents submitted by the petitioners and as per norms enunciated in Motion II format, it is ordered as follows :

- a) The date of hearing of the petition filed jointly by the Petitioner for the sanction of the Scheme is fixed on 22nd March , 2018.
- b) Notice of hearing of this petition in form NCLT 3A shall be advertised once in English daily “ Business standard “ and in Bengali “ Aajkal “ daily newspaper , not less than 10 days before the aforesaid date fixed for hearing .
- c) In addition to the above public notice , the petitioner companies shall serve notice of the petition on the following authorities namely (a) Central government through Regional Director , Eastern Region , Ministry of Corporate Affairs , (b) Registrar Of Companies , West Bengal ,(c)The Income Tax Department of the office having jurisdiction over the respective petitioner companies, (d) the Official Liquidator and such other relevant and sect oral 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 and by e-mail positively within 7 days from the date of this order for filing their representations., if any on the petition . Notice along with the copy of the application and other related documents with PAN Numbers of the Applicant Companies should be served upon the Chief Commissioner of Income Tax Department by Mail and Speed Post or by Messenger and by e-mail positively. Petitioner Companies are also directed to mention their respective PAN Nos everywhere.

- d) The notice shall specify that representations, if any should be filed before this Tribunal within 30 days of date of receipt of the notice with a copy of such representations being sent simultaneously to the petitioners and/or their Authorised Representatives. If no such representations is received by the Tribunal within the said period, it shall be presumed that such authorities have no representations to make on the Scheme of Amalgamation.
- e) All Petitioner Companies at least 7 days before the date of hearing of the petition shall file and affidavit of service in relation to the paper publication as well as service of notices along with the copy of the notice by speed post / registered post and by e-mail to the the Authorities specified above including the Pectoral Regulators.
- f) The petitioner Companies shall 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 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.

18. Such notices shall be sent 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.

19. The Company Petition No C.P (CAA)NO 768/KB/2017 connected with C.A(CAA) NO 453/ KB/2017 is listed for further hearing on **22nd March , 2018**.

20. Urgent Photostat copy of this order, if applied for, be supplied to the parties , subject to compliance with all requisite formalities.



(Jinan K.R)
Member (J)

Signed on this , Eighth day of February, 2018.

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