(2021) 11 NCLT CK 0076

In the National Company Law Tribunal

Case No : Company Petition CP (CAA) NO.14/ALD/2021 Connected with Company Application CA (CAA) NO.17/ALD/2021

Anvi Holdings Private Limited Vs

Date of Decision : 23-11-2021

Acts Referred:

Companies Act, 2013 — Section 133, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 230, 230(5), 231, 232, 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8(3)
Companies Act, 1956 — Section 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251

Citation : (2021) 11 NCLT CK 0076

Hon'ble Judges : Rajshekhar,V.K, Member (J);Virendra Kumar Gupta, Member (T)

Bench : Division Bench

Advocate : S.K. Gupta

Final Decision : Dosposed Of

Judgement

Virendra Kumar Gupta, Member (Technical)

1. The Present Joint Company Petition is filed by Petitioner Companies under Sections 230 and 232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 for sanction of Scheme of Amalgamation of Anvi Holdings Private Limited (Petitioner Transferor Company No.1), Anvi Housing Private Limited (Petitioner Transferor Company No.2), Cawnpore Housing Development Private Limited (Petitioner Transferor Company No.3) and Modern Real Estates Private Limited (Petitioner Transferee Company) and their respective Shareholders and Creditors (hereinafter referred to as "Scheme" or "Scheme of Amalgamation").

2. The Petition has now come up for final hearing. The Ld. Counsel for the Applicants submits as follows :-

i. The proposed 'Scheme of Amalgamation' has previously been approved by the Board of Directors of the Petitioner Transferor Companies and the Petitioner Transferee Company in their respective Board meetings held on 1" July, 2021.

ii. The factual position of the Authorized, Issued, Subscribed and Paid up share Capital of the Petitioner Companies as on 31' March, 2021 is described in the present Company Petition.

iii. The rationale of the proposed Scheme of Amalgamation is elaborately described in the present Company Petition which may be summarized as under :-

(a) The Transferor and Transferee Companies are Holding and Subsidiary Companies and have common control, common management, common place of business and common group administration.

(b) The amalgamation will lead to emergence of a single entity with strong financial capability to effectively withstand competition, to effectuate economies of scale and to optimize benefits available under the law. The consolidated Companywith far enlarged asset base, higher profitability and net worth will be better placed to access low cost fund for its expansion and diversification requirements.

(c) The amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried by the Amalgamating Companies and will avoid duplication of administrative functions and eliminate multiple record keeping.

(d) The amalgamation will result in simplification and rationalization of the holding structure and reduction in corporate legal entities.

3. The Petitioners have stated that the accounting treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013 as certified by the Auditors of the Petitioner Companies.

4. It has also been stated in the Petition that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or under Sections 210 to 226 of the Companies Act, 2013 are pending against any of the Petitioner Companies.

5. It has also been stated in the Petition that the Scheme is not prejudicial to the interests of the Shareholders and Creditors of the Petitioner Companies and the Petition is made bona fide and is in the interest of all the Petitioner Companies and their respective Shareholders and Creditors as a whole and is just and equitable.

6. It has been stated that the Petitioner Transferor Company No.2 and 3 are wholly owned subsidiaries of the Petitioner Transferor Company No.1 and the

Petitioner Transferee Company is step down subsidiary company of the Petitioner Transferor Company No. l and wholly owned subsidiary of Petitioner Transferor Company No.3 as such, the Equity and/ or Preference Share Capital held by the Petitioner Transferor Company No. I in the Petitioner Transferor Company No.2 and 3 and held by the Petitioner Transferor Company No.3 in the Petitioner Transferee Company shall stand cancelled and extinguished and the Petitioner Transferee Company shall issue and allot without any further application, act or deed and without any further payment, the Equity and/ or Preference Shares to the Equity and/ or Preference Shareholders of the Petitioner Transferor Company No.! and 3 in the manner provided under Para No.11 of the Scheme.

7. A perusal of the present Petition discloses that initially the Petitioner Companies had filed Company Application CA (CAA) No.17/ALD/2021 seeking directions of this Tribunal to dispense with the requirement of convening meetings of Equity and Preference Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Transferor Company No.1, Petitioner Transferor Company No.2, Petitioner Transferor Company No.3 and the Petitioner Transferee Company. Accordingly, this Hon'ble Tribunal vide its Order dated 16th August, 2021, dispensed with the requirement of convening meetings of Equity and Preference Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Transferor Company No.1, Petitioner Transferor Company No.2, Petitioner Transferor Company No.3 and the Petitioner Transferee Company.

8. This Hon'ble Tribunal vide its Order dated 31' August, 2021 directed to issue notice of hearing in respect of present Company Petition to the Statutory Authorities and also to make paper publication in respect thereof in English Newspaper 'Business Standard' and Hindi Newspaper `Rashtriya Sahara' having circulation in Kanpur where registered office of the Petitioner Companies is situated.

9. In compliance thereof, the Petitioner Companies on 12th October,2021 have filed Affidavit of service and publication, confirming that notices have been duly published in English Newspaper "Business Standard" and Hindi Newspaper "Rashtriya Sahara", having circulation in Kanpur and served upon (a) the Central Government through the office of the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, Uttar Pradesh, Kanpur; (c) the Official Liquidator, Allahabad; (d) the Income-Tax Departments having jurisdiction over the Petitioner Companies.

10. Pursuant to the said advertisements and notices, the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi received a Report from the Registrar of Companies, Uttar Pradesh, Kanpur and filed its representation on 21st October, 2021 through an affidavit whereof the Regional Director in his report stated that the transferor companies and the transferee companies have filed the Balance Sheets and Annual returns up to 2020-21

and no prosecution has been filed and no inspection or investigation has been conducted in respect of the petitioner companies. Further, it has made an observation with regard to Para 6.10 of the Scheme providing for operation of bank accounts of the Petitioner Transferor Companies by the Petitioner Transferee Company till such time the name of the Petitioner Transferor Companies are substituted with the Petitioner Transferee Company and stated that since after the Effective Date the identity of the Petitioner Transferor Companies will come to an end, therefore, the Petitioner Transferor Companies could not operate bank accounts in their name post Effective Date of the Scheme. The Petitioner Companies in their Reply Affidavit filed on 23' October, 2021 clarified that pursuant to Para 6.1, 6.2 and 6.3 of the Scheme, all the assets and properties of the Petitioner Transferor Companies whether movable or immovable including the bank balances shall stand transferred and vested in the Petitioner Transferee Company so as to become the assets and properties of the Petitioner Transferee Company from the Appointed Date, as such, the balances lying in the Bank Accounts of the Petitioner Transferor Companies shall become the balances of the Petitioner Transferee Company. The said clause in the Scheme is intended to mitigate the transitional operational difficulties and ensuring smooth functioning of banking operations as an interim measure to facilitate the deposition of cheques and pay orders issued in the name of the Petitioner Transferor Companies till the convergence of Petitioner Transferor Companies bank accounts in the name of the Petitioner Transferee Company takes place in banking records. It is hereby confirmed that the banking operations of the Petitioner Transferee Company will continue to remain operational as usual as the Petitioner Transferee is not getting dissolved post sanction of the Scheme of Amalgamation. More so, the said provision in the Scheme would facilitate proper implementation of the Scheme to achieve its intended objective and is unlikely to affect the interest of any stakeholder of the Petitioner Companies. It was also stated that this Hon'ble Tribunal vide Order dated 5t1iNovember, 2020 in Company Petition No.140/ALD/2020 sanctioned the Scheme of Amalgamation of Petitioner Companies disregarding similar observation made by the learned Regional Director in its Representation/ Affidavit dated 9th October, 2020. The representative of the Central Government while agreeing to the reply of the Petitioner Companies conveyed no objection to the sanction of the proposed Scheme of Amalgamation.

11. The Official Liquidator, Ministry of Corporate Affairs, Allahabad, Uttar Pradesh has also filed its report through a representation/ affidavit dated 20.10.2021, and at Para 23 mentioned that the Official Liquidator has no objection to the dissolution of the transferor companies without winding up pursuant to the provisions of Sec 230-232 of the Companies Act, 2013, and other applicable sections and rules there under.

12. The Income-Tax Department has not filed any representation within 30 days of service of the notice of the Petition. Hence, pursuant to Section 230(5) of the

Companies Act, 2013 read with Rule 8(3) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, it is presumed that the Income-Tax Department has no objection on the Scheme of Amalgamation of the Petitioner Companies.

13. We have gone through the reports of the Ld. Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi, Ld. Registrar of Companies, Uttar Pradesh, Kanpur and Ld. Official Liquidator, Ministry of Corporate Affairs, Allahabad, Uttar Pradesh and the Reply Affidavit filed by the Petitioner Companies and after perusing the same, we find that there appears to be no reservation to grant sanction to the Scheme and we are of the view that the sanction of the present Scheme is neither against public policy, nor it would be prejudicial to the public interest at large.

14. In addition to above, all the statutory compliance seems to have been complied with by the Petitioner Companies, therefore, the present Company Petition deserves to be allowed in terms of its Prayer clause.

15. In the result, the proposed Scheme of Amalgamation, which is annexed to the Company Petition stands approved and sanctioned. The Petitioner Companies are required to act upon as per terms and conditions of the sanctioned Scheme and the same shall be binding on all the Shareholders, Secured Creditors and Unsecured Creditors of the above named Petitioner Companies and also on the Petitioner Companies with effect from the Appointed Date i.e. 1st day of April, 2021.

16. While approving the Scheme as above, it is clarified that this order should not be construed as, in any way, granting exemption from payment of stamp duty (if any, is applicable), taxes (including Income Tax, GST or any other charges, if any, are applicable) 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. Also, the Petitioner Transferor Company No.1, Petitioner Transferor Company No.2 and Petitioner Transferor Company No.3 shall stand dissolved without undergoing the process of winding up.

17. 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, Uttar Pradesh for registration.

18. All the concerned Regulatory Authorities to act on a copy of this order annexed with the Scheme duly authenticated by the Registrar, National Company Law Tribunal, Allahabad Bench.

19. Leave is granted to the Petitioners to file the Schedule of Assets.

20. Any person interested shall be at liberty to apply before this Tribunal in the above matter for such directions as may be necessary.

21. Accordingly, the present Company Petition bearing CP (CAA) No.14/ ALD/2021 is allowed and stands disposed of.

