

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

CA (CAA) No. 548/KB/ 2017

In the matter of:

A petition made under Sections 230 and
232 of the Companies Act, 2013.

And

In the matter of:

Bhumika Business Private Limited, a
company incorporated under the
provisions of the Companies Act, 1956,
having its Registered Office at
Technopolis, 14th floor, Plot BP 4, Sector 5,
Salt Lake, Kolkata 700 091, within the
aforesaid jurisdiction.

CIN: U51909WB2012PTC188509

PAN: AAFCB2589R

And

In the Matter of:

Sd

Sd

Shyamsukha Builders Private Limited, a company incorporated under the provisions of the Companies Act, 2013, having its registered office at Poddar Court, Gate no.2, 18, Rabindra Sarani, Kolkata 700 001, in the State of West Bengal, within the aforesaid jurisdiction.

CIN: U45400WB2014PTC202066

PAN: AAUCS5910J

1. Bhumika Business Private Limited
– Transferor Company

2. Shyamsukha Builders Private Limited
– Transferee Company

..... Applicants

For the Applicants:

1. Mr. D. N. SHARMA , Advocate
2. Mr. Deepak Kumar Jain, Advocate

Date of pronouncing the order: 19-01-2018

ORDER

Per Jinan K. R.

This is an Application under Sections 230(1) and 232(1) of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 filed by the Applicant Nos. 1 and 2, namely, (1) Bhumika Business Private Limited (Transferor

sd

sd

Company), and (2) Shyamsukha Builders Private Limited (Transferee Company) and their respective shareholders in connection with a proposed Scheme of Amalgamation (Annexure E) whereby and where under it is proposed to amalgamate Bhumika Business Private Limited-“BBPL” (Transferor Company) with Shyamsukha Builders Private Limited-“SBPL” (Transferee Company) with all assets and liabilities relating thereto as a going concern.

The object of this Application is to ultimately obtain sanction of this Tribunal to the proposed Scheme of Amalgamation to be made between the Transferor Company, Transferee company and their respective shareholders whereby and where under the entire undertaking of the Transferor Company with all assets and liabilities relating thereto as a going concern is proposed to be transferred to and vested in the Transferee Company.

It is stated in the Application that the amalgamation would result in consolidation of business. Further, the amalgamation will provide a high level of synergistic integration of operations and better operational management.

It is further stated in the Application that the amalgamation would result in financial resources of the Amalgamating Company and Amalgamated Company being efficiently merged and pooled leading to more effective management of funds, greater economies of scale, stronger base for future growth.

It is also submitted in the Application that the Amalgamation will provide greater internal control and functional integration at various

Sd

Sd

levels of the organization such as, Information Technology, human resources, finance, legal and general management leading to an efficient organisation capable of responding swiftly to volatile and rapidly changing marked scenarios.

The Board of Directors of the Transferor Company and Transferee Company, in their respective meeting held on 31st March, 2017, have passed resolution approving the Scheme of Amalgamation of BBPL with SBPL. A copy of the resolution passed by the of Directors of the Transferor Company and Transferee Company approving the Scheme of Amalgamation is annexed to this Application at pages 108-113.

It is stated in the Application that the valuation of the shares of the Applicant Companies, based on which the share entitlement ratio has been arrived at, has been carried out and approved by the Chartered Accountants and stated to be bona fide and reasonable.

It is stated in the Application that the Scheme will not adversely affect the rights of any of the creditors of the Applicant Companies in any manner whatsoever and due provisions have been made for payment of all the liabilities as and when the same fall due in usual course.

There are no proceedings pending under Sections 206 to 213 of the Companies Act, 2013 against any of the Applicant Companies.

There are also no proceedings pending under Sections 241 and 242 of the said Act or any other proceedings whatsoever.

Sd

Sd

There are no investigations or proceedings pending under Section 235 to 251 of the Companies Act, 2013 against the Applicant Companies.

The Scheme of Amalgamation does not attract the provisions of the Competition Commission of India.

There is as at present no scheme of corporate debt restructuring ongoing or pending in relation to the Applicant Companies.

It is submitted in the Application that there are two different Schemes pending before the NCLT Bench, Kolkata being CAA No.243 of 2017 and CAA No.244 of 2017 in which each of the applicants are parties hereto. The Schemes are pending for final sanction.

Save as aforesaid, there are no proceedings pending under the Companies Act, 1956 or Companies Act, 2013 against any of the Companies.

It is stated in the Application that the accounting treatment, proposed in Clause 13 in the Scheme of Amalgamation, is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013.

As stated in the Application that as on 15th September, 2017 the applicant company No.1 "BBPL" has no secured creditors but has only 1 (one) unsecured creditor and a total of Rs. 11,000/- was outstanding while the applicant company No.2 "SBPL", the Transferee Company, has no secured creditor or unsecured creditors in its company.

Sd

Sd

The Copy of the certificate issued by their respective Chartered Accountant on 15-09-2017 are annexed at page 114-116.

It is stated in the Application that the only unsecured creditors of "BBPL", the Transferor Company, has duly confirmed and agreed to the terms and conditions of the said proposed Scheme of Amalgamation.

An affidavit from the Unsecured creditor of the Transferor Company, according his consent to the proposed Scheme of Amalgamation, is annexed to the Application and marked as "H" at page 117.

The Applicant Companies have prayed in the Application that inasmuch as all the Creditors of the Applicant Companies have duly consented in writing by way of an individual affidavit to the proposed Scheme of Amalgamation, the requirement of convening and holding a meeting to ascertain the wishes of the Creditors of the Applicant Companies be dispensed with.

The Transferee Company is having 2 Equity Shareholders and 1 Preference Shareholder and the Transferor Company is having 3 Equity Shareholders.

The copies of the list of the shareholders of the Applicant Companies are annexed with the Application and collectively marked "K".

Each and every Shareholder of the applicant companies have considered the proposed Scheme of Amalgamation and on such

Sd

Sd

consideration have given their consent in writing by way of an individual affidavit agreeing to the Scheme of Amalgamation and also consented to waive the holding and convening of the meetings of the shareholders of the Applicant Companies concerned.

The 'No objection" affidavits as received from all the shareholders of the Applicant Companies are annexed with the Application and collectively marked "L".

The Applicant Companies have stated in the Application that inasmuch as all the shareholders of the Applicant Companies duly consented in writing by way of an affidavit to the proposed Scheme of Amalgamation, the requirement of convening and holding a meeting to ascertain the wishes of the shareholders of all the Applicant Companies be dispensed with.

Heard the learned Counsel for the applicant, perused the records, documents annexed to the application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicant, the following orders are passed :

1. In view of the fact that all the shareholders of the Applicant Companies duly consented in writing by way of an affidavit to the proposed Scheme of Amalgamation, the requirement of convening and holding of a meeting to ascertain the wishes of the shareholders of all the Applicant Companies for the Scheme of Amalgamation, is dispensed with ;

Sd

Sd

2. In view of the fact that there are no secured creditors of the Applicant Companies, convening and holding of meetings of the Secured Creditors of the Applicant Companies does not arise ;
3. In view of the fact that the only unsecured creditors of "BBPL" the Transferor Company, has duly confirmed and agreed to the terms and conditions of the said proposed Scheme of Amalgamation by way of an affidavit, convening and holding of the meeting of the Unsecured Creditors of the Transferor Company is dispensed with;
4. In view of the fact that there are no unsecured creditors of the Transferee Company, namely, Shyamsukha Builders Private Limited, convening and holding of the meeting of the Unsecured Creditors of the Transferee Company does not arise ;
5. Let the notice be served by the applicant companies, as per the requirements of sub-section (5) of Section 230 of the Companies Act, 2013, along with the copy of the petition and all other documents including the copy of the Scheme of Amalgamation 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 the concerned Assessing Officer along with the Chief Commissioner of Income-Tax with PAN Numbers of the Applicant Companies through E-Mail and by Speed Post, both, as also on the Official Liquidator having jurisdiction over the transferor

sd

sd

and the 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 by Speed Post within seven days from the date of this order for filing their representation, if any, on the application within 30 days from the date of the notice ;

6. The applicants shall file affidavit within 7 days of serving the notice regarding service of notice ;
7. The applicants are further directed to send notice through e-mail also and file 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, in advance ;
8. 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 ;
9. 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 by this Tribunal that there is no objection to the approval of the Scheme of Amalgamation on the part of the authorities, subject to other conditions being applicable under the Companies Act, 2013 and relevant rules made thereunder ;
10. The applicant 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

Sd

Sd

the date fixed for hearing by filing the certificate of Companies' Auditor.

The Company Application bearing No. CA(CAA) No. 548/KB/2017 is, accordingly, disposed of.

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



(V.P. Singh)
Member(Judicial)



(Jinañ K. R.)
Member(Judicial)

GOUR_STENO