

IN THE NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH

TP No. 28/391(1)/ 394/GB/2016 in

(CP No. 3/2016).

Under section : 230 to 232 of the Companies Act, 2013 (Corresponding to section 391(1)/394 of the Companies Act of 1956.

In the matter of

Trisita Services (P) Ltd. And Trisita Marketing (P) Ltd.

Coram :

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

For the Petitioners : Mr. A.Nath and Mr A.Todi, Advocates.

O R D E R

Date: 06.072017

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

" 1: Scheme of arrangement(Annexure-1) be sanctioned by this Hon'ble High Court to be binding with effect from 1.4.2015 or from such other date as this Hon'ble Court may fix on transferor company and the transferee company and their shareholders, secured and unsecured creditors and all concerned"

"2. 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".

3. 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”.

4. That, all profit accruing to transferor company i.e Trisita Services Pvt Ltd, 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”.

5. 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”.

6. The petitioner companies do within 30 days after the date of the order to be made herein, sanctioning the scheme of arrangement cause a certified copy hereof to be delivered to the Registrar of Companies, Shillong.

7. Both the transferor company and transferee company shall do all the acts and deeds as contained in the scheme of arrangement.

8. Any person interested shall be liberty to apply to this Hon'ble Court in the above matter for such directions as may be necessary”.

9. 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”.

2. Earlier to this proceeding, M/s. Trisita Services (P) Ltd, Transferor company (hereinafter referred to as P-1 company and M/s. Trisita Marketing (P) Ltd, Transferee company(hereinafter referred to as P-2 company, filed an application under section 391(1)/394 of the Act ,1956 seeking approval of scheme of amalgamation of P-1 company with the P-2 company, they being transferor and transferee company respectively.

3. Hon'ble High Court on hearing the petitioner was pleased to approve the application vide order dated 13.10.2015 rendered in Company Application No. 05/2015. For ready reference, the aforesaid order is reproduced below :-

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

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 Trisita Services(P) Ltd. Transferor Company/Applicant company having its registered office at C/o. United Steel Corporation, M.S. Road, Guwahati 781001, Assam and within the jurisdiction of this court with Trisita Marketing (P)Ltd. (Transferee Company) having its registered office at C/o. United Steel Corporation, M.S.Road, Guwahati 781 001, Assam and their respective shareholders.

It is directed that a separate meeting(s) of Equity Shareholders of Trisita Services(P) Ltd, Transferor Company the "Demerged Company" shall be convened and held at the office of 1st floor, Jain Centre, 34A, Metcalf Street, Kolkata 700013 on the 20th day of November, 2015 at 11 a.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 share-holders. The said scheme is referred to as "The scheme of Amalgamation".

It is further directed that, a separate meeting of Equity shareholders of Trisita Marketing (P)Ltd, transferee company the "Resulting Company" shall be convened and held at the office of 1st floor, Jain Centre, 34 A, Metcalf Street, Kolkata 700013 on the 20th day of November, 2015 at 3 p.m. for the purpose of considering and if though fit, approving with or without modification the scheme of Amalgamation.

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 Telegraph and Ananda Bazar Pratrika. The publication in the Gazette is dispensed with.

That in addition, at least 21(twenty one) clear days the meetings to be held as aforesaid, a Notice convening the said meetings of 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 applicant companies at their respective or last known addresses.

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.

That Mr. Kanupriya Agarwal, CA, and failing him Mr. Saurabh Agarwal, CA shall be the Chairman of the said meeting of the equity shareholders of Trisita Services (P) Ltd., to be held as aforesaid and the Chairman shall be paid ta remuneration of Rs. 6,000/- for such meeting.

Likewise, Mr. Sanjay Kr. Agarwal, CA and failing him, Mr. Pradip Agarwal, CA shall be Chairman of the said meeting of the equity shareholders of the Trisita Marketing (P) Ltd to be held as aforesaid and the Chairman shall be paid a remuneration of Rs. 6,000/- for such meeting.

The Chairman appointed for the said meeting(s) or any person authorised by them to issue and send out notices of the meeting(s) referred to above.

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.

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 filled 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.

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.

That the Chairman shall 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.

The Chariman 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.

That the date of the meeting be advertised in on issue of the Telegraph and Ananda Bazar Pratrika on any date at least 21 clear days prior to the date of the meeting.

Ordered accordingly".

4. Thereafter, a second application 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. 3 of 2016. On receipt of the said Company Petition No. 3 of 2016, Hon'ble High Court has rendered the order dated 02.03.2016. For ready reference, the said order is reproduced below: -

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

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

Let this petition be fixed for hearing on 20.04.2016.

Let notice of hearing be advertised in "the Statesman" and in the "Dainik Statesman", Kolkata, 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 20.04.2016".

5. In terms of the order dated 02.03.2016, a notice of hearing was advertised in the "Statesman" and in the "Dainik Statesman", Kolkata, not less than 14(fourteen) days before the date fixed for hearing. Further, as required under the order dated 02.03.2016, notice of the petition was also served on the Central Government through the Regional Director, Company Law Board, 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, Advocates' Clerk confirming compliance of the directions in the order dated 02.03.2016.

6. However, during the pendency of the said Company Petition, the Companies (Transfer of Pending proceeding) Rules, 2016 hereinafter referred to Rule of 2016 came into force and in terms of Rule 3 of the said Rules, proceeding which was registered as Company Petition No. 3 of 2016, was transferred to this court for disposal in accordance with law.

7. After receipt of this proceeding by this Tribunal on transfer, notice of the petition was also ordered to be served on the Income-tax Department, Reserved

Bank of India/SEBI/ Official Liquidator by registered post requiring them to respond to the prayer made in the present proceeding on the date fixed in the order itself vide order dated 4th May, 2017. An affidavit to that effect has also been filed by Mr. B.Nath, Advocates' Clerk stating that the directions in the aforesaid order have faithfully been complied with.

8. Responding the directions, passed by this Hon'ble High Court/Tribunal, Regional Director, Company Law Board, North Eastern Region, Shillong submitted a report stating that subject to increase of authorised share capital of the transferee company, he had no objection in allowing the prayer seeking confirmation of scheme of amalgamation/arrangement between the petitioner companies as prayed for. No other observation or objection has been made by any person in pursuance of advertisements for sanction of scheme.

9. For ready reference, the relevant part of the report of Regional Director, Company Law Board, North Eastern Region, Shillong is also reproduced below :-

2. That it is submitted that on examination of the petition in detail and report of the ROC, NE Region it appears that no complaint and/or representation has been received against the proposed Scheme of Arrangement/Amalgamation. The Central Government has therefore decided, that the petition/application need not be opposed and the matter be decided by this Hon'ble Tribunal on its merits subject to condition that the transferee company to increase its authorized share capital for making allotment of share to the shareholders of the Transferor Company.

3. The statements made in paragraph 1 are true to the best of my knowledge and those made in paragraph 2 are the information derived from the records of the case. Further I am to submit that the office of the deponent has duly addressed the Income Tax Authority to ascertain their views/objection if any vide letter No. RD(NER)/3/391-394/2016/150 dated 23.06.2016. The Income Tax Department vide letter No.M-1(j) Pr.CCIT/NER/Tech/Ghy/2016-17/15935 dated 18.10.2016 has communicated their "No Objection" to the present Scheme of Amalgamation (the same is attached herewith as Annexure B). The report of ROC is attached herewith as annexure A. Hence the present case may be decided by the Hon'ble tribunal on its inherent merits. These are my humble submission before the Hon'ble tribunal for kind consideration and disposal of the case on its merit."

10. It may also be stated here that the Regional Director, Company Law Board, North Eastern Region, Shillong in the meantime, obtained a report from ROC, Region, Shillong as well as from Income-tax Department and according to the statements, made in the report of the Regional Director, Company Law Board, North Eastern Region, Shillong, said two authorities had no objection in accepting the prayer made in the present petition before this Tribunal.

11. Further, though notice of hearing of the petition was served on the Reserve Bank of India (in short, RBI) and also on Securities Exchange Board of India (in short, SEBI), the RBI and the SEBI did not respond to the notice of hearing. Therefore, it can safely be presumed that the said two authorities have no representation to make on the Scheme of Amalgamation.

12. From the materials on records, the scheme appears to be fair and reasonable, and it is not violative of any provisions of law and/or is contrary to any public policy.

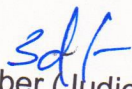
13. It is therefore, considered expedient that the prayer for sanction of the scheme of amalgamation be granted in terms of the prayers in this petition confirming the said scheme of amalgamation. Accordingly there will be orders in terms of prayers 1-9 of paragraph 19 of the petition.

14. The official Liquidator is directed to file a report within a month that the affairs of the transferor company have not been conducted in a manner prejudiced to the interest of its members or public interest, and thereafter, the transferor company shall be dissolved without the process of winding up.

15. A copy of this order shall be furnished to the Official Liquidator to do the needful by the registry of this Tribunal.

16. 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.

17. The petitioner companies shall do the needful to file Form No. INC-28 in due course.
18. Let the Registrar of this Tribunal draw up necessary order in Form No. CAA-7 of the Companies (Compromise, Arrangements & Amalgamations) Rules, 2016.
19. The Schedule of properties shall be furnished by the transferor companies in accordance with Form No. CAA-7 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 with necessary variations within 30 days.
20. As advised by the Regional Director, the transferee company is directed to increase its authorised capital of the transferee company to meet the purposes alluded to in the report of Regional Director and thereafter the petitioner would do the needful in order to suitably amend the MOA of the transferee company.


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

Samir.