

NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Company Petition No.691/KB/2017

IN THE MATTER OF:

The Companies Act, 2013 - Section 230(6) read with
Section 232(3)

-And-

IN THE MATTER OF:

BJN Paints India 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
'Berger House', 129, Park Street, Kolkata 700 017 in
the State of West Bengal

.. Petitioner

Date of Pronouncing the order: 09.1.18

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

For the Petitioner:

Mr Ratnanko Banerji, Senior Advocate
Mr D N Sharma, Advocate
Mr Aniket Agarwal, Advocate
Ms Rusha Saha, Advocate

sd

sd

Per V.P. Singh

ORDER

This is a petition under Section 230(6) read with Section 232(3) of the Companies Act, 2013 in connection with proposed Scheme of Amalgamation of BJN Paints India Limited, being the Petitioner Company, the Transferor Company, with Berger Paints India Limited, the Transferee Company, whereby and where under the entire undertaking of the Transferor Company together with all property, rights, powers and all debts, liabilities, duties and obligations relating thereto is proposed to be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the Scheme of Amalgamation, annexed with the Petition and marked "A".

The Petitioner Company is a wholly owned step down subsidiary of the Transferee Company.

The Board of Directors of BJN Paints India Limited, the Petitioner, Transferor Company and Berger Paints India Limited, the Transferee Company, at their respective meetings held on 14-04-2017 by resolutions passed unanimously approved, the Scheme of Amalgamation of the Transferor Company with the Transferee Company.

sd

sd

It is stated in the Petition that the Transferee Company is a well established concern engaged in the business of manufacturing paints and coatings for various applications, including decorative paints, protective coatings, automotive and industrial coatings and powder coatings. Such business is carried on by the Transferee Company directly as also through its various subsidiaries and associate Companies in India and other countries, including the Transferor Company.

The Transferor Company is engaged in the business of manufacturing and processing architectural paints and coatings which it had acquired from Sherwin Williams Paints India Private Limited with effect from the close of business hours of 31-03-2013. Such acquisition was a strategic acquisition to increase the group's share in the architectural coatings business and presence in the key markets covered by the said business.

It is further stated in the Petition that the said business has since been stabilised. The said business of the Transferor Company can now be combined with and carried on in conjunction with the business of the Transferee Company more conveniently and efficiently.

It is stated in the Petition that it is considered desirable and expedient to amalgamate the Transferor Company with the Transferee Company in the manner and on the terms and conditions stated in the Scheme of Amalgamation.

It is further stated in the Petition that the amalgamation will enable appropriate consolidation of the activities of the Transferor Company and the Transferee Company with pooling and more efficient utilisation of their resources, greater economies of scale, reduction in overheads and other expenses and improvement in various operating parameters.

The same will result, inter alia, in better inventory management, reduction of working capital requirements, lower cost of production and better integration of operations which will be facilitated by and will follow the amalgamation.

As such, the Scheme of Amalgamation will enable the business and undertakings of the amalgamated entity to be run, controlled and managed more economically, convenient and advantageously.

It is also stated in the Petition that the business of the Transferor Company will stand fully integrated with the business of the Transferee Company consequent to the amalgamation. The same will enable the potential of the said businesses to be realised more fully.

The Scheme of Amalgamation is proposed accordingly and will have beneficial results for the said Companies, their shareholders, employees and all concerned.

The Auditors of the Transferor Company and the Transferee Company have confirmed that the accounting treatment in the said Scheme is in conformity with

the accounting standard prescribed under Section 133 of the Companies Act, 2013.

The certificates issued by the Auditors of the Applicant, the Transferor Company are annexed with the Petition and marked "M".

It is further submitted in the Petition that in terms of the latest Securities and Exchange Board of India (SEBI) Circular dated 10-03-2017, the requirement of taking approval of Stock Exchanges to the schemes of Amalgamation in case of wholly owned subsidiaries has been dispensed with and the listed holding companies are only required to file the Scheme with the Stock Exchanges for the purpose of disclosure.

The Transferee Company, as the listed holding Company of the Transferor Company was thus not required to take the approval of the Stock Exchanges to the Scheme in terms of the said Circular.

The copy of letter dated 21-04-2017 of the Transferee Company forwarding the Scheme to the Bombay Stock Exchange, National Stock Exchange and Calcutta Stock Exchange for the purpose of disclosure is annexed with the Petition and marked "N".

It is further stated in the Petition that the present petition would not, in any manner, prejudice or affect the rights and interests of the Directors, shareholders, creditors,

debenture holders or any other person whatsoever. There will be no adverse effect on account of the Scheme of Amalgamation on the said person.

The Scheme is proposed to the advantage of all concerned including the said person.

It is stated in the Petition that there are no proceedings under Sections 235 to 251 of the Companies Act, 1956 or Sections 210 to 227 of the Companies Act, 2013 against the Transferor Company.

By an Order dated 22-08-2017 of this Tribunal in the Company Application CA(CAA) No. 270/KB/2017, the holding of meetings of the Shareholders of the Transferor Company was dispensed with, in view of the written consents given by the said Shareholders of the Petitioner and directions were given for holding and convening of separate meetings of the Secured Creditors and the Unsecured Creditors of the Transferor Company.

Further it was directed that the Transferee Company was not required to file any application or petition for sanction of the Scheme under Sections 230 to 232 of the Companies Act, 2013 since the Scheme does not entail any compromise or arrangement whatsoever between the Transferee Company and its shareholders or creditors.

In terms of the Order dated 22-08-2017 of this Tribunal in company Application CA(CAA) No.270/KB/2017, separate meetings of the Secured Creditors and the

Unsecured Creditors of the Transferor Company were duly convened and held on 11-10-2017.

The said meetings of the Secured Creditors and the Unsecured Creditors of the Transferor Company unanimously approved the Scheme of Amalgamation without any modification.

In terms of the said order dated 22nd August, 2017, the Chairman of the meetings of the Secured and the Unsecured Creditors of the Transferor Company, has filed his reports in respect of each of the said meetings with this Tribunal.

In compliance of Section 230(5) of the Companies Act, 2013 and the Order dated 22-08-2017 of this Tribunal, the Petitioner has duly served notices on 11-09-2017 on the Regional Director, Ministry of Corporate Affairs, Eastern Region, Kolkata, the Registrar of Companies, West Bengal, Income-Tax Department having jurisdiction over the Petitioner and on the Official Liquidator, having jurisdiction over the Petitioner.

In this regard, the Petitioner has filed an affidavit of service dated 26-09-2017.

Further notice of meetings was also published in the "Business Standard" in English and in "Aajkal" in Bengali on 09-09-2017.

An affidavit of compliance was duly filed by the Petitioner on 26-09-2017.

Despite service of notices, no objection or representation has been made by any of the Statutory Authorities, within a period of thirty days from the date of receipt of the notices by them or till date of filing of this Petition, except from the Official Liquidator attached to the Hon'ble High Court, Calcutta.

The Official Liquidator has filed his report dated 16th November, 2017 wherein he has stated in his opinion, the affairs of the Petitioner Company have not been conducted in a manner prejudicial to the interest of its members or to public interest.

After such due compliance, the petitioners have made the instant petition bearing No. CP No.691/KB/2017 before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Arrangement and for orders facilitating and giving effect to the same.

Heard the arguments of the Ld. Counsel for the petitioners.

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 Arrangement 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, both, 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 file the 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 Arrangement.

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.

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 1st 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 26-02-2018.

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

sd

(K.R. Jindan)
Member(Judicial)

sd

(V.P. Singh)
Member(Judicial)

GOUR_STENO