

THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH

C.P. (CAA) No. 640/KB/2017

Connected with

C.A (CAA) No. 273 of 2017

In the matter of:

The Companies Act, 2013;

And

In the matter of:

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

And

In the matter of:

AIE VALLEY TRADERS PRIVATE LIMITED, a  
company incorporated under the  
Companies Act, 1956 and having its  
registered office at 22, Stephen House,  
4E, B.B.D. Bag, Kolkata-700001, West  
Bengal within the aforesaid jurisdiction;

.....Petitioner Company-1

KAMDHENU COMMODITIES & TRADING  
PRIVATE LIMITED, a company  
incorporated under the Companies Act,  
1956 and having its registered office  
at 22, Stephen House, 4E, B.B.D.  
Bag, Kolkata-700001, West Bengal  
within the aforesaid jurisdiction;

.....Petitioner Company-2

GEOTECH SOLUTIONS PRIVATE LIMITED, a  
Company incorporated under the  
Companies Act, 1956 and having its  
registered office at 22, Stephen House, 4E,  
B.B.D. Bag, Kolkata- 700001, West  
Bengal within the aforesaid jurisdiction;

.....Petitioner Company-3

And

In the matter of:

1. AIE VALLEY TRADERS PRIVATE LIMITED
2. KAMDHENU COMMODITIES & TRADING  
PRIVATE LIMITED
3. GEOTECH SOLUTIONS PRIVATE LIMITED

.... Petitioners





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

For the Petitioners :

Ms. Bidisha Achari, PCS

Date of pronouncing the order: 15-12-17

### ORDER

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

The object of this petition is to obtain sanction of this Tribunal to a Scheme of Amalgamation to be made between the Transferee Company, namely, AIE Valley Traders Private Limited, the Transferor Companies, namely, Kamdhenu Commodities & Trading Private Limited and Geotech Solutions Private Limited and their respective shareholders whereby and where under the entire undertaking of the Transferor Companies, as a going concern together with all its assets and liabilities, will stand transferred to and vested in the Transferee Company with effect from the appointed date, 1<sup>st</sup> April, 2016 in a manner as provided in the Scheme of Amalgamation, duly approved by the Shareholders of the Petitioner Companies at their respective meetings vide Order dated 23-08-2017 of this Tribunal in Company Application CA(CAA) No. 273/KB/2017.

A copy of the Scheme of Amalgamation is annexed with the Petition and marked with "A".



It is stated in the Petition that the Transferee Company and the Transferor Companies are companies under the same management. In such a scenario, in view of the insignificant business operations of both the Transferor Companies, it is proposed to merge them in the Transferee Company. Further, by the Scheme of Amalgamation, the financial resources of all the companies will be conveniently merged and pooled together leading to a more effective and centralised management and reduction of administrative expenses and overheads which are presently being multiplied because of separate entities.

It is further stated in the Petition that the proposed merger will also result in the larger pool of various resources as well as manpower and will create a synergy, which will enable the Transferee Company to grow and prosper at a faster pace.

It is also stated in the Petition that the merger will also increase the net worth and the borrowing capacity of the Transferee Company, hence shall lead to the expansion of its business at much faster rate. It would also lead to growth prospects for the personnel and organisations connected with these companies and thus be in the interest and welfare of the employees of the companies concerned and will also be in the larger interest of the stakeholders.

The Board of Directors of the Petitioner Companies have, at their respective meetings held on 01-03-2017 by resolutions unanimously approved the Scheme of Amalgamation of the Transferor Companies with the Transferee Company.

It is further submitted in the Petition that the aggregate assets of the Petitioner Companies are sufficient to meet all their liabilities and the said Scheme will not adversely affect the rights of any of the Creditors of the Petitioner Companies in

any manner whatsoever and due provisions have been made for payment of all the liabilities as and when the same fall due.

Vide Order dated 23-08-2017 made in the Company Application CA(CAA) No. 273/KB/2017 passed by this Tribunal, all the petitioner companies were directed to convene meetings of the equity shareholders at their registered Office for the purpose of considering and if thought fit, approving with or without modification, the Scheme of Amalgamation.

In compliance of the said Order dated 23-08-2017 of this Tribunal, the Petitioner Companies served notices of the said meetings individually by hand delivery on each of the equity shareholders of the Petitioner Companies together with copy of the Scheme of Amalgamation and the statement required under 230 of the Companies Act, 2013 along with the form of proxy.

Further, in compliance with the said Order dated 23-08-2017, the notice of the meeting was also advertised by the Petitioner Companies, once in "Aajkaal" Bengali Newspaper and once in "The Business Standard", English Newspaper on 07-09-2017.

In terms of the said Order dated 23-08-2017, Notice in Form CAA.3 was duly served upon the Central Government through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Registrar of Companies, West Bengal, the Official Liquidator attached to the Hon'ble High Court, Calcutta and the Income Tax Department having jurisdiction over the Transferee and the Transferor Companies.



In compliance with Rule 12 of the Companies(Compromises, Arrangements and Amalgamations) Rules, 2016, the Petitioner Companies filed an Affidavit of Service to this Tribunal.

On 10-10-2017, respective meetings of the equity shareholders of the Petitioner Companies 1,2 and 3 were duly held at the registered office of the petitioner companies and the Equity shareholders of all the Petitioner Companies unanimously approved the Scheme of Amalgamation.

The Petitioner Companies 1 and 2 have unsecured creditors who have given their written consent to the Scheme of Amalgamation. The Peitioner Company No.3 has no creditors and a certificate from the Auditor to the effect has been provided.

In view of the aforesaid, there was no requirement of convening of the separate meetings of the Creditors of the Petitioner Companies.

After such due compliance, the petitioners have made the instant petition bearing No. CP(CAA)/640/KB/2017 before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Amalgamation.

Heard the arguments of the Ld. Counsel 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 along with the Chief Commissioner of Income-Tax

with PAN numbers of the Applicant Companies, through E-mail and by Speed post, both, as also the Official Liquidator having jurisdiction of the transferor and the 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 Special Messenger or by registered post or speed post within seven days from the date of this order for filing their representation, if any, on the petition within 30 days from the date of notice.

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

The petitioners are further directed to send notice through e-mail also and filed 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. 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.

It is observed from the records that in the matter of Company Application CA(CAA) No. 273(KB) of 2017, the Income-Tax Officer, Ward-4(4), Kolkata, West Bengal, vide her letter No. ITO/W-10(2)/Kol./AABCK3113C/2017-18/529 dated 11-09-2017 addressed to this Tribunal, has submitted the following comments :

Sd

Sd



" This is bring to your kind notice that M/s. Kamdhenu Commodities & Trading Pvt. Ltd.[PAN AABC3113C] [Transferor-company No.1] is assessed in this charge. As such, the sub missions made here under are related to he facts and figures in respect of M/s. Kamdhenu Commodities & trading Pvt. Ltd.[PAN - AABCK3113C][Transferor-company No.1].

It is found that Transferor-company No.1 was incorporated on 21-09-1982. Perusal of the statement of accounts of M/s. Kamdhenu Commodities & Trading Pvt. Ltd.[PAN-AABCK3113C] [Transferor Company No.1] reveals that the Authorised Share Capital and paid-up share-capial of the company is only Rs. 10,00,000/-. However, the net value of each share[Face Value Rs.10/-] is negative as the company's balance sheet shows net liability of Rs. 24,09,075/- after adjustment of shareholders' fund as at 31/03/2017. Perusal of the proposed "Scheme of Arrangement" shows that the share-holders of the transferor company 1 i.e.M/s. Kamdhenu Commodities & Trading Pvt. Ltd. will be allotted 1 share of the transferee company for each share held in he transferor company 1. Thus, as a result of "scheme of arrangement", the share-holders of transferor-company 1 shall be benefited. It is pertinent to point out that the directors of all the three companies are common.

It is further evident that the company[Transferor-company No.1] is not actually engaged in any business activities. The company is not showing any income from operation for the last couple of years. The company's registered office is shown at 22, Stephen House, 4E, B.B.D. Bag, Kolkata - 700 001. The company is not owner of any building or office premises. The company is not paying any rent for the said registered office. The company [Transferor-company No.1] does not have any employee. The toal value of fixed asset as on 31/03/.2016 is Rs. 3199/-.



It is also pertinent to point out that there will be no financial advantage to Transferee Company as a result of the proposed "Scheme of Arrangement" as the Transferor Company-1 does not have any asset. However, the transferee company shall be entitled to get benefit of brought forward loss of Rs. 11,80,899/- set off against future income which will lessen its tax burden income to that extent. Therefore, as a result of the "scheme of arrangement", there will be loss of revenue in respect of tax liability of the "Transferee Company".

Since as per terms of the "Scheme of Arrangement", the transferor companies will stand dissolved, necessary directions is required to be given for surrender/deactivation of the PANs of the transferor companies so as to avoid any action in future on the "transferor companies" on the basis of "active" PAN.

Before passing any order, the Income Tax Department may kindly be informed the date of hearing so as to enable the department to represent the case before the Hon'ble Members of the NCLT."

Let the Income-Tax Officer, Ward-4(4), Kolkata, West Bengal be intimated appropriately about the date of hearing of the final disposal of the Petition so as to enable the Department to represent the case before this Tribunal.

Let the advertisement of the hearing of this petition be published one in the English daily, "The Business Standard" and another in the Bengali daily newspaper, "Aajkal", same as was made earlier in 1<sup>st</sup> 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 05-02-2018 .

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

Sd  
15/12/17

(K.R. Jinan)  
Member(Judicial)

Sd  
15/12/17

(V.P. Singh)  
Member(Judicial)

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