

**NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**CA(CAA)No.562/KB/2017**

**Coram: Shri Jinan K.R., Hon'ble Member (Judicial)**

**In the matter of :**

**An application under Section 230(1) read with Section 232 (1) of the Companies Act, 2013.**

**IN THE MATTER OF:**

**THE BORMAH JAN TEA COMPANY (1936) LIMITED**, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at McLeod House, 3, Netaji Subhas Road, Kolkata 700 001 in the State of West Bengal.

....Applicant No.1

And

**TEESTA VALLEY TEA COMPANY LIMITED**, a Company incorporated under the provisions of the Indian Companies Act, 1866 and being a Company within the meaning of the Companies Act, 2013 having its registered office at 5 & 7, Netaji Subhas Road, Kolkata 700 001 in the State of West Bengal.

....Applicant No.2

**IN THE MATTER OF:**

1. The Bormah Jan Tea Company (1936) Limited .. Transferor Company
2. Teesta Valley Tea Company Limited .. Transferee Company

**Counsel on Record for the Applicants:**

Mr. Rupak Ghosh, Advocate :  
Mr. Aniket Agarwal, Advocate : For Applicants.  
Mr. Suvam Sinha, Advocate :

**Date of Pronouncing the order:** 02 /02/2018.

**ORDER**

**Per Shri Jinan K.R., Member (Judicial)**

1. This is an application under Section 230(1) read with Section 232(1) of the Companies Act, 2013 filed by the Applicant Companies, namely The **Bormah Jan Tea Company (1936) Limited**, being the Applicant Company No.1 abovenamed (hereinafter referred to as "**the Transferor Company**") and **Teesta Valley Tea Company Limited**, being the Applicant Company No.2 abovenamed (hereinafter referred to as "**the Transferee Company**") in connection with a proposed Scheme of Amalgamation of the Transferor Company with the Transferee Company in the manner and on the terms and conditions stated in the said Scheme of Amalgamation.

2. The object of this application is to obtain orders/directions with regard to meetings of shareholders and creditors under Section 230(1) read with Section 232(1) of the Companies Act, 2013 in connection with the Scheme of Amalgamation of The Bormah Jan Tea Company (1936) Limited (Applicant No.1) Transferor Company with Teesta Valley Tea Company Limited (Applicant No.2) Transferee Company whereby and whereunder the entire undertaking of the Transferor Company together with all property, rights, powers and all debts, liabilities, duties and obligations relating thereto is proposed to be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the Said Scheme of Amalgamation, a copy of which is annexed with the application and marked "A".

3. The Bormah Jan Tea Company (1936) Limited (Applicant No.1), the Transferor Company, was incorporated on 04.03.1936 as a public company within the meaning of the Companies Act, 2013. The Transferor Company is registered with the Registrar of Companies, West Bengal having CIN LO1132WB1936PLCOO8535. Its PAN Number is AABCT2010K. The email address is [uttam\\_rungta@teestavalley.com](mailto:uttam_rungta@teestavalley.com) and website is [www.bormahjantea.com](http://www.bormahjantea.com). The main objects of the Transferor Company is to acquire lands, tea gardens and plantations. The Transferor Company is engaged in the business of cultivation, manufacture and sale of tea. The Authorised Share Capital of the Transferor Company is Rs.1,23,50,000/- divided into 4,85,000 Equity Shares of Rs.10/- each and 75,000 6% Redeemable Cumulative Preference Shares of Rs.100/- each. The issued, Subscribed and Paid up Share Capital of the Transferor Company is Rs.12,50,000/- divided into 1,25,000 Equity Shares of Rs.10/- each fully paid up.

4. Teesta Valley Tea Company Limited, Applicant No.2, Transferee Company was incorporated on the 20<sup>th</sup> day of November 1876 under the provisions of the Indian Companies Act, 1866. The Transferee Company is a public company within the meaning of the Companies Act, 2013. The Transferee Company is registered with ROC having CIN L15491WB1876PLC000347. Its PAN Number is AA ACT9762D. The e-mail address of the Transferee Company is [accounts@teestavalley.com](mailto:accounts@teestavalley.com) and website is [www.teestavalley.com](http://www.teestavalley.com). The main objects of the Transferee Company is to hold and acquire lands, tea gardens and plantations and to cultivate the same and manufacture, production and sale of tea and tea seed. The Authorized Share Capital of the Transferee Company is Rs.22,50,00,000/- divided into 5,00,000 Equity Shares of Rs.10/- each and 1,75,000 6% Redeemable Cumulative Preference Shares of Rs.100/- each. The issued, subscribed and Paid up Share Capital of the Transferee Company is Rs.1,88,00,000/- divided into 1,50,000 Equity Shares of Rs.10/- each fully paid up and 1,62,000 6% Redeemable Cumulative Preference Shares of Rs.100/- each fully paid up.

5. Ld. Counsels appearing for the applicants, took us to the averments made in the application as well as the documents annexed hereto. The creditors of the Applicant Companies constituting over 90% in value have agreed in writing to the proposed Scheme of Amalgamation by way of affidavit. The Transferee Company has only 5 (five) Preference Shareholders. All the said Preference Shareholders of the Transferee Company have by way of affidavits agreed and confirmed their consent to the proposed Scheme of Amalgamation. Counsel appearing for the Applicants seek directions and orders under Sections 230(1) and 232(1)

of the Companies Act, 2013 for convening of separate meetings of the Equity Shareholders of the Applicants and dispensing with meetings of Preference Shareholders of the Applicant No.2 and Creditors of Applicants in view of the aforesaid.

- i. Meeting of Equity Shareholders of Applicant No.1 at 11 AM;  
and
- ii. Meeting of Equity Shareholders of Applicant No.2 at 1:00 P.M.

6. In the event meeting of Equity shareholders of the Applicant No.1 spills over and is concluded after the time fixed for commencement of the succeeding meeting of Equity Shareholders of Applicant No.2, such succeeding meeting shall be held immediately after such conclusion of the prior meeting.

7. In view of the individual affidavit given by the Preference Shareholders of the Applicant No.2, meeting of the Preference Shareholders of the Applicant No.2 is hereby dispensed with.

8. That in view of the individual affidavits given by the creditors over 90% in value, meeting of the Transferee Company and Transferor Companies are hereby dispensed with.

9. That at least 30 (thirty) clear days before the meetings to be held as aforesaid, an advertisement convening the same indicating the day, date, times and the venue of the said meetings and stating that copies of the said Scheme of Amalgamation along

with the statement required to be furnished pursuant to the provisions of the Companies Act, 2013 disclosing necessary details and a prescribed form of proxy can be obtained free of charge at the respective registered offices of the Applicants be inserted once each in the "Business Standard" in English and "Aajkal" in Bengali as per the requirements of Section 230 of the Companies Act, 2013 in Form No.CAA2 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

10. That at least 30 (thirty) clear days before the date of the meetings of Equity Shareholders to be held as aforesaid, notice convening the said meetings together with a copy of the said Scheme, a copy of the statement required to be sent under the provisions of the Companies Act, 2013 disclosing necessary details and the prescribed form of proxy shall be sent to each of the said Equity Shareholders of the Applicant Nos. 1 and 2, by post or air mail or courier or email or through personal messenger at their respective or last known addresses. The said notices along with accompanying documents shall also be placed on the respective website of the Applicant Nos.1 and 2.

11. That notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the Scheme, Statement under the provisions of the Companies Act, 2013 disclosing necessary details shall also be served on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, the Registrar of Companies,

West Bengal, Official Liquidator, Securities Exchange Board of India, Income Tax Department having jurisdiction over the Applicants and other sectoral regulators or authorities, if any, in terms of the provisions of Section 230(5) of the Companies Act, 2013 by sending the same by hand delivery through special messenger or by post forthwith after the notices are sent to the shareholders in terms of Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 for filing their representation, if any, within 30 days from the date of the notice. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the advocates of the said Applicants. If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme of Amalgamation. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 in Form No. CAA3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with necessary variations, incorporating the directions herein.

12. That the quorum for the said meetings of the Equity Shareholders of the Applicant Nos.1 and 2 shall be fixed in accordance with Section 103 of the Companies Act, 2013 present either in person or by proxy.

13. It is however provided that in case the quorum of any meeting is not available on the scheduled time and date, the

Chairperson may adjourn such meeting to any date/time and take a decision on the quorum for the adjourned meeting.

14. Mr. Anuj Singh, Advocate (9830202752), is appointed as the Chairperson of the said meetings of the Equity Shareholders of the Applicant Nos.1 and 2 to be held as aforesaid in terms of this order. The Chairperson shall be paid a consolidated sum of Rs.50,000/- (Rupees Fifty Thousands only) for conducting the aforesaid meetings as Chairperson.

15. Mr. Rahul Parasrampurua, Company Secretary (Mobile No.9831042317) is appointed as the Scrutinizer of the said meetings of the Equity Shareholders of the Applicant Nos.1 and 2 to be held as aforementioned in terms of this order. The Scrutinizer shall be paid a consolidated sum of Rs.40,000/- (Rupees Forty Thousands only) for acting as Scrutinizer.

16. That the Chairperson appointed for the said meetings or any person authorized by the Chairperson do issue and send out the notices of the said meetings referred to above.

17. The Applicants to file an affidavit proving service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the meetings to be held.



18. The Equity Shareholders of the Applicant Nos.1 and 2 shall be given the option of voting on the resolution for approval of the Scheme by casting their votes personally or by proxy at the venue of the meetings at 3, Netaji Subhas Road Kolkata 700 001 on 28<sup>th</sup> March 2018 or by postal ballot / remote e-voting during the period from 26<sup>th</sup> February, 2018 (9:00 A.M.) to 27<sup>th</sup> March, 2018 (5:00 P.M.). The facility for remote e-voting shall be disabled at 5:00 P.M on 27<sup>th</sup> March 2018.

19. The business of the meetings shall be transacted accordingly. The resolution for approval of the Scheme of Amalgamation shall, if passed by a majority in number representing three-fourths in value of the Equity Shareholders casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of the said meetings of such shareholders of the Applicant Companies under Section 230(1) read with Section 232(1) of the Companies Act, 2013.

20. Subject to the directions and matters dealt with herein, the procedure for postal ballot/ e-voting and conduct of voting at the venue of the meeting in so far as the same is prescribed by the Companies (Management & Administration) Rules, 2014 ("the said Rules") and the forms thereunder shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.

21. The cut-off date in terms of the said Rules for determining the eligibility of shareholders to vote ("hereinafter referred to as the "Relevant Date") shall be 19<sup>th</sup> February 2018. The votes cast by the shareholders

shall be reckoned and scrutinized for all modes with reference to such Relevant Date.

22. The Equity Shareholders of the Applicant Companies may opt to exercise their votes only in one mode, i.e, by (a) postal ballot, (b) remote e-voting or (c) by poll at the venue of the meeting. In case they cast their votes by both, postal ballot and remote e-Voting, then voting done through remote e-voting shall prevail and voting done by postal ballot will be treated as invalid. Further, if they cast their votes by postal ballot and/or remote e-voting, as aforesaid, they will not be entitled to vote again by poll at the venue of the meeting, whether in person or by proxy. If they do so, the votes so cast by them at the venue of the meeting shall be treated as invalid.

23. It is clarified that the Equity Shareholders of the Applicant Companies choosing to cast their votes by postal ballot/ remote e-voting shall nevertheless be entitled to attend and participate in the discussions in their meeting but shall not be entitled to vote again at such meeting. At the venue of the meetings the votes shall be taken by polling papers.

24. Voting shall be allowed on the proposed Scheme by proxy at the venue of the meetings of the Equity Shareholders of the Applicant Companies provided that the proxies in the prescribed form duly signed by the person(s) entitled to attend and vote at the respective meeting, is filed with the Applicant Companies at the respective registered office not later

than forty-eight hours before the respective meeting. In case of a Body Corporate, being an Equity Shareholder, opting to attend and vote at the venue of a meeting of an Applicant Company, as aforesaid, through its authorized representative, such Body Corporate may do so provided a certified copy of the resolution of its Board of Directors or other governing body authorizing such representative to attend and vote at such meeting on its behalf is deposited at the registered office of such Applicant Company not later than 48 (forty eight) hours before the time for holding such meeting.

25. The votes cast at the meetings shall be scrutinized by the Scrutinizer. The Scrutinizer shall prepare and submit the respective reports on the meetings along with all papers relating to the voting to the Chairperson of the meetings within 3 days of the conclusion of the meetings. The Chairperson shall declare the results of the meetings after submission of the reports of the Scrutinizer to him. In case of meetings of Equity Shareholders, the votes cast by them in all the modes shall be consolidated. The declaration of results by the Chairperson shall also be published in the same newspapers in which notice of the meetings is advertised. The Applicant Companies shall also appoint a person who shall be responsible for addressing the grievances of the shareholders, if any, in connection with the e-voting as required by the said Rules.

26. The value of each shareholder shall be in accordance with the books, records and/or registers of the Applicant Companies and, where

entries in the books are disputed, the chairperson shall determine the number and value, as the case may be, for purposes of the said meetings.

27. That the Chairperson do report to this Tribunal the results of the said meetings within four weeks from the date of the conclusion of the said meetings and his respective report on the said meetings shall be in Form No. CAA4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

28. The application being Company Application No.562 of 2017 is disposed of accordingly.

29. There shall be no orders as to costs.

30. Urgent Photostat certified copies of this Order, if applied for, be supplied to parties upon compliance of all requisite formalities.



sd

**(K R Jinan)**  
**Member (J)**

*Signed on 2nd day of February 2018.*

PS\_Aloke