

NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD BENCH

CP No. 50/2016

Connected with

C.A. 32 of 2016

Dated Thursday, the 23th Day of March, 2017

Quorum: Mr. H. P. Chaturvedi, Members-Judicial

IN THE MATTER OF COMPANIES ACT, 1956

AND IN THE MATTER OF:

SCHEME OF ARRANGEMENT

BETWEEN

Subhadra Trading And Finance Limited

(TRANSFeree COMPANY)

AND

Umananda Trade And finance Ltd.	(TRANSFEROR COMPANY -1)
Tarnik Investments And Trading Ltd.	(TRANSFEROR COMPANY -2)
Dhankari Investment Ltd.	(TRANSFEROR COMPANY -3)
TOFSL Trading And Investment Ltd.	(TRANSFEROR COMPANY -4)
The Engineering And Technical Service Limited	(TRANSFEROR COMPANY -5)
Accorate Traders Ltd.	(TRANSFEROR COMPANY -6)
Kameni Upaskar Limited	(TRANSFEROR COMPANY -7)

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

Present: Advocate Shri R.P Agarwal for Petitioner
Shri M.K Bagri, Official Liquidator for Central Government, through office of
Regional Director

ORDER

(Per, Mr. H. P. Chaturvedi, Members-Judicial)

The present Company Petition is filed as Second Motion Petition for Sanction of the Scheme of Arrangement. The Company Petition is received as a transferred case from Hon'ble Allahabad High Court. In this Second Motion Petition the

Petitioner Company Subhadra Trading And Finance Limited Along with 7 other transferor companies have shown in prayer clause of the Petition.

As per the matter available on record the Hon'ble Allahabad High Court having heard the Second Motion Petition has passed an Interim Order dated 15.11.2016 directing the Petitioner to issue notices for hearing of this Company Petition through publishing advertisement in Newspaper and further notice (of this Petition) also be sent to the Central Government through Regional Director (N/R) under Section 394 (e) of the old Act and to the Official Liquidator attached to the High Court. In compliance thereof necessary notices were issued and publication in newspaper were effected . Further proof of service are also filed on 31 November, 2016 before Hon'ble Allahabad High Court.

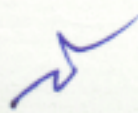
In response of the above notices the office of Official Liquidator has filed Affidavit of the Regional Director, Ministry of Corporate Affairs, Northern Region, New Delhi.

Further the Official Liquidator also submits its report on 16 Feb, 2017 which is available on record. Except certain observation /comments made in the affidavit of RD along with report of OL, nothing adverse is available on record against the sanction of the present scheme. The petitioner companies have stated (in the Company Petition) that proposed scheme of arrangement have been approved by Board of Director at their meeting duly convened and held on 25.10.2016. In support thereof of two copies of resolution dated 25.10.2016 are annexed with CP. It is also stated in para 27 the of the present company petition that five individual shareholder of transferee company have further approved the scheme by filing their consent affidavit which is new part of record in the CA 32/2016.

It is stated that another two shareholder of the transferee company are body corporate and their Board of Director have approved through its resolution passed in their respective meeting convened and held on 25.10.2016. Thus the proposed scheme has been approved unanimously by shareholders of the petitioner company. It has also made clear that none of petitioner company has any creditors secure or unsecured.

It is also informed by submitting particulars of transferor company No. 1 to 7 that Transferor company No 1 to 7 are subsidiary of Subhadra Trading and Finance Limited (the transferee company).

The Transferor Company is a core investment company (as defined in regulation framework of RBI) engaged in business of making investment in companies the listed or unlisted group of companies.



In the present petition necessary particulars about the financial position of the Company and nature of its shareholding, the its assets and Liabilities along with audit account report of the Company have been annexed.

It is stated that there is no material change in financial position of the company after 31st march except usual normal course of its business. The salient feature of the proposed scheme of the company are described in detail in para 12,13,14 of the petition.

It is also clarified the statutory auditor of the transferee company duly certifies that accounting treatment is as per the accounting standards.

Further all the petitioner companies are unlisted companies their shares are not listed in any stock exchange nor petitioner companies have issued any debentures and accepted deposits from the public. The assets of the transferee company and transferor companies would be sufficient to meet their respective liabilities as present the companies are having no creditors and report of the statutory auditor of the petitioner company are filed with the Application.

It is further submitted that no investigation proceeding under section 235 to 251 under the company Act, 1956 or corresponding provision 210 to 229 of CA 2013 is pending against the petitioner companies. Hence it is prayed for the sanction of the proposed scheme on the ground as stated in preceding paragraphs of this order which are now considered.

A perusal of the Record of the case shows that the Hon'ble Allahabad High Court in its interim order dated 04.11.2016 has pleased to observe as such while dispensing with meeting of its shareholders and creditors of the transferor and transferee company. The order of the High Court may be is reproduced herewith:

"This Company Application under section 391/394 of the companies Act, 1956 has been filed for sanctioning of the scheme of arrangements between Subhadra Trade and Finance Ltd (Transferee company) and Umananda Trade and Finance Ltd (Transferor Company-1) Tarnik Investments and Trading Ltd. (Transferor Company-2), Dhankari Investments Ltd (Transferor company-3), Tofsl Trading and Investments Ltd (Transferor Company-4), The Engineering and Technical services Limited (Transferor Company-5), Accurate Traders Ltd. (Transferor Company-6), Kameni Upaskar Limited (Transferor Company-7) and their respective shareholders and creditors, copy whereof is filed as Annexure-I to this application. This scheme is stated to have been approved by the respective Board of Directors of the application.

A prayer has made for dispensing with the meetings of the shareholders and the creditors of the transferor and transferee companies.

As far as M/s Subhadra trade and Finance Ltd, the Transferee company is concerned, it consists of 7 shareholders five of which are individuals while the other two shareholders are the transferor companies. The individual hare holders have submitted no objection on affidavits, thus giving their approval to the scheme of arrangement. As regards, the two companies, who are themselves applicants before this court, a Board resolution, approving the scheme of arrangement has been filed.

In so far as, a transferor companies are concerned, it has been submitted that there are no individual shareholders and that the entire shareholding is in the

name of the companies themselves and a resolution approving the scheme has been passed by the respective Board of Directors.

Accordingly, the meetings of the shareholders and creditors of the transferee & transferor companies are directed to be dispensed with.

Counsel for petitioner applicant companies may file a second motion petition u/s 394 of the Act for sanction of the scheme.

Thus it can also be seen that except the report of OL and affidavit of RD none has come forward to oppose the proposed scheme. The Regional Director while filing affidavit has made certain observation in relevant para of his affidavit and expressed its views contending such that this court may pass order as per its merit for sanction of the scheme.

The Official Liquidator through its report 16.06.2017 has expressed such that it has no objection to the dissolution of the transferor companies without winding up pursuant to provision of the companies Act. However, the present petition to be considered after formal report of the Regional Director is filed and further requested that director/officer of the transferor/transferee company to be directed to make compliance of the observations made by the office of the RD in its affidavit and in report of ROC and the OL.


In response thereto counsel for petitioner Shree R.P. Agarwal gave assurance to this Tribunal to make compliance of Legal requirements.

In response to RD affidavit the petitioner company through authorised representative of Miss Geeta Bhalla, (Director of company) has filed an undertaking that the petitioner company shall comply with FEMA/RBI and other statutory compliance in addition to this to make compliance of accounting standards 14. In response to observations made by R.D in his affidavit, she has further stated that such provisions have already been incorporated in relevant clause of the Company Scheme.

We have heard the submission of learned counsel and official liquidator on sanction of the proposed Scheme.

Having examined the contents of the petition along with documents on record annex therewith. We are of the view that sanction of the present scheme is not against the public policy nor prejudicial to the interests of shareholders and detrimental to public at large. Considering memo of undertaking and necessary affidavit have been filed by the representative of the company and assurances given by the learned counsel of the petitioner before this bench.

From the material available on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of Law nor contrary to Public Policy nor detrimental to public at large.



Further all the Statutory compliance seems to be complied with or further undertaken to be complied by Petitioner as per their Affidavit and Memo of Undertaking. Therefore, Company Scheme Petition filed by the Petitioner is made absolute in terms of its Prayer Clause .Accordingly, the Company Scheme of Arrangement annexed to Company Petition is hereby approved and sanctioned.

Further a cost of Rs. 20,000/- is awarded in favour of the Central Government through the office of Regional Director (N.R.) towards Legal Expenses incurred which is payable by the company within four weeks from the receipt of authentic copy of this order.

The petitioner company to lodge a copy of this order along with company scheme to the office of ROC and also communicate the office superintendent of stamp of the State Government, for the purpose of adjudication of stamp duty if necessary, within 60 days of receipt of this order.

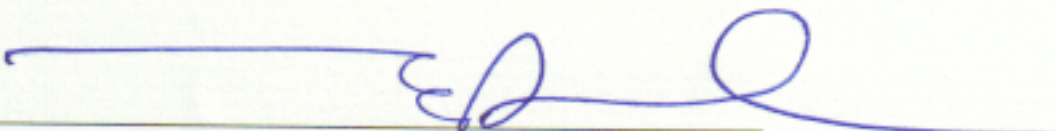
The counsel of the company to furnish a copy of draft order of sanction of the Scheme as per the prescribed format under Companies Compromises, Arrangement and Amalgamations) Rules, 2016 read with other rules for scrutiny and authentication by the Registry of this Tribunal.

The parties to act upon as per operative portion of the order and to take necessary steps as per the provisions of Companies Act and Rules.

All Concerned Regulatory Authorities may act on a copy of this order along with the Scheme duly authenticated by the Asst. Registrar, National Company Law Tribunal, Allahabad Bench.

Accordingly Petition stands disposed off.

Dated 23th March, 2017


H.P. CHATURVEDI, MEMBER-JUDICIAL