

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH: GUWAHATI**

**T.P.No.34/391(1)/394/2016
(C.P.No.14/2016)**

Under Section: 391(1) and 394 of the Companies Act, 2013

In the matter of:

Netgen Power (Pvt.) Ltd.
Kauntia Consultants and Investments (Pvt.) Ltd. and
N. E. Thermion (Pvt.) Ltd. ... Petitioners

Coram:

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

For the Petitioner : Mr A. Nath, Advocate

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ORDER

Date of Order: 3rd October 2017

Heard Mr A. Nath, learned Advocate for the petitioners.

2. This proceeding under Sections 391(1) and 394 of the Companies Act, 1956 was filed before the Hon'ble Gauhati High Court seeking the following reliefs –

- i) *Scheme of amalgamation (Annexure-1) be sanctioned by this Hon'ble High Court to be binding with effect from 1.4.2016 or from such other date as this Hon'ble Court may fix on transferor companies and the transferee company and their shareholders and all concerned.*
- ii) *All the properties, rights and interest of the transferor company be transferred and be vested without further act or deed to transferee company and accordingly the same shall pursuant to Section 391 and 394 of the Companies Act, 1956 be transferred to and be vested in the transferee company.*
- iii) *That with effect from the appointing date and up to and including the effective date the transferor company shall be deemed to have been carrying on all businesses and activities and stand possessed of all assets, rights, title, interest and authorities of the merger for and on account of, and in trust for the transferee company.*

- iv) *That, all profit accruing to transferor companies i.e. Netgen Power Pvt. Ltd. and Kauntia Consultants and Investments, or losses arising or incurred by it (including the effect of taxes if any thereon) relating to the merger for all purposes, be treated as the profits, taxes or losses, as the case may be of the transferee company.*
- v) *All proceedings and/or suits and/or appeals now pending, if any, by or against the merger of the transferor company by continued by it or against transferee company.*
- vi) *The petitioner companies do within 30 days after the date of the order to be made herein, sanctioning the scheme of arrangement/ amalgamation cause a certified copy hereof to be delivered to the Registrar of Companies, Shillong*
- vii) *The transferor companies and transferee company shall do all the acts and deeds as contained in the scheme of arrangement/ amalgamation.*
- viii) *Any person interested shall be liberty to apply to this Hon'ble High Court in the above matter for such directions as may be necessary.*
- ix) *Such further order or other orders be made and/or direction or directions be given as the Hon'ble Court may deem fit and proper.*

3. Earlier to this proceeding, Netgen Power Pvt. Ltd. transferor Company (hereinafter referred to as P1 Company), Kauntia Consultants and Investments Pvt. Ltd. transferee company (hereinafter referred to as P2 company) and N.E. Thermion Pvt. Ltd. transferee company (hereinafter referred to as P3 company) filed an application under Section 391(1)/394 of the Act, 1956 before the Hon'ble Gauhati High Court seeking approval of scheme of amalgamation of P1 company with P2 and P3 company, they being transferor and transferee company respectively.

4. The Hon'ble High Court, on hearing the petitioner, was pleased to allow the application seeking approval of the Scheme of Amalgamation vide order dated 16.3.2016 rendered in Company Application No. 2 of 2016 and order dated 20.4.2016 rendered in IA No. 1429/2016 (in Company Application No. 2/2016). For ready reference, the aforesaid orders are reproduced below:

"ORDER

16.03.2016

Heard Mr. A. Nath learned counsel for the applicants upon hearing the learned counsel for the applicants the following order is passed.

- 1) *This is an application under Sections 391(1) and 394 of the Companies Act, 1956 in connection with a scheme of Amalgamation proposed to be made between Netgen Power Pvt. Ltd. Transferor company/*

Applicant company having its registered office at 1st Floor, Annada Bhawan, Ulubari, G.S. Road, Guwahati- 781007, Assam and within the jurisdiction of this court with Kauntia Consultants and Investments Pvt. Ltd. (Transferee Company) having its registered office at 1st Floor, Ivory Enclave, R.G.B. Road, Guwahati- 781021, Assam and their respective shareholders and N.E. Thermion Pvt. Ltd. (Transferee Company) having its registered office at 1st Floor, Annada Bhawan, Ulubari, G.S. Road, Guwahati- 7, Assam and their respective shareholders.

- 2) It is directed that a separate meeting(s) of Equity shareholders of Netgen Power Pvt. Ltd. Transferor Company the "Demerged Company" shall be convened and held at the registered office at 1st Floor, Annada Bhawan, Ulubari, G.S. Road, Guwahati-7, on the 25th day of April, 2016 at 4 P.M. for the purpose of considering and if though fit, approving with or without modification the scheme of Amalgamation between the applicant companies and their respective shareholders. The said scheme is referred to as "The scheme of Amalgamation".
- 3) It is directed that a separate meeting of Equity shareholders of Kauntia Consultants and Investments Pvt. Ltd. Transferee Company the "Resulting Company" shall be convened and held at the registered office at 1st Floor, Ivory Enclave, R.G.B. Road, Guwahati-21, on the 26th day of April, 2016 at 4 P.M. for the purpose of considering and, if though fit, approving with or without modification the scheme of Amalgamation.
- 4) It is further directed that a separate meeting of Equity Shareholders of N.E. Thermion Pvt. Ltd. Transferee Company the "Resulting Company" shall be convened and held at the registered office at 1st Floor, Annada Bhawan, Ulubari, G.S. Road, Guwahati-7, on 25th day of April, 2016 at 11 A.M. for the purpose of considering and, if thought fit, approving with or without modification the scheme of Amalgamation.
- 5) That at least 21 (twenty one) clear days before the date of the said meeting(s), an advertisement convening the same and stating that copies of the said scheme and of statement required to be furnished pursuant to Section 393 of the Companies Act, 1956 and a form of proxy, can be obtained free of charge at the registered office of the Transferor Companies/Applicant Companies be inserted once each "The Assam Tribune" and "Dainik Asom" publication in the Gazette is dispensed with.
- 6) That in addition, at least 21 (twenty one) clear days the meetings to be held at aforesaid, a Notice convening the said meetings at the place and time as aforesaid together with a copy of the said scheme, a copy of the statement required to be furnished under Section 393 of the Companies Act, 1956 and the prescribed form of proxy be sent by post to all Equity Shareholders of the transferee companies/applicant companies at their respective or last known addresses.
- 7) The Advocate on Record for the applicant Companies do within 15 days from this day file in Court the form of the notice, advertisement and statement to company the notice and the same shall be settled by the Registrar (J) of this Court.

- 8) That Shri Navneet Baruah, Advocate, Gauhati High Court and failing him Shri Suman Chetia, Advocate, Gauhati High Court shall be the Chairman of the said meeting of the equity shareholders of Netgen Power Pvt. Ltd. to be held as aforesaid and the Chairman shall be paid a remuneration of Rs.20,000.00 for such meeting.
- 9) Shri Anup Tahabilder, Advocate, Gauhati High Court and failing him, Shri Murari Lal Choudhury, C.A., Guwahati shall be Chairman of the said meeting of the equity shareholders of the Kauntia Consultants and Investments Pvt. Ltd. to be held as aforesaid and the Chairman shall be paid a remuneration of Rs.20,000.00 for such meeting.
- 10) Likewise Shri Nayan J. Medhi, Advocate, Gauhati High Court and failing him, Shri Ritesh Choudhary C.A., Guwahati shall be Chairman of the said meeting of the equity shareholders of the N.E. Thermion Pvt. Ltd. to be held as aforesaid and the Chairman shall be paid a remuneration of Rs.20,000.00 for such meeting.
- 11) The Chairman appointed for the said meeting(s) or any person authorized by them, to issue and sent out notices of the meeting (s) referred to above.
- 12) The quorum for the meeting of the equity shareholders of the applicant Companies shall be 2(two) persons, respectively present either personally or by proxy.
- 13) That voting by proxy be permitted provided that a proxy in the prescribed form duly signed by the person(s) entitled to attend and vote at the respective meeting, is filed with applicant Companies at its registered office not later than forty eight hours before the respective meeting. The Chairman shall have the power of adjourn the meeting(s), if necessary.
- 14) The value of each member shall be in accordance with the books of the applicant Companies and, where entries in the books are disputed, the respective Chairman shall determine the value for the purpose of the meeting.
- 15) That the Chairman do report to this Court the result of the said meeting(s) within three weeks of the conclusion of the said meetings and the Chairman shall verify such report by their affidavits.
- 16) The Chairman and all parties concerned to act on a copy of the minutes of this order duly signed by an officer of this court being served on them.
- 17) That the date of the meeting be advertised in an issue of "The Assam Tribune" and "Dainik Asom" on any date at least 21 clear days prior to the date of the meeting.
- 18) Ordered accordingly."

"ORDER

20.4.2016

Heard Mr. A. Nath, learned counsel for the petitioners.

By filing this application, a prayer has been made for correction of typographical error and also for extension of time for issuance of advertisement. In paragraph 3 of the application it is stated that two inadvertent typographical errors have been occasioned. In paragraph 1 of the order dated 16.03.2016 passed by this court, the word 'Transferee Company' occurring at 7th line after the words 'Kauntia Consultants and Investments Pvt. Ltd.', the word 'Transferor Company' ought to have been written but it has been typed as 'transferee company' which is wrong. Similarly, in paragraph 3 of the same order at 2nd and 3rd line after the words 'Kauntia Consultants and Investments Pvt. Ltd.' it has been referred to as 'resulting company' but it should have been typed as 'transferor company' the demerged company.

Having heard the learned counsel, Mr. A. Nath and considering the application filed along with disposed of Company Application No. 2/2016, it is hereby ordered that the words 'transferee company' occurring after 'Kauntia Consultants and Investments Pvt. Ltd.' at 7th line of paragraph 1 of the order dated 16.03.2016 passed by this Court shall be read as 'transferor company' and similarly the words 'resulting company' occurring after 'Kauntia Consultants and Investments Pvt. Ltd.' at 2nd and 3rd line of paragraph 3 of the order dated 16.03.2016 shall be read as 'transferor company', the demerged company.

The petitioner has further prayed that advertisement could not be issued in the Assam Tribune and the Dainik Asom for holding of meetings and accordingly he prays that the schedule mentioned in the order dated 16.03.2016 is required to be amended. Accordingly, it is ordered that the date of the meeting with the shareholders of the applicant companies shall be as follows:-

- (i) First applicant company Netgen Power Pvt. Ltd. meeting shall be held on 30th day of May, 2016 at 4 P.M.
- (ii) Second applicant company 'Kauntia Consultants and Investments Pvt. Ltd. meeting shall be held on 31st day of May, 2016 at 4 P.M.
- (iii) Third applicant company N.E. Thermion Pvt. Ltd. meeting shall be held on 1st day of June, 2016 at 4 P.M.

Interlocutory application stands disposed of. The order passed today shall be considered to be a part of the order dated 16.03.2016 passed in Co.Appl. No.2/2016 on 16.03.2016."

5. Thereafter, a second petition under Section 391(1) and 394 of the Companies Act, 1956 was filed before the Hon'ble High Court which was registered as Company Petition No. 14 of 2016. On receipt of the said company petition No.

14/2016 the Hon'ble High Court has rendered the order dated 8.9.2016 for the ready reference of the said order is reproduced below –

"ORDER

8.9.2016

Heard Mr. A. Nath, learned counsel for the petitioner.

Perused the petition for confirmation of scheme of amalgamation in form No.40 of the Companies (Court) Rules, 1959.

Let this petition be fixed for hearing on 26.10.2016.

Let notice of hearing be advertised in "The Assam Tribune" and in the Dainik Asom" not less than 14 (fourteen) days before the date fixed for hearing.

Let notice of the petition be served to the Central Government through the Regional Director, Company Law Board, North Eastern Region, Shillong and to be served not less than 28 clear days before the date fixed for hearing.

The case be posted for hearing on 26.10.2016."

6. In term of the order dated 8.9.2016 a notice of hearing was advertised in the 'Assam Tribune' and in the 'Dainik Asom' not less than 14 (fourteen) days before the date fixed for hearing. Further as required under the order dated 8.9.2016, notice of the petition was also served on the Central Government through the Regional Director, North Eastern Region, Shillong which were to be served not less than 28 clear days before the date fixed for hearing. In that connection an affidavit has been filed by Mr. B. Nath, Advocate's Clerk confirming compliance of the directions in the order dated 8.9.2016.

7. However, during the pendency of the said company petition, the companies (transfer of pending proceeding) Rules, 2016 came into force and in terms of Rule 3 of the said rules, proceedings which was registered as Company Petition No. 14 of 2016 was transferred to this Tribunal for disposal in accordance with law.

8. After receipt of this proceeding by this Tribunal on transfer, notice of the petition were also ordered to be served on the Income Tax Department, Reserve Bank of India/SEBI/Official Liquidator/Regional Director, Shillong by registered post requiring them to respond to the prayer made in present proceeding on the date fixed in the order itself vide order dated 4.5.2017. An affidavit to that effect has also been

filed stating that the directions in the aforesaid order have faithfully been complied with.

9. Responding to the directions passed by the Hon'ble High Court/Tribunal, Registrar of Companies, North Eastern Region, Shillong, Official Liquidator, Office of the Official Liquidator attached to Gauhati High Court at Shillong submitted their respective report. For ready reference, the relevant part of the report of the Registrar of Companies (North Eastern Region), Shillong and that of the Official Liquidator are reproduced below –

Report of the Registrar of Companies

- "3. That accordingly, after examination of the reply received and other documents furnished by the company, the Registrar of Companies submits his report as under:
- i. As replied by the company to this office letter there are no winding up proceedings pending against the company in any court/Tribunal.
 - ii. The company has furnished Auditor's certificate to the affect that the company has duly complied with the Accounting standards as prescribed u/s 133 of the Companies Act, 2013.
 - iii. The companies has furnished certified copy of valuation certificate on the basis of which exchange ratio have been fixed.
 - iv. In reply to point no. 5 of this office letter dated 08.04.2017, the transferor company has mentioned that there had been certain related party transactions after the appointed date. The company may be asked to submit a certificate from Auditor's that said transactions is at arm's length.
 - v. As per annexure to auditor's report the companies have not accepted any deposits from the public.
4. In view of the above facts and circumstances and subject to observation made at para 3(iv), it appears that the affairs of the company have not been prejudicial to interest of shareholders/ stakeholders.
5. That in view of the facts and circumstances it is respectfully prayed before this Hon'ble Tribunal that the matter may be decided on its own merits by the Hon'ble Tribunal."

Report of the Official Liquidator

- "3. That accordingly after examination of the reply received from the company and other documents furnished, the Official Liquidator submits his report as under:

- i. *As replied by the company to this office letter there are no winding up proceedings pending against the company in any court/Tribunal.*
 - ii. *The company has furnished Auditor's certificate to the affect that the company has duly complied with the Accounting standards as prescribed u/s 133 of the Companies Act, 2013.*
 - iii. *The companies has furnished certified copy of valuation certificate on the basis of which exchange ratio have been fixed.*
 - iv. *As per annexure to auditor's report the companies have not accepted any deposits from the public.*
4. *In view of the above facts and circumstances it appears that the affairs of the company have not been prejudicial to interest of shareholders/stakeholders.*
 5. *That in view of the facts and circumstances it is respectfully prayed before this Hon'ble Tribunal that the matter may be decided on its own merits by the Hon'ble Tribunal."*

10. The Tribunal vide its order dated 06.09.2017 directed the company to submit necessary certificate as indicated by the ROC in their report at para No. 3(iv) on or before next date fixed (i.e. on 14.09.2017) before this Tribunal with copy thereof to the ROC. The Company, accordingly, submitted necessary certificates from the Auditors before this Tribunal. In the certificates aforementioned, it was stated that the said transactions entered into by the companies with related parties, were at arm's length.

11. Further, in their respective reports dated 29.08.2017, the Registrar of Companies, North Eastern Region, Shillong as well as the Official Liquidator, Office of the Official Liquidator, attached to Gauhati High Court, have prayed that the matter may be decided by this Tribunal on its own merit.

12. Notice of hearing of the petition was served on the Income Tax Department, the Reserve Bank of India and Securities Exchange Board of India as well. However, said authorities have not responded to the notice of hearing and, therefore, it can safely be presumed that the said authorities have no objection against the scheme of amalgamation aforementioned.

13. It may also be stated here that this Tribunal, vide order dated 14.09.2017, had asked the Regional Director, North Eastern Region, Ministry of Corporate Affairs, Shillong to respond to the prayer made in the application. In that

connection, one may look into the order of this Tribunal passed on 14.09.2017. For ready reference, same is reproduced below:

"Mr J.U. Ahmed, learned Advocate submits that Mr A. Nath, the learned Advocate engaged by the petitioner in this proceeding, could not be present today because of some other preoccupations. Mr Ahmed, however, submits that in term of the order passed by this Tribunal on 06.09.2017, a certificate issued by the Statutory Auditor in regard to transactions entered into by the transferor company, namely, M/s Netgen Power Pvt. Ltd. with the other parties after the appointed date i.e. 01.04.2016 has been furnished. The certificate, so issued by the Statutory Auditor is reproduced below:

"This is to certify that the all the transactions entered into by the Transferor Company i.e. M/s Netgen Power Private Limited with its related parties after the appointed date i.e. 01st day of April, 2016 is at arm's length."

2. *It has been further submitted that such a certificate has already been submitted before the ROC in terms of the ROC's report dated 29.08.2017.*

3. *However, the petitioner is directed to filed the same before the Registry under affidavit for being tagged with the present proceeding in due course.*

4. *On the other hand, Mr K. Sanyal, Assistant Director, Office of the Regional Director, N.E. Region, Shillong has sent an email to the effect that the new Regional Director would join only on 15.09.2017 and, therefore, in terms of the order passed by this Tribunal on 23.08.2017, the response of the Regional Director in regard to the prayer made in the present petition could not be placed before this Tribunal today. As such, he has prayed for some time. Prayer is allowed.*

5. *List this matter on 03.10.2017 for submitting of report by the Regional Director in regard to the prayer made in the present proceeding."*

14. On hearing the learned Advocate for the petitioner having regard to the materials on record, I am of the opinion that the scheme of amalgamation, as proposed, is fair and reasonable and is not violative of any provisions of law and/or contrary to any public policy.

15. It is therefore, considered expedient that the prayer for sanction of the scheme of amalgamation be granted in terms of the prayers in this petition confirming the said scheme of amalgamation. Accordingly, there will be orders in terms of prayers 1-9 of paragraph 19 of the petition.

16. The Official Liquidator is directed to file a report within one month from the date of receipt of a copy of this order to the effect that the affairs of the transferor company have not been conducted in a manner prejudicial to the interest of its

members or public interest, and thereafter, the transferor company shall be dissolved without the process of winding up.

17. Registry shall furnish a copy of this order by registered post as well as by email to the Official Liquidator and the Official Liquidator, on receipt of the order, shall do the needful accordingly.

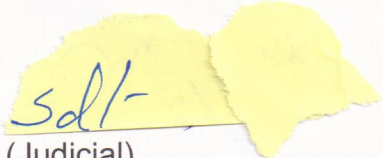
18. The parties to the amalgamation or other persons interested, shall be at liberty to apply to this Tribunal for any direction(s) that may be necessary in regard to the working of the amalgamation.

19. The petitioner companies shall do the needful to file Form No. INC-28 in due course.

20. Let the Registrar of this Tribunal draw up necessary order in Form No. CAA-7 of the Companies (Compromise, Arrangements & Amalgamations) Rules, 2016.

21. The Schedule of properties shall be furnished by the transferor companies in accordance with Form No. CAA-7 of the Companies (Compromise, Arrangements & Amalgamations) Rules, 2016 with necessary variations within 30 days.

22. The petition accordingly stands disposed of.


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

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