

**National Company Law Tribunal
Guwahati Bench**

Diary No.02(03)/2017

Under Section 230 to 232 of the Companies Act, 2013

1. Kamalkunj Vyapaar Limited (Transferor Company)
2. S S Tradelink Private Limited (Transferee Company) Petitioners

Coram:

Hon'ble Mr Justice P.K. Saikia, Member (J)

ORDER

Date of Order: 9th February 2018

Ms S. Tejawat, C.A., is present representing the petitioners. Mr N. Gogoi, learned Advocate, is present on behalf of Mr S. Saikia, learned Advocate for the Income Tax Department.

2. This application under Sections 230 & 232 of the Companies Act, 2013 (in short, Act of 2013) has been filed seeking following reliefs:

- "a. *It is necessary that the separate meetings of Equity Shareholders of both the applicant Companies be called to consider and if thought fit to approve the scheme of Amalgamation, with or without modification.*
- b. *It is suggested that separate meetings of the Equity Shareholders of the applicant Companies may be held at the registered office of the respective company or such other place or places as may be determined by the Hon'ble Bench and that a chairperson may be appointed for each of the meetings to be held.*

An affidavit identifying the class of members is annexed hereto as Annexure A7.

- c. *It is respectfully prayed for that the quorum for the respective meetings of the Equity Shareholders of the Applicant Companies be fixed at 2 (Two) persons each, present in person or by proxy.*
- d. *It is respectfully submitted that the Transferor Company has Nil Creditors. All the creditors of the Transferee Company have provided No Objection Certificates with regard to the Amalgamation of the Applicant Companies.*

Affidavit identifying the creditors the applicant companies is attached hereto as Annexure A8.

It is humbly prayed for that meeting of the creditors be dispensed with. No objection certificates as received from the creditors have been annexed as Annexure A9.

- e. It is prayed that necessary directions may be given as to the issuing and publication of notices in the newspapers, convening, holding and conducting of the meetings proposed as above.*
- f. It is also prayed that necessary directions be given as to the notice to be given to sectorial regulators or authorities as required under sub section (5) of section 230.*
- g. Such further or other order or orders be made and/or directions be given affording necessary relief to the petitioner as to this Hon'ble Bench may deem fit and proper."*

3. Heard Ms S. Tejawat, C.A., appearing on behalf of the petitioners. Ms Tejawat submits that this application has been filed under Sections 230 & 232 of the Act, 2013 seeking the reliefs aforementioned. She further submits that the application in hand has been filed in accordance with the requirements of law laid down in Sections 230-232 and in the various rules of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (in short, Rules of 2016), more particularly the prescription rendered in Rules 3, 4, 5 & 6 of the Rules of 2016.

4. I have considered such submissions in the light of averments made in the petition having regard to the various rules and procedures holding the field. On doing so, I find it necessary to render the following order in regard to prayer made in the petition under consideration:

i) A separate meeting of the holders of the equity shares of S S Tradelink Private Limited (hereinafter referred to as Transferee Company) shall be convened and held at Ground Floor, Bulbul Market, SRCB Road, Fancy Bazar, Guwahati-781001, Assam, on 20.03.2018 at 11-00 A.M. for the purpose of considering, and if thought fit, of approving, with or without modification, the Scheme of Arrangement between the transferor company and the transferee company The said Scheme hereinafter would be referred to as the Scheme of Arrangement.

ii) A separate meeting of the holders of equity shares of transferor company, namely, Kamalkunj Vyapaar Limited, shall be convened and held at its registered office at Ground Floor, Bulbul Market, SRCB Road, Fancy Bazar, Guwahati-781001, Assam, on 20.03.2018 at 02-00 P.M. for the purpose of approving with or without modification

the aforesaid Scheme of Arrangement.

iii) At least 30 days before the meeting to be held at the place aforementioned, a notice convening the said meeting at place and time as aforesaid together with the copy of the said Scheme of Arrangement as well as a copy of the statement required to be sent under Rule 6 (3) of the Rules of 2016 and the prescribed Forms of Proxy shall be sent to each equity shareholder of the petitioner companies by registered post with A/D or by speed post & email at their respective last known addresses. Such notice convening the said meeting at place and time as aforesaid shall be in Form No CAA2.

iv) In addition thereto, at least 30 days before the day fixed for the meeting, an advertisement, convening the same stating that copies of the said Scheme of Arrangement and the statement, required to be furnished under Section 230 of the Act and Forms of Proxy, can be obtained from the registered office of the petitioner companies.

v) Further, the notice of the meeting under Section 230 (3) of the Act of 2013 shall be advertised in Form No.CAA.2 and such advertisement shall be published in the Sentinel, an English Daily, and in the Protideen, an Assamese daily, which have wide circulation in the state where the registered offices of the petitioner companies are situated. Such a notice shall also be placed, not less than 30 days before the date fixed for meeting on the website of the company, if any.

vi) Further, for the purpose of sub-section (5) of section 230 of the Act, the notice shall be sent in Form No. CAA.3, and shall be accompanied by a copy of the scheme of compromise or arrangement, the explanatory statement and the disclosures, mentioned under rule 6, and such notice shall be sent to the Central Government, the Registrar of Companies and the Income-tax authorities and also to the Reserve Bank of India, Guwahati.

vii) The notice to the aforesaid authorities shall be sent forthwith, after notice is sent to the members of the company and such notice are to be sent by Registered Post with A/D or by speed post at the Office of aforesaid authorities.

viii) In the notice, it may also be stated that the authorities referred to in Rule 8 (1) of the Rules, 2016, may make their representation under sub-section (5) of Section 230 and same shall be sent to this Bench within a period of 30 days from the date of receipt of such notice.

ix) Further, a copy of such representation from the side of aforesaid authorities shall simultaneously be sent to the companies as well. and in any case, if such representation from those authorities is not received by this Bench, it shall be presumed that those authorities have no comments to make on the proposed Scheme of Compromise or Amalgamation.

5. Mr B. Debnath, CS, and failing him, Mr Ajoy Agarwala, CA, shall be the Chairman of the meeting of the equity shareholders of the transferee company to be held at the place aforementioned. The Chairman of the meeting be paid a conciliatory remuneration of Rs. 7,500/-

6. Further, Dr B. Gogoi, learned Advocate, and failing him, Mr A. Todi, learned Advocate, shall be the Chairman of the meeting of the equity shareholders of the transferor company to be held at the aforesaid place and shall be paid a remuneration of Rs. 7,500/-.

7. The Quorum of the meeting shall be two persons, present either in person or by proxy. Voting by proxy shall be permitted, provided a proxy in the prescribed form duly signed by the person, entitled to attend and vote at the meeting, is filed with the company at its registered office not later than 48 hours before the meeting. The other conditions specified in Rule 10 (2) to Rule 10 (5) would be applicable in case of voting by proxy. The Chairman shall have the power to adjourn the meeting if necessary.

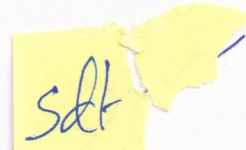
8. The Chairman shall file an affidavit before this Bench not less than 7 days before the date fixed for meeting or the date of the first meeting as the case may be stating that the direction regarding issue of notice and the advertisement have been duly complied with.

9. The respective Chairman shall report the result of such meetings to this Bench within 3 days from the date of conclusion of the meetings and their report shall be submitted in Form No.CAA.4.

10. It has further been stated that the transferee company has creditors but the creditors want that the meeting of the creditors of transferee company shall be dispensed with and in that connection, an NOC from those creditors has also been annexed with the application.

11. In view of the above, the creditors' meeting of the transferee company is dispensed with. It is evident from the application that the transferor company has no creditor.

12. List this matter on 26.03.2018.



Member (Judicial)
National Company Law Tribunal,
Guwahati Bench,
Guwahati.

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