(2023) 08 NCLT CK 0028

In the National Company Law Tribunal

Case No : CP (CAA)/50/MB-IV/2023 In CA (CAA)/248/MB/2021

Akin Logistics and Services Private Limited Vs

Date of Decision : 18-08-2023

Acts Referred:
Companies Act, 2013 — Section 90, 230, 232, 232(3)(i)

Citation : (2023) 08 NCLT CK 0028

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

Bench : Division Bench

Advocate : Ahmed M Chunawala, Rajesh Shah & Co, Rupa Sutar

Final Decision : Disposed Of

Judgement

Prabhat Kumar, Member (Technical)

1. Heard the Learned Counsel for the Petitioner Companies. Neither 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, except otherwise stated.

2. The sanction of the Tribunal is sought under Sections 232 read with section 230 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Amalgamation of Akin Logistics and Services Private Limited, the Transferor Company with Akin Chemicals Private Limited, the Transferee Company.

3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 27th August, 2021.

4. That the Petitioner Companies have been filed in consonance with the Order passed in the Company Scheme Application i.e. CA (CAA)/248/MB/2021 of the Hon’ble Tribunal. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National

Company Law Tribunal, Mumbai Bench.

5. That the Petitioner Company No. 1 is presently carrying on business as establish, organize, manage, run, charter, conduct, contract, develop, handle, own, operate and to do business as fleet, carriers, transporters, in all its branches on land, air, water space, for transporting goods, articles, or things on all routes and lines in National and International level subject to law in force through all sorts of carries like trucks, lorries, trawlers, dumpers, coaches, tankers, tractors, haulers, jeeps, trailers, motor buses, omnibuses, motor taxies, railways, tramways, aircrafts, hovercrafts, rockers, space shuttles, ships, vessels, boats, barges and that the Petitioner Company No. 2 is presently carrying on the business as buyers, sellers, exporter, importer, job worker, vendor, contractor, supplier or otherwise to deal in all types of organic, inorganic, industrial, laboratory, photographic, fine, biological, pathological, pharmaceutical and other chemicals, compound, drugs, formulations, preparations, acids, solvents, oils, solutions, derivatives, fluids.

6. The rationale for the Scheme of Amalgamation of the Petitioner Companies is in the interest of the stakeholders of these companies and shall result in the following benefits:

a. The amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base.

b. It would be advantageous to combine the activities and operations of both companies into a single Company for synergistic linkages and the benefit of combined financial resources. This will be reflected in the profitability of the Transferee Company.

c. This Scheme of amalgamation would result in merger and thus consolidation of business of the Transferor Company and the Transferee Company in one entity, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform.

d. The Amalgamation of the Transferor Company with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of both the companies. The merged entity will also have sufficient funds required for meeting its long term capital needs as provided for in the scheme.

e. The Scheme of amalgamation will result in cost saving for both the companies as they are capitalizing on each other’s core competency and resources which is expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company.

f. The Transferor Company is a wholly owned subsidiary of the Transferee

Company. The shareholders would consolidate their holdings and leverage the share value consequent to higher profitability.

7. The Regional Director has filed his Report dated 2nd June, 2023 making certain observations and the Petitioner Companies have undertaken/made following submission that :-

a. the Petitioner Companies will file the copy of the Standalone and Consolidated Financial Statements for the year ended 31st March, 2022 on completion of the Amalgamation process.

b. The Petitioner Companies have filed the Form GNL-1 form vide SRN No.F61881991 dated 14/06/2023 for M/s Akin Logistics And Services Private Limited and vide SRN No. F61882320 dated 14/06/2023 for M/s Akin Chemicals Private Limited.

c. the interest of creditors will be protected.

d. the setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be in accordance with provisions of section 232(3)(i) of the Companies Act, 2013.

e. the Transferee Company shall comply with AS-14 for accounting treatment, and shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 as applicable.

f. the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy/ any change/ changes are made.

g. the Petitioner will comply with the requirements as to Appointed Date, clarified vide circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry.

h. there are no sectoral regulatory authorities and if there are any sectoral authorities the Transferee Company would comply with the direction.

i. the provisions of Section 90 of Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment Rules, 2019, thereunder for filing of Form BEN-2 is not applicable to the Petitioner Companies.

8. The Regional Director appeared through its representative and submitted that their observations/ objections have been satisfactorily explained by the Petitioner Companies and is acceptable to them, and the Regional Director does not have any further objection to the proposed Scheme Company Petition.

9. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme in relation to tax or any other kind of obligations of Transferor Company, as permissible under the Income Tax Law, and the Transferee Company shall abide with it subject to provisions of that law.

10. The Official Liquidator has filed his report dated 6th January, 2023 in the

Company Scheme Petition No. 50 of 2023, inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner not prejudicial to the interest of the Shareholders of the Transferor Companies and that the Transferor Company may be ordered to be dissolved by this Tribunal.

11. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy considering that no objection has so far been received from any Authority or Creditors or Members or any other Stakeholders.

12. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 50 of 2023 is made absolute in terms of clauses (a) to (c) of the said Company Scheme Petition

13. The First Petitioner Company be dissolved without winding up.

14. Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy within 30 days from the date of receipt of the Order from the Registry.

15. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar/ Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.

16. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director/ Assistant Registrar, National Company Law Tribunal, Mumbai.

17. The Appointed Date is 1st April, 2021.

18. Ordered Accordingly.

