

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT - I
KOLKATA**

C.P. (CAA)/208(KB)2023
Connected with
C.A. (CAA)/119(KB)2023

In the Matter of the Companies Act, 2013 - Section 230 to Section 232

And

In the Matter of :

Gillapukri Tea Co. Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U01132WB1997PLC083328 and its registered office at 9 Brabourne Road, 3rd Floor Kolkata - 700001 in the State of West Bengal.

..... Petitioner Company/ Gillapukri

And

In the Matter of :

Gillapukri Tea Co. Limited;

..... Petitioner

Date of pronouncing the order: 4/07/2024

Coram:

Smt. Bidisha Banerjee : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

Appearances (via video conferencing/physically)

Mr. Shashi Agarwal, CA : For Petitioner

Mr. A. Mishra, Adv.

Ms. Meenakshi Manot, Adv.

Mr. Channakeshava, Asst. Director : For the Office of RD

ORDER

Per: Balraj Joshi Member (Technical)

1. The instant petition has been filed under Section 230 , 232 and other applicable provisions of the Companies Act, 2013 (“Act”) for sanction of the Scheme of Arrangement between the Company and its Members under Section 230(1)(b) of the Act , pursuant to which and up on its coming in to effect, amount of Rs 6,45,74,793 standing to the credit of the Capital Reserves of the Company shall be utilized and adjusted against the advance given to Directors amounting to Rs 6,45,74,793 and remaining amount of Capital Reserve will be kept as Capital Reserve, as on the Appointed Date, viz 1st April, 2022 in the manner and on the terms and conditions as stated in the said Scheme of Arrangement (“Scheme”). **(Page No. 27-33 of Petition)**

2. The Petition has now come up for a final hearing. Ld. Counsel for the Petitioner submits as follows:-

(a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on 09/02/2023 respectively. **(Page No. 26 of Petition)**

(b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-

i. For better, efficient and economical management, control and running of the business of the undertakings concerned and also for administrative convenience and to obtain the advantage of economy of large scale and to broad base the present business, the present Scheme is proposed to amalgamate the Transferor Companies with the Transferee Company.

ii. Simplification of corporate structure by reducing the number of legal entities and reorganizing the legal entities in the group structure;

iii. Significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out;

iv. Elimination of duplication in administrative costs and multiple record-keeping, thus resulting in cost savings;

- v. Concentrated effort and focus by the senior management to grow the business by eliminating duplicative communication and burdensome coordination efforts across multiple entities.
- vi. Simply the Shareholding of Transferee Company.
- (c) The Statutory Auditors of respective Petitioner Companies have by their certificates dated 23/02/2023 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013. **(Page No. 170-171 of Petition).**
- (d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).
- (e) The exchange ratio of shares in consideration of the Arrangement has been fixed on a fair and reasonable basis and on the basis of the Report thereon of Pranab Kumar Chakrabarty, Registered Valuer. **(Page No. 172-180 of Petition).**
- (f) The shares of all Petitioner Companies are not listed in any Stock exchange.
- (g) By an order dated 07/11/2023 in Company Application (CAA) No. 119/(KB)/2023, this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) :- **(Page No:- 135-138 of Petition)**
Meetings dispensed: Meetings of the Equity Shareholders, of the Petitioner Company and unsecured creditor was dispensed with under Section 230(1) read with Section 232(1) of the Act.
- (h) Consequently, the Petitioner presented the instant petition for sanction of the Scheme. By an order dated 19/12/2023 the instant petition was admitted by this Tribunal and initially fixed for hearing on 18/01/2024 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 19/12/2023 an affidavit of compliance duly affirmed on 10/01/2024 in this regard has also been filed and the Petitioner have duly served such notices by hand delivery upon the Statutory / Sectoral Authorities:-

Sl No.	Detail of Notice	Date of Service by Hand	Page of Affidavit of Service affirmed on 10/01/2024
1	The Regional Director, Eastern Region, Ministry of Corporate Affairs	27/12/2023	7
2	The Registrar of Companies, West Bengal	27/12/2023	8
3	The Official Liquidator, High Court, Calcutta	27/12/2023	9
4	DCIT/ACIT, Circle 4(1)	27/12/2023	10
5	The Chief Commissioner of Income Tax-2	27/12/2023	11
6	Business Standard	08/01/2024	5
7	Aajkal	08/01/2024	6

- (i) Further, in compliance with the said order dated 19/12/2023 notice was also sent by speed post and the Petitioner have also duly served such notices on the Statutory / Sectoral Authorities:

Sl No.	Detail of Notice	Date of Service by Speed Post	Page of Affidavit of Service affirmed on 10/01/2024
1	The Regional Director, Eastern Region, Ministry of Corporate Affairs	on 27/12/2023 delivered on 28/12/2023	12-13
2	The Registrar of Companies, West Bengal	on 27/12/2023 delivered on 28/12/2023	14-15
3	The Official Liquidator, High Court, Calcutta	on 27/12/2023 delivered on 28/12/2023	16-17
4	DCIT/ACIT, Circle 4(1)	on 27/12/2023 delivered on 28/12/2023	18-19
5	The Chief Commissioner of Income Tax-2	on 27/12/2023 delivered on 28/12/2023	20-21

- (j) Further, in compliance with the said order dated 19/12/2023 notice was also sent by email and the Petitioner have also duly served such notices on the Statutory / Sectorial Authorities:-

Sl	Detail of Notice	Date of Service by email	Page of Affidavit of Service affirmed on 10/01/2024
1	The Regional Director, Eastern Region, Ministry of Corporate Affairs	27/12/2023	23
2	The Registrar of Companies, West Bengal	27/12/2023	24
3	The Official Liquidator, High Court, Calcutta	27/12/2023	25
4	DCIT/ACIT, Circle 4(1)	27/12/2023	26
5	The Chief Commissioner of Income Tax-2	27/12/2023	27
6	Certificate in Compliance of Section 65B of Evidence Act	27/12/2023	22

(k) Further, in terms of the order dated 19/12/2023, notice of Petition was published in newspapers Business Standard (English Edition) on 08/01/2024 and in Aajkaal (Bengali Edition) on 08/01/2024. **(Page No. 5 & 6 of Rejoinder dated 10/01/2024)**

(l) All statutory formalities requisite for obtaining the sanction of the Scheme have been duly complied with by the Petitioner . The Scheme has been made bona fide and is in the interest of all concerned.

3. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (“RD”), High Court, Calcutta have filed their representations before this Tribunal.

4. The RD has filed his reply affidavit dated 17th January, 2024 (“**RD affidavit**”) which has been dealt with by the Petitioner . The observations of the RD and responses of the Petitioner(s) are summarized as under:-

(a) Paragraph No. 2 (a) of RD affidavit: (a) That it is submitted that on examination of report of the Registrar of Companies, West Bengal, it appears that no complaint and/or representation has been received against the proposed

Scheme of Arrangement. Further, the Applicant company is updated in filing their financial statement and annual return for the year ended 31/03/2023.

Paragraph No. 5(a) of Rejoinder: (a) With reference to paragraph 2(a) of the said reply, since the statements made in the said paragraphs are general hence no comments are required to the said statements.

(b) Paragraph No. 2 (b) of RD affidavit: (b) That the proposed Scheme of Arrangement provides for Arrangement between the Petitioner Company and its members under the provision of section 230 of the Companies Act, 2013. It further provides, inter alia, for the amount standing to the credit of the Capital Reserve of the Company shall be utilized and adjusted against the advance given to Directors and no amount will be paid to the members of the Company.

Paragraph No. 5(b) of Rejoinder: (b). With reference to paragraph 2(b) of the said reply, since the statements made in the said paragraphs are general hence no comments are required to the said statements.

(c) Paragraph No. 2 (c) of RD affidavit: (c) That the Applicant to submit an Affidavit to the effect that the interest of the creditors, if any, and all stakeholders and Government Revenue are protected as well as Statutory dues are paid off.

Paragraph No. 5(c) of Rejoinder: (c). With reference to paragraph 2(c) of the said reply, I say that the Scheme do not effect the interest of the creditors, all other stakeholders and Government Revenue.

(d) Paragraph No. 2 (d) of RD affidavit: (d) The Hon'ble Tribunal may kindly direct the Petitioner to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

Paragraph No. 5(d) of Rejoinder: (d) With reference to para 2 (d), it is stated that the Scheme enclosed in the Company Application and Company Petition are one and the same and there is no discrepancy and no change.

(e) Paragraph No. 2 (e) of RD affidavit: (e) It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme of Arrangement was forwarded to the Income Tax Department on

18/12/2023 for their views/observation in the matter. However, no such views/observation in the matter from the Income Tax Department has been received yet. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.

Paragraph No. 5(e) of Rejoinder: (e). With reference to para 2(e), it is stated that the petitioner company have also sent the notice of the Scheme two times in there different modes to the respective income tax assessing officer and have received no communication. However, the Petitioner Company undertakes that even after the sanction of the scheme, the Transferee Company will be liable for all liabilities of the Transferor Company . I further say that proceeding if any initiated by the Income Tax Department against the Transferor Company can be initiated after sanction of Scheme against the Transferee Company.

Paragraph No. 5(f) of Rejoinder: It is further submitted that the Petitioner Company undertake that if there are any deficiencies found, or violations committed relating to any enactment, statutory rules or regulations, the sanction granted by the Hon'ble Tribunal to the scheme will not come in the way of action being taken in accordance with law including recovery of income tax demand in accordance with applicable provisions of Income Tax Act.

5. After hearing submissions made by the Ld. Counsel appearing for the Petitioner, it is ordered that in case of any default including any Provisions of Income Tax Act the Income Tax department , the ROC, West Bengal, and all other Statutory Department shall be at liberty to initiate appropriate proceedings against the Petitioner Company.

6. Further, heard submissions made by the Ld Counsel appearing for the Petitioner, Joint Director for and on behalf of RD, who appeared and were heard. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders: -

- (a) The Scheme of Arrangement mentioned in paragraph 1 of the petition, being Annexure "A" hereto, be and is hereby sanctioned by this Tribunal to be binding with effect from 1st April, 2022 (“Appointed Date”) on Transferor Companies and Transferee Company, their respective shareholders and creditors and all concerned;

- (b) Capital Reserves of the Company as stated in the scheme be adjusted without further act or deed pursuant to Section 230 , 232 and other applicable provisions of the Companies Act, 2013 but subject nevertheless to all charges, now affecting the same;
- (c) All proceedings and/or suits and/or appeals now pending by or against the Petitioner Company, will continue;
- (d) That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
- (e) The Petitioner Company shall within thirty days of the date of the receipt of this order, cause a certified copy thereof to be delivered to the Registrar of Companies for registration.

7. Company Petition **C.P.(CAA)/208(KB)2023** connected with **C.A. (CAA)/119(KB)2023** is **disposed of** accordingly.

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

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on 4th of July, 2024

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