(2020) 03 NCLT CK 0083

In the National Company Law Appellate Tribunal

Case No : Company Petition No. CAA-24 (PB) Of 2019

All India Finance And Commerce Private Limited APPELLANT

Vs

World Media Private Limited RESPONDENT

Date of Decision : 03-03-2020

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(5), 231, 232, 232(2)(i), 232(3)(i), 233, 234

Citation : (2020) 03 NCLT CK 0083

Hon'ble Judges : Dr. Deepti Mukesh, J;Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : Ravi Sharma, Tania Sharma

Final Decision : Disposed Of

Judgement

Santanu Kumar Mohapatra, Member (T)

1. This Joint application has been filed by the Petitioner Companies under Sections 230 and 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. All India Finance and Commerce Private Limited was incorporated on 07.01.1937 under the provisions of the Companies Act, 1913, and its registered office is presently situated at K-9 Connaught Circus, New Delhi-110001.

3. The "Transferee Company, M/s. World Media Private Limited was incorporated on 17.10.1949 under the provisions of the Companies Act, 1913, and its registered office is presently situated at 9K, Connaught Circus, New

Delhi-110001.

4. It is seen from the records that the First Motion application seeking convening/ dispensation from convening the meetings of Shareholders and Creditors of the petitioner company was filed before this Bench vide Company Application CA (CAA) No. 132 (PB)/2018. Based on such joint application moved under Sections 230-232 of the Companies Act, 2013, the meetings of Equity Shareholders, Secured Creditors of both the petitioner companies and meeting of Unsecured Creditors of transferor company were dispensed with, vide order dated 17.10.2018 passed by this Bench. In respect of the meeting of Unsecured Creditors of Transferee Company directions were issued to convene the meeting vide the same order.

5. Subsequently, the meeting of unsecured creditors of the Transferee Company was duly held on 20.12.2018 and the Scheme was unanimously approved by the members present at the meeting. The report of the Chairperson and Scrutinizer has been placed on record.

6. Thereafter, on 16.04.2019 the Petitioners were directed to carry out publication in the 'Business Standard' English Delhi Edition as well as in 'Jansatta' Hindi Delhi Edition. In addition to above, notices were directed to be served on the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other relevant sectoral regulators.

7. It is seen from the records that the Petitioners have filed affidavits on 30.05.2019 and subsequently on 25.07.2019 affirming compliance of the order passed by the Tribunal dated 16.04.2019. A perusal of the affidavits discloses that the petitioners have affected the newspaper publication as directed in one issue of the 'Business Standard' English edition on 02.05.2019 as well as in Uansatta' Hindi edition again on 02.05.2019 in relation to the date of hearing of the petition. Further, the affidavits also disclose that copies of petition have been duly served on the Registrar of Companies, Regional Director, Northern Region and Income Tax Department in compliance of the order and in proof of the same acknowledgement made by the respective offices have also been enclosed.

8. The Regional Director has filed its report wherein following observations were made:

"1. "Refer to clause 5.1 of the scheme, the Transferee company may kindly he directed to comply with the provision of section 232(3)(i) of the Companies Act, 2013 in regard to fee payable on is revised authorized share capital. 2. Refer to clause 5 of the scheme, after amalgamation, the authorized share capital of Transferee company shall be re-classified from 25,46,590 equity shares of Rs. 10/- each to 20,84,455 equity shares of Rs. 10/- each and 4,61,835 0.01 % redeemable preference shares of Rs. 10/-. In this regard, it is stated that no reclassification of authorized share capital is allowed in the Companies Act, 2013. Hence, the Petitioner Companies may be asked to amend the scheme accordingly."

9. The petitioners have filed rejoinder to the reply of Regional Director on 07.08.2019 and submitted as follows:

"That with regard to point no. 1 (supra), it is submitted that section 232(2)(i) of the Companies Act, 2013 provides that where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set-off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation and thus, the additional fees/ duty or any other charges payable (if any) are eligible for set off against fees already paid by the transferor company on its authorized capital.

However, the Transferee Company unconditionally undertakes that it shall pay additional fees on revised authorized share capital (if any) payable post amalgamation as per the directions of the Hon'ble National Company Law Tribunal. That with regard to point no. 2 (supra), it is most humbly submitted that paras 5.1 and 5.2 of the scheme of amalgamation, provide for alteration of authorized share capital and upon the Scheme becoming effective, the authorized share capital of the Transferee Company shall automatically stand increased as well as the memorandum of association and articles of association of the Transferee Company (relating to authorized share capital) shall stand altered, modified and amended. That as per para 5.2 of the scheme, the approval of the shareholders of the Transferee Company to the Scheme shall be deemed to be their consent/approval also to the alteration of the Memorandum of Association of the Transferee Company as may be required under the Act. The consent affidavit approving the scheme on behalf of the shareholders of the transferee company is available on record as Annexure 13 (page 207-227) of Company Application No. 132(PB)/2018. That in view of the above, it is submitted that amendment to the scheme as contemplated by the Ld. RD is not required as the alteration to the authorized capital shall become effective and approval of the shareholders of the transferee company and the consent has been already accorded by the equity shareholders for approval of the scheme."

10. As regards increase in the authorized share capital of transferee company is concerned, it has filed an additional rejoinder affidavit on 23.01.2020 confirming that:

"that in this regard, the transferee company has increased its authorized share capital by INR 47 lakhs (4,70,0000 0.01 % Redeemable Preference shares of INR 10 each) such that its authorized share capital as on date is INR 2,96,04,900/- (comprising of 24,90,090 equity shares of Rs. 10 each and 4,70,000 0.01 % Redeemable Preference shares of INR 10 each). Supporting documents relating to payment of stamp duty for increase in authorized capital and forms filed and approved by the Registrar of Companies is annexed herewith as "ANNEXURE 2"."

11. However, at the time of final hearing, Ld. Counsel for the petitioners submitted that there shall be no reclassification of authorized share capital and

that the authorized share capital of the transferee company has been duly increased to facilitate the merger. On behalf of RD, it is submitted that in view of the increase in the authorized share capital of the transferee company the observations made by Regional Director stands satisfied.

12. The Official Liquidator has filed its report on 07.06.2019 wherein no material objection has been raised in relation to 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.

13. Despite due service of notice on the Department of Income Tax, no reply has been filed by the Department till date of final hearing. It is pertinent to mention here that the Department of Income Tax should have filed their response within 30 days from the date of receipt of such notice as per the provisions of sub-section 5 of Section 230 of the Companies Act, 2013, failing which it is provided in the said Section that it shall be presumed that the authority has no representation to be made in respect of the Scheme. Therefore, inference can be taken that the Department of Income Tax has no observation against the Scheme.

14. Be that as it may, 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.

15. 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.

16. 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.

17. 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 the 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 approved by shareholders and creditors.

18. In the case of Hindustan Lever Employees Union Vs. Hindustan Lever Limited reported in (1995) 5 SCC 491, the three Judges Bench of Hon'ble Supreme Court

has 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."

19. 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.

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

21. The petitioner companies have also filed affidavit on 24.07.2019 confirming that no objection has been received against the Scheme from any party or from any person interested in the Scheme in any manner.

22. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, and the report filed by the Regional Director, Northern Region, Ministry of Corporate Affairs, report filed by the official liquidator 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.

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

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

25. 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.

26. 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.

27. THIS TRIBUNAL DO FURTHER ORDER

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

2. That all the property, rights and powers of the 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, he transferred to and vest in the transferee company.

3. That all the liabilities and duties of the 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

4. That all proceedings now pending by or against the transferor company, be continued by or against the transferee company; and

5. That all the employees of the 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.

6. That Petitioner companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to he delivered to the Registrar of Companies for registration and on such certified copy being so delivered the Transferor Company shall he dissolved and the Registrar of Companies shall place all documents relating to the 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

7. 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.

