
(2019) 05 NCLT CK 0002

In the National Company Law Tribunal

Case No : Company Petition No. Caa 02 (Pb) Of 2019

Agarwal Meadows Private Limited

APPELLANT

Vs

Paisalo Digital Limited

RESPONDENT

Date of Decision : 17-05-2019

Acts Referred:

Companies Act, 2013 — Section 133, 230, 231, 232, 233, 234

Citation : (2019) 05 NCLT CK 0002

Hon'ble Judges : M.M. Kumar, J;S.K. Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : P. Nagesh, Dhruv Gupta, Harshal Kumar, C. Balooni, Swati Kaushal, Ajit Sharma, Ashutosh

Final Decision : Disposed Of

Judgement

S. K. Mohapatra, Member

1. This Joint application has been filed by the Petitioner Companies under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation of the Transferor Company into the Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred as the "Scheme") has been placed on record.

2. The "Transferor Company", M/s Agarwal Meadows Private Limited was incorporated on 08.12.1989 under the provisions of the Companies Act, 1956, having its Registered Office at CSC, Pocket-52, Chittaranjan Park, Near Police Station, New Delhi-110019.

3. The "Transferee Company", M/s Paisalo Digital Limited was incorporated on 05.03.1992 under the Companies Act, 1956, having its registered office situated at 101, CSC, Pocket - 52, CR Park, Near Police Station, New Delhi - 110019.

4. It is seen from the records that the First Motion application seeking dispensation from convening the meetings of Shareholders and Creditors of petitioner companies was filed before this Bench vide CA (CAA) No. 172 (PB) 2018 and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, the meetings of Equity Shareholders, Secured Creditors of transferor company and secured creditors of transferee company were dispensed with, vide order dated 12.10.2018 passed by this Bench. Directions were also issued in the same order to convene meetings of equity shareholders, and unsecured creditors of Transferee Company.

5. Subsequently, in compliance of the order dated 12.10.2018 the aforementioned meetings were duly convened on 01.12.2018 and the proposed Scheme was unanimously approved by the members present and voting in the respective meetings. The reports of the Chairperson and Scrutinizer have also been placed on record.

6. Thereafter, on 19.02.2019 the Petitioners were directed to carry out publication in the newspapers "Business Standard" (English Delhi Edition) as well as in "Business Standard" in Vernacular (Hindi Delhi Edition). In addition to the public notice, notices were directed to be served on the Regional Director (Northern Region), Official Liquidator, Registrar of Companies, NCT of Delhi and Haryana, the Income Tax Department and to other relevant sectoral regulators.

7. It is seen from the records that the Petitioner companies have filed an affidavit dated 20.03.2019, affirming compliance of the order dated 19.02.2019. A perusal of the affidavit discloses that the Petitioners have effected the newspaper publication as directed in one issue of the "Business Standard" English Edition as well as in "Business Standard" Hindi Edition on 08.03.2019, in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of the petition have been duly served to the Regional Director (Northern Region), Official Liquidator, Registrar of Companies, NCT of Delhi and Haryana, the Income Tax Department and to other relevant sectoral regulators in compliance of the order and in proof of the same acknowledgement made by respective offices have also been enclosed.

8. The Regional Director has filed its representation on 29.03.2019 wherein no objection has been raised against the Scheme. It is further stated in the report that Registrar of Companies has not received any compliant/ objection from shareholders, creditors or any other stakeholders of the Petitioner Companies. It is also stated that the transferor company and transferee company have filed their up to date Annual Return and Balance Sheet for the year ending 31.03.2018 and no prosecution, investigation or inspection has been conducted in respect of petitioner companies.

9. The Official Liquidator has filed its report dated 18.03.2019 wherein no specific objection has been raised against the approval of the Scheme. It is submitted in the report that the official liquidator has not received any complaint against the

proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

10. The Department of Income Tax has also filed its report on 23.04.2019 wherein the Department has not raised any objection against the sanctioning of the Scheme.

11. However, in order to protect the interest of the Revenue it is clarified that there shall be no limitation on the power of the Income tax Department for recovery of pending Income Tax dues, including imposition of penalties etc. as provided in law.

12. In respect of Reserve Bank of India, the transferee company has filed affidavit dated 22.04.2019, stating that the Department of Non-Banking Supervision of RBI has issued no Objection Letter dated 04.04.2019, copy of which has been placed on record. It is also confirmed in the affidavit that till date of the affidavit no objection has been received by the petitioner companies from any objector or from their representative.

13. In the joint petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies. It is stated that the appointed date as provided in the Scheme shall be 31st December, 2017.

14. Certificates of respective Statutory auditors of both the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.

15. The shareholders of the applicant companies are the best Judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme of which sanction is sought under Section 230-232 of the Companies Act of 2013 will not ordinarily interfere with the corporate decisions of companies as approved by shareholders and creditors.

16. In the case of Hindustan Lever Employees Union Vs. Hindustan Lever Limited (1995) 5 SCC 491 the three Judges Bench of Hon'ble Supreme Court held that:

'A company court does not exercise appellate jurisdiction over a scheme and its jurisdiction is limited to ascertaining fairness, justness and reasonableness of the Scheme and to ensure that neither any law has been violated or public interest compromised in the process.'

17. Right to apply for the sanction of the Scheme has been statutorily provided under Section 230-234 of the Companies Act, 2013 and therefore, it is open to the applicant companies to avail the benefits extended by statutory provisions and the Rules.

18. It has also been affirmed in the petition that the Scheme is in the interest of the transferor company and the transferee company including their shareholders, creditors, employees and all concerned.

19. In view of the foregoing, upon considering the approval accorded by the members and creditors of all the Petitioner companies to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs including the report of official liquidator, Income Tax Department and RBI and also as no objection from any quarter against the Scheme has been received; there appears to be no impediment in sanctioning the present Scheme.

20. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.

21. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

22. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

23. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law.

24. THIS TRIBUNAL DO FURTHER ORDER

i. That the Transferor Company shall stand dissolved without following the process of winding- up; and

ii. That all the property, rights and powers of Transferor Company, be transferred without further act or deed, to the transferee company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the transferee company.

iii. That all the liabilities and duties of Transferor Company, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and

iv. That all proceedings now pending by or against Transferor Company, be continued by or against the transferee company; and

v. That all the employees of Transferor Company in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date shall become the employees of the transferee company on such date without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the Transferor Company on the said date.

vi. That Petitioner companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered Transferor Company shall be dissolved and the Registrar of Companies shall place all documents relating to Transferor Company registered with him on the file kept by him in relation to the transferee company and the files relating to both the petitioner companies shall be consolidated accordingly; and

vii. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

The petition stands disposed of in the above terms.

Let copy of the order be served to the parties.