(2020) 05 NCLT CK 0028

In the National Company Law Appellate Tribunal

Case No : Company Petition No. CAA 91/PB Of 2019, Company Application No. CA (CAA) 62/PB Of 2019

APS Tech Support Private Limited — APPELLANT

Vs

AP Securitas Private Limited — RESPONDENT

Date of Decision : 08-05-2020

Acts Referred:
Companies Act, 2013 — Section 129, 230, 231, 232, 232(3)(i)

Citation : (2020) 05 NCLT CK 0028

Hon'ble Judges : B.S.V. Prakash Kumar, J

Bench : Single Bench

Advocate : Mukesh Sukhija, Pooja Bhatia, Tania Sharma, Vibhuti Malhotra

Final Decision : Disposed Of

Judgement

B.S.V. Prakash Kumar, J

1. This Joint Application has been filed by the Petitioner Companies under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements 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.

2. A perusal of the petition that initially the First Motion application seeking directions for convening/dispensing with the meetings of Shareholders and Creditors was filed before this bench and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, this Tribunal vide its first motion order issued directions with respect to the same. The Petitioners were directed to carry out publication in the newspapers English Daily 'Business Standard' (Delhi Edition) as well as in Hindi Daily 'Business Standard' (Delhi Edition). In addition, thereto notices were directed to be served on the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other relevant sectoral

regulators.

3. It is seen from the records that the Petitioners have filed an affidavit affirming compliance of the order. A perusal of the Affidavit discloses that the petitioners have effected the newspaper publication as directed in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of petition were duly served on the Regional Director, Northern Region, Registrar of Companies, Delhi and Haryana, Official Liquidator and Income Tax Department in compliance of the order and in proof of the same acknowledgement by the respective offices have also been place on record.

4. The rationale for the proposed scheme as stated in the scheme is that the Transferor Company and the Transferee Company belong to the same group. There are synergies in the business operations of the Transferor Company and the Transferee Company. In order to provide better operational and financial efficiency in the businesses of Transferor Companies and the Transferee Company, it is intended to merge Transferor Company into the Transferee Company.

5. Further, the Regional Director in its affidavit dated 21/11/2019 has stated that the Transferor Companies are regular in filing the statutory returns. It has further submitted that no complaints/inspection/investigation or Prosecution are pending against the Transferor and Transferee Companies.

6. The Official Liquidator in his Report dated 16/01/2020, based on the information submitted by the Petitioner Companies, submitted that no Complaint against the proposed Scheme is received from any person/party interested in the Scheme in any manner till the date of filing of the Report.

7. The Income Tax Department has also recorded no adverse comments in relation to the Scheme. Although in order to protect the interest of the revenue it is made clear that there shall be no limitation on the power of the Income tax Department for recovery of pending Income Tax dues if any from petitioner companies, including imposition of penalties etc. as provided in law.

8. Para 15 of the Scheme provides that the merger of the Transferor Company with Transferee Company shall be accounted as per "The Pooling of interests Method" as prescribed in the Accounting Standard-14 contained in company (Accounting Standards) Rules, 2006, notified under Section 129 of the Companies Act, 2013 read with the Companies (Indian Accounting Standards) Rules, 2015.

9. The Transferee Company has undertaken that the Transferee Company will pay the Fees, if any required to be paid to the Registrar of Companies after merger of the authorized Share capital of the Transferor Company with the Authorized Share Capital of Transferee Company, if the Fees paid by the Transferor is insufficient & this undertaking has already be given by Transferor Companies & Transferee Company in para 12.1 of the Scheme of amalgamation and the

proposed Scheme is not in contravention of Section 232 (3) (i) of the Companies Act 2013 and the Section clearly provides that "where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation".

10. 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 and the reports of official Liquidator and, there appears to be no impediment in sanctioning the present scheme. Consequently, sanction is hereby granted to the scheme under section 230 to 232 of the Companies Act, 2013. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

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 to the scheme 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.

While approving the Scheme as above, we further clarify that this order should not be construed as an order in any granting exemption from payment of stamp duty, taxes including income tax, GST etc. or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.

12. THIS TRIBUNAL DO FURTHER ORDER(S):

(A) WITH RESPECT TO TRANSFEROR COMPANIES AND TRANSFEREE COMPANY

1. That the Transferor Company stands dissolved without being wound up; and

2. That all the property, rights and powers of all the Transferor Company 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 Transferee Company for all the estates and interests of the Transferor Company therein but subject nevertheless to all charges now affecting the same; and

3. That all the liabilities and duties of the Transferor Company be transferred without further act or deed, to 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;

4. That all proceedings now pending by or against the Transferor Company by continued by or against the Transferee Company.

5. That all the employees of the Transferor Company in Service, if any, on the date immediately preceding the date on which the scheme takes effect, i.e. the

effective date shall become the employees of the Transferee Company on such date without any break or interruption in service and upon terms and conditions not less favourable than those subsisting in concerned Transferor Company on the said date.

6. That 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 for registration and on such certified copy being so delivered the Transferor Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file kept by him in relation to the Transferee Company and the files relating to all the petitioner companies shall be consolidated accordingly.

Any person interested shall be at liberty to apply to the tribunal in the above matter for any directions that may be necessary. The petition stands disposed of in the above terms.