

ATTENDANCE-CUM-ORDER SHEET OF HEARING

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH

CP No. 02/230/231/232/GB/2017

Jaybharat Foods (P) Ltd and Others

- Petitioners

PRESENT

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

Date of Order: 17.04.2017

Name of the Company	
Under Section	231/232

Sl. No.	Name & Designation of Authorized Representative.(in Capital Letters).	Appearing on behalf of	Signature with date
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ORDER

Heard Mr. R. K. Agarwala, Smti Dipamoni Kalita and Mr. A. Choudhury, Advocates for the petitioners. Ms. D.Kalita, learned counsel appearing on behalf of Mr.R.K.Agarwala, learned counsel for the petitioners.

2. The present petition has been filed under sections 230 to 232 of the Companies Act, 2013 (erstwhile sections 391(2) to 394 of the Companies Act, 1956) for Amalgamation of Transferor Companies, namely, 1. Jaibharat Foods Pvt. Ltd., 2. Navodaya Enterprise Pvt. Ltd. & 3. Nexus Equity Consultants Ltd. with the Transferee Company, namely, Jyoti Holdings Pvt. Ltd.

3. This Tribunal vide order dated 08/02/2017 had passed the following order:



"Let notice of this petition for sanction of the Scheme of Arrangement be served on the Central Government, (through the Regional Director, North Eastern Region, Ministry of Corporate Affairs, Shillong), Income Tax Department, having jurisdiction over the petitioners, Registrar of Companies, Shillong by sending the same by hand delivery or through special messenger or by registered post or speed post within 5 days from the date of this order for filing their representation, if any, on the petition within 30 days from the date of notice. Copy of the petition along with all the annexures shall be sent with the notice. The notice shall specify the date fixed for hearing of the petition and shall state 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/or their advocates, if no such representation is received by the Tribunal within the said period, it shall be presumed that said Authorities have no representation to make on the Scheme of Arrangement. Such notice shall be sent pursuant to Form No.CAA.3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein."

4. An affidavit has been filed by the petitioners on 27/03/2017 in compliance of the order dated 08/02/2017. In the said affidavit the petitioners have stated that the notice has been sent to the Central Govt., Registrar of Companies, Shillong by Regd. Post on 13/02/2017 and to the Income Tax Department by hand on 13/02/2017 and the advertisement of hearing of petition was published in "The Assam Tribune" & "Axomiya Pratideen" on 11/03/2017. Copies of postal receipts of taking steps for service of notices and copies of paper advertisement are also annexed with the affidavit.

5. Perused the petition for confirmation of the Scheme of Amalgamation as well as affidavit filed in compliance of the order dated 08/02/2017. It appears that the petitioner companies have complied with the direction given by this Tribunal on 08/02/2017.

6. In response to the said notice dated 08/02/2017 the Registrar of Companies, North Eastern Region, Shillong has filled his representation wherein he, amongst others, has stated as follows:

- i). On the MCA portal the master data of Transferor Company No. 1 shows a charge/loan amounting to Rs. 10,00,000/- open. On

clarification being sought from the company it replied through email that the charge has already been satisfied and in support of the same the company has furnished copy of relevant charge satisfaction certificate as well as e-form relating to the same which is enclosed herewith for your reference and marked as Annexure-"A".

ii) . From the perusal of the Auditor's report annexed to Financial Statements for the last four financial years of the subject companies it appears that they have maintained proper books & records as required by law.

iii). That the Statutory Auditors of the subject companies have not made any adverse comments in their said Audit Reports which have been examined by the office.

iv). It appears from the said Audit report that the affairs of the subject companies were conducted within the ambit of the Companies Act, 1956/ Companies Act, 2013.

v). From the perusal of the said Audit report of the subject Companies it appears that they have not accepted any public deposits.

vi). From the perusal of the Audit report of the subject Companies it appears that the Transferee and Transferor Companies have no disputed statutory dues.

vii). From the perusal of the Audit report of the subject companies it appears that the interest of Shareholders, Creditors and Employees etc. does not appear to have been hampered or jeopardized through the affairs conducted by the said companies.

viii). The Transferor Company No. 1,2 & 3 have increased their Authorised Capital several times after their inception and have filed necessary returns with the RoC and have paid the requisite fees.



ix). The Transferee Company have also increased its Authorised Capital two times after its inception and have filed necessary returns with the RoC and have paid requisite fees.

x). Since all the petitioner companies other than M/S Jaibharat Foods Pvt. Ltd. are NBFCs and from the perusal of the profit & Loss account of M/S Navodaya Enterprise Pvt. Ltd. and M/S Jyoti Holdings Pvt. Ltd. it appears that the companies have no income from operations but interest income only so the companies may be asked to furnish No Objection Certificate from the Reserve Bank of India.

xi). This office has ascertained from the office of the Official Liquidator that none of the petitioner companies are under liquidation however there is no information whether there is any winding up proceeding pending against the petitioner companies in any Court/ Tribunal since there is no prior information of winding up to the Official Liquidator until order for winding up have been passed by the Hon'ble Court/Tribunal. Moreover from the petition for the Scheme of Amalgamation and accompanying affidavit it could not be ascertained whether there is any winding up proceeding pending against the subject companies before any Court/ Tribunal. Therefore, in this regard the Hon'ble NCLT may be pleased to ask the companies to furnish on affidavit that no winding up proceedings are pending before the Hon'ble Court/ Tribunal.

xii). The Registrar of Companies have made this report on the basis of the Auditor's report for the last four financial years of the subject companies and the returns/ records available in the MCA portal which has been filed by the company as well as the reply received to this office's letter dated 22.02.2017 regarding queries raised in relation to the proposed scheme.

xiii). That in the circumstances stated above and after scrutiny of the Auditor's report for the last four years of the subject companies and other relevant papers and records etc. submitted by the company, the Registrar of Companies is of the opinion that the affairs of the above-noted subject companies have not been conducted in a manner

prejudicial to the interest of the members or to public subject to clarification at para 3(x) and 3(xi) above.

7. It appears that despite notices having been served on all the authorities, specified in the order dated 08.02.2017, no other authorities except Registrar of Companies, North Eastern Region, Shillong have filed any representation in regard to the prayer made in the present proceeding. As such, it can safely be presumed that the said authorities have no representation to make on the Scheme of Amalgamation.


8. From the perusal of the representation made by ROC, it is evident that he has no objection to the sanction of the Scheme and has left the matter to the discretion of this Tribunal.

9. But, however, in paragraph 3(x) of the representation filed by the Registrar of the Companies, Shillong, it is averred that the petitioner companies other than M/S Jaibharat Foods Pvt. Ltd. are NBFCs and from the perusal of the profit & Loss account of M/S Navodaya Enterprise Pvt. Ltd. and M/S Jyoti Holdings Pvt. Ltd. it appears to ROC that the companies have no income from operations but interest income only and as such, the companies may be asked to furnish No Objection Certificate from the Reserve Bank of India.

10. In this regard the Counsel for the petitioner companies on instruction from the petitioner companies submits that the petitioner companies are not NBFCs and undertake to obtain "No Objection Certificate" from the Reserve Bank of India, if any, required in future.

11. Again in paragraph 3(xi) of the representation filed by the Registrar of Companies, Shillong, it is stated that this Tribunal may direct the petitioner companies to furnish an affidavit that no winding up proceedings are pending against the petitioner companies before the Hon'ble Court/ Tribunal. The counsel for the petitioner companies on instruction fairly submits that no winding up proceedings are pending before any Hon'ble Court/ Tribunal against the Petitioner companies.

12. No other observation or objection has been made by any person in pursuance of advertisements for sanction of Scheme.



13. 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.

14. It is therefore, considered expedient that the prayer for approval/sanction of the Scheme of Amalgamation be granted in terms of the prayer in this petition confirming the said Scheme of Amalgamation. Accordingly, there will be orders in terms of prayers (a), (b), (c), (d), (e), (f), (g), (h), (i) & (j) of paragraph 12 of the petition.

15. That the Official Liquidator is directed to file a report within a month that the affairs of the Transferor Companies have not been conducted in a manner prejudicial to the interest of its members or public interest, and thereafter, the Transferor companies shall be dissolved without the process of winding up.

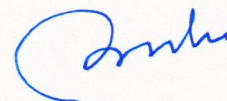
16. A copy of this order shall be furnished to the Official Liquidator to do the needful by the Registry of this Tribunal.

17. 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.

18. The petitioner companies do file with the Registrar of the Companies a certified copy of this order within 30 days of the receipt of this order.

19. Let the Registrar of this Tribunal draw up necessary order in Form No.CAA.7 of the companies (Compromises, Arrangements & Amalgamations) Rules, 2016 with such necessary variations.

20. The Schedule of Properties shall be furnished by the Transferor Company to the Registrar of this Tribunal in accordance with Form No.CAA.7 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016, within 30 days.



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