(2023) 07 NCLT CK 0009

In the National Company Law Appellate Tribunal

Case No : C.P.(CAA) 41/ND/2021 With C.A.(CAA) 120/ND/2020

Allwin Footwear Private Limited Vs

Date of Decision : 05-07-2023

Acts Referred:

Companies Act, 2013 — Section 82, 133, 230, 230(5), 232, 232(4), 232(7)
Companies Accounts Rules, 2014 — Rule 7

Citation : (2023) 07 NCLT CK 0009

Hon'ble Judges : P.S.N Prasad, Member (J);Dr. Binod Kumar Sinha, Member (T)

Bench : Division Bench

Advocate : Nikhil Kumar Verma

Final Decision : Disposed Of

Judgement

P.S.N. Prasad, Member (Judicial)

1. The present Joint Petition is filed by the Petitioner Companies viz., M/s Allwin Footwear Private Limited (Petitioner No. 1/Transferor Company 1), M/s Gusbi International Limited (Petitioner No. 2/Transferor Company 2), M/s Gulshan International Private Limited (Petitioner No. 3/Transferee Company) under Section 230-232 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 Sanction of the proposed Scheme of Amalgamation of the Transferor Company No. 1 and 2 with Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred as the "Scheme") has been placed on record.

2. The Petitioner Company No. 1/Transferor Company No. 1 i.e., M/s Allwin Footwear Private Limited was incorporated on 3rd July, 1986 under the provisions of the Companies Act 1956 bearing CIN: U74899DL1986PTC024704 having its registered office at B-20/1, Wazirpur Industrial Area Delhi-110052. The Authorized Share Capital is Rs. 1,05,00,000/- (Rupees One Crore and Five Lakh) divided into 1,05,000 (One Lakh and Five Thousand) equity shares of Rs. 100/- each. The present issued, subscribed and paid-up share capital of the company is Rs. 1,03,11,000/- (Rupees One Crore, Three Lakh and Eleven Thousand) divided

into 1,03,110 (One Lakh Three Thousand One Hundred and Ten) equity shares of Rs. 100 each.

3. The Petitioner Company No. 2/Transferor Company 2 i.e., M/s Gusbi International Ltd was incorporated on 1st August, 1997 under the provisions of the Companies Act 1956 bearing CIN: U74899DL1997PTC088855 having its registered office at B-20/1, Wazirpur Industrial Area Phase-II Delhi-110052. The Authorized Capital is Rs. 90,00,000 (Rupees Ninety Lakh) divided into 9,00,000 (Nine Lakh) equity shares of Rs. 10 each. The present issued, subscribed and paid-up share capital of the company is Rs. 87,50,000 (Rupees Eighty-Seven Lakh and Fifty Thousand) divided into 8,75,000 (Eight Lakh and Seventy-Five Thousand) equity shares of Rs. 10 each.

4. The Petitioner Company No. 3/Transferee Company i.e., M/s Gulshan International Pvt Ltd was incorporated on 20th January, 1998 as a public company under the provisions of the Companies Act 1956 subsequently, it was converted into a private limited company on 24th February, 2007 bearing CIN: U19111DL1998PTC091817 having its registered office at B-20/1, Wazirpur Industrial Area Delhi-110052. The Authorized Capital of the Transferee Company Rs. 5,00,00,000 (Rupees Five Crore) divided into 50,00,000 (Fifty Lakh) equity shares of Rs. 10 each. The present issued, subscribed and paid-up share capital of the company is Rs. 4,24,25,000/- (Rupees Four Crore Twenty-Four Lakh and Twenty-Five Thousand) divided into 42,42,500 (Forty-Two Lakh Forty-Two Thousand and Five Hundred) equity shares of Rs. 10 each.

5. The Petitioner Companies submit that the proposed scheme of amalgamation of the Transferor Companies and Transferee Company would have the following benefits: -

i. It will give the consolidated company better finances, facilitate adequate resource mobilization to sustain growth.

ii. Strengthening and consolidating the position of the Transferee Company and enabling it post-merger to participate more vigorously and profitably in an increasingly competitive and liberalized market.

iii. Enabling better leverage of facilities, infrastructure and human resources and for better administration.

iv. Augmenting and strengthening core businesses of the transferee company and resulting in enhancement of the shareholders' value of Transferee Company.

v. Enabling the amalgamated entity to raise funds from the financial institutions on better terms. The synergy of the amalgamation will improve operational efficiency, integrated management functioning and will enhance the share value for the benefit of shareholders of the existing entities.

vi. It will result in reduction of overheads, administrative, managerial and other expenditure, and bring about operational rationalization, organizational efficiency and optimal utilization of various resources.

vii. The Scheme is beneficial to the Petitioner Companies their shareholders, creditors, employees and all concerned and will enable these Companies to achieve and fulfil their objectives more efficiently and economically.

6. The appointed date as fixed for the proposed scheme of Amalgamation is 1st April, 2023 instead of 01.04.2020, an affidavit dated 22.03.2023 has been filed by the Petitioner Companies for changing the appointed date.

7. From the records, it is seen that the First Motion joint applications was filed before this Tribunal vide CA(CAA)120(ND)OF2020. Vide order dated 16.02.2021, the meeting of shareholders and Unsecured Creditors of all the Petitioner Companies dispensed with. There were nil secured creditors of the Petitioner Companies, therefore, the requirement for convening a meeting did not rise.

8. The Tribunal directed the petitioner companies to issue individual notices to the (i) Regional Director, Northern Region of Ministry of Corporate Affairs, (ii) Income Tax Department, (iii) Registrar of Companies NCT of Delhi and Haryana, (iv) Official Liquidator

9. Vide Order dated 23.03.2021, the Petitioner Companies were also directed to carry out publication in the newspapers. It is seen from the records that the petitioners have filed an Affidavit affirming compliance and disclosing that the applicants have effected publication in "Business Standard" (English, Delhi edition) and "Business Standard" (Hindi, Delhi edition), both dated on 12.04.2021.

In addition to the public notice, notices were served on the Regional Director (Northern Region), Official Liquidator, the Income Tax Department, Registrar of Companies, NCT of Delhi and Haryana, the Reserve Bank of India and to the other relevant sectoral regulators.

10. Pursuant to the notice issued to the Regional Director and Official Liquidator, they have filed their response/reply in the matter.

11. The Regional Director (RD) in its report dated 22.02.2022 has made certain observations with regard to the proposed scheme of Amalgamation among the Petitioner Companies. The Petitioner Companies had filed reply dated 02.03.2023 in response to the observations made by the Regional Director, under wherein the Petitioner Companies gave clarification and undertaking to address the observations made by the Regional Director. The details of which are summarised below:

Observ

ation

Report filed by the Regional Director dated

22.02.2022

Reply filed by the Petitioner Company

dated 02.03.2023

1.

As regards non-compliance of the provisions of the section 82 of the Companies Act, 2013 by the Petitioner Transferee Company as reported by the ROC, it is to state that the said company has not intimated to ROC about such satisfaction of charges by filing of e-form CHG which was created by them, thereby there is contravention of section 82 of the Act.

That the company has filed E-form No. CHG-4 for the satisfaction of charge on 16.03.2022 vide SRN: T88745674,

however the aforesaid form was filed beyond 300 days, therefore the company tried to make an application to the Central Government for the condonation of delay in registration of satisfaction of Charge by filing E-form the said form and it shows "SRN entered is not valid"

It is humbly submitted that in accordance with the provisions of Section 82 of the Companies Act, 2013, the Transferee Company has already intimated the Registrar of Companies regarding the satisfaction of charge by

filing E-Form CHG-4 on 16.03.2022.

12. The Official Liquidator has filed its report dated 23.07.2021, wherein no specific objection has been raised against the approval of the Scheme. It is submitted in the report 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.

13. The Income Tax Department has not submitted its reports despite repeated reminders. Vide order dated 24.05.2022 passed by this Tribunal, right to file a reply stands closed. Again, vide order dated 14.02.2023 one last opportunity given to Income Tax Department to file a reply but the Income Tax Department did not comply with the same. Despite of repeated opportunities, no comments were received from the Income Tax Department with respect to any of the Petitioner Companies. As per the provisions of Section 230(5) of the Companies Act, 2013, on the expiry of 30 days from the date of the notice, it may be presumed that the Income Tax Department does not have any comments on the proposed Scheme of Amalgamation.

14. The Petitioner Companies filed an affidavit cum undertaking dated 02.03.2023. wherein it has been submitted that the if any tax demand raises by the Income Tax Department from the Company in near future, then it will be satisfied and paid by the Transferee Company.

15. Considering the reply of the Petitioner Companies and further, the

undertaking of the Petitioner Companies with respect to the observations and clarifications, we find no impediment in approving the present scheme of amalgamation.

16. In this 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.

17. Certificates of Statutory auditor of the petitioner companies, has been placed on record to the effect that Accounting Treatment proposed in the Scheme of Arrangement 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 read with Rule 7 of the Companies Accounts Rules, 2014 and Companies (Accounting Standards) Amendment Rules, 2016, and other generally accepted accounting principles in accordance with the Companies Act, 2013, as applicable.

18. The shareholders of the petitioner company are the best judges of their interest, being 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 the 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.

19. It has also been affirmed in the petition that the Scheme is in the interest of all the Petitioner Companies including their shareholders, creditors, employees and all concerned. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, 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 with the following directions: -

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

ii. 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 in accordance with the law, against the concerned persons, directors and officials of the petitioners.

iii. 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.

21. This Tribunal further directs with respect to Transferor companies and Transferee company, that:

i. Upon the sanction becoming effective from the appointed date i.e., 01.04.2023 as provided under the affidavit dated 22.03.2023 has been filed by the Petitioner Companies, the Transferor Companies shall stand dissolved without undergoing the process of winding up.

ii. All contracts of the Transferor Companies, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favor of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto;

iii. All the employees of the Transferor Company shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favorable than those on which they are engaged by the Transferor Company, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;

iv. All liabilities of the Transferor Companies, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Companies Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company, as if it had incurred such liabilities.

v. All proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company.

vi. Any person interested or effected shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

22. Further, the 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, the Transferor companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies on the file kept by him in relation to the Transferee Company and the files relating to all the Petitioner Companies shall be consolidated accordingly.

23. In compliance with the requirement of Section 232(7) of the Act, the transferee company shall until the full implementation of the Scheme of Amalgamation shall file a statement every year in the Form CAA 8 along with the required fees with the Registrar of Companies as prescribed in the Companies (Registration offices and fees) Rules 2014 within 210 days from the end of each financial year.

24. The petition stands disposed of in the above terms. Let copy of the order be served to the parties.

