

(2020) 05 NCLT CK 0016

In the National Company Law Appellate Tribunal

Case No : CAA No. 160/230/232/ND Of 2019, Company Application (CAA) No. 172/230-232/(ND) Of 2019

Angelica Technologies Private Limited

APPELLANT

Vs

Lunarmech Technologies Private Limited

RESPONDENT

Date of Decision : 22-05-2020

Acts Referred:

Companies Act, 2013 — Section 230, 231, 232

Citation : (2020) 05 NCLT CK 0016

Hon'ble Judges : P.S.N. Prasad, J; Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Devesh Kumar Vasisht, Apurva Jain, Shankari, Abhishek Maratha

Final Decision : Allowed

Judgement

Sumita Purkayastha, Member (T)

1. This Joint Application has been filed by the Petitioner Companies under Section 230 to 232 of the Companies Act, 2013 read with the Companies (Compromise, Arrangement and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation. The copy of the Scheme has been placed on record annexed as (Annexure A-1) to the petition.

2. From the record, it is seen that the First Motion application seeking direction for dispensing with the meeting of the Shareholders and Creditors of the Transferor Company and Transferee Company was filed before this the NCLT Delhi bench vide in CAA - C.A (CAA) - 172/230-232/(ND)/2019 and based on such joint application moved under Section 230-232 of the Companies Act, 2013, the meetings of the Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors of both the companies were dispensed with, vide order dated 02.12.2019 passed by Court V.

3. Under the circumstances, the Petitioner Companies filed their joint petition for

sanction of the Scheme of Amalgamation before this Tribunal, subsequent to the order of dispensation of the meeting in relation to both the Transferor Company and Transferee Company. On 17.12.2019 this Tribunal vide its orders issued Notice in Second Motion petition moved by the Petitioner Companies in connection with the scheme of amalgamation, to the (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; (b) Registrar of Companies. NCT of Delhi & Haryana, Ministry of Corporate Affairs; (c) the Income Tax Department, along with full details of assessing officer and PAN Card numbers of the companies; (d) Official Liquidator and to other sectoral regulators and to such other Objector(s), if any.

4. It is seen from the records that petitioners have filed the affidavit of compliance dated 17.01.2020 in relation to the compliance of the order passed by the Tribunal as noted above and a perusal of the same discloses that the petitioners have carried out the paper publication as directed by the Tribunal in one issue of in the newspapers 'Business Standard' (English - Delhi Edition) as well as in 'Jansatta' (Hindi -Delhi Edition) dated on 11.01.2020.

5. Further in compliance with the directions issued by this Tribunal, a notice of the petition has also been served to the Regional Director, Northern Region, Registrar of the Companies, NCT of Delhi and Haryana, Official Liquidator (New Delhi) and the Income Tax Department in compliance of the order and in proof of the same acknowledgement by the respective offices have also been placed on record. A copy of the covering letter duly acknowledged by the Office of the Deputy Commissioner of Income Tax, the Official Liquidator, the Regional Director and Registrar of Companies and a copy of Publication in the newspaper is attached with the affidavit.

6. The Regional Director, Northern Region, MCA to whom notice was issued has filed Affidavit on 10.02.2020 and upon perusal of the same it is observed that no objection against the scheme has been raised by the Regional Director/Registrar of Companies. It is stated in the report that no prosecution has been filed and no inspection or investigation has been conducted against the petitioner companies.

7. That the report of the Official Liquidator filed on 03.09.2019 has been placed on record which states that the Official Liquidator has not received any complaint against the proposed scheme of Amalgamation from person/party interested in the scheme. The Official Liquidator is of the view that the affairs of the aforesaid Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the provisions of the Companies Act, 1956 or 2013, whichever is applicable. Hence, no objection has been raised in the report submitted by the Official Liquidator.

8. That the report dated 25.02.2020 of the Income Tax Department with respect to the Transferor Company (M/S. Angelica Technologies Pvt. Ltd.) has been placed on record which states that no outstanding tax has to be paid, Hence, no objection has been raised in the report submitted by the Income Tax

Department. Further in the report of the Income Tax Department filed with respect to the Transferee Company (M/S. Lunarmech Technologies Pvt. Ltd.) it is observed that in Para No. 8 an objection with respect of demands pending for recovery with respect to A.Y 2016-2017 and AY. 2018-2019 has been raised. The Petitioner vide its counter affidavit dated 02.03.2020 to the report of the Income Tax Department with respect to the Transferee company, undertakes that upon the scheme becoming effective, all tax liabilities including Income tax Liabilities pending shall be paid by the Transferee Company. The Income Tax Department found the reply to be satisfactory.

9. 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 affidavits filed by the Regional Director, Northern region, Ministry of Corporate Affairs, Official liquidator and submissions made by the Standing Counsel for the Income Tax Department, whereby no objections have been raised to the proposed Scheme or if raised has been met by filing undertaking, there appears no impediment to grant sanction to the Scheme. However, the Companies shall remain bound by the undertaking filed by either of them. Consequently, sanction is hereby granted under Sections 230-232 of the Companies Act, 2013. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

10. In view of absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the scheme of amalgamation annexed as (Annexure A-1) with the Company Petition as well as the prayer made therein.

11. 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 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.

12. 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 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 (S):

That in terms of the Scheme:

A. That the Transferor Company stand dissolved without following the process of wound up;

B. All the property, rights and powers of the Tranfer(sic)⁴ Companies 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 vest in the Transference company for all the estate and interest of the

Transferor Company therein but subject nevertheless to all charges (sic) affecting the same;

C. 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 section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee company;

D. All proceedings now pending by or against the Transferor Companies be continued by or against the Transferee company;

E. All the employees of the Transferor Companies in service on date immediately preceding the date on which the schedule finally take effect shall become the employees of the Transferee company without any break or interruption in their service;

F. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of receipt of cop of the Owner from the Registry;

G. The Order of sanction to this Scheme shall be repaired by the Registry as per the relevant format provide under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.

H. Any person interested shall be at liberty to reply to the Tribunal in the above matter for any directions that may be necessary.

I. Accordingly, the Scheme stands sanctioned and CAA -160/230/232/ND/2019 is allowed.