(2023) 09 NCLT CK 0008

In the National Company Law Tribunal

Case No : CA (CAA) No. 25/Chd/Pb/2023

Ankur International Private Limited Vs Nandish Alloys Limited ?

Date of Decision : 14-09-2023

Acts Referred:
Companies Act, 2013 — Section 133, 230, 232

Citation : (2023) 09 NCLT CK 0008

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

Bench : Division Bench

Advocate : Balwinder Singh Kalsi

Final Decision : Allowed

Judgement

Harnam Singh Thakur, Member (Judicial)

1. This is a Joint First Motion Application filed by Applicant Companies namely; Ankur International Private Limited (referred to as Transferor Company") and Nandish Alloys Limited(referred to as "Transferee Company"), under Section 230-232 of the Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Amalgamation between the respective companies. The said Scheme is attached as Annexure P-17 with the Application.

2. The matter was relisted on 24.08.2023 due to the irregularity that the consents of shareholders of both Applicant Companies, secured and unsecured creditors of Applicant Company No. 2 were furnished in the form of letters and not by way of affidavits. The compliance was made by submitting the consent on affidavit vide Dairy No. 01621/1 dated 31.08.2023.

3. The applicant companies have prayed for the dispensing with the requirement of convening the meetings of the shareholders, secured and unsecured creditors of the applicant companies.

4. The Transferor Company is presently engaged in the business of Spinning,

Weaving, Ginning, Pressing and dealing in Woollen, Fabrics, Sale of yarn, Man Made Fiber Yarn, dyeing and processing of Yarns, Fabrics, Sale of Yarn or other manufactured products made from the said substances or other similar products.

5. The Transferee Company is presently engaged in the business of manufacturing, importing, exporting, of all kinds of Iron & Steels (primary/semi-finished/ finished) long products including ingots/ blooms/ billets/ bars and rods (including rounds, flats, hexagons, octagons, wire rods), angles, shapes and sections (including beams, jists, channels, special profiles) and wires.

6. It is submitted that the registered offices of the Transferor Company and Transferee Company are situated within the State of Punjab, therefore, the territorial jurisdiction of Applicant Companies falls with this Bench.

7. The rationale of the Scheme is given below: -

a. The aforesaid amalgamation will enable appropriate consolidation and integration of the operations and activities of both the companies and enable the merged entity to offer a comprehensive package of all activities relating to business under a simplified corporate structure.

b. The proposed merger will enable the merged entity to run and manage business activities more competitively and effectively with the combined infrastructures, credentials, experience and track record of all Companies.

c. The business of the amalgamated entity will be continuing to run more efficiently and economically as a result of pooling of resources and their effective utilization. This will also result in substantial reduction in costs and duplicity.

d. As such, the amalgamation of the Transferor Company with the Transferee Company will also result in the formation of a larger, more profitable and broad based company having greater capacity to raise and access funds for growth and expansion of its business, marketing and selling its services.

e. The amalgamation will enable greater realisation of the potential of the business of the Transferor Company and the Transferee Company in the merged entity and will have beneficial results for the said Companies, their shareholders and all other stakeholders.

8. It is stated that the Board of Directors of the Transferor Company and the Transferee Company, in their meetings held on 15.04.2023, have considered and unanimously approved the Scheme subject to the sanction of the same by this Tribunal. The copies of the Board Resolutions of the Transferor Company and the Transferee Company are part of Annexures P-1 and P-2 of the Application respectively.

9. The appointed date of the Scheme is 01.04.2022 as defined in Part-I, Clause 1 sub clause ii of the Scheme of Amalgamation which is attached as Annexure P-17 of the Application.

10. It is submitted that the Scheme of Amalgamation (Annexure P-17) also takes care of the interest of the staff/workmen and employees of the Applicant Companies, by virtue of Clause 8.1, 8.2 and 8.3 of the Scheme.

11. It is stated that the Applicant Companies have filed the audited financial statements as at 31.03.2022 along with the provisional financial statements as on 28.02.2023, with the application as Annexure- P-4 and Annexure P-10, respectively.

12. It is further submitted that in pursuance to Section 230 and Section 232 of the Act, the Applicant Companies have filed the certificate dated 03.05.2023 issued by the Statutory Auditor of the Applicant Companies certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act which is attached as Annexure P-18 of the application.

13. It is further submitted by the counsel for applicant companies that the valuation report has been submitted by Mr. Vardhman Doogar, IBBI Registered Valuer, having Regn. No. IBBI/RV/06/2019/10802 which is attached as Annexure P-19 of the application. As per the valuation report dated 26.04.2023 the following share exchange ratio has been proposed:-

"17 (Seventeen) equity shares of Rs.10/- each in the Transferee Company credited as fully paid up for every 100 (Hundred) Equity Shares of Rs.10/- each fully paid-up held by them in the capital of the Transferor Company".

14. It is deposed by way of affidavits furnished by authorized signatories of the Applicant Companies that there are no material investigations or proceedings pending against the Applicant Companies under the Companies Act, 2013 or any other provision of law which have a material adverse effect on the sanction of the Scheme. There are no material legal proceedings against the Applicant Companies under applicable laws that adversely impact the sanction of the Scheme. It is further deposed by way of affidavits furnished by authorized signatories of the Applicant Companies that the Applicant Companies are not regulated or governed by any sectoral regulators. The aforesaid affidavit has been attached as Annexure P-20 of the Application.

15. It is deposed by the way of affidavit that the present Scheme of Amalgamation does not involve the reduction of share capital and that the Scheme does not provide for any arrangement with the outside creditors and thus thereby Corporate Debt restructuring is not applicable to the Scheme (Annexure P-20 of the Application).

16. It is further stated that the Scheme does not envisage any buyback of shares. None of the Applicant Companies hold any public deposit, as on the date of the application.

17. The Applicant Companies have furnished the following documents:-

a) Proposed Scheme of Amalgamation (Annexure P-17 of the application).

b) The Certificates of Incorporation along with Memorandum and Articles of Association of applicant companies. (Annexure P-3 and P -9 of the Application)

c) List of Equity Shareholders of the Transferor Company along with consent Letters(Annexure P-5 and P 6 of the application).

d) List of 'NIL' Secured and Unsecured Creditor of Transferor Company duly certified by R.K Deepak & Co., Chartered Accountants (Annexures P-7 and P-8 of the application).

e) List of Equity Shareholders of the Transferee Company along with consent letters (Annexure P-11 and P 12 of the application).

f) List of Secured and Unsecured Creditors of Transferee Company duly certified by Chartered Accountants along with consent Letters (Annexures P-13, P-14and P-15 of the application).

g) Certificate of Statutory Auditors to the effect that accounting treatment proposed in the Scheme is in conformity with Section 133 of the Act (Annexure P -18 of the application).

h) Report of Share Exchange Ratio (Annexure P-17 of the application).

i) Audited Financial Statements as on 31.03.2022 of the applicant companies (Annexure P-4 and P-10 of the application).

j) Provisional Financial Statements as on 28.02.2023 of the applicant companies (Annexures P-4 and P-10 of the application).

k) Affidavit with regard to the Sectoral Regulator of the applicant companies (Annexure P-20 of the application).

18. The Applicant Companies have furnished the details of the Equity Shareholders, Preference Shareholders, Secured Creditors, Unsecured Creditors, and Debenture holders as follows:

Name of the Applicant

Companies

Shareholders along with their consent

Creditors along with their consent.

Equity Shareholder

Consent with calculations

Secured Creditors

Consent with calculations

Unsecured Creditors

Consent with calculations

Transferor Company

4

100% in Value

Nil

NA

Nil

NA

Transferee Company

11

100% in Value

1

100%in Value

22

96.66% in Value (17 creditors)

19. Accordingly, the directions of this Bench in the present case are as under:

I. In relation to Transferor Company/Applicant Company No. 1:

a. The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company, and the fact that the consents have been received by way of affidavits;

b. Since there are NIL secured creditor and unsecured creditor in Transferor Company, therefore, there is no scope for any meeting;

II. In relation to Transferee Company/Applicant Company No. 2:

a. The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company, and the fact that the consent have been received by way of affidavits;

b. The meeting of unsecured creditors of the Transferee Company has been dispensed with as the consent of unsecured Creditors holding 96.66% in value have been received by way of affidavits;

c. The meeting of sole secured creditor of the Transferee Company has been dispensed with as the consent of sole secured creditor has been received by way of affidavit;

20. In view of the above, the First Motion Application stands allowed by giving

liberty to the Applicant Companies to file the Second Motion Petition with a direction that the Applicant Companies shall make specific prayers for sending notices to the (a) Central Government through Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, (b) concerned Registrar of Companies; (c) Official Liquidator; and (d) Income Tax Authorities by disclosing the PAN numbers of all the Applicant Companies in the title of the Second Motion Petition.