

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

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

T.P. No.110 of 2017 connected with Company Application No.963/2016

In the Matter of :

The Companies Act, 1956 ;

-And-

In the Matter of :

An application under Sections 391(2) to 394 of the said Act;

-And-

In the Matter of :

Global Transmission Private Limited, a company, incorporated under the provisions of the Companies Act, 1956 having its Registered office at Opp. Circuit House, Ferozepur Road, Ludhiana, Punjab- 141 001, outside the jurisdiction above;

-And-

In the Matter of:

Fortune Nickel Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 109-B, Agar Nagar, Ludhiana, Punjab- 141 001, outside the aforesaid jurisdiction;

-And-

In the Matter of :

A.N. Trading Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at GTC House, Opp. Circuit House, Ferozepur Road, Ludhiana, Punjab- 141 001, outside the jurisdiction above;

-And-

In the Matter of :

Balram Alloys Private Limited, a company incorporated under the

provisions of the Companies Act, 1956 having its Registered office at 700-B, Agar Nagar, Ludhiana, Punjab- 141 001, outside the jurisdiction above;

-And-

In the Matter of :

Shivangan Tie Up Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 71, Metacalfe Street, Kolkata- 700 013, within the aforesaid jurisdiction;

-And-

In the Matter of:

1. Shivangan Tie Up Private Limited

... **Petitioner**

Counsel on Record

1. Mr Shashi Agarwal] For the Petitioner
2. Mr T. K. Das, ICLS, Assistant Director] for RD(ER), MCA

Date of Pronouncing the order: 21.09.2017

ORDER

This is a petition filed by Shivangan Tie Up Private Limited, the petitioner herein under Section 391(2) to 394 of the Companies Act, 1956 in relation to the Scheme of Amalgamation proposed between Fortune Nickel Limited, A.N. Trading Private Limited, Balram Alloys Private Limited and Shivangan Tie Up Private Limited (hereinafter referred to as the "Transferor Companies") with Global Transmission Private Limited (hereinafter referred to as the "Transferee Company") 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 "Scheme") proposed to be made between the Fortune Nickel Limited, A.N. Trading Private Limited,

Balram Alloys Private Limited and Shivangan Tie Up Private Limited, the "Transferor Companies" with Global Transmission Private Limited, the Transferee Company and their respective shareholders whereby and where under all the assets, properties, rights and claims whatsoever of the Transferor Companies and their entire undertaking together with all rights and obligations relating thereto are proposed to be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the Scheme of Amalgamation, a copy whereof has been annexed and marked with the letter "A" to the petition.

As the registered offices of the Petitioners-transferor companies nos. 1 to 3 and the petitioner-Transferee are situated at Ludhiana, Punjab and the jurisdiction lies with the High Court of Punjab & Haryana, by an order dated 19th September 2016 in CA No.696 of 2016, the Hon'ble High Court of Punjab & Haryana dispensed with the meetings of the shareholders of the petitioner companies, in view of the written consent given by all the shareholders of the applicants. **But the Hon'ble High Court of Punjab & Haryana has not dispensed with the meeting of the creditors of Transferor Company no.4, i.e., Shivangan Tie Up Private Limited.** In this context, it is mentioned that the registered office of the petitioner i.e., the transferor company no.4 is situated in the State of West Bengal.

This matter again was moved before the Hon'ble High Court at Calcutta, and the Hon'ble High Court vide their order dated 19th September 2016 dispensed with the meetings of the shareholders of the applicant company for considering the scheme.

On further scrutiny, it appears that consent has been given by the two unsecured creditors of the petitioner, i.e. the transferor company no.4 conveying approval to the scheme of amalgamation. However, considering the written consent by an affidavit given by the creditors of the petitioner company,

the holding of the meeting of the creditors of the petitioner company is dispensed with.

Further, the petitioner has not served the notice of hearing on the Official Liquidator, which is required under the N.C.L.T. Rules governing the approval for the scheme of amalgamation.

The Regional Director, Eastern Region, Ministry of Corporate Affairs at Kolkata has affirmed an affidavit is submitting the observations of the Central Government on the Scheme which are mentioned as under:

"2. (a) That it is submitted that on examination of the report of the Registrar of Companies, West Bengal, it appears that no complaint and representation has been received against the proposed Scheme of Amalgamation. The petitioner Company is also up-dated in filing its statutory returns. It is further submitted that on examination of the proposed scheme is not prejudicial to the interest of members/ shareholders and public. The Central Government has, therefore, decided that the instant petition/scheme need not be opposed.

(b) It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 31-10-2016 with a request to forward their comments/ observations/ objections, if any, on the proposed scheme of amalgamation within 15 days, but till date no comments/ observations/ objections have been received from the said authority.

3. The statements made in paragraph 1 is true to the best of my knowledge and those made in paragraph 2 is the information derived from the records of the case. These are my humble submissions before this Hon'ble National Company Law Tribunal, Kolkata Bench for kind consideration and disposal of the case on its merits."

After perusing the documents and having heard the submissions of the Ld. Counsel for the petitioner, the following orders are passed herein by this Tribunal.

- i. 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 **Official Liquidator having jurisdiction over the transferor company no.4, i.e. the petitioner herein** 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 an affidavit within seven days regarding service of the 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 petitioner 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 Amalgamation.
- ii. 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.

List the matter on 17th November 2017 for further hearing.

There shall be no order as to costs.

Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

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

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

Signed on this, 21st September 2017