(2021) 04 NCLT CK 0047

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 73/MB.V Of 2021

Amcor Rigid Plastics India Private Limited — APPELLANT

Vs

Amcor Flexibles India Private Limited — RESPONDENT

Date of Decision : 08-04-2021

Acts Referred:

Companies Act, 2013 — Section 230, 230(5), 231, 232
Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 8

Citation : (2021) 04 NCLT CK 0047

Hon'ble Judges : Suchitra Kanuparthi, J;Chandra Bhan Singh, Member (Technical)

Bench : Division Bench

Advocate : Hemant Sethi, Vidisha Poonja

Judgement

1. This Court is convened via video conferencing today.

2. The Counsel for the Applicants states that the present Scheme is a Scheme of Amalgamation (Scheme) between Amcor Rigid Plastics India

Private Limited (Transferor Company) and Amcor Flexibles India Private Limited (Transferee Company) presented under sections 230-232 and other

applicable provisions of the Companies Act, 2013.

3. The Counsel for the Applicants states that resolutions were passed by the Board of Directors of the Transferor Company and of the Transferee

Company in their respective meetings held on 10th December 2020 and approved the Scheme. The Appointed Date fixed under the Scheme is 1st

April, 2020.

4. The Counsel for the Applicants submits that the First Applicant Company is engaged in the business of manufacturing PET Preforms and Bottles

Products. Currently, the Company is not engaged in carrying out any significant business activity. The Second Applicant Company is engaged in the

business of manufacturing of packaging products for pharmaceuticals, food and fast involving consumer goods industry.

5. The Counsel for the Applicant Companies further submits that the rationale for this Scheme is to reap the following benefits anticipated pursuant to

amalgamation between Transferor Company and Transferee Company and their respective shareholders:

(a) Simplification of the corporate structure by reducing the number of legal entities;

(b) Optimal utilisation of existing resources through consolidation of operations into a single legal entity; and

(c) Simplified management structure, better administration, focused operational efforts, standardisation and simplification of business processes,

elimination of duplication and rationalisation of administrative expenses.

6. Upon the Scheme becoming effective and in consideration of the merger the Shareholders of the Transferor Company shall be entitled to fully paid

up Equity Shares of Rs 10 each of the Transferee Company in the ratio of 161 fully paid -up Equity Shares of Rs 10/- each the Transferee Company

for every 165 fully paid-up Equity Shares of Rs 10/- each held in the Transferor Company.

7. There are 2 (Two) Equity Shareholders in the First Applicant Company. All the Equity Shareholders have filed affidavits consenting to the Scheme,

which have been placed on record at Annexure B1 and Annexure B2 by way of an Additional Affidavit dated 3 March 2021 to Application. There-

fore, the meetings of Equity Shareholders of the First Applicant Company are dispensed with.

8. There are no Secured Creditors in the First Applicant Company therefore, the question of issuing notices does not arise.

9. The Counsel for the First Applicant Company further submits that the First Applicant Company has obtained consent affidavit in writing agreeing to

the Scheme from ~91% of the Unsecured Creditors of the First Applicant Company for the value amounting to INR 27,58,27,977 (Rupees Two crores

Seventy Five Lakhs Eighty Two Thousand Nine Hundred and Seventy Seven Only) out of Total INR 3,03,08,686 (Rupees Three Crore Three Lakhs

Eight Thousand and Six Hundred and Eighty Six only) and the same annexed as

Annexure F1 to Annexure F2 of the Additional Af- fidavit dated 3

March 2021 filed with this Tribunal. In view of the fact that 91% of the Unsecured Creditors of the First Applicant Company have filed their consent

affidavits, the meetings of the Unsecured Creditors of the First Applicant Company are hereby dispensed with.

10. There are 2 (Two) equity shareholders in the Second Applicant Company. All the Equity shareholders have filed affidavits consenting to the

Scheme, which have been placed on record at Annexure D1 and Annexure D2 of the Additional Affidavit dated 3 March 2021 to Application.

Therefore, the meetings of Equity Shareholders of the Second Applicant Company are dispensed with.

11. There are no Secured Creditors in the Second Applicant Company. Therefore, the question of sending notices does not arise.

12. The Counsel for the Second Applicant Company further submits that the Second Applicant Company has obtained consent affidavit in writing

agreeing to the Scheme from 91% of the Unsecured Creditors of the Second Applicant Company for the value amounting to INR 3,59,38,60,707

(Rupees Three Hundred and Fifty Nine Crores Thirty Eight Lakhs Sixty Thousand and Seven Hundred and Seven Only) out of Total INR

3,96,67,80,189 (Rupees Three Hundred and Ninety Six Crores Sixty Seven Lakhs Eighty Thousand and One Hundred and Eighty Nine only) and the

same is annexed as Annexure H1 to Annexure H20 to Additional Affidavit dated 3 March 2021 filed with this Tribunal. In view of the fact that 91%

of the Unsecured Creditors of the Second Applicant Company have filed their consent affidavits, the meetings of the Unsecured Creditors of the

Second Applicant Company are hereby dispensed with.

13. The Applicant Companies to serve notices along with copy of Scheme upon:- (i) the Central Government through the office of Regional Director

(Western region),Ministry of Corporate Affairs, Mumbai, (ii) the Registrar of Companies, Maharashtra, Mumbai, (iii) Income Tax Authority [First

Applicant Company- PAN: AADCS6330D Circle 8, Pune], [Second Applicant Company- PAN: AAGCA0510J Circle 9(1)(1), Mumbai] within whose

jurisdiction the respective companies are assessed to tax within a direction that they may submit their representations, if any, within thirty days of

receipt of notice, pursuant to section 230(5) of the Companies Act, 2013 and rule

8 of the Companies (Compromises, Arrangements and

Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will

be presumed that they have no objection to the proposed Scheme.

14. Additionally, the First Applicant Company is also directed to serve notice of the meeting upon Official Liquidator, High Court, Bombay, pursuant to

section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. This

Tribunal hereby appoints M/s. B. A. Ved & Co., Chartered Account- ants, having address at B-152, Kalpataru Towers, Off. Akurli Road, Opp. ESIS

Hospital, Kandiwali (east), Mumbai- 400101, having email as vedbhavesh@gmail.com, to assist the Official Liquidator to scrutinize the books of

accounts of the First Applicant/Transferor Company for the last five years and submit its representation to the Tribunal. The First Applicant Company

shall pay a consolidated fee of Rs. 2,00,000 for this purpose. If no representation is received by the Tribunal from Official Liquidator, High Court,

Bombay, within a period of thirty days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation /

objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

15. The Applicant Companies shall host the notices along with a copy of the Scheme on their respective websites, if any.

16. The Applicant Companies shall file compliance report with the registry in regard to the directions given in this Order in lieu of customary affidavit

of service, due to lockdown situation prevailing now proving service of notic- es to the regulatory authorities as stated above and do report to this

Tribunal that the directions regarding the issue of notices have been duly com- plied with.