

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Company Petition CP(CAA) No.450/KB/2017

IN THE MATTER OF:

An Application under Section 230 and 232 of the Companies Act, 2013 and Rule 15 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 ('The Rules');

-And-

IN THE MATTER OF:

Tega Industries Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered Office at 147, Block-G, New Alipore, Kolkata, West Bengal – 700 053, within the aforesaid jurisdiction;

And

Tega Industries (SEZ) Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered Office at Plot No. Z/103/J, Dahej SEZ, Phase II, Taluka- Vagra, Dahej, Bharuch, Gujarat – 392130, outside the aforesaid jurisdiction;

And

Tega Industries Limited

- Petitioner Company

Date of pronouncement of the Order :

Coram : Mr. Jinan K. R., Member(Judicial)

For the Petitioners:

Mr. SK Tiwari, Advocate

Mr.Pratik Baid, CA

Ms. Tia Inla, Deputy Director, C/o. Regional Director (Eastern Region),
Ministry of Corporate Affairs

Per Jinan K. R.

ORDER

The object of this petition is to obtain sanction of this Tribunal to the Scheme of Amalgamation of the Tega Industries(SEZ) Limited, the Transferor Company or the Amalgamating Company, with Tega Industries Limited, the Transferee Company or the Amalgamated Company, where under the entire undertaking of the Transferor Company as gong concern together with all its assets and liabilities will stand transferred to and vested in the Transferee Company with effect from 01-10-2016 in terms of the Scheme of Amalgamation, duly approved by the Equity shareholders,

Secured Creditors and the Unsecured Creditors of the Transferee Company at their respective meetings presided over by the Chairperson appointed under the Order of this Tribunal dated 24-04-2017 passed in the Company Application CA No. 89/2017.

A copy of the Scheme of Amalgamation is annexed with the Petition and marked as Annexure "A".

It has been submitted by the Petitioner Company that the Transferor Company or the Amalgamating Company, Tega Industries(SEZ) Limited is a wholly owned subsidiary of the Transferee Company, namely, Tega Industries Limited, and has a manufacturing facility located at Dahej SEZ, in Bharuch, Gujarat.

It has been submitted in the Petition that the respective Board of Directors of the Amalgamating Company and the Amalgamated Company, at their respective meetings held on 22-11-2016, by resolutions, thought it fit to amalgamate them for achieving synergic advantages and approved the Scheme of Amalgamation.

The copies of the said resolutions annexed with the Petition and marked Annexure "C".

The rationale which led the management of both the Companies to decide for amalgamation lies in several positive factors like greater financial strength and the flexibility for the amalgamated entity, enable better and efficient management,

control and running of the businesses to attain the operational efficiencies, simplified corporate structure, etc.

All these factors will culminate in maximising overall shareholders' value.

It has also been submitted in the Petition that the Scheme of Amalgamation shall be in the beneficial interest of the shareholders and the creditors of the Amalgamated company and the Amalgamating Company.

The Scheme shall not be in any manner prejudicial to the interest of the concerned members, creditors, employees or general public at large.

By an Order dated 24-04-2017 passed by this Tribunal in Company Application CA No. 89/2017, the petitioner company was directed to convene the meetings of its equity shareholders, the secured and the unsecured creditors, by giving 30 days' advance notice before the scheduled date of the meeting on 30-05-2017, for the purpose of considering and if thought fit approving with or without modification the said Scheme of Amalgamation.

In compliance of the said Order of this Tribunal, the petitioner Company sent notices on 27-04-2017 to all the members, secured and the unsecured creditors together with a copy of the Scheme of Amalgamation, statement required under Section 232 read with Section 230 of the Act., Proxy Form and other documents required to be annexed therewith and/or forming part thereof.

The Petitioner Company also advertised notice of the said meetings in the English daily, "The Business Standard" and "The Aajkal", the Bengali daily, in accordance with the aforesaid Order of this Tribunal dated 24-04-2017.

The Transferee Company, in compliance of Rule 12 of the Rules , also filed an Affidavit of service dated 15-05-2017 with the Tribunal, annexing therewith the relevant copies of the notices sent to the members, creditors and the copies of the publications in the newspapers.

A copy of the acknowledgement obtained to this effect by the Transferee Company is enclosed with the Petition and marked as Annexure –"D".

It has been stated in the Petition that on 30-05-2017, respective meetings of the equity shareholders, secured creditors and the unsecured creditors of the Transferee Company were duly held and the respective equity shareholders, secured and the unsecured creditors, as above, unanimously casted their votes in favour of the Scheme of Amalgamation.

The Chairperson of the aforesaid meetings made report of the results of each of he said meetings which have been filed with this Tribunal.

The copy of the report of the Chairperson is enclosed with the Petition and marked as Annexure "F".

Pursuant to the Order of this Tribunal dated 24-04-2017, notices of the said meetings were also served on the Statutory Authorities and the Regional Director, Kolkata has sent notice dated 03-05-2017 to the Petitioner Company asking to furnish information along with the copy of the relevant documents.

The Petitioner company had duly furnished the relevant information/documents to the Regional Director, Kolkata vide its letter dated 12-05-2017 submitted on 18-05-2017.

It is submitted in the Petition that the Regional Director, Kolkata has not issued any further notice within a period of 30 days from the date of receipt of the reply dated 12-05-2017 from the Petitioner Company.

The acknowledgement copy of the letter filed by the Petitioner Company, before the Regional Director, Kolkata, is enclosed with the Petition and marked as Annexure "E".

After such due compliance, the petitioners have made the instant petition bearing CP(CAA) No.450/KB/2017 before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Amalgamation and for orders facilitating and giving effect to the same.

Further, In compliance of the Orders of this Tribunal dated 16-10-2017 and 28-11-2017, passed in the Company Petition CP(CAA) No.450/KB/2017 connected with Company Application CA(CAA) No. 89/KB/2017, notice of the hearing of the Petition

for sanction of the Scheme of Amalgamation of Tega Industries(SEZ) Limited, the Transferor Company, with Tega Industries Limited, the Transferee Company, has been served in Form CAA3 of the Companies (Compromises, Arrangements & Amalgamation) Rules, 2016 with such changes as were necessary on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Income-Tax Department, the Registrar of Companies, West Bengal, the Official Liquidator attached to Hon'ble High Court, Calcutta and on the Official Liquidator, Ahmedabad – 380 009.

Further, copy of the Notice along with the explanatory statement forming part thereof having requisite information including the copy of the Scheme of Amalgamation issued to the shareholders, secured and the unsecured creditors of the Petitioner Company following provisions of Section 230(3) of the Companies Act, 2013 were sent with the said Notice by the Petitioner Company.

Advertisement of notice of this Petition as directed in the said Order of this Tribunal dated 16-10-2017, were also published in English Daily, 'Business Standard' and Bengali daily 'Aajkal' on 01-11-2017.

The Petitioner company has filed the Affidavit of service dated 19-01-2018 in connection with the Company Petition CP(CAA) No. 450/KB/2017 and stated in the said Affidavit that till date, the Petitioner company has not received any objection from any person opposing the Scheme of Amalgamation.

In compliance of the proviso to Section 230(7) of the Act, the Chartered Accountants who is the Auditor of the Petitioner Company certified that the accounting treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards prescribed under Section 133 of the Act.

A copy of the certificate of the Chartered Accountants is filed with the Petition as Annexure "G".

The Official Liquidator attached to the Hon'ble High Court, Calcutta in his report dated 04-01-2018 has observed that on scrutiny of the Scheme of merger, it has been observed that the Transferor Company is having its registered Office in the State of Gujarat whereas, the Transferee Company is having its registered Office in the State of West Bengal.

Since the Transferor Company is having its registered Office in the state of Gujarat, the Official Liquidator cannot comment on the affairs of the Transferor Company as the same is not under his jurisdiction, as it is the Transferor Company, which will be dissolved without winding up/liquidation subject to the Order of this Tribunal.

The Petitioner Company has submitted a copy of the Order dated 03-11-2017 passed by the National Company Law Tribunal, Ahmedabad Bench, evidencing sanction of the Scheme of Amalgamation of the Transferor/Amalgamating Company with the Transferee/Amalgamated Company by the said Bench of this Tribunal.

Heard the arguments of the Ld. Counsels for the petitioner Company.

In view of the facts stated above, the following orders in terms of prayers made in the petition, are passed :

- a) The Scheme of Amalgamation of the Transferor/Amalgamating Company with the Transferee/Amalgamated Company, being Annexure "A" to the petition, is sanctioned with effect from 01-10-2016 to be binding on the Transferor/Amalgamating Company and the Transferee/Amalgamated Company and their shareholders and all concerned ;
- b) Consequential orders are made and/or directions are given for :
- i) Vesting and transfer of all the assets, properties, entitlements, rights, benefits and advantages, liabilities and obligations of the Transferor/Amalgamating Company to the Amalgamated Company and to become the assets, properties, entitlements, rights, benefits, advantages, liabilities and obligations of the Transferee/Amalgamated Company ;
 - ii) continuation by or against the Transferee/Amalgamated Company of legal proceedings pending by or against the Transferor/Amalgamating Company on the date of transfer ;
 - iii) filing of certified copy of this Order with the Registrar of Companies, West Bengal within 30 days of receipt of certified copy of the Order ;

In the event of the petitioner Companies supplying the legible computerized print out of the Scheme of Amalgamation and the schedule of assets in acceptable form to the department, the department will append such computerized print-out, upon verification to be certified copy of the order without insisting on a hand-written copy thereof.

Accordingly, the Company Petition bearing CP(CAA) No. 450/KB/2017 stands disposed of.

Sd

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

Sd

(Jinan K.R.)

Member(Judicial)

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