(2023) 03 NCLT CK 0039

In the National Company Law Tribunal

Case No : CA(CAA)No. 8/KB/2023

Agrifields International Limited & Anr Vs

Date of Decision : 07-03-2023

Acts Referred:
Companies Act, 2013 — Section 133, 230, 230(1), 230(5), 232, 232(1)

Citation : (2023) 03 NCLT CK 0039

Hon'ble Judges : Bidisha Banerjee, Member (J);Satya Ranjan Prasad, Member (T)

Bench : Division Bench

Advocate : Madhuri Pandey

Final Decision : Disposed Of

Judgement

Bidisha Banerjee, Member (Judicial):

1. This is an application under sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 filed by the Applicant Companies, namely, Farmfields Private Limited (Transferor Company), and Agrifields International Limited (Transferee Company), in connection with a proposed Scheme of Amalgamation of the Applicant Companies (hereinafter referred as "Scheme").

2. The Board of Directors of the Applicant Companies approved the Scheme of Amalgamation between the Applicant Companies and their respective shareholders for amalgamation of the Transferor Company with the Transferee Company, whereby and where under the entire undertaking of the Transferor Company together with all assets and liabilities relating thereto as going concerns are proposed to be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the Scheme of Amalgamation, a copy whereof is annexed with the Application and marked as "Annexure D" from page number "105 to 139" of the Application.

3. The Appointed date is 1st October, 2022 as mentioned in the Scheme of Amalgamation annexed with the Application vide Annexure-D from page "105 to

139” of the Application.

4. The circumstances which justify and necessitate the said Scheme of Amalgamation are, inter-alia, as follows:

a. The Scheme of Amalgamation has been proposed to consolidate the group structure and provide advantages of synergies in business activities;

b. The business of both the Transferor Company and the Transferee Company can be combined and carried forward conveniently with the combined strength of both the Applicant Companies;

c. The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the Transferee Company;

d. The amalgamation will result in usual economies of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources and the business of the companies can be conveniently and advantageously combined together and in general business of the Companies concerned will be carried on more economically and profitably under the said Scheme of Amalgamation;

e. The said Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business of the Companies concerned. The aforesaid Scheme of Amalgamation will also enable the undertakings and business of the said Applicant Companies to obtain greater facilities possessed and enjoyed by one large company compared with a number of small companies for raising capital, securing and conducting trade on favorable terms and other benefits;

f. The said scheme will contribute in furthering and fulfilling the objects of the companies concerned and, in the growth, and development of these businesses;

g. The said scheme will strengthen and consolidate the position of the amalgamated Company and will enable the amalgamated Company to increase its profitability;

h. The said scheme will enable the undertakings concerned to pool their resources and to expand their activities;

i. The said scheme will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages;

j. The said scheme will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.

5. The Board of Directors of the Applicant Companies have at their respective Board meetings, held on 11th November 2022, by a resolution passed unanimously and approved the Scheme of Amalgamation. The said resolution is annexed with the Application and referred in “Annexure E” from page number

“140 to 141” of the Application.

6. The assets of the Applicant Companies are sufficient to meet all their liabilities and the Scheme of Amalgamation will not adversely affect the rights of any of the creditors of any of the Applicant Companies in any manner whatsoever.

7. The Applicant Companies have made due provisions for payment of all the liabilities as and when the same will fall due.

8. The report determining the number and exchange ratio of shares which, shall be issued and allotted to the equity shareholders of the Transferor Company by the Transferee Company for implementing the terms of the Scheme has been prepared by an independent Registered Valuer in practice and such recommendation has been accepted by the Board of Directors of both the Applicant Companies. The said report is annexed with the Application and marked as “Annexure F” from page number “142 to 184” of the Application.

9. It is stated in the Application that all the Applicant Companies are closely held Companies and there are no outside shareholder or director in any of the Transferor Company or the Transferee Company.

10. There are 2 (Two) equity shareholders in the Transferor Company.

11. The list of equity shareholders of the Transferor Company as on 11th November, 2022 along with the certificate by the Chartered Accountant verifying the correctness of the same as on that date is annexed with the Application and marked as “Annexure G” from page number “185 to 186” of the Application.

12. Each and every shareholder of the Transferor Company have considered the Scheme of Amalgamation and have given their consent in writing agreeing to the Scheme of Amalgamation and also consenting to waive the holding of the meeting of the shareholders of the concerned Transferor Company. The copies of the consent affidavits of all the shareholders of the Transferor Company are annexed with the application and collectively marked as “Annexure-H” from page number “187 to 194” of the Application.

13. There are 7 (Seven) equity shareholders in the Transferee Company.

14. The list of equity shareholders of the Transferee Company as on 11th November, 2022 along with the certificate by the Chartered Accountant verifying the correctness of the same as on that date is annexed with the Application and marked as “Annexure I” from page number “195 to 196” of the Application.

15. Each and every shareholder of the Transferee Company have considered the Scheme of Amalgamation and have given their consent in writing agreeing to the Scheme of Amalgamation and also consenting to waive the holding of the meeting of the shareholders of the concerned Transferee Company. The copies of the consent letters of all the equity shareholders along with their respective affidavit of the Transferee Company are annexed with the application and collectively marked as “Annexure-J” from page number “197 to 224” of the

Application.

16. The equity shareholders of both the Applicant Companies have considered and agreed in writing to the Scheme of Amalgamation and have also consented to waiving the holding of the meeting of shareholders of the Applicant Companies concerned.

17. There are NIL secured and One (1) unsecured creditor in the Transferor Company.

18. There are NIL secured and Unsecured creditors in the Transferee Company.

19. The Statutory Auditors of the Transferor Company have given certificate certifying the list of secured and unsecured creditors in the Transferor Company as on 11th November, 2022. The copies of such certificate along with the list of secured and unsecured creditors drawn as on the dates mentioned above, are annexed with the Application and marked as "Annexure K" from page number "225 to 230" of the Application.

20. The Statutory Auditor of the Transferee Company has given certificate certifying the list of secured and unsecured creditors of the Transferee Company as on 11th November, 2022. The copies of such certificate along with the list of secured and unsecured creditors drawn as on the dates mentioned above, are annexed with the Application and marked as "Annexure L" from page number "231 to 232" of the Application".

21. Copy of Permanent Account Number (PAN) cards of both the Applicant Companies are annexed herewith and marked as "Annexure M" from page number "233 to 234" of the Application.

22. The certificate by the Statutory Auditor of the Transferee Company verifying conformity with Accounting Standard under Section 133 of the Companies Act, 2013 is annexed with the Application and marked as "Annexure N" from page number "235 to 237" of the Application".

23. Heard the learned Authorized Representative for the applicants, perused the records, documents annexed the Application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants, the following orders are passed:

a. In view of the fact that all the equity shareholders of the Applicant Companies duly consented in writing by way of affidavits, to the proposed Scheme of Amalgamation, duly certified by the Chartered Accountants, the requirements of convening and holding of separate meetings of the shareholders of the Applicant Companies to ascertain the wishes of the equity shareholders of both the Applicant Companies for the Scheme of Amalgamation, are dispensed with;

b. The Unsecured creditor of the Transferor Company have given their consent in writing by way of affidavit agreeing to the Scheme of Amalgamation and also consenting to waive holding of separate meeting of the unsecured creditor of the concerned Transferor Company, as certified by the Statutory Auditor, convening and holding of separate meetings of the unsecured creditors of the Applicant Company, are dispensed with;

c. In view of the fact that the Transferor Company has NIL Secured Creditor and Transferee Company has NIL Secured and Unsecured Creditor, the question of convening and holding meetings of the Secured Creditors of both the Applicant Companies and Unsecured Creditor of the Transferee Company does not arise.

d. Let the notice be served by the Applicant Companies, as per the requirements of sub-section (5) of Section 230 of The Companies Act, 2013, along with the copy of the Application and all other documents including the copy of the Scheme of Amalgamation and the statement disclosing necessary details to the following authorities:

i. Central Government, through the Regional Director, Eastern Region

ii. Ministry of Corporate Affairs, Registrar of Companies, West Bengal

iii. The concerned Income-Tax Assessing Officer along with the Chief Commissioner of Income-Tax with PAN Numbers of the Applicant Companies through E-Mail and by Speed Post, or by messenger,

iv. The Official Liquidator, having jurisdiction over the Applicant Companies

e. Such other relevant sectoral regulators/authorities, if applicable, which are likely to be affected by the proposed scheme, by sending the same by hand delivery through Special Messenger or by Registered Post or by Speed Post, and by EMail, within ten days from the date of this order for filing their representation, if any, on the Application within 30 days from the date of the notice;

24. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the Applicants and/or their authorised representatives, in advance;

25. Objections, if any, to the scheme contemplated by the authorities to whom notice has been given, may be filed within the time stipulated, failing which it will be considered by this Tribunal that there is no objection to the approval of the Scheme of Amalgamation on the part of the authorities, subject to other conditions being applicable under The Companies Act, 2013 and relevant rules made thereunder;

26. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation;

27. The Applicants shall file affidavit not less than 7 days before the date of hearing of Second Motion Petition;

28. The Company Application being CA (CAA) No.8/ KB/2023 is, accordingly, disposed of.

29. Certified copy of this Order may be issued, if applied for, upon compliance of all requisite formalities.

