

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Company Petition CP(CAA) No.375/KB/2017

IN THE MATTER OF:

An Application under Section 232(3) of the Companies Act, 2013 read with Rule 15 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 ;

-And-

IN THE MATTER OF:

1. AMPI FINANCE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered Office at 22, RN Mukherjee Road, 3rd Floor, Kolkata – 700 001, West Bengal within the aforesaid jurisdiction ;
2. AMPI PROJECTS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered Office at 22, RN Mukherjee Road, 3rd Floor, Kolkata – 700 001, West Bengal within the aforesaid jurisdiction ;
3. PKD PORJECTS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and

having its registered Office at 22, RN Mukherjee Road, 3rd Floor, Kolkata – 700 001, West Bengal within the aforesaid jurisdiction ;

4. ATLANTIC VINTRADE PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered Office at 22, RN Mukherjee Road, 3rd Floor, Kolkata – 700 001, West Bengal within the aforesaid jurisdiction ;

And

1. AMPI PROJECTS PRIVATE LIMITED
2. AMPI PROJECTS PRIVATE LIMITED
3. PKD PORJECTS PRIVATE LIMITED
4. ATLANTIC VINTRADE PRIVATE LIMITED

- Petitioners

Date of pronouncement of the Order :

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

For the Petitioners:

Mr. Shaunak Mitra, Advocate

Ms. Bidisha Achari, Pr. CS

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 to be made between the Transferee Company, AMPI Finance Limited, the Transferor Companies, AMPI Projects Private Limited, PKD Projects Private Limited, Atlantic Vintrade Private Limited, and their respective shareholders whereby and where under the entire undertaking of the Transferor Companies as a going concern together with all its assets and liabilities will stand transferred to and vested in the Transferee Company with effect from 01-04-2016, the appointed date, in a manner as provided in the Scheme of Amalgamation, duly approved by the shareholders of the petitioner companies at their respective meetings presided over by the Chairperson appointed under the Order dated 30-03-2017, as pronounced on 04-04-2017, passed by this Tribunal in the Company Application CA No. 113/2017.

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

The Board of Directors of the Petitioner Companies have, at their respective meetings held on 24-01-2017 by resolutions passed unanimously, approved the draft Scheme of Amalgamation of the Transferor Companies, namely, AMPI Projects Private

Limited, PKD Projects Private Limited, Atlantic Vintrade Private Limited, with AMPI Finance Limited, the Transferee Company.

The copies of the said resolutions have been annexed with the Company Application CA No. 113/ 2017 filed before this Tribunal.

It is stated in the Petition that the aggregate assets of the Petitioner Companies are more than sufficient to meet all their liabilities and the Scheme of Amalgamation will not adversely affect the rights of any of the creditors of the Petitioner 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.

The Creditors of the Petitioner Companies had given their written consent by way of affidavits and the copies of the said affidavits had been annexed with the Company Application CA No. 113/2017 filed before this Tribunal and in respect thereof, this Tribunal vide its Order dated 30-03-2017, as pronounced on 04-04-2017, was pleased to dispense with convening and holding of the meetings of the Creditors of the Petitioner Companies.

By the Order of this Tribunal dated 30-03-2017, as pronounced on 04-04-2017, made in Company Application CA No.113/2017, the petitioner companies were directed to convene and hold the meetings of the equity shareholders of all the petitioner companies at their registered Office by giving 30 days advance notice before the scheduled date of the meeting, being 08-05-2017, individually to each of the

members of the respective petitioner companies for the purpose of considering and if thought fit, approving with or without modification, the Scheme of Amalgamation.

In compliance of the said Order of this Tribunal dated 30-03-2017, as pronounced on 04-04-2017 the Petitioners served notices of the said meetings individually by hand delivery on each of the equity shareholders of the petitioner companies together with a copy of the Scheme of Amalgamation and the statement required under Section 231, 232 read with Section 230 of the Companies Act, 2013 along with the form of proxy.

The notice of the meeting was also advertised as directed by the said Order of this Tribunal once in "AAJKAL", Bengali Newspaper and once in "The Business Standard", English Newspaper on 08-04-2017.

Further, in terms of the said order, notice in Form CAA.3 was duly served upon the Central Government through the Regional Director, Eastern Region, and the Registrar of Companies, West Bengal, Income Tax Department and the Reserve Bank of India.

It has further been submitted by the Petitioner Companies that prior written approval from the Reserve Bank of India has already been obtained and marked as Annexure "C" with this Petition.

The copies of the said notices are annexed as Annexure "H" and a common explanatory statement sent with all the notices is annexed as Annexure "I".

In compliance with Rule 12 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016, the petitioner companies filed an affidavit of service on 02-05-2017.

A copy of the said Affidavit of service is annexed with the Petition and marked with letter "J".

It has also been submitted in the Petition that on 08-05-2017, respective meeting of the equity shareholders of the petitioner companies 1,2,3 and 4 were duly held in accordance with the aforesaid Order of this Tribunal and the respective equity shareholders of the Petitioner Companies had unanimously approved the Scheme of Amalgamation.

The Chairperson of the meetings, as was appointed by this Tribunal vide the aforesaid Order, has reported the results of the respective meetings of the petitioner companies to this Tribunal.

The copies of the reports of the Chairperson of the meetings of the equity shareholders are annexed with the Petition and collectively marked with letter "K".

It has been submitted in the Petition that the exchange ratio of the shares of the Transferor Companies and the Transferee Company has been fixed at a fair and reasonable basis and the valuation of the shares of the Petitioner Companies, based

on which the share entitlement ratio has been arrived at, after careful consideration and after taking into account all relevant facts, has been carried and approved by the Chartered Accountants and is bona fide and reasonable.

A copy of the Valuation Report is already filed with the Company Application CA No.113/2017.

In compliance of the proviso to Section 230(7) of the Act, the Chartered Accountants, who is the Auditor of the Petitioner Company No.1, by certificate dated 18-03-2017, certified that accounting treating proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards prescribed under Section 133 of the Act.

A copy of the said Certificate is attached with the Petition as Annexure "L".

The Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata had filed his Report vide affidavit dated 22-11-2017 and observed :

(a) It is submitted that on examination of the report of the Registrar of Companies, West Bengal, it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. The petitioner companies are also updated in filing their statutory returns. It is further submitted that on examination of the proposed scheme of amalgamation, it appears that the proposed Scheme of Amalgamation is not prejudicial to the

interest of members/shareholders and/or public. The Central Government has, therefore, decided that the instant petition/Scheme need not be opposed.

- (b) It is submitted 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 25-07-2017 with a request to forward their comments/observations/objections, if any, on the proposed scheme of amalgamation and the reply dated 04-08-2017 received from the said Department with regard to one of the Transferor Company, namely, M/s. PKD Projects Private Limited is enclosed herewith and marked as "Annexure A", for the kind perusal of the Hon'ble Tribunal. It has been stated by the Income Tax Department that scrutiny assessment for the Financial Year 2015-16 is pending.
- (c) It is further submitted that the petitioner companies reported that the transferee company is registered with Reserve Bank of India as NBFC, and the proposed scheme of amalgamation has been forwarded to RBI and a No Objection letter has been obtained from the RBI to the proposed Scheme. The said NOC is enclosed herewith and marked as "Annexure-B", for the kind perusal of the Hon'ble Tribunal."

The Official Liquidator attached to the Hon'ble High Court, Calcutta vide his report dated 14-12-2017 has stated that in order to enable the Official Liquidator to make his report and give his opinion, the Official Liquidator appointed Chartered Accountant to examine the Books, papers, records and documents of the

Transferor Companies and to make report indicating clearly as to whether in the opinion of the Chartered Accountant, the affairs of the Transferor Companies have been conducted in a manner prejudicial to the interest of its members or to public interest.

Accordingly, the Chartered Accountant had examined the books, records and other documents of the Transferor Companies and submitted report to the Official Liquidator which is enclosed with the report of the Official Liquidator dated 14-12-2017.

On receipt of the report of the said Chartered Accountant, the Official Liquidator attached to the Hon'ble High Court, Calcutta observed :

"Further, we, on the basis of verification carried out in accordance with the generally accepted auditing practices and conventions including test checks, are of the opinion that the affairs of the Transferor Companies have not been conducted in a manner prejudicial to the interest of its members or to public interest."

After such due compliance, the petitioners have made the instant petition bearing No. CP(CAA) No.375/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.

Sd

Heard the arguments of the Ld. Counsel for the petitioner Companies.

In view the facts stated above, the following orders in terms of prayers made in the petition, with modifications by this Tribunal, are passed :

- a) The Scheme of Amalgamation, being Annexure "A" to the petition is sanctioned so as to be binding on all the equity shareholders of the Petitioner Companies and all concerned with effect from 1st day of April, 2016 ;
- b) All the assets and properties and interest of the Transferor Companies be transferred without any further act or deed to Transferee Company and become the assets and vest in the Transferee Company with all the estate and interest of the Transferor Companies pursuant to Section 232 read with Section 230 of the Companies Act, 2013 ;
- c) All the liabilities and duties of the Transferor Companies be transferred without further act or deed to the Transferee Company and shall, become the liabilities and duties of the Transferee Company, pursuant to Section 232 read with Section 230 of the Companies Act, 2013 ;
- d) All the employees of the Transferor Companies to be transferred to the Transferee Company ;
- e) All proceedings and/or suits and/or appeals now pending by or against the Transferor Companies, shall be continued by or against the Transferee Company ;
- f) Leave is granted to the Petitioners to file the Schedule of Assets of the Transferor Companies within three weeks from the date of this Order ;

- g) After dissolution of the Transferor Companies, the fee paid by the Transferor Companies on their Authorized share capital to be set off against the fee payable by the Transferee Company on its authorised share capital, subsequent to the amalgamation.
- h) The Transferor Companies, namely, AMPI Projects Private Limited, PKD Projects Private Limited, Atlantic Vintrade Private Limited and the Transferee Company, namely, AMPI Finance Limited, respectively, do within 30 days after the date of this Order, cause a certified copy thereof to be delivered to the Registrar of Companies, West Bengal for registration ;
- i) The Transferor Companies, namely, AMPI Projects Private Limited, PKD Projects Private Limited, Atlantic Vintrade Private Limited, be dissolved without winding up from the date of the filing of the certified copy of this Order with the Registrar of Companies, West Bengal by the Transferor Companies and the Transferee Company ;
- j) The Registrar of Companies, West Bengal, upon receiving such certified copy of this Order is directed to place all files, records, documents, etc., relating to the Transferor Companies, namely, , AMPI Projects Private Limited, PKD Projects Private Limited, Atlantic Vintrade Private Limited and register with him, on the file kept by him in relation to the Transferee Company, namely, AMPI Finance Limited, and the files relating to the Transferor Companies and the Transferee Company shall be consolidated accordingly ;
- k) Any person interested, shall be at liberty to apply before this Tribunal in the above matter for such directions as may be necessary.

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. 375/KB/2017 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.



(Jinan K.R.)

Member(Judicial)

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