(2022) 11 NCLT CK 0028

In the National Company Law Tribunal

Case No : CP (CAA) No.27/Chd/Pb/2021

Anannya Sales Private Limited Vs

Date of Decision : 02-11-2022

Acts Referred:

Companies Act, 2013 — Section 133, 184, 185, 189, 230, 232, 232(3)(i)
Companies Act, 1956 — Section 295, 297, 299, 301

Citation : (2022) 11 NCLT CK 0028

Hon'ble Judges : Harnam Singh Thakur, Member (J);Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Anil Aggarwal, Pridhi Jaswinder Sandhu

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a joint second motion company petition filed by the Petitioner-Companies, namely, Anannya Sales Private Limited (Transferor Company No. 1/ Petitioner Company No.1) and Sugandha Retails Private Limited (Transferor Company No. 2/Petitioner Company No.2) and Youngman Investments Private Limited (Transferor Company No. 3/Petitioner Company No.3) and Milan Vanijya Private Limited (Transferee Company/Petitioner Company No.4) and Youngman Retails Private Limited (Transferee Company/Petitioner Company No.5) in terms of Sections 230-232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

2. The Petitioner Companies have prayed for sanctioning of the Scheme of Amalgamation between the respective companies. The said Scheme is attached as Annexure- A1 of the petition.

3. The first motion application was filed before this Tribunal by Company Application No. CA (CAA) No.7/Chd/Pb/2021 before this Tribunal for seeking directions for dispensing with the meetings of Equity Shareholders, Secured and Unsecured Creditors of the Applicant Companies. which was disposed of on

06.10.2021 wherein the meetings of equity shareholders, secured and unsecured creditors of all the applicant companies were dispensed with for the reasons recorded in the aforementioned order. The first motion application was disposed on 06.10.2021, with directions to dispensed with the meetings of Equity Shareholders, Secured and Unsecured Creditors of the Applicant Companies for the reasons mentioned in the aforesaid orders.

4. The main objects, date of incorporation, authorized and paid-up share capital and the rationale of the Scheme have been discussed in detail in the order dated 06.10.2021.

5. In the second motion proceedings, certain directions were issued by this Tribunal by order dated 05.01.2022 and the same were complied by filing affidavit by Diary No. 01278/01 dated 16.03.2022. The notice of hearing was published in "Financial Express" (English), Chandigarh Edition and "Rozana Spokesman" (Punjabi), Punjab Edition on 13.02.2022 and the original copies of the newspapers are attached as Annexure-3 of the aforesaid affidavit. It is also stated in the affidavit furnished by petitioner companies that copies of notices were served upon the (1) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs; (2) Registrar of Companies, Punjab and Chandigarh; (3) Official Liquidator; (4) Reserve Bank of India and (5) the jurisdictional Income Tax Department, by way of speed post. Original postal receipts along with service receipts are attached as Annexure 1 and 2 of the aforesaid affidavit.

6. It is deposed by the authorized signatories of petitioner companies that no objection has been received from any stakeholder, creditor, stakeholder of the petitioner companies or any other person or authority to the scheme of amalgamation till date. The aforesaid affidavits furnished by the authorized signatories have been filed by Diary No. 01278/15 dated 16.09.2022.

7. In response to the abovementioned notices, the statutory authorities have furnished their responses.

7.1 Registrar of Companies (RoC)/Regional Director (RD)

7.1.1 The Registrar of Companies (RoC) has filed its report along with the report of the Regional Director (RD), by Diary No. 01278/10 dated 20.07.2022. In the report of the Regional Director,it has been observed at para 10 that :-

"1. No Affidavit regarding compliance of provisions of Section 295, 297, 299 & 301 (Section 184, 185 and 189) has been furnished by petitioner companies.

2. The authorized capital of transferee company, after the scheme becoming effective shall be in accordance with Section 232(3)(i) of the Companies Act, 2013. As per the Section 232(3)(i) of Companies Act, 2013 the fee, if any, paid by the Transferor Capital shall be set-off against any fee payable by Transferee Company on its authorized capital subsequent to the amalgamation accordingly."

7.1.2 The petitioner companies have filed a reply to the observation of RoC by Diary No. 01278/14 dated 16.09.2022 that:-

1) There were no transactions falling under the preview of Section 295, 297, 299 & 301 of the Companies Act, 1956 and Section 184, 185 and 189 of the Companies Act, 2013. So, no compliance regarding these provisions was required to be made by the petitioner companies. Hence, no affidavit is required to be filed in this regard.

2) It is also undertaken by transferee company that after the scheme becoming effective, the combination of authorized share capital shall be as per Section 232(3)(i) of the Companies Act, 2013 and if any fee becomes payable on the increased authorized capital, the same shall be paid by transferee company.

On a perusal of the report and the response of the petitioners, it is seen that the observations raised by the RD/RoC stands duly satisfied.

7.2 Income Tax Department

7.2.1 The Income Tax Department filed its report by Diary Nos. 01278/3, 01278/4, 01278/5, 01278/8, 01278/9 all dated 20.04.2022 with respect to Petitioner Companies wherein it has been stated that neither any proceeding has been initiated nor any Demand is pending in the case of the petitioner company No. 1 to 3. A demand amounting to Rs. 6,981 for A.Y 2007-08, Rs. 434 for A.Y. 2008-09, Rs. 335 for A.Y. 2009-10, Rs. 370 for A.Y. 2011-12 is pending in respect of transferor company No. 4 and a demand of Rs. 13,11,770 is pending for A.Y 2019-20 with respect to transferee company.

7.2.2 The petitioner companies have filed a reply to the Report of income Tax Departement by Diary No. 01278/12 dated 16.09.2022 wherein it has been stated that as per Para 4.2.4 of the Scheme, all the liabilities, outstanding demand and pending proceedings of the transferor companies will be transferred to transferee companies. It is also undertaken that all the outstanding demands, liabilities and pending proceedings of the transferor companies shall be dealt by the transferee company in accordance with law.

Thus, on a perusal of the report, it is seen that the observations of the Income Tax Department stand satisfied.

7.3 Official Liquidator

7.3.1 The Official Liquidator filed its report by Diary Nos. 012478/11 dated 14.07.2022. The Official Liquidator in its report has reproduced the information on the incorporation of the Petitioner Companies, their capital structure, financial highlights, shareholding, etc. The Official Liquidator has also reproduced the extracts of Reports of the Statutory Auditors of the Petitioner Companies on the Financial Statements.

On a perusal of the report, it is seen that the Official Liquidator has made no adverse observation against the petitioner companies.

8. The petitioner companies have also served notice to Reserve Bank of India and Copy of notice issued are attached as Annexure- A1 of Diary No. 01278/01 dated 16.03.2022. However, there is no reply from the concerned authority till now. Considering the lapse of time in the matter, it is presumed that there is no objection to the proposed Scheme of Amalgamation.

9. The certificate of the Statutory Auditors with respect to the Scheme between Petitioner Companies to the effect that the accounting treatment proposed in the Scheme is in compliance with applicable Indian Accounting Standards (Ind AS) as specified in Section 133 of the Act, read with rules thereunder and other Generally Accepted Accounting Principles is attached as Annexures- A 24 of the petition.

10. We have heard the learned counsel for petitioner companies and learned counsel for the Income Tax Department and have perused the record carefully.

11. In the context of the above discussion, the Scheme contemplated between the petitioner companies, appears to be prima facie in compliance with all the requirements stipulated under the relevant Sections of the Companies Act, 2013. As the observations from the Statutory Authorities have been duly addressed by the Petitioner Companies and since all the requisite statutory compliances have been fulfilled, this Tribunal sanctions the Scheme of Amalgamation attached as Annexure - A1 with the petition.

12. Notwithstanding the submission that no investigation is pending against the petitioner companies, if there is any deficiency found or, the violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with the law, against the concerned persons, directors and officials of the petitioners.

13. While approving the scheme as above, it is clarified 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, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

i. That all the property, rights and powers of the Transferor Companies be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Companies but subject nevertheless to all charges now affecting the same; and

ii. That all the liabilities and duties of the Transferor Companies be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company;

iii. That the Appointed Date for the scheme shall be 01.04.2020 as specified in the Scheme;

iv. That the proceedings, if any, now pending by or against the Transferor Companies be continued by or against the Transferee Company;

v. That the employees of the Transferor Companies shall be transferred to the Transferee Company in terms of the 'Scheme'.

vi. That the Transferee Company shall, without further application, allot to the existing members of the Transferor Companies shares of Transferee Company to which they are entitled under the said Scheme;

vii. That the fee, if any, paid by the Transferor Companies on their authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme'; and

viii. That the Transferee Company shall file the revised memorandum and articles of association with the concerned Registrar of Companies and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company; after setting off the fees paid by the Transferor Companies;

ix. That the Petitioner Companies shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the concerned Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Companies shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Companies registered with him on the file relating to the said Transferee Company, and the files relating to the Companies and Transferee Company shall be consolidated accordingly, as the case may be;

14. As per the aforesaid directions, formal orders in Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 be issued after the filing of the Schedule of Properties within three weeks from the date of receiving a certified copy of this order by the petitioners.

15. All the concerned Regulatory Authorities are to act on a copy of this order annexed with the Scheme duly authenticated by the Registrar of this Bench.

16. The Company Petition CP (CAA) No. 27/Chd/Pb/2021 is allowed and disposed of accordingly.