**(2020) 06 NCLT CK 0062**

**In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi**

**Case No :** CAA No. 128/PB Of 2019 In Company Application (CAA)-102(PB) Of 2019

Alfa Technobuild Private Limited And Ors. APPELLANT

Vs

Eros Agro And Farms Private Limited RESPONDENT

**Date of Decision :** 18-06-2020

**Acts Referred:**
Companies Act, 2013 — Section 129, 133, 230, 231, 232

**Citation :** (2020) 06 NCLT CK 0062

**Hon'ble Judges :** B.S.V. Prakash Kumar, J;Narender Kumar Bhola, Member (Technical)

**Bench :** Division Bench

**Advocate :** Dinesh Kumar Gupta, Lakshmi Gurung, Tania Sharma, Amish Tondon

**Final Decision :** Disposed Of

# Judgement

1. Under consideration is the Joint Company application No. CAA-128/ PB/2019 filed under Sections 230 to 232 of the Companies Act, 2013 (hereinafter referred as "Act, 2013") r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (hereinafter referred as "Rules"). The present 2nd motion petition has been filed by the Applicant Companies named above for the purpose of the approval of the Scheme of Amalgamation, as contemplated between the Companies and its Shareholders by way of Amalgamation of Transferor Companies with the Transferee Company.

2. As per the Scheme of Amalgamation (hereinafter referred as "Scheme") the Transferor Company No. 1 viz., Alfa Technobuild Private Limited (hereinafter referred as "Transferor Company No. 1"), the Transferor Company No. 2 viz., HA Buildtech Private Limited (hereinafter referred as "Transferor Company No. 2"), the Transferor Company No. 3 viz., Paras Infra Projects Private Limited (hereinafter referred as "Transferor Company No. 3"), the Transferor Company No. 4 viz., Prestige Infraprojects Private Limited (hereinafter referred as

 

"Transferor Company No. 4"), the Transferor Company No. 5 viz., Samarth Technobuild Private Limited (hereinafter referred as "Transferor Company No. 5"), the Transferor Company No. 6 viz., Shine Technobuild Private Limited (hereinafter referred as "Transferor Company No. 6") are proposed to get merged with the Transferee Company viz., Eros Agro & Farms Private Limited (hereinafter referred to as "Transferee Company") as going concern.

3. The Transferor Company No. 1 is a Private company Limited by shares and was incorporated on 16th November, 2011 under the provisions of Companies Act, 1956 (hereinafter referred as "Act 1956") in the name and style of 'Alfa Technobuild Private Limited' and is registered with the Registrar of Companies National Capital Territory of Delhi & Haryana (hereinafter referred as "RoC, NCT of Delhi and Haryana") under the Company Identification Number (hereinafter referred as "CIN") U45400DL2011PTC227528, having its registered office at Shop No. 128, First Floor, Shiva Market, Pitampura, New Delhi-110034. The Transferor Company No. 1 is engaged in the business of construction of residential houses, commercial buildings, flats, factories, sheds, warehouses and buildings in or outside India and to act as builders, colonisers and civil constructional contractors. The main objects of the Transferor Company are set out in the Memorandum of Association (hereinafter referred as "MoA"). The Authorized share capital of the Transferor Company No. 1 as on 31st March, 2019 is Rs. 30,00,000/- divided into 3,00,000 Equity Shares of Rs. 10/- each and the issued, subscribed and paid up share capital is Rs. 22,94,000/- divided into 2,29,400 equity shares of Rs. 10/- each.

4. The Transferor Company No. 2 is a Private company Limited by shares and was incorporated on 8th December, 2011 under the provisions of Act 1956 in the name and style of 'HA Buildtech Private Limited and is registered with the RoC, NCT of Delhi and Haryana under the CIN U45204DL2011PTC228451, having its registered office at Shop No. 128, First Floor, Shiva Market, Pitampura, New Delhi-110034. The Transferor Company No. 2 is engaged in the business of construction of residential houses, commercial buildings, flats, factories, sheds, warehouses and buildings in or outside India and to act as builders, colonisers and civil constructional contractors. The main objects of the Transferor Company are set out in the MoA. The Authorized share capital of the Transferor Company No. 2 as on 31st March 31, 2019 is Rs. 45,00,000/- divided into 4,50,000 Equity Shares of Rs. 10/- each and the issued, subscribed and paid up share capital is Rs. 42,65,000/- divided into 4,26,500 equity shares of Rs. 10/- each.

5. The Transferor Company No. 3 is a Private company Limited by shares and was incorporated on 28th November, 2011 under the provisions of Act 1956 in the name and style of 'Paras Infraprojects Private Limited' and is registered with the RoC, NCT of Delhi and Haryana under the CIN U45203DL2011PTC227993, having its registered office at Shop No. 128, First Floor, Shiva Market, Pitampura, New Delhi-110034. The Transferor Company No. 3 is engaged in the business of construction of residential houses, commercial buildings, flats, factories, sheds,

 

warehouses and buildings in or outside India and to act as builders, colonisers and civil constructional contractors. The main objects of the Transferor Company are set out in the MoA. The Authorized share capital of the Transferor Company No. 3 as on 31st March, 2019 is Rs. 40,00,000/- divided into 4,00,000 Equity Shares of Rs. 10/- each and the issued, subscribed and paid up share capital is Rs. 37,10,000/- divided into 3,71,000 equity shares of Rs. 10/- each.

6. The Transferor Company No. 4 is a Private company Limited by shares and was incorporated on 5th November, 2011 under the provisions of Act 1956 in the name and style of 'Prestige Infraprojects Private Limited' and is registered with the RoC, NCT of Delhi and Haryana under the CIN U45400DL2011PTC227091, having its registered office at Shop No. 128, First Floor, Shiva Market, Pitampura, New Delhi-110034.. The Transferor Company No. 4 is engaged in the business of construction of residential houses, commercial buildings, flats, factories, sheds, warehouses and buildings in or outside India and to act as builders, colonisers and civil constructional contractors. The main objects of the Transferor Company are set out in the MoA. The Authorized share capital of the Transferor Company No. 4 as on 31st March, 2019 is Rs. 30,00,000/- divided into 3,00,000 Equity Shares of Rs. 10/- each and the issued, subscribed and paid up share capital is Rs. 23,51,000/- divided into 2,35,100 equity shares of Rs. 10/- each.

7. The Transferor Company No. 5 is a Private company Limited by shares and was incorporated on 28th November, 2011 under the provisions of Act 1956 in the name and style of 'Sarnarth Technobuild Private Limited' and is registered with the RoC, NCT of Delhi and Haryana under the CIN U45203DL2011PTC227991, having its registered office at Shop No. 128, First Floor, Shiva Market, Pitampura, New Delhi-110034. The Transferor Company No. 5 is engaged in the business of construction of residential houses, commercial buildings, flats, factories, sheds, warehouses and buildings in or outside India and to act as builders, colonisers and civil constructional contractors. The main objects of the Transferor Company are set out in the MoA. The Authorized share capital of the Transferor Company No. 5 as on 31st March, 2019 is Rs. 40,00,000/- divided into 4,00,000 Equity Shares of Rs. 10/- each and the issued, subscribed and paid up share capital is Rs. 32,90,000/- divided into 3,29,000 equity shares of Rs. 10/- each.

8. The Transferor Company No. 6 is a Private company Limited by shares and was incorporated on 8th December, 2011 under the provisions of Act 1956 in the name and style of 'Shine Technobuild Private Limited' and is registered with the RoC, NCT of Delhi and Haryana under the CIN U45204DL2011PTC228444 having its registered office at Shop No. 128, First Floor, Shiva Market, Pitampura, New Delhi-110034. The Transferor Company is engaged in the business of construction of residential houses, commercial buildings, flats, factories, sheds, warehouses and buildings in or outside India and to act as builders, colonisers and civil constructional contractors. The main objects of the Transferor Company are set out in the MoA. The Authorized share capital of the Transferor Company

 

No. 6 as on 31st March, 2019 is Rs. 30,00,000/- divided into 3,00,000 Equity Shares of Rs. 10/- each and the issued, subscribed and paid up share capital is Rs. 21,70,000/- divided into 2,17,000 equity shares of Rs. 10/- each.

9. The Transferee Company is a Private company Limited by shares and was incorporated on 18th July, 2007 under the provisions of the Act, 1956 in the name and style of 'Eros Agro & Farms Pnvate Limited' and is registered with the RoC, NCT of Delhi and Haryana under the CIN U01403DL2007PTC165962 having its registered office at Shop No. 128, First Floor, Shiva market, Pitampura, New Delhi-110034. The Transferee Company is engaged in the business of trading rice, to cultivate, grow, manufacture, import, export, buy, sell, trade &deal in Agricultural and Form products of all types. The main objects of the Transferee Company are set out in the MoA. The Authorized share capital of the Transferee Company as on 31st March, 2019 is Rs. 1,00,00.000/- divided into 10,00,000 equity shares of Rs. 10/- each and the issued, subscribed and paid up share capital is Rs. 77,76,000/- divided into 7,77,600 equity shares of Rs. 10/- each.

10. The Applicant companies are falling within the jurisdiction of this Bench and the Board of Directors of the Transferor and Transferee companies have approved the Scheme vide Resolution dated 10th June 2019. The requirement of convening of meeting of shareholders, secured and unsecured creditors of the Applicant Companies has been dispensed vide Order dated 9th August, 2019 passed by this Bench in CA (CAA)-102 (PB)/2019.

11. The representative appearing for the Applicant Companies has submitted that the Applicant Companies are group companies and are engaged in similar business activities. The rationale and circumstances that have necessitated the present Scheme is that the amalgamation would result in better administrative convenience and elimination of overhead charges and other expenses associated with running seven companies and will ensure optimum utilization of available resources. The representative further submitted that the amalgamation of the Transferor Companies with the Transferee Company would inter alia have the following benefits:

i. Greater integration, greater financial strength and flexibility for the amalgamated entities, which would result in maximising over all shareholder value and will improve the competitive position of the combined entity.

ii. Greater efficiency in cash management of the amalgamated entity 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 maximise shareholder value.

iii. Improved organisational capability and leadership, arising from the pooling of human capital that has diverse skills, talents and vast experience to compete successfully in increasingly competitive industry.

iv. Greater access by the amalgamated company to different marker segments in the conduct of its business etc.

12. The Representative further submitted that the directors of the Transferor Companies and the Transferee Company have no material interest in the proposed Scheme except in so far as they are holders of the shares in the said respective companies either directly or indirectly. Further, the details of the shareholding pattern, Secured and Unsecured Creditors of the Transferor Companies and Transferee Company is as follows:

SI. No.

Company/Type of Shareholders

No. of Shareholders

Type of Creditors

No. of creditors (including Debenture holders)

1.

Transferor Company No. 1 Equity Shareholders

Preference Shareholders

6 Nil

Secured Unsecured

Nil 1

2.

Transferor Company No. 2 Equity Shareholders

Preference Shareholders

6 Nil

Secured Unsecured

Nil 1

3.

Transferor Company No. 3 Equity Shareholders

Preference Shareholders

7 Nil

Secured Unsecured

Nil 1

4.

 

Transferor  Company No. 4 Equity Shareholders

Preference  Shareholders

5

Nil

Secured          Unsecured

Nil          2

5.

Transferor  Company No. 5 Equity Shareholders

Preference  Shareholders

6          Nil

Secured          Unsecured

Nil          1

6.

Transferor  Company No. 6 Equity Shareholders

Preference  Shareholders

6          Nil

Secured          Unsecured

Nil          1

7.

Transferor  Company No. 7 Equity Shareholders

Preference  Shareholders

9          Nil

Secured          Unsecured

Nil          3

The Certificates issued by the Chartered accountant as on 31.03.2019 and 31.05.2019 are placed on record.

13. The Regional Director, Northern Region, MCA (hereinafter referred as "RD") to whom notice was issued, has filed the Report on 18th November, 2019 before this Tribunal, and upon perusal of the same it is observed that the RD does not have any adverse observation/ remark against the Scheme under consideration and further it is stated that there is no prosecution and no inspection or investigation pending in respect of the Applicant Companies. The RD has

 

observed in para 10 of the report that the Scheme provides the Authorised capital of the Transferee Company as Rs. 3,20,00,000/- divided into 32,00,000 equity shares of Rs. 10/- each instead of Rs. 3,15,00,000/- divided into 31,50,000 equity shares of Rs. 10/- each. To this extent the Authorised Representative of the Applicant Companies have filed an undertaking, stating that there has been an inadvertent typographical error while drafting the proposed Scheme and will be rectified.

14. The Official Liquidator has filed its report wherein it is stated that it has relied on the documents/reply submitted by the Applicant Companies and that it has not received any complaints against the Scheme from any persons/party interested in the Scheme in any manner till the date of filing this Report. Further, it is stated that it is of the view that the affairs of the Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as provided under the Act 2013.

15. No report has been filed by the Income tax Department (hereinafter referred as 'ITD') and the Ld. Counsel has submitted that there is no objection to the Scheme under consideration.

16. Clause 8 of part II of the Scheme provides that all the permanent employees of the Transferor Companies who are in employment as on the Effective date shall become the permanent employees of the Transferee Company without any break or interruption in service and on terms and conditions as to employment and remuneration not less favourable than those on which they are engaged or employed by the Transferor Companies along with the funds and pensions created by the Transferor Companies.

17. Clause 11 of Part IV of the Scheme provides that the Transferee Company shall make adjustments in the books of accounts as per 'Pooling of Interest Method' specified in the Accounting Standard 14 "Accounting for Amalgamations" notified by the Central government as per Section 129 and 133 of the Act 2013. Further, Clause 11.3 provides that in case of any difference in accounting policy between the Transferor Companies and the Transferee Company, the impact of the same till the Appointed Date will be quantified and adjusted in accordance with the Accounting Standard 5-'Net Profit or loss for the Period, Prior Period Items and Changes in Accounting Polices', in the books of the Transferee Company to ensure that the financial statements of the Transferee Company reflect the financial position on the basis of the consistent accounting policy.

18. On the Scheme becoming effective, the Transferor Companies would be dissolved without any further act, deed or instrument, without going through the process of winding up and shall be succeeded by the Transferee Company.

19. There is no additional requirement for any modification and the Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under Sections 230 to 232 of the Act, 2013.

 

20. Taking into consideration the above facts, this Company Petition is allowed, and the Scheme of Amalgamation annexed with the Petitions is hereby sanctioned. The Scheme approved shall be binding on the Shareholders, Creditors and employees of the Companies involved in this Scheme. The Appointed date of the Scheme is 1st April, 2019.

21. While approving the Scheme as above, it is further clarified that this Order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.

22. The Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.

23. A certified copy of this Order shall be filed with the concerned Registrar of Companies within 30 days of the receipt of this Order.

24. The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this Order with the concerned Registrar of Companies.

25. Upon receiving the certified copy of this Order, the ROC concerned is directed to place all documents relating to the Transferor Company with that of the Transferee Company and the files relating to the Transferor Company shall be consolidated with the files and records of the Transferee Company.

26. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format provided under the Rules.

27. Accordingly, the Scheme stands sanctioned and CAA-128/PB/2019 stands disposed of.