

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM : Shri Vijai Pratap Singh
Hon'ble Member (J)
&
Shri Jinan K.R.
Hon'ble Member(J)

C.P. No.369/KB/2017 connected with Company Application No.139/KB/2017

In the Matter of :

The Companies Act, 2013 (The Act);
-And-

In the Matter of :

An application under Section 232(3) of the Act read with Rule 15
of the Companies (Compromise, Arrangements and Amalgamations)
Rules, 2016;

-And-

In the Matter of :

1. Bihani Educare Private Limited, a company incorporated
under the Companies Act, 1956 and having its registered office
at 22, Strand Road, 1st floor, P.S. Hare Street, Kolkata – 700017,
West Bengal within the aforesaid jurisdiction;
-And-

In the Matter of:

2. Arham Packaging Goods Private Limited, a Company incorporated
under the Companies Act, 1956 and having its registered office at 35,
Humayun Kabir Sarani, B1-G, 4th floor, R.No.7, Formerly 128A, New
Alipore, Block-G, Kolkata – 700 053, West Bengal within the aforesaid
jurisdiction;

-And-

In the Matter of:

3. Arrowspace Nirman Private Limited, a Company incorporated
under the Companies Act, 1956 and having its registered office at 35,
Humayun Kabir Sarani, B1-G, 4th floor, R.No.7, Formerly 128A, New
Alipore, Block-G, Kolkata – 700 053, West Bengal within the aforesaid
jurisdiction;

-And-

In the Matter of:

4. Subhrekha Projects Private Limited, a Company incorporated under the Companies Act, 1956 and having its registered office at 35, Humayun Kabir Sarani, B1-G, 4th floor, R.No.7, Formerly 128A, New Alipore, Block-G, Kolkata – 700 053, West Bengal within the aforesaid jurisdiction;

-And-

In the Matter of:

1. Bihani Educare Private Limited
2. Arham Packaging Goods Private Limited
3. Arrowspace Nirman Private Limited
4. Subhrekha Projects Private Limited

... Petitioners

Counsel on Record

- | | |
|-------------------------------|-----------------------|
| 1. Mr. Manoj Kr. Banthia, PCS |] For the Petitioners |
| 2. Ms. Pritha Bose, PCS |] |

Date of Pronouncing the order: 21.09.2017

ORDER

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

This is a joint petition filed by the Petitioners namely, Bihani Educare Private Limited, Arham Packaging Goods Private Limited, Arrowspace Nirman Private Limited and Subhrekha Projects Private Limited (hereinafter referred to as the Petitioners) under Sections 230 to 232 of the Companies Act, 2013 read with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation proposed amongst Arham Packaging Goods Private Limited, Arrowspace Nirman Private Limited and Subhrekha Projects Private Limited with Bihani Educare Private Limited and their respective shareholders. A copy of the Scheme has been annexed as Annexure "A" with the petition.

The object of this petition is to obtain sanction of this Hon'ble Tribunal to a Scheme of Amalgamation (hereinafter referred to as the "said Scheme" or

"Scheme") proposed to be made between the Transferee Company, Bihani Educare Private Limited and Transferor Companies, (i) Arham Packaging Goods Private Limited, (ii) Arrowspace Nirman Private Limited and (iii) Subhrekha Projects Private Limited and their respective shareholders whereby and whereunder the entire undertaking of the Transferor Company as a going concern together with all its assets and liabilities will stand transferred to and vested in the Transferee company with effect from 1st of April, 2016 in a manner as provided in the scheme of amalgamation, duly approved by the shareholders of the petitioner companies at their respective meetings held on 29th May, 2017 presided over by the Chairperson appointed under the Order dated 21st April, 2017 of this Tribunal in C.A. No.139 of 2017.

It appears from the records that the equity shareholders of all the petitioner companies have unanimously approved the resolution favouring the scheme of amalgamation. Secured and unsecured creditors of the petitioner companies were dispensed with by this Tribunal vide Order dated 21st April, 2017, in view of written consent by way of affidavit has been obtained by all the petitioner companies for the approval of the Scheme.

In compliance with the order dated 21st April, 2017, passed by the Hon'ble Tribunal in CA No.139 of 2017, the petitioners served notices of the meeting on the Central Government through Regional Director, Registrar of Companies, West Bengal and all other Sectoral Regulatory Authorities. But the above authorities did not respond to the above notices.

Now, after filing the petition before this Hon'ble Tribunal and perusing the documents submitted by the petitioner and as per norms enunciated in Motion II format, it is ordered as follows:

- a) Accordingly, 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 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 Income-Tax department as also the Official Liquidator having jurisdiction over the transferor and 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 within 7 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 petitioner is to file affidavit within 7 days regarding service of notice. The petitioner is further directed to send notice through e-mail also and filed 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/or 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 Amalgamation.

- b) Notice of hearing shall be advertised in newspapers as per the same procedure as had been done earlier at least 10 days before the date fixed for hearing pursuant to form NCLT 3A of the NCLT Rules, 2016 with necessary variations.
- c) Objections, if any, to the scheme contemplated by the authorities to whom notice has been given on or before the date of hearing fixed herein may be filed, failing which it will be considered that there is no objection to the approval of the Scheme on the part of the

authorities by this Tribunal and subject to other conditions being applicable under the Companies Act, 2013 and relevant rules made thereunder.

- d) The petitioner companies shall comply with the proviso to sub-section (3) of section 232 or proviso to sub-section (7) of section 230, as may be applicable under the circumstances on or before the date fixed for hearing by filing the certificate of Company's auditor.

The petition for the consideration of the proposed scheme of amalgamation is fixed for hearing on 22nd November, 2017.

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

Sd/-
(Vijai Pratap Singh)
Member (J)

Sd/-
(Jinan K.R.)
Member (J)

Signed on this, the 21st September, 2017