

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

C.P. (CAA) No. 605/KB/2017

In

CA (CAA) No. 243/2017

In the matter of:

A Petition made under Sections 230 and  
232(1) read with Section 66 of the  
Companies Act, 2013 ;

And

In the matter of:

DYNAMIC EQUITIES PRIVATE LIMITED, a  
company incorporated under the  
provisions of the Companies Act, 1956,  
having its Registered Office at  
Technopolis, 14<sup>th</sup> Floor, Plot BP 4, Sector 5,  
Salt Lake, Kolkata 700 091 within the  
aforesaid jurisdiction ;

DYNAMIC COMMODITIES PRIVATE LIMITED,  
a company incorporated under the  
provisions of the Companies Act, 1956,  
having its Registered Office at  
Technopolis, 14<sup>th</sup> Floor, Plot BP 4, Sector 5,  
Salt Lake, Kolkata 700 091 within the  
aforesaid jurisdiction ;

And

In the matter of :

BHUMIKA BUSINESS PRIVATE LIMITED, a  
company incorporated under the  
provisions of the Companies Act, 1956,  
having its Registered Office at  
Technopolis, 14<sup>th</sup> Floor, Plot BP 4, Sector 5,  
Salt Lake, Kolkata 700 091 within the  
aforesaid jurisdiction ;

1. DYNAMIC EQUITIES PRIVATE LIMITED
2. DYNAMIC COMMODITIES PRIVATE LIMITED
3. BHUMIKA BUSINESS PRIVATE LIMITED

Petitioners

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

For the Petitioners:

1. Mr. D. N. Sharma, Advocate
2. Mr. Ravi Asopa, Advocate
3. Mr. Deepak Jain, Advocate

Date of pronouncing the order: 01.02.2018.

ORDER

Per Shri Jinan K. R., Member (Judicial)

The object of this petition is to obtain sanction of this Tribunal to the Scheme of Arrangement between DYNAMIC EQUITIES PRIVATE LIMITED, being the Petitioner No.1, DYNAMIC COMMODITIES PRIVATE LIMITED, being the Petitioner No.2 and BHUMIKA BUSINESS PRIVATE LIMITED, being the Petitioner No.3 and their respective shareholders whereby and where under it is proposed to reorganize and reconstruct DYNAMIC EQUITIES PRIVATE LIMITED and DYNAMIC COMMODITIES

PRIVATE LIMITED by transferring their respective 'Demerged Undertakings' as defined in the Scheme to BHUMIKA BUSINESS PRIVATE LIMITED together with their respective assets and liabilities to BHUMIKA BUSINESS PRIVATE LIMITED for the consideration and reduction in the issued, subscribed and paid up share capital of DYNAMIC COMMODITIES PRIVATE LIMITED without any consideration and in the manner and on terms and conditions as fully stated in the Scheme of Arrangement, a copy whereof is annexed with the Petition and marked "A".

It is stated in the Petition that the proposed demerger will result in unlocking and maximizing value for shareholders and allow a focused strategy in operations, which would be in the best interest of all the stakeholders.

It will facilitate greater efficiency in cash management and management of excess of cash flow generated to maximize shareholders' value.

It is also stated in the Petition that it will help in achieving and sustaining competitiveness and development of internal core competencies of the Companies in the long term.

It is stated that the demerger will also provide scope for independent collaboration, consolidation and expansion of the activities of the respective



undertakings of DYNAMIC EQUITIES PRIVATE LIMITED and DYNAMIC COMMODITIES PRIVATE LIMITED.

The Board of Directors of all the Petitioner companies have, at their respective meetings, by resolutions passed unanimously, approved the said Scheme of Arrangement.

The copies of the said resolutions are annexed with the Petition and collectively marked as "H".

It is further stated in the Petition that the aggregate assets of the Petitioner companies are more than sufficient to meet all their liabilities and the Scheme of Arrangement 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 in usual course.

A list of secured and unsecured creditors of the respective companies duly certified by the Auditor are annexed with the Petition and marked as "I".

Sd

For the purpose of the Scheme, audited accounts of the Petitioners for the period as on 31-03-2017 are annexed with the Petition and respectively marked as "C", "E" and "G".

It is submitted in the Petition that there are no proceedings pending under Sections 206 to 213 of the Companies Act, 2013 against any of the Petitioner Companies.

There are also no proceedings pending under Sections 241 and 242 of the said Act or any other proceedings whatsoever against the petitioner companies under the Companies Act, 1956 or the Companies Act, 2013.

It is further submitted in the Petition that the Scheme of Arrangement does not attract the provisions of the Competition Commissioner of India.

There is at present no Scheme of Corporate Debt restructuring ongoing or pending in relation to the Companies.

By Order made in the Company Application No.243 of 2017 on 31-07-2017, this Tribunal directed that separate meetings of the Equity Shareholders, secured and the unsecured creditors of the Petitioner companies be convened and held for the purpose of considering and, if thought fit, approving, with or without modification, the proposed Scheme of Arrangement.

The notice of the said meetings was served individually by hand or by registered post upon each of the said Equity shareholders, secured and unsecured creditors of the Petitioner Companies as required by the said order together with a copy each of the Scheme of Arrangement and of the Statement required under Section 230 of the Companies Act, 2013 and a form of Proxy.

The notice of the said meetings were also advertised, separately, as directed vide the said Order of this Tribunal dated 31-07-2017 in "The Business Standard", Kolkata and also in "Pratidin", Kolkata in their respective issues dated 14-08-2017.

The Affidavit of compliance and service dated 18-09-2017 has been duly filed by the Petitioners.

On the 25<sup>th</sup> September, 2017, the said meetings of the Equity Shareholders, secured and unsecured creditors of the Petitioner Companies were convened and held in accordance with the Order of this Tribunal dated 31-07-2017.

The said meetings of the respective Equity Shareholders, secured and unsecured creditors unanimously approved the said Scheme without any modification.

The Chairperson of the aforesaid meetings has reported the results of the said meetings.

sd



The true copies of the said reports together with their affidavits are annexed with the Petition and collectively marked "K".

It is further stated in the Petition that the share entitlement ratio of shares of the Petitioner Companies have been fixed on a fair and reasonable basis and on the basis of the Valuation Report prepared by a firm of Chartered Accountants, a copy whereof is annexed with the Petition and marked as "L".

A certificate from the Auditors of BHUMIKA BUSINESS PRIVATE LIMITED, Petitioner No.,3 stating that the accounting treatment is in conformity with the accounting standard under Section 133, is annexed with the Petition and marked as "M".

It is also stated in the Petition that the Petitioner No.1 is having 2 Equity Shareholders and the Petitioner No.2 is having 3 Equity Shareholders and the Petitioner No.3 is having 3 Equity Shareholders.

The copies of the list of the shareholders of the Petitioner Companies, duly certified, are annexed with the Petition and collectively marked as "N".

It is submitted in the Petition that no one will be prejudiced if the Scheme of Arrangement is sanctioned and the sanction of the Scheme of Arrangement will

Sd



benefit and will be in the interest of the Petitioner Companies, their shareholders, creditors, employees and all concerned.

The Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata had filed an affidavit dated 17-11-2017 which was taken on record by this Tribunal vide Order dated 15-12-2017.

However, in the said report of the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, there were certain observations regarding the Scheme of Arrangement and this Tribunal vide its Order dated 15-12-2017 directed the Petitioners to file reply before the Central Government.

The Central Government was directed to file supplementary Report.

The Petitioners had filed a supplementary affidavit clarifying the position with regard to the pending prosecutions which was served on the Regional Director on 10-01-2018 and the observations of the Central Government in this regard vide its Affidavit dated 30-01-2018 are as under :

“(a) That it is admitted by the Petitioners that two cases bearing Criminal Complaint Case No.1677/2014 and 114643/2013 under Section 220 of the Companies Act, 1956 are pending in the Court of the Ld. Chief Metropolitan

Sd

Magistrate at Alipore though the petitioners have stated that the said complains are not maintainable. However, since the matter is subjudice, no comments are being made on the same.

(b) That since the present petition is in relation to the Scheme of Demerger and even after the approval of the said Scheme the demerged companies shall continue to exist and the said prosecution cases can be proceeded with against the demerged companies, the scheme does not adversely affect the pendency of the complaints.

(c) That in view of the above observations the Scheme does not appear to be prejudicial to the interest of members/shareholders and/or public. The Central Government has, therefore, decided not to oppose the instant petition/Scheme."

After such due compliance, the petitioners have made the instant petition bearing C.P. No. 605/KB/2017, before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Arrangement.

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

Sd

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 on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, the Registrar of Companies, West Bengal and the concerned Assessing Officer along with the Chief Commissioner of Income Tax with PAN numbers of the Petitioner Companies, by hand delivery through personal messenger or by Speed post, E-Mail, both and also on the Official Liquidator attached to the High Court, Calcutta and Reserve Bank of India, having jurisdiction over the Petitioner Companies.

The Petitioner Companies shall file an affidavit, along with the copy of the notice within 7 days regarding service of the notice.

The petitioner Companies shall send notice through e-mail also and file 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.

Sd

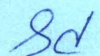


Such notices shall be sent under section 230(5) of the companies act, 2013 in Form no. CAA.3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein.

Let the advertisement of the hearing of this petition be published once in the English daily, "The Business Standard" and in the Bengali daily, "Pratidin" same as was earlier made in first motion, stating the PAN numbers of all the petitioner companies, at least 10 days before the date fixed for hearing in Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016 with necessary variations.

The Petition is fixed for hearing on 05-03-2018

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



(Jinan K. R.)  
Member(Judicial)

GOUR\_STENO