courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 31/08/2026

(2023) 06 NCLT CK 0012

In the National Company Law Tribunal

Case No : CP (CAA)226/MB/2022 In CA (CAA)148/MB/2022

Advanced Compuflow Pvt Ltd Vs

Date of Decision : 09-06-2023

Acts Referred:
Companies Act, 2013 — Section 66, 230, 232
Income Tax Act, 1961 — Section 68

Citation : (2023) 06 NCLT CK 0012

Hon'ble Judges : Kishore Vemulappali, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Avinash R. Khanolkar, Surekha Yadav, Haresh Upendra, Rupa Sutar

Final Decision : Disposed Of

Judgement

Kishore Vemulappali, Member (Judicial)

1. Heard the learned Counsel for the Petitioners and the representative of the Regional Director Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.

2. The sanction of this Tribunal is sought under Sections 232 r/w section 230 of the Companies Act, 2013 for the Composite Scheme of Arrangement (hereinafter as the Scheme) of between Advanced Compuflow Private Limited (1st Petitioner Company/ the Transferor Company) and Shamyak Investment Private Limited (2nd Petitioner Company/ the Transferee Company/ the Demerged Company) and Ozka Properties Private Limited (Formerly Known as Ozka Solar Energy Private Limited) (3rd Petitioner Company/ the Resulting Company) and their respective shareholders.

3. The respective Board of Directors of the Petitioner Companies passed a Resolution on 23.05.2022, respectively, and approved the proposed Scheme. The appointed date of the Scheme is 01.04.2022.

4. The 1st Petitioner Company is engaged in business of Investment in Shares and Securities; 2nd Petitioner Company is engaged and carry on the business of

Investment in shares and Securities and real estate and the 3rd Petitioner Company is engaged in the business of activities of real estate and to carry on the business to hold, purchase, take on lease or otherwise acquire land or buildings of any tenure or description wherever situated, or rights or interests therein or connected therewith.

5. This Scheme inter-alia provides for the transfer and vesting of whole business undertaking of the 1st Petitioner Company to the 2nd Petitioner Company through merger by way of absorption and demerger of Real Estate Undertaking (hereinafter referred as the Demerged Undertaking) of the 2nd Petitioner Company to the 3rd Petitioner Company. That while effecting the Scheme the Merger of the 1st Petitioner Company with the 2nd Petitioner Company will be given effect first and transfer of Demerged Undertaking of 2nd Petitioner Company to the 3rd Petitioner Company will be given effect at later stage.

6. In lieu of the Consideration of the Scheme, as per clause 9 of the Scheme, upon this Scheme becomes effective, following consideration shall be issued:

(i) For Merger by way of absorption of the 1st Petitioner Company with the 2nd Petitioner Company, the 2nd Petitioner Company i.e. the Transferee Company shall issue and allot 244 Equity Share of ☐ 100/- each for every 100 Equity Shares of ☐ 100/- each to each Shareholder of the 1st Petitioner Company.

(ii) For Demerger of the 2nd Petitioner Company with the 3rd Petitioner Company, the 3rd Petitioner Company i.e. Resulting Company there shall be no issuance of Shares/Consideration in any form in light of the fact that the entire issued, subscribed and paid-up capital of the Resulting Company is held by Demerged Company and/or its nominee.

7. The respective Board of Directors of the Petitioner Companies anticipate the following benefits pursuant to the Scheme :

Benefits of Merger by Absorption of Transferor Company with Transferee Company is as follows:

(a) The merger will achieve greater financial strength and flexibility, to maximize the stakeholder’s value.

(b) The merger will provide for more productive and optimum utilization of various resources by pooling of financial resource of the Transferor Company and Transferee Company.

(c) The merger will lead to greater efficiency including operational rationalization, organizational efficiency, cash flow management and access to cash flow of combined business activities which can be deployed more efficiently, minimize the administrative expenses and compliances and to maximize shareholders value.

(d) The merger will result in a reduction in the multiplicity of legal and regulatory compliances required particularly as non-banking finance company at present to

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/advanced-compuflow-pvt-ltd-…

be separately carried out by the Transferor company and the Transferee company.

Benefits of Demerging Real Estate Undertaking is as follows:

(a) Segregation of Real Estate Undertaking of the Demerged Company into the Resulting Company in a manner provided in this scheme will result into enhanced strategic flexibility by solely focusing on each of the businesses.

(b) Allowing management of each company to have a focused strategy in operations and create enhanced value for stakeholders.

(c) Each core business activity has a differentiated strategy, different industry specific risks and operate inter alia under different market dynamics and growth trajectory.

8. The Petitioner submits that the Share Capital Structure of the 1st Petitioner Company, as on 31.03.2022, is as under:

Particulars

Amount in ☐

Authorised Share Capital

10,000 Equity Shares of ☐ 100/- each

10,00,000/-

2,50,000 12% Non-Cumulative Redeemable

Preference Shares of ☐ 10/- each

25,00,000/-

TOTAL

35,00,000/-

Issued, Subscribed and Paid-up Share Capital

4,690 Equity Shares of ☐ 100/- each

4,69,000/-

TOTAL

4,69,000/-

9. The Petitioners submits that the Share Capital Structure of the 2nd Petitioner Company, as on 31.03.2022 is as under :

Particulars

Amount in ☐

Authorised Share Capital:

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/advanced-compuflow-pvt-ltd-…

21,50,000 Equity Shares of ☐   100/- each

21,50,00,000/-

Total

21,50,00,000/-

Issued, Subscribed and Paid –Up:

1,93,796 Equity Shares of ☐   100/- each

1,93,79,600/-

Total

1,93,79,600/-

10. The Petitioners submits that the Share Capital Structure of the 3rd Petitioner Company, as on 31.03.2022 is as under :

Particulars

Amount in ☐

Authorised Share Capital:

1,00,000 Equity Shares of ☐   10/- each

10,00,000/-

Total

10,00,000/-

Issued, Subscribed and Paid –Up:

10,000 Equity Shares of ☐   10/- each

1,00,000/-

Total

1,00,000/-

11. The Petitioner Companies has also submitted that there is no change in the capital structure after the date of filing of this Petition.

12. The Petitioner Companies have drawn attention to the Financial position of the 1st Petitioner Company which is as follows:

(Rs. In lakhs)

Year

Share Capital

Revenue

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/advanced-compuflow-pvt-ltd-...

Profit/Loss

2021

4.69

1186.19

977.17

2022

4.69

147.12

(10.64)

13. The Petitioner Companies have drawn attention to the Financial position of the 2nd Petitioner Company which is as follows:

(Rs. In lakhs)

Year

Share Capital

Revenue

Profit/Loss

2021

193.796

6369.32

4124.34

2022

193.796

9221.44

7193.99

14. The Petitioner Companies have drawn attention to the Financial position of the 3rd Petitioner Company which is as follows:

(Rs. In lakhs)

Year

Share Capital

Revenue

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/advanced-compuflow-pvt-ltd-...

Profit/Loss

2021

1

Nil

Nil

2022

1

Nil

Nil

15. The Regional Director has filed his Report dated 26th April, 2023 making certain observations and the Petitioner Companies have Filed Affidavit dated 08th December, 2022 and undertaken/made following submission that :-

a. No Inquiry, Investigations, Inspections, Prosecutions, Complaints under the Companies Act 2013 are pending against any of the Petitioner Companies;

b. The interest of the creditors will be protected;

c. There is no increase in authorized share capital of Transferee Company on account of merger. The Transferee Company has sufficient authorized capital to issue shares to shareholders of Transferor Company as consideration of the scheme;

d. The Petitioner companies shall pass such accounting entries as may be necessary in connection with the scheme of arrangement to comply with accounting standards IND-AS 103 and any other applicable accounting standards to the extent applicable;

e. The Petitioner Companies will comply with directions of Sectoral Regulatory Authorities including RERA as and when required and to the extent applicable;

f. The Transferor Company i.e. Advanced Compuflow Private Limited has issued 3,350 equity shares at Premium of Rs.7050 (Seven Thousand Fifty Rupees) per equity share on 6th March 2007 and e-filed return of allotment on 19th March 2007 and payment was made on 22nd March 2007 via SRN A11860277. Such allotment was made 16 years back and the same was in accordance with the provisions including section 68 of the of the Income Tax Act, 1961 as applicable at the time of issue of shares; and

g. The Petitioner Companies have filed e-form BEN-2 on 29th July 2019 via SRN H79311296.

16. Ms. Rupa Sutar, Deputy Director, Office of Regional Director (WR), Mumbai appeared on the date of hearing and submits that above explanations and

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/advanced-compuflow-pvt-ltd-…

clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.

17. The Official Liquidator, Mumbai has filed its Report dated 11.05.2023 inter-alia stating that the affairs of the Transferor Company have been conducted in a proper manner and not prejudicial to the interest of its shareholders and/or to the public at large.

18. Beside, these Government Authorities the Department of Income Tax had filed its claim with the Petitioners. The claim has been paid off and this Bench has taken note of the same vide an Order dated 12.04.2023.

19. All the assets and liabilities including taxes and charges, if any, and duties of the 1st Petitioner Company, shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the 2nd Petitioner Company w.e.f. the Appointed Date.

20. Subsequent to the giving effect to the Demerger; all the assets & liabilities including taxes and charges, if any, and duties of the Demerged Undertaking of the 2nd Petitioner Company, shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the 3rd Petitioner Company w.e.f. the Appointed Date.

21. The 1st Petitioner Company shall be dissolved without winding-up upon giving effect to the Merger part.

22. From the material on record and the submissions made herein-above, the Scheme appears to be fair and reasonable and is not violative of any provisions of the Law and is not contrary to public policy.

23. The Income Tax Department will be at liberty to examine the aspect of any tax payable because of this scheme and it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.

24. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P.(CAA)/226/MB/2022 filed by the Petitioner Companies is made absolute in terms of prayers clause of the said Company Scheme Petition.

25. The Scheme is sanctioned hereby on the above terms and directions. Further, the appointed date of the Scheme is fixed as 1st April, 2022.

26. The creditors of undertaking, being demerged, shall be entitled to make claim against the resulting company as well as demerged company in relation to their debt up to the date of demerger. In case the resulting Company is made to pay the debt of such undertaking, it shall be entitled to seek reimbursement of the amount so paid from the Demerged Company.

27. The Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-Form INC-28 in addition to physical copy, within 30

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/advanced-compuflow-pvt-ltd-…

days from the date of receipt of order, duly certified by the Deputy Registrar or the Assistant Registrar, as the case may be, of this Tribunal.

28. The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the Deputy Registrar or the Assistant Registrar, as the case may be, of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt certified copy of the order.

29. All concerned regulatory authorities to act on a copy of this Order duly certified by the Registry of this Tribunal, along with a copy of the Scheme.

30. Ordered accordingly.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/advanced-compuflow-pvt-ltd-…