

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

TP No. 156/KB/2017

C.P. No. 1091/2016

Connected with

C.A No. 796 of 2016

In the matter of:

The Companies Act, 1956;

And

In the matter of:

An Application under Sections 391(2) and
394 of the said Act;

And

In the matter of:

MAAN STEEL & POWER LIMITED, a
company incorporated under

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the provisions of the Companies Act, 1956, having its registered office at 58/1, Sarat Bose Road, Kolkata - 700 025 within the aforesaid jurisdiction ;

And

PAWANSHIV SHOPPERS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 13, Elgin Road, 4th Floor, Room No. 4C, Kolkata - 700 020 within the aforesaid jurisdiction ;

And

In the matter of :

1. MAAN STEE & POWER LIMITED

AND

2. PAWANSHIV SHOPPERS PRIVATE LIMITED

.....PETITIONERS

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CORAM : Shri V.P. Singh, Member(Judicial)
Shri Jinan K. R., Member(Judicial)

For the Petitioners :

Mrs. Manju Bhuteria, Advocate

Mr. Madan Kumar Maroti, PCA

Mr. N Gurumurthy, FCA

Mr. K. S. Pradhan, Joint Director, Ministry of Corporate Affairs

Date of pronouncing the order: 01-1-2018

ORDER

Per Shri Jinan K. R. Member(Judicial) :

The Petition had been filed before the Hon'ble High Court, Calcutta bearing Company Petition No. 1091 of 2016 connected with Company Application No. 796 of 2016 and subsequently, the said Petition had been transferred to this Tribunal bearing TP No. 156/KB/2017 for disposal.

The object of the petition bearing Company Petition No. 1091 of 2016 was to obtain sanction to a Scheme of Amalgamation of Pawanshiv Shoppers Private Limited, the Transferor Company with Maan Steel & Power Limited, the Transferee Company where all the assets, properties, rights and claims whatsoever of the Transferor Company and its 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

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Scheme of Amalgamation, a copy whereof is annexed to the Petition and marked with letter "A".

The Transferee Company is engaged in the business of manufacturing of sponge iron and the Transferor Company is engaged in trading business.

It is stated in the petition that the business of the Transferor Company and the Transferee Company can be combined and carried forward conveniently with combined strength.

It is further stated in the petition that the amalgamation will enable the Transferee Company to consolidate its line of business by restructuring and reorganising its business activities and capital structure.

The amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration in better and more productive utilisation of various resources.

It is further submitted in the Petition that the Scheme of Amalgamation will have beneficial results for the Company concerned, their shareholders, employees and all concerned.

It has been stated in the Affidavit dated 06-09-2017 filed by the Petitioner Companies that the Board of Directors of the Transferee Company and the Transferor Company have, at their respective Board meetings on 24-05-2016 adopted the Scheme of Amalgamation.

The copy of the said resolutions are annexed with the affidavit dated 06-09-2017 and marked Annexure "A".

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A copy of the Audited Balance Sheet and Statement of Profit & Loss of the Transferee Company and the Transferor Company made upto 31-03-2016 had been annexed with the Petition and marked with "D" and "E", respectively.

The respective Auditors of the Transferee Company and the Transferor Company had not made any adverse remark or comment in their respective Reports.

The Auditors' report did not disclose any irregularity or mismanagement in the affairs of the Transferee Company and the Transferor Company.

It has been stated in the Petition that subsequent to the date of the aforesaid Audited Balance Sheets, there had been no substantial change in the financial position of the respective Transferee Company and the Transferor Company, except those arising or resulting from the normal course of business.

It has been further stated in the Petition that the assets of the petitioner companies are sufficient to meet all their liabilities.

Further, the Scheme of Amalgamation does not involve any compromise or composition with the creditors of the petitioner companies.

The Scheme of Amalgamation will not affect the rights of the creditors of the petitioner companies in any manner, whatsoever.

It has been submitted in the Petition that there are no proceedings pending under Sections 235 to 251 of the Company Act, 1956 against any of the petitioner Companies.

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It has further been submitted that no one will be prejudiced by the Scheme of Amalgamation and that the sanction of the Scheme of Amalgamation is in the interest of and for the benefit of the Petitioner Companies and their respective shareholders and all concerned.

By an Order dated 28-11-2016, the Hon'ble High Court, Calcutta was pleased to waive the meetings of the shareholders of the Transferee Company as well as the Transferor Company for the purpose of considering and if thought fit approving with or without modification, the Scheme of Amalgamation.

A copy of the said Order dated 28-11-2016 downloaded from the Official website of the Hon'ble High Court, Calcutta is annexed with the Petition marked "F".

It is further submitted by the Petitioners vide their Affidavit dated 04-11-2017 that as on 23-10-2017, the Transferee Company has 109 Unsecured Creditors amounting to Rs. 13,66,15,124/- which has duly been certified by the statutory auditor of the Company and annexed with the affidavit dated 04-11-2017 marked "A".

Out of the above 109 Nos. of unsecured creditors, only 6 Nos. Unsecured creditors amounting to Rs. 13,02,56,023/- aggregating to 95% of total value of creditors as on 23-10-2017 have given their written consent conveying their 'No objection' to the Scheme of Amalgamation without modification.

The copy of the 'No objection' of the said unsecured creditors is annexed with the Affidavit dated 04-11-2017 and marked "B".

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It is submitted by the Petitioners in the said Affidavit dated 04-11-2017 that as on 23-10-2017, the Transferee Company has 7 Secured Creditors amounting to Rs. 27,76,40,461/- which has duly been certified by the statutory auditor of the Company.

Out of the above 7 Nos. of secured creditors, amounting to Rs. 27,76,40,461/- which has duly been certified by the statutory auditor of the Company. Out of the 7 Nos. of Secured creditors, only 3 Nos. (consolidated affidavit by each creditor covering 2 Nos. of credit facility) of secured creditors amounting to Rs. 26,77,06,925/- aggregating to 96% of total value of creditors as on 23-10-2017 have given their written consent conveying their 'No objection' to the Scheme of Amalgamation without modification and is annexed with the Affidavit dated 04-11-2017 marked "C".

It has further been stated in the said Affidavit dated 04-11-2017 that there are no secured or unsecured creditors in respect of transferor company as on 23-10-2017.

A copy of the certificate from the statutory auditor of the Company confirming NIL creditors is annexed with the said affidavit dated 04-11-2017 and marked "D".

It has been submitted by the Petitioners in the said Affidavit dated 04-11-2017 that the statutory Auditors of Maan Steel & Power Limited, the Transferee Company have issued a certificate confirming that in terms of the provisions of Sections 230 and 232 of the Companies Act, 2013 and read together with the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 with reference to its compliance with the applicable accounting standard specified under Section 133 of the Act, read with Rule 7 of the Companies(Accounts) Rules, 2014 and other generally accepted accounting principles.

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The said certificate of the statutory auditors is annexed with the affidavit dated 04-11-2017 and marked Annexure "E".

The Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata has submitted his affidavit dated 12-05-2017 and the supplementary affidavit dated 14-07-2017 and observed as under :

In the Affidavit dated 14-07-2017, the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata it has been observed as under :

" this Directorate issued a letter to the petitioner companies on 22/23.03.2017 seeking some information from the petitioner companies. In this connection, it is stated that the query letter issued to the petitioner, transferor company, viz. M/s. Pawanshiv Shoppers Private Limited has been returned back undelivered with the postal remark "Left", hence it appeared that M/s. Pawanshiv Shoppers Private Limited is not maintaining the Registered Office. As such this Directorate advised the Registrar of Companies, West Bengal to issue show cause notice to the said company for non-maintenance of the Registered Office under Section 12 of the Companies Act, 21013, and inter alia the Registrar of Companies, West Bengal, mentioned in his report dated 06-07-2017 that there is no such violation of Section 12 in his report. The report of the Registrar of Companies, West Bengal dated 06-07-2017 is enclosed herewith for kind perusal of this Tribunal and marked as Annexure-I. The Central Government has, therefore, decided that the instant petition/Scheme need not be opposed."

In the Affidavit dated 12-05-2017 of the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, it has been observed as under :

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“ 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 22/23.03.2017 with a request to forward their comments/observations/objections, if any, on the proposed scheme of amalgamation within 15 days. But, no report from the Income Tax Department has been received in the matter till finalisation of this affidavit.”

Heard the arguments of the Ld. Counsel for the petitioner Companies and the Deputy Director, Eastern Region, Ministry of Corporate Affairs.

In view of the consent, conveying the ‘No objection’ to the Scheme of Amalgamation without modification, of the Secured creditors and the Unsecured creditors of the Transferee Company, as annexed to the Affidavit dated 04-11-2017 filed by the Petitioner Companies, holding of separate meetings of the Secured and Unsecured Creditors is dispensed with.

In view of the facts stated above, the following orders in terms of the prayers made in the Company Petition 1091/2016, are passed, with modifications :

- a) The Scheme of Amalgamation being Annexure “A” to the Company Petition 1091/2016 is sanctioned to be binding with effect from 1st day of April, 2016 on MAANSTEEL & POWER LIMITED AND PAWANSHIV SHOPPERS PRIVATE LIMITED and their shareholders and all concerned ;
- b) All the properties, rights and interest of PAWANSHIV SHOPPERS PRIVATE LIMITED be transferred to and vested in without further act or deed in MAAN

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STEEL & POWER LIMITED and accordingly, the same shall, pursuant to Section 394(2) of the Companies Act, 1956 be transferred to and vested in MAAN STEEL & POWER LIMITED for all the estate and interest of PAWANSHIV SHOPPERS PRIVATE LIMITED but subject nevertheless to all charges, now affecting the same ;

c) All the liabilities and duties of PAWANSHIV SHOPPERS PRIVATE LIMITED be transferred without further act or deed to MAAN STEEL & POWER LIMITED and accordingly, the same shall, pursuant to Section 394(2) of the Companies Act, 1956 be transferred to and become the liabilities and duties of MAAN STEEL & POWER LIMITED ;

d) All the proceedings and/or suit appeals now pending by or against PAWANSHIV SHOPPERS PRIVATE LIMITED shall be continued by or against MAAN STEEL & POWER LIMITED ;

e) MAAN STEEL & POWER LIMITED and PAWANSHIV SHOPPERS PRIVATE LIMITED shall, within 30 days after the date of obtaining the Certified Copy of this Order, cause certified copies of this Order to be delivered to the Registrar of Companies, West Bengal for registration, respectively ;

f) The Official Liquidator attached to the Hon'ble High Court, Calcutta is directed to file a report under Second Provision to Section 394(1) of the Companies Act, 1956 in respect of the Petitioner Companies, within 6 weeks from the date of this Order.

For the purpose, the Official Liquidator may entrust the work of verification of the books of accounts and the financial statements of the Petitioner

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Companies to a Chartered Accountant Firm, the cost of which shall be borne by the Petitioner Companies depending upon the volume of work.

g) Leave is given to MAAN STEEL & POWER LIMITED to appropriately apply for dissolution without winding up of PAWANSHIV SHOPPERS PRIVATE LIMITED upon filing of the report by the Official Liquidator attached to Hon'ble High Court, Calcutta ;

h) The schedule of assets in respect of PAWANSHIV SHOPPERS PRIVATE LIMITED be filed within a period of 60 days from the date of this Order ;

i) Any person interested, be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

Accordingly, the Company Petition being TP No. 156/KB/2017 connected with Company Petition No. 1091 of 2016 and Company Application No. 796 of 2016, stands disposed of.

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



(V.P. Singh)
Member(Judicial)



(Jina K. R.)
Member(Judicial)

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