

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM

Shri V. P. Singh
Hon'ble Member (J)

Shri S. Vijayaraghavan
Hon'ble Member (T)

Company Application No. 73/2017

In the matter of:

An application under Section 230, 232(1) and 232(2) of the Companies Act, 2013.

And

In the matter of:

TITAGARH AGRICO PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 756, Anandapur, EM Bypass, Kolkata 700017, within the aforesaid jurisdiction.

And

In the matter of:

CIMMCO LIMITED, an existing company within the meaning of the Companies Act, 1956 having its registered office at 756, Anandapur, EM Bypass, Kolkata 700107, within the aforesaid jurisdiction.

1. TITAGARH AGRICO PRIVATE LIMITED
2. CIMMCO LIMITED Applicants

Date of pronouncing the Order 14-3-2017

Advocates on Record:

1. Mr. Ravi Asopa, Advocate

] For Applicants

ORDER

Per Sri Vijai Pratap Singh, Member(J)

The instant application has been filed under Sections 230, 232(1) and 232(2) of the Companies Act, 2013 for directions to call separate meetings of Equity/Preference shareholders of the applicants to consider and if thought fit to approve the proposed Scheme of Amalgamation, with or without modification.

The object of this application is to ultimately obtain sanction of this Tribunal to the proposed Scheme of Amalgamation of Titagarh Agrico Private Limited, the applicant no. 1 (the Transferor Company) with CIMMCO Limited, applicant no. 2 (the Transferee Company) whereby all the properties, assets, rights and claims whatsoever of the Transferor Company and its entire undertaking together with all its rights and obligations relating thereto are proposed to be transferred to and vest in the Transferee Company on the terms and conditions as fully stated in the said Scheme of Amalgamation.

The applicant no. 1 is having 7 Equity Shareholders and with a paid up capital of Rs. 36 Crores and the applicant no 2 as on 10/02/2017, is having

47,636 Equity Shareholders and 2 preference shareholders with a paid up capital of Rs. 60.15 Crores (approx). Both the companies have prayed for holding Equity/Preference Shareholders meetings.

The transferee company is stated to be listed with BSE, NSE and CSE and both the companies have secured and unsecured creditors.

We have perused the documents annexed to the application and have heard the submissions made on behalf of the applicants and pass the following orders:

1. That a meeting of the Equity Shareholders of TITAGARH AGRICO PRIVATE LIMITED, being the applicant no.1 herein shall be convened and held at 'Kala Kunj', 48, Shakespeare Sarani, Kolkata 700 017, on Tuesday the 2nd May, 2017 at 3:00 P.M. for the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme of Amalgamation of the applicant no.1 with the applicant no.2.
2. That a meeting of the Non Convertible Non Cumulative Redeemable Preference Shareholders of CIMMCO LIMITED, being the applicant no.2 herein shall be convened and held 'Kala Kunj', 48, Shakespeare Sarani, Kolkata 700 017, on Tuesday the 2nd May, 2017 at 3:15 P.M. for the purpose of considering, and if thought fit, approving, with or without



modification, the proposed Scheme of Amalgamation of the applicant no.1 with the applicant no.2.

3. That a meeting of the Equity Shareholders of CIMMCO LIMITED, being the applicant no.2 herein shall be convened and held at 'Kala Kunj', 48, Shakespeare Sarani, Kolkata 700 017, on Tuesday the 2nd May, 2017 at 3:30 P.M. for the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme of Amalgamation of the applicant no.1 with the applicant no.2.
4. That a meeting of the Secured creditors of TITAGARH AGRICO PRIVATE LIMITED and CIMMCO LIMITED, being the applicant nos. 1 and 2 herein shall be convened and held at 'Kala Kunj', 48, Shakespeare Sarani, Kolkata 700 017, on Tuesday the 2nd May, 2017 at 5:00 P.M. for the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme of Amalgamation of the applicant no.1 with the applicant no.2.
5. That a meeting of the Unsecured creditors of TITAGARH AGRICO PRIVATE LIMITED and CIMMCO LIMITED, being the applicant nos. 1 and 2 herein shall be convened and held at 'Kala Kunj', 48, Shakespeare Sarani, Kolkata 700 017, on Tuesday the 2nd May, 2017 at 5:15 P.M. for

2



the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme of Amalgamation of the applicant no.1 with the applicant no.2.

6. That at least 30 (thirty) clear days before the date of the said meetings an advertisement convening the same and stating that copies of the said Scheme of Amalgamation and the Statement containing necessary details required to be furnished pursuant to Section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 and a prescribed form of proxy can be obtained free of charge at the Registered Office of the concerned Applicant companies or at the office of their Advocates Messrs Khaitan & Co., 1B, Old Post Office Street, Kolkata 700 001 be inserted once each in the "Pratidin" Bengali newspaper and in "The Business Standard" English newspaper as per requirements of Section 230 of the Companies Act, 2013 in Form No. CAA 2 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.
7. That in addition, at least 30 (thirty) clear days before the meetings to be held as aforesaid, a notice convening the said meetings at the place and time as aforesaid together with a copy of the said Scheme, the



Statement disclosing necessary details required to be sent under the Companies Act, 2013 read with the Companies (Compromises, Arrangements & Amalgamation) Rules, 2016 and the prescribed form of Proxy be sent by registered post or by speed post or by hand through Personal Messenger addressed to each of the Equity/Preference Shareholders and/or secured/unsecured creditors of the concerned Applicant Companies at their respective or last known addresses.

8. In addition to voting at physical meeting under Section 230 of the Companies Act, 2013 separate notice of the resolution will be given to all the shareholders of the applicant no.2 (the Transferee Company) to consider the same by postal ballot/e-voting pursuant to Section 110 of the Companies Act, 2013 read with Rules 20 and 22 of Companies (Management & Administration) Rules, 2014. The scheme shall be acted upon only if the votes cast by the public shareholders in favour of the proposal are more than the number of votes cast by the public shareholders against it.
9. To serve the notice as per requirements of sub-Section (5) of Section 230 of the Companies Act, 2013 alongwith 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, Securities and Exchange Board of India, concerned Stock Exchanges 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, within 30 days from the date of notice. 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 applicants 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. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 in Form No. CAA.3 of the Companies (Compromises, Arrangements & Amalgamation) Rules, 2016 with necessary variations incorporating the directions therein.

H



10. That Sri Soumabho Ghosh, Advocate, (Mobile : 9883285027) shall be the Chairperson, failing which, Sri Rupak Ghosh, Advocate (Mobile : 9830232279) will act as alternate Chairperson, for the said meeting of the Equity Shareholders of the Applicant no.1 to be held as aforesaid .
11. That Sri Soumabho Ghosh, Advocate, (Mobile : 9883285027) shall be the Chairperson, failing which, Sri Rupak Ghosh, Advocate (Mobile : 9830232279) will act as alternate Chairperson, for the said meeting of the preference Shareholders of the Applicant no.2 to be held as aforesaid.
12. That Sri Soumabho Ghosh, Advocate, (Mobile : 9883285027) shall be the Chairperson, failing which, Sri Rupak Ghosh, Advocate (Mobile : 9830232279) will act as alternate Chairperson, for the said meeting of the Equity Shareholders of the Applicant no.2 to be held as aforesaid.
13. That Sri Soumabho Ghosh, Advocate, (Mobile : 9883285027) shall be the Chairperson, failing which, Sri Sri Rupak Ghosh, Advocate (Mobile : 9830232279) will act as alternate Chairperson, for the said meeting of the Secured creditors of the Applicant no.1 and 2 to be held as aforesaid.

R



14. That Sri Soumabho Ghosh, Advocate, (Mobile : 9883285027) shall be the Chairperson, failing which, Sri Rupak Ghosh, Advocate (Mobile : 9830232279) will act as alternate Chairperson, for the said meeting of the Unsecured creditors of the Applicant no.1 and 2 to be held as aforesaid.
15. The consolidated remuneration of Sri Soumabho Ghosh, Advocate, as Chairperson for conducting the aforementioned meetings is fixed at Rs. 75,000/-. The consolidated remuneration of Sri Sri Rupak Ghosh, Advocate, as alternate Chairperson for conducting the aforementioned meetings is fixed at Rs. 75,000/-.
16. That Sri Mohan Ram Goenka, Pr. CS. (Mobile : 9831074332), shall be the Scrutinizer for the said meetings of the Equity/Preference Shareholders of the Applicant No. 1 and Applicant no.2 to be held as aforesaid at a consolidated remuneration of Rs.30,000/-.
17. The Chairperson / Alternate Chairperson appointed for the said meetings or any person authorised by him or any of them do issue and send out the notice of the said meetings referred to above.
18. That the quorum for meeting of the Equity Shareholders of the Applicant no.1 be fixed at 2 (two) persons present either in person or by

proxy; quorum for meeting of the Equity Shareholders of the Applicant no.2 be fixed at 30 (thirty) persons present either in person or by proxy; and the quorum for meeting of the Non Convertible Non Cumulative Redeemable Preference Shareholders of the Applicant no.2 be fixed at 2 (two) persons present either in person or by proxy; and the quorum for meeting of the secured creditors of the Applicant nos.1 and 2 be fixed at 2 (two) persons present either in person or by proxy.

19. 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 meeting, is filed with the concerned Applicant Companies at their Registered Offices not later than forty eight hours before the meetings. Any one of the Chairpersons shall have the power to adjourn the meetings, if necessary, and to conduct the procedure for the adjourned meetings as deemed necessary under the Act.
20. That the value of each member shall be in accordance with the respective books of the concerned Applicant Companies and where entries in the books of the concerned Applicant Companies are disputed, the Chairperson concerned shall determine the value for the purpose of the meeting.

21. That the Chairpersons do report to this Court the results of the said meetings within four weeks from the date of the conclusion of the respective meetings and their respective reports shall be in Form No. CAA 4 pursuant to Rule 13(2) and 14 of the Companies (Compromises, Arrangements & Amalgamation) Rules, 2016, verified by their respective affidavits.
22. The application being C.A.No. 73 of 2017 is disposed of accordingly.
23. Parties and the Chairperson to act on the order.

There shall be no order as to costs.

Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.


(S. Vijayaraghavan)
Member (T)


(Vijai Pratap Singh)
Member (J)

Signed on this, the 14th day of March 2017.