(2020) 12 NCLT CK 0181

In the National Company Law Tribunal

Case No : Company Petition No. 1055/(MB) Of 2020, Company Application (CAA) No. 1047/(MB) Of 2020

Abandcompany Corporate Services Limited And Ors. Vs

Date of Decision : 10-12-2020

Acts Referred:
Companies Act, 2013 — Section 129, 230, 230(5), 231, 232, 232(3)(i)

Citation : (2020) 12 NCLT CK 0181

Hon'ble Judges : Suchitra Kanuparthi, J;Chandra Bhan Singh, Member (Technical)

Bench : Division Bench

Advocate : CS. Priyanka Jian

Judgement

1. The Petitioners seeks the sanction of the Tribunal under Sections 230 to 232 and other relevant provisions of the Companies Act, 2013 (the Act)

and the Rules framed there under for the Scheme of Amalgamation of ABANDCOMPANY CORPORATE SERVICES LTD (Petitioner Company

No. 1/ Transferor Company No. 1), MANALI ENTERPRISE PRIVATE LIMITED (Petitioner Company no. 2/ Transferor Company no. 2),

MANALI FINVEST LIMITED (Petitioner Company no. 3/ Transferor Company no. 3) (hereinafter collectively referred to as â??Transferor

Companiesâ??) are proposed to get amalgamated into ABNCO PROPERTIES PRIVATE LIMITED (Petitioner Company no. 4/ Transferee

Company) and their respective Shareholders.

2. The Bench is convened by videoconference. Heard the Learned Authorised Representative for the Petitioner Companies. No objector has come

before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the said Scheme.

3. The Petitioner Companies have approved the said Scheme of Amalgamation by

passing the Board Resolutions dated 19th March 2020 which are

annexed to the Joint Company Scheme Petition.

4. The Learned Authorized Representative for the Petitioners further submits that the First Petitioner Company and the Second Petitioner Company

are engaged in the business of providing consultancy and advice in relation to investment, administrative marketing and other services. The Petitioner

Company 3 is presently pursuing activities of providing consultancy in investment & Finance and carrying on the object to invest & Finance the capital

and other moneys of the company in different companies, partnership firm and proprietorship firm etc. The Petitioner Company 4 is in the business of

purchasing, taking on lease or tenancy or in exchange hire, acquire any estate, lands, buildings, easements, or other interest, rights in immovable

properties and to hold concessions, licenses, privileges, claims, leases, sell and to mortgage, to lease immovable properties of the company

5. The Learned Authorised Representative appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the

Order dated 21st August, 2020 passed in the Company Scheme Application No. CA (CAA) 1047 of 2020 of the Honâ??ble National Company Law

Tribunal, Mumbai Bench.

6. The Learned Authorised Representative appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all

requirements as per directions of the Tribunal, and they have filed necessary affidavits of compliance before the Tribunal.

7. As per the present Company Petition, the rationale of the proposed Scheme is described in the present Company Petition stating that the Companies

believe that such restructuring would have following benefits:

a) Reduction of shareholding layers, elimination of the Interest liabilities on Inter Corporate Borrowings, facilitates administrative convenience, enable

cost savings and ensure optimum utilization of resources.

b) Simplification of Corporate structure through absorption of the Transferor Companies by the Transferee Company.

c) It will provide the benefit of operational synergies to the combined entity, which can be put to the best advantage of the stakeholders.

d) Enable optimum and efficient utilization of funds and resources.

e) Improved organizational capability and Greater efficiency in cash management and unfettered access to cash flow generated by the combined

business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholder value.

8. The Regional Director has filed his Report dated 7th December, 2020 stating therein that save and except the observations as stated in paragraph

IV (a) to (f) of the report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report,

the Regional Director has stated that:

a) The Petitioner under provision 230 (5) of Companies Act, 2013 have to serve notice to the Concern Authorities which are likely to be affected by

Compromise or arrangement. Further the approval of the scheme by this honourable tribunal may not deter such authorities to deal with any of the

issues arising after giving the effect to the scheme. The decision of such Authorities is binding on the Petitioner Company

b) In compliance of AS -14 (IND AS-103) the Petitioner Company shall pass accounting entries which are necessary in connection with the scheme

to comply with the applicable Accounting slandered such as AS-5 (IND- AS-8) etc.

c) As per Definition of Scheme

a. Appointed Date: Shall means 1st of April, 2019 or such other date as may be directed by any appropriate Authority being the date with effect from

which this scheme shall be deemed to be effective.

b. Effective date Shall Means the date on which the last of all the Conditions and matters referred to in Clause 16 has been fulfilled or worried

reference in this scheme to date of upon this scheme becoming effective or upon this scheme coming into effect shall means the effective date.

c. Further the Petitioner may be asked to comply with requirement and clarified vide circular no F No. 7/12/2019/CL-1 dated 21.08.2019 issued by the

Ministry of Corporate Affair.

d) The Company have to undertake to comply with Section 232 (3) (i) of Companies Act, 2013. Where the transferor Company is dissolved the fee, If

any, paid by the transferor Company on its Authorised Capital shall be set- off against any fee payable by the transferee Company on its Authorised

Capital subsequent to the amalgamation and therefore, petitioner to affirm that they comply the provision of the section

e) From the List of Shareholders of the Petitioner Companies as on 31.03.2019 it is observed that the transferor and transferee Company holding

share inter-se as per clause 7 of the scheme it is proposed to allot equity share of transferee Company at specify ratio to all equity shareholder of

transferor Companies. The allotment of Shares post-merger should take into consideration inter-se investment of all Petitioner Companies.

f) As per Financials of Transferor 2 & 3 for the year 2017-18 and 2018-19 revenue of operation shows from sales of services, however Petitioner

failed to furnish returns filed for service tax on income from sales of services when called upon by this office

This indicate that the Financials of transferor Companies do not show true and fair view resulting into violation of section 129 of Companies Act, 2013.

This turnaround penal action against transferor Company and hence Petitioner Companies has to undertake to get the said offence compounded.

9. In response to the above stated observations made by Regional Director, the Petitioner Companies have given necessary clarification and furnished

undertaking by filing reply affidavit, which read as under:

a) Apropos observation made in paragraph IV (a) of the report of Regional Director is concerned, the Petitioners submits that the Companies has

already served the copy of petition pursuant to Section 230(5) of the Companies Act, 2013 and affidavit of services has been filed before this Hon.

Tribunal.

b) Apropos observation made in paragraph IV (b) of the report of Regional Director is concerned, the Petitioners undertakes to comply with AS-14

(IND AS-103) and such applicable accounting standards for Amalgamation and as per other applicable provisions of Companies Act, 2013 while

passing necessary entries in connection with the Scheme.

c) Apropos observation made in paragraph IV (c) of the report of Regional Director is concerned, the Petitioners confirms that the definition

â??Appointed Dateâ? means 1st April, 2019. Further, Clause 1 Definition of the Scheme specifies that the appointed date shall be 1st April, 2019.

Further, the Petitioners confirms that the â??Effective Dateâ? shall be the date on which the certified or authenticated copies of the order sanctioning

this scheme by the Mumbai Bench of National Company Law Tribunal is filed with the Registrar of Companies, Mumbai Maharashtra by the

Transferor Companies and the Transferee Company as required under the provisions of the Companies Act. The Transferee Company further

undertake to comply with the circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs. The Petitioner

Companies clarifies that the amalgamation as embodied in the Scheme shall take effect from the Appointed Date i.e. 1st April 2019.

d) Apropos observation made in paragraph IV (d) of the report of Regional Director is concerned, the Petitioners undertake to comply with the section

232(3)(i) of the Companies Act, 2013.

e) Apropos observation made in paragraph IV (e) of the report of Regional Director is concerned the Petitioner confirm that clause 7 of the scheme

of the Transferee Company shall allot equity shares as per the specified ratio to all equity shareholders of the Transferor Companies. Further in

Clause 11 of the scheme in the point of Accounting Treatment in the books of Transferee Company provides that the shares held by the Transferee

Company in the Transferor Companies shall stand cancelled.

f) Apropos the observation of the Regional Director in para IV (f) is concerned, the petitioner company undertakes to file suitable compounding

applications as may be legally advised.

10. Thus the Petitioner Companies have explained the observations made by Regional Director in relevant paragraph (9(a) to (9)(f) of the above

stated reply affidavit. In view of the clarification and undertakings given by the Petitioner Companies the above stated observations of the Regional

Director stand satisfied. Moreover the Petitioner Companies have given undertaking to comply with the requirement under the Companies Act, 2013

and rules made thereunder. Hence, the same is accepted.

11. The Official Liquidator has filed his report dated 4th October, 2020 inter alia, stating therein that the affairs of the Transferor Companies have

been conducted in a proper manner not prejudicial to the interest of the Shareholders of the Transferor Companies and that the Transferor Companies

may be ordered to be dissolved by this Tribunal.

12. From the material on record, the proposed Scheme appears to be fair and reasonable and does not affect adversely the interest of its shareholders,

creditors nor is against the public interest at large. It does not appear to be violative of any statutory provisions. Hence, the proposed Company

Scheme can be approved and sanctioned by this court.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 1055 of 2020 is made absolute in terms of prayer

clauses of the Petition. Consequently the present Scheme of Amalgamation of ABANDCOMPANY CORPORATE SERVICES LTD (Petitioner

Company No. 1/ Transferor Company No. 1), MANALI ENTERPRISE PRIVATE LIMITED (Petitioner Company no. 2/ Transferor Company no.

2), MANALI FINVEST LIMITED (Petitioner Company no. 3/ Transferor Company no. 3) (hereinafter collectively referred to as â??Transferor

Companiesâ??) are proposed to get amalgamated into ABNCO PROPERTIES PRIVATE LIMITED (Petitioner Company no. 4/ Transferee

Company) and their respective Shareholders are hereby sanctioned and approved.

14. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme, duly certified by the

Deputy/Assistant Registrar of this Tribunal, with the Registrar of Companies concerned, electronically in E-form INC-28 within 30 days from the date

of receipt of the Order.

15. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy/Assistant Registrar of this Tribunal,

within 60 working days from the date of receipt of the Order, with the Superintendent of Stamps concerned, for the purpose of adjudication of stamp

duty payable.

16. All concerned shall act on a copy of this Order along with Scheme duly authenticated by the Deputy/Assistant Registrar of this Tribunal.

17. The Scheme, with the Appointed Date fixed as 1st April, 2019 of the CP (CAA) No. 1047/MB/2020 is hereby sanctioned.

18. Any person interested shall be at liberty to apply to the Tribunal in above matter for any direction that may be necessary.

19. Pronounced in open court today. File be consigned to records.