

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.A. (CAA) No. 937/KB/2019

In the matter of:

The Companies Act, 2013

AND

In the matter of:

An application under sections 230 to 232 and other applicable provisions of the Companies Act, 2013

AND

In the matter of:

Lesha Commercial Pvt Ltd, bearing CIN: U51909WB1995PTC075669, having its registered office at 9A, Saket Appt. 2, Ho-Chi Minh Sarani, Park Street, Kolkata-700071, West Bengal.

...Transferor Company1

AND

In the matter of:

Adirish Properties Private Limited, bearing CINU70102WB2010PTC146365, having its registered office at 9A, Saket Appt. 2, Ho-Chi Minh Sarani, Park Street, Kolkata-700071, West Bengal.

...Transferor Company2

AND

In the matter of:

Acme Chem Ltd, bearing CIN: U24118WB1992PLC055994, having its registered office at 9A, Saket Appt. 2, Ho-Chi Minh Sarani, Park Street, Kolkata-700071, West Bengal.

...Transferee Company

AND

In the matter of:

1. **Lesha Commercial Pvt Ltd**
2. **Adirish Properties Private Limited**
3. **Acme Chem Ltd**

...Applicant Companies

Date of hearing: 23.11.2020

Date of pronouncement of Order: 07.12.2020

Coram:

Rajasekhar V.K., Member (Judicial)

Harish Chander Suri, Member (Technical)

Appearances (via video conferencing):

Ms. Iram Hassan, Advocate for the Applicants

ORDER

Per: Rajasekhar V.K. (Judicial)

1. The court convened by video conference today.
2. The sanction of this Tribunal is sought under sections 230 to 232 and other relevant provisions of the Companies Act, 2013 and the rules framed thereunder for the Scheme of Amalgamation of Lesha Commercial Pvt Ltd, (*Transferor Company-1*) and Adirish Properties Private Limited (*Transferor Company-2*) with Acme Chem Ltd (*Transferee Company*).
3. Learned Counsel for the Applicant Companies submits that the said Scheme of Amalgamation has been approved by passing the Board Resolutions at the respective meetings of the Applicant Companies held on 1st September 2020 which are annexed to the Company Application.

4. Learned Counsel for the Applicant Companies submits that the main object of Transferor Company-1, *inter alia*, are to carry on the business of buyers, sellers, agents, assemblers, etc., in all kinds of agricultural produces and products, machinery and engineering items and manmade fibre, etc. Its Permanent Account Number (PAN) is AAACL5452G.
5. Learned Counsel for the Applicant Companies submits that the main object of Transferor Company-2, *inter alia*, are to carry on the business to acquire, purchase, prepare, exchange, hire, buy, sell, construct, build, decorate, etc., building, house, flats, apartments, hospitals, shopping mall, hotels, etc. Its PAN is AAICA4642D.
6. Learned Counsel for the Applicant Companies submits that the main object of Transferee Company, *inter alia*, are to manufacture, process, import, export and deal in all types of chemicals, rubber chemicals, laboratory chemicals, dyes, etc. Its PAN is AACCA3931B.
7. Learned Counsel for the Applicant Companies submits that there has been no change in the share capital of the Transferor Company-1, Transferor Company-2 and Transferee Company subsequent to 31st March, 2020; the share capital of the Applicant Companies as on the aforementioned date areas follows:

Transferor Company-1		
1.	Authorised Capital (divided into 13,10,000 equity shares of Rs. 10/- each)	Rs. 1,31,00,000/-
2.	Issued, subscribed and paid-up capital (divided into 12,81,040 equity shares of Rs. 10/- each fully paid)	Rs 1,28,10,400/-
Transferor Company-2		
1.	Authorised Capital (divided into 1,00,000 equity shares of Rs. 10/- each)	Rs. 10,00,000/-
2.	Issued, subscribed and paid-up capital	Rs 8,46,430/-

	(divided into 84,643 equity shares of Rs. 10/- each fully paid)	
Transferee Company		
1.	Authorised Capital (divided into 60,00,000 equity shares of Rs. 10/- each)	Rs. 6,00,00,000/-
2.	Issued, subscribed and paid-up capital (divided into 58,60,000 equity shares of Rs. 10/- each fully paid)	Rs. 5,86,00,000/-

8. Learned Counsel for the Applicant Companies submits that the Scheme of Amalgamation will, *inter alia*, enable the optimal utilisation of available resources and yield benefits to the Transferee Company; it will enable the resulting business and activities of the Transferee Company to be carried on more efficiently, conveniently and advantageously with greater economies of scale, pooling and more efficient utilisation of their resources, elimination of duplication of work, rationalisation of administrative structure, reduction in overheads, etc.; it will result in consolidation of business under single entity and achieve simplified corporate structure; it will reduce the marginal overlaps, etc.

9. Learned Counsel for the Applicant Companies submits that the Directors of the Applicant Companies have no material interest in the said Scheme other than by way of an ordinary shareholding.

10. Learned Counsel for the Applicant Companies submits that the proposed Scheme is not within the purview of the Competition Act, 2002, that there are no proceedings pending under section 210 to 227 of the Companies Act, 2013 against any of the Applicant Companies and that no investigation under the Companies Act, 2013 is pending against the Applicant Companies.

11. Learned Counsel for the Applicant Companies submits that in compliance of proviso to Section 230(7) of the Act, the statutory

Auditors of the Transferee Company have certified the accounting treatment proposed in the Scheme is in conformity with the Accounting Standards prescribed under section 133 of the Companies Act, 2013.

12. Learned Counsel for the Applicant Companies submits that as on 31st March, 2020 the Transferor Company-1 has 3 equity shareholders and Transferor Company-2 has 4 equity Shareholders; all the Shareholders of both the Transferor Companies have consented to the present scheme and have given their consent to waive the holding of meeting to approve the Scheme by way of their Affidavits which are annexed to the Application. It will thus be in the interest of justice to dispense with the meetings of the equity shareholders of both the Transferor Companies.
13. Learned Counsel for the Applicant Companies submits that it is necessary that meeting of equity Shareholders of the Transferee Company be called to consider and if thought fit, approve the said Scheme, with or without modification.
14. It is submitted that a separate list of Secured and Unsecured Creditors of the Applicant Companies as on 31.03.2020 with certificates issued by the Chartered Accountant certifying such list along with their category are annexed to the Application. Such meeting of creditors of the Applicant Companies may be directed to be held.
15. Upon perusal of the documents, it is found that neither of the Transferor Companies have Secured Creditor, therefore, the requirement of holding meeting of Secured Creditor of these companies do not arise.
16. In view of the aforementioned circumstances, the meetings of the Equity Shareholders of the Transferor Companies are hereby dispensed with.
17. A separate meeting of the shareholders of the Transferee Company shall be convened and held on **18.01.2021** at its registered office

i.e.,9A, Saket Appt. 2, Ho-Chi Minh Sarani, Park Street, Kolkata-700071, West Bengal for the purpose of considering, and if thought fit, approving, with or without modification, the Scheme at 11.00 am.

18. A separate meeting of the Secured Creditors of the Transferee Company and Unsecured Creditors of the Transferor Company and the Transferee Company shall be convened and held on **18.01.2021** at 9A, Saket Appt. 2, Ho-Chi Minh Sarani, Park Street, Kolkata-700071, West Bengal for the purpose of considering, and if thought fit, approving, with or without modification, the scheme at the following times: -

- a. Meeting of Secured Creditors of the Transferee Company at 03.00 pm.
- b. Meeting of Unsecured Creditors of the Transferee Company at 04.00 pm.
- c. Meeting of Unsecured Creditors of the Transferor Company 1 at 04.30 pm.
- d. Meeting of Unsecured Creditors of the Transferor Company 2 at 05.00 pm.

19. Mr. Vijay Kumar Singhal, Chartered Accountant, (Mobile No. 9830374173) is hereby appointed as the Chairperson for the aforesaid meetings of the Shareholders of the Transferee Company, Secured and Unsecured Creditors of the Transferee Company and the Transferor Companies at a consolidated remuneration of Rs. 60,000/- (Rupees Sixty Thousand Only).

20. Mr. Saktibrata Jana, Advocate, (Mobile No. 9734514640) is hereby appointed as the Alternate Chairperson for the aforesaid meetings of the Shareholders of the Transferee Company, Secured and Unsecured Creditors of the Transferee Company and the Transferor Companies at a consolidated remuneration of Rs. 50,000/- (Rupees Fifty Thousand Only).

21. Mr. Rohit Sharma, Company Secretary, (Mobile No. 9830666536) email: rohitsharma3022@gmail.com is hereby appointed as the

Scrutinizer for the aforesaid meetings of the Shareholders of the Transferee Company, Secured and Unsecured Creditors of the Transferee Company and the Transferor Companies at a consolidated remuneration of Rs. 50,000/- (Rupees Fifty Thousand Only).

22. At least **30 (Thirty)** clear days before the meetings are to be held as aforesaid, an advertisement of notice of meetings be inserted once each in the “Business Standard” in English and “Aajkal” in Bengali as per Rule 7 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 with necessary variations incorporating the directions herein.
23. The quorum for the said meeting of the Shareholders of the Transferee Company shall be **2(Two)** persons present personally or by proxy.
24. The quorum for the said meeting of the Secured Creditors of the Transferee Company shall be **2 (Two)** persons present personally or by proxy; the quorum for the said meeting of the Unsecured Creditors of the Transferee Company shall be **10 (Ten)** persons present personally or by proxy; the quorum for the said meeting of the Unsecured Creditors of the Transferor Company¹ and Transferor Company² shall be **1 (One)** person each present personally or by proxy.
25. 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.
26. At least **30 (Thirty)** clear days before the date of the meetings of the Shareholders and Secured and Unsecured Creditors of the Applicant Companies to be held as aforesaid, notices convening the said meetings, including 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 Shareholders, Secured and Unsecured Creditors of

the Transferee Company, each of the Unsecured Creditors the Transferor Company 1 and Transferor Company 2, by post or air mail or courier or email or through personal messenger at their last known addresses.

27. At least **30 (Thirty)** clear days before the fixed date for hearing, Applicant Companies are to serve the notice of hearing of the Application upon the Official Liquidator, High Court, Calcutta Pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016. This Tribunal hereby appoints Ms. Anindita Bhaumik, Chartered Accountant, (Mobile No. 9433803215), email: anindita_bhaumik@yahoo.co.in to assist the Official Liquidator in scrutinizing the books of the Transferor Company for the last five years. She shall be paid a remuneration of Rs. 50,000/- (Rupees Fifty Thousand Only) for the services. If no response is received by the Tribunal from the Official Liquidator within thirty days, it may be presumed that the Official Liquidator, High Court, Calcutta has no objection to the proposed Scheme.

28. The Applicant Companies are to serve the notices along with copy of the Scheme by post or air mail or courier or personal messenger and by way of email upon (i) the Central Government through the office of Regional Director (Eastern Region), Ministry of Corporate Affairs, West Bengal, (ii) the Registrar of Companies, West Bengal; and (iii) concerned Income Tax Authority within whose jurisdiction the respective Applicant Company's assessments are made, clearly indicating PAN of the company concerned, pursuant to Section 230(5) of the Companies Act, 2013 as per rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal within 30 days of the date of receipt of the notice it will be presumed that the authorities have no objection to the proposed Scheme.

29. The Applicant Companies are further directed jointly file copies of e-mails along with original proof of service by way of affidavit of compliance of all the conditions laid down herein.
30. The Application being **C.A. (CAA) No. 937/KB/2019** is disposed of accordingly.
31. The Registry is directed to send e-mail copy of the order forthwith to all the parties inclusive of the Counsel.
32. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

