(2023) 10 NCLT CK 0013

In the National Company Law Tribunal

Case No : C.P. (CAA)/138 (MB)/2023 CONENCTED WITH C.A. (CAA)/146 (MB)/2022

Arvutam Enterprises Private Limited Vs

Date of Decision : 06-10-2023

Acts Referred:

Companies Act, 2013 — Section 90, 230, 230(5), 232, 232(3)(i), 232(6)
Income Tax Act, 1961 — Section 68

Citation : (2023) 10 NCLT CK 0013

Hon'ble Judges : Kuldip Kumar Kareer, Member (J);Anil Raj Chellan, Member (T)

Bench : Division Bench

Advocate : Sameer Pandit, Sarrah Khambati, Rozat Akolawala

Final Decision : Disposed Of

Judgement

Kuldip Kumar Kareer, Member Judicial

1. Heard the Learned Counsel for the Petitioner Companies and the Authorised Representative of the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.

2. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 in the matter of Scheme of Arrangement and Amalgamation ("Scheme") of Arvutam Enterprises Private Limited ("Transferor Company No. 1"), Innovador Traders Private Limited ("Transferor Company No. 2"), Systemtrac Traders Private Limited ("Transferor Company No. 3") (collectively referred as "Transferor Companies") with APRN Enterprises Private Limited (Formerly known as Ansapack Private Limited) ("Transferee Company") and their respective shareholders and creditors under the Companies Act, 2013.

3. The Learned Counsel for the Petitioner Companies state that the Transferor Companies have approved the Scheme at their respective board meetings held on April 5, 2022 and April 6, 2022. The Learned Counsel for the Petitioner

Companies further states that the Transferee Company has approved the Scheme at its board meeting held on April 11, 2022.

4. The Learned Counsel for the Petitioner Companies state that the business of the Transferor Company No. 1 is consultancy services in property investments and facility management. The Learned Counsel for the Petitioner Companies states that the Transferor Company No. 2 and Transferor Company No. 3 are engaged in the business of general trading in commodities. The Learned Counsel for the Petitioner Companies states that the Transferee Company is engaged in the business of manufacturing and trading in packaging material.

5. The Learned Counsel for the Petitioner Companies states that the Transferor Companies are wholly owned subsidiaries of the Transferee Company. The Learned Counsel for the Petitioner Companies states that the amalgamation of the Transferor Companies with the Transferee Company shall achieve restructuring, consolidation and streamlining of the Transferor Companies and the Transferee Company and shall achieve the following key objectives/benefits:

a. The amalgamation will result in achieving greater integration and greater financial strength and flexibility and maximize overall shareholders’ value.

b. The amalgamation will enable the commencement and consolidation of the business of managing and recovering borrowings/stressed assets by the Transferee Company.

c. The amalgamation will result in achieving cost savings from more focused operational efforts, rationalization, standardization and simplification of business processes and productivity improvements.

d. The amalgamation will result in greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined businesses which can be deployed more efficiently to fund growth opportunities and, to maximize shareholders value.

e. The amalgamation will help in consolidating and improving the internal control systems and procedures which will bring greater management and operational efficiency due to integration of various similar functions being carried out by the entities such as human resources, finance, legal, management etc.

f. The amalgamation will result in a significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Companies and the Transferee Company.

g. The amalgamation will also enable unified accounting and auditing resulting in reduction of costs, time and efforts involved.

h. The amalgamation will result in simplification of group structure

6. The Learned Counsel for the Petitioner Companies submits that the Scheme is filed in consonance with Section 230-232 of the Act along with order dated

February 3, 2023 in C.A. (CAA)/146 (MB)/2022.

7. The Learned Counsel for the Petitioner Companies submits that pursuant to the directions contained in the order dated February 3, 2023, the meeting of the shareholders of the Petitioner Companies was dispensed with in view of the fact that, the respective shareholders of the Petitioner Companies had given their consent to the Scheme and for dispensing with the convening and holding of the meeting of the Shareholders by way of consent affidavits which were produced before this Hon’ble Tribunal. The Learned Counsel for the Petitioner Companies further submits that pursuant to the directions contained in the order dated February 3, 2023, the Transferor Companies have issued notice of the Scheme to all their respective unsecured creditors and the Transferee Company has issued notice of the Scheme to all its secured creditors and such unsecured creditors having outstanding amount of more than Rs.10,00,000/-, being equivalent to more than ninety percent in value of the total unsecured creditors of the Transferee Company.

8. The Learned Counsel for the Petitioner Companies state that the Petitioner Companies have complied with all the requirements as per the direction of the Tribunal and they have filed necessary affidavits to demonstrate compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if and to the extent applicable, as may be required under the Companies Act, 2013 and the rules made thereunder. The said undertaking is accepted.

9. The Learned Counsel for the Petitioner Companies submits that the Transferor Companies are wholly owned subsidiaries of the Transferee Company and therefore, there shall be no issue of shares as consideration for the amalgamation of the Transferor Companies with the Transferee Company. The Learned Counsel for the Petitioner Companies submit that upon the Scheme becoming effective, all equity shares of the Transferor Companies held by the Transferee Company shall stand cancelled without any further application, act or deed.

10. The Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai has filed a Report dated July 11, 2023 (“Report”). The observations made by the Regional Director on the Scheme are made in paragraphs 2 and 3 of the Report. In response to same, the Petitioner Companies have filed their Affidavit dated July 24, 2023 (“Affidavit in Reply to the Report”) giving necessary clarifications and undertakings. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarised in the table below:-

Para

Observations by the Regional Director

Undertakings of the Petitioner Companies/

Reply

2(a)(ii)(1)

i. That the ROC Mumbai in his report dated 18.04.2023 has also stated that No Inspection, Investigation, Inquiry, Prosecutions, Technical Scrutiny and Complaints under CA, 2013 have been pending against the Petitioner Companies.

ii. Further ROC has mentioned as follows:-

1. There are no secured creditors of the Transferor Companies and there are 3 secured creditors as of 31st December 2021 in Transferee Company.

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The Practising Chartered Accountants of the Transferor Companies have by its Certificate dated April 6, 2022

certified the number of secured creditors of the respective Transferor Companies, a copy which is annexed as Exhibit "OO" to Exhibit "QQ" to the captioned Company Scheme Application. Similarly, the Practising Chartered Accountants of the Transferee Company by its Certificate dated April 13, 2022 certified the number of secured creditors of the Transferee Company, a copy of which is annexed at Exhibit "RR" to the captioned Company

Scheme Application

2(a)(ii)(2)

2. There are 3 unsecured creditors in 1st Transferor Company, 2nd Transferor Company has 6 unsecured Creditors and 3rd Transferor Company has 9 secured creditors.

That the Transferee Company has 717 unsecured creditors.

The Practising Chartered Accountants of Transferor Nos. 1 and 2 Companies have by its Certificate dated April 6, 2022 certified the number of unsecured creditors as on December

31, 2021 of Transferor Nos. 1 and 2 Companies, a copy which is annexed as Exhibit "UU" and Exhibit "TT" to the captioned Company Scheme Application. Further, The Transferor No. 3 Company has 9 unsecured creditors as on December 31, 2021 and the same is certified by the Practising Chartered Accountant of Transferor No. 3 Company by its Certificate dated April 6. 2022, a copy of which is annexed at Exhibit. "UU" to the captioned Company Scheme Application. As regards the number of unsecured creditors of the Transferee Company, the same has been certified by Certificate dated June 21, 2022 issued by the Practising Chartered Accountant of the

Transferee Company, a copy of which is annexed at Exhibit “A” to the Additional Affidavit dated July 21, 2022 to the captioned Company

Scheme Application.

2(a)(ii)(3)

3. As per provisions of section 232 (3)(i) of CA, 2013 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 authorized capital shall be set off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation. Therefore, remaining fee, if any after setting off the fees already paid by the transferor company on its authorized capital, must be paid by the transferee company on the increased authorized capital subsequent to amalgamation.

The Petitioner Companies agree that where the Transferor Companies are dissolved, the fee, paid by the Transferor Companies on their respective authorised capital shall be set-off against any fees payable by the Transferee Company on its authorised capital subsequent to the amalgamation in compliance with Section 232(3)(i) of the Companies Act, 2013. The Affidavit in Reply to the Report may be treated as an undertaking on behalf of the Petitioner Companies in terms of paragraph 2(a)(ii)(3) of the Report.

2(a)(ii)(4)

4. Interest of the Creditors should be protected.

Under the Scheme no compromise is offered to any of the creditors of the respective Petitioner Companies and no liability of the creditors under the Scheme is being reduced or extinguished. The creditors of the respective Petitioner Companies will be paid off in the ordinary course of business as and when their dues become payable as per law and thus the interests of creditors are duly protected.

2(c)

c) Transferee company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transfer of companies

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The Transferee Company undertakes to comply with provisions of Section 232(3)(i) of the Companies Act, 2013 in respect of fees payable by the Transferee Company for increase in share capital on account of the merger. The Affidavit in Reply to the Report may be treated as an undertaking on behalf of the Petitioner Companies in terms of paragraph 2(c) of the Report.

2(d)

d) In compliance of Accounting Standard-14 or IND- AS 103, as may be applicable, the resultant company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.

The Transferee Company undertakes to pass such accounting entries which are necessary in connection with the Scheme to comply with applicable Accounting Standards. The Affidavit in Reply to the Report may be treated as an undertaking on behalf of the Transferee Company in terms of paragraph 2(d)

of the Report.

2(e)

e) The Hon'ble Tribunal may kindly direct the Petitioner Companies to file cm affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.

The Scheme annexed to the captioned Company Scheme Application contained certain typographical errors in clause 3.1(ii) and clause

7 of the Scheme. By resolutions dated April 6, 2023 passed by the respective Board of Directors of the Petitioner Companies (Exhibits “Z-1” to “Z-4” to the captioned Petition), the said typographical errors were rectified. The rectified copy of the Scheme was shared with the Regional Director vide Transferee Company’s letter dated April 10, 2023 (Exhibit “JJ” to the captioned Petition). The rectified copy of the Scheme is annexed as Exhibit “W”

to the captioned Company Scheme Petition. Apart from the above typographical errors, the Scheme enclosed to the Company Scheme Application and Company Scheme Petition are one and same and there is no discrepancy or any

change in the Scheme.

2(f)

f) The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the petitioner companies concerned.

The Petitioner Companies have duly served notices of the Scheme to the concerned authorities and the same has been recorded in the Affidavit of Service dated April 20, 2023 filed by the respective Petitioner Companies (Exhibit “HH-1” to “HH-4” to the captioned Petition) which is already on record before this Hon’ble Tribunal. As regards the powers of

the authorities in respect of matters arising after giving effect to the Scheme, the same will have to be exercised in and will apply to the Petitioner Companies in accordance with applicable law.

2(g)

g) As per Definition of the Scheme,

"Appointed Date" means start of business hours in Mumbai, India on January 1, 2022;

"Effective Date" shall mean a date on which all the conditions (taken together) specified under Clause 18 of this Scheme stand satisfied;

"Record Date" means the date to be fixed by the Board of Directors of APL to determine the shareholders of the relevant Transferors (being AEPL, ITPL and STPL) whose names are recorded in the Register of Members of such Transferors as on such date and to whom the equity shares of APL would be issued pursuant to this Scheme.

It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs

As per Clause 2 of Scheme, the Scheme shall be effective from the Appointed Date and become operative from the last of the date on which all the conditions set out in Clause 18 of Part C of the Scheme are satisfied. As such, the Scheme is in compliance with circular no. F. No. 7/12/2019/CL-1 dated August 21, 2019 read with the provisions of the Companies Act, 2013 and regulations made thereunder. As such, the Scheme is in compliance

with the provisions of Section 232 (6) of the

Companies Act, 2013 and all other applicable provisions of the Companies Act, 2013.

2(h)

h) Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if so required.

The Petitioner Companies undertake to comply with the directions of the concerned sectoral

Regulatory, in accordance with law. The Affidavit in Reply to the Report may be treated as an undertaking on behalf of the Petitioner Companies in terms of paragraph 2(h)

of the Report.

2(i)

i) It is observed from financial statements as on 31.03.2022 of Petitioner Companies has issued shares at Security Premium and collected total

premium as follows:-

The treatment given by the Transferee Company in respect of shares set out in the paragraph under reference, the assessment of the respective assessment years wherein the said

shares were issued has

Sr.

No.

Date of Issue

No. of shar es

Name of the Allotee

Par Valu e

Pre miu m

Total premi um

1.

07.03.

2011

4000

Piramal Enterpris es Limited

10

1240

49,60,

000

2.

07.03.

2011

4400

Arvind Agarwal

10

1240

54,56,

000

been accepted by the Income Tax Department without making any addition under Section 68 of Income Tax Act, 1961. In any event, the notice of the Scheme was duly issued to the Income Tax Authorities and the same has been recorded in the Affidavit of Service dated April 20, 2023 filed by the respective Petitioner

Companies (Exhibit “HH-1” to “HH-4” to

the captioned Petition) which is already on record before this Hon’ble Tribunal. However, no objection or observation has been raised by the Income Tax Authorities on the Scheme.

3.

07.03.

2011

6000

Premnat h Agarwal HUF

10

1240

74,40,

000

4.

27.03.

2015

4650

0

Rachna Agarwal

10

79

36,73,

500

5.

27.03.

2015

4900

0

Aditya Agarwal

10

79

38,71,

000

6.

27.03.

2015

4900

0

Gautam Agarwal

10

79

38,71,

000

7.

27.03.

2015

1100

00

Premnat h Agarwal

10

79

86,90,

000

8.

27.03.

2020

3010

752

Emblem Holdings Private Limited

10

83

24,98,

92,41

6

9.

30.03.

2020

4301

07

Emblem Holdings

Private Limited

10

83

3,56,9

8,881

TOTAL

32355

2797

Further, the Petitioner Companies shall also satisfy the Hon'ble Bench about assessment of share capital u/s. 68 of the Income Tax Act, 1961, for issue of shares at fair value in order to compliance of the scheme on the merit particularly allotment of 14,400 shares of Rs.10/- each of premium of Rs.1240/- per shares on 07.03.2011 as per information furnished by the Petitioner Company vide its letter dated 10.04.2023.

2(j) and 3

j) As per shareholding pattern as on 31.03.2022 submitted by the Petitioner company, details of

shareholding is as follows:-

The Transferee Company has been

advised that filing of

Sr. No

.

Petitioner Company

Name of Sharehol

der

% of share

s held

Remarks

Form BEN-2 is not required in respect of the shares set out in the paragraph under reference. In any event, the Petitioner Companies undertake to comply with the provisions of Section 90 of the Companies Act, 2013 read with Companies (Significant Beneficial Owners) Amendment Rules, 2019, as applicable to the Petitioner Companies.

1.

ANSAPAC K PRIVATE LIMITED

Emblem Holdings Private Limited

64.96

%

No Form BEN-2 has been filed by any of the Petitioner Companies as per

records available at MCA21

Portal

3. No Form BEN-2 has been filed by any of the Petitioner Company as per records available at MCA21 Portal, hence Petitioner Companies shall undertake to comply with the provisions of section 90 of Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment Rules, 2019, thereunder and to file Form BEN- 2 for declaring name of the significant beneficial owner with

concerned ROC.”

11. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraph 10 above. The Affidavit dated July 24, 2023 filed by the Petitioner Companies, the clarifications and undertakings given by the Petitioner Companies are accepted by this Tribunal, and the Petitioner Companies are directed to comply with the same. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made thereunder. The Authorised Representative of the Regional Director, MCA (WR), Mumbai Mr. Gaurav Jaiswal who is present at the time of the hearing has submitted that the explanation and clarifications given by the Petitioner Companies are found satisfactory and he stated that they have no objections for approving the Scheme by the Tribunal.

12. The Learned Counsel for the Petitioner Companies submits that the Petitioner Companies undertake to comply with the provisions of Income Tax Act and Rules thereunder, as applicable.

13. Further heard Mr. Gaurav Jaiswal, Company prosecutor of Regional Director, MCA (WR), Mumbai, who is present and reported no objections to allowing the above Company Scheme Petition.

14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy considering that no objection has so far been received from any authority or creditors or members or any other stakeholders.

15. Since all the requisite statutory compliances have been fulfilled, the captioned Company Scheme Petition is made absolute in terms of prayer clause (A). The Transferor Companies are ordered to be dissolved without winding up.

16. The Scheme is hereby sanctioned with the Appointed Date of January 1, 2022.

17. The Petitioner Companies are directed to lodge a copy of this Order and Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable on the same, if any, within 60 (sixty) clear working days from the date of receipt of the certified copy of the Order.

18. The Petitioner Companies are further directed to file a certified copy of this

Order along with a copy of the Scheme with the concerned Registrar of Companies electronically along with E-Form INC 28 within 30 days from the date of receipt of this Order.

19. All concerned regulatory authorities to act on a copy of this Order along with the Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench.

20. Any person interested is at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.

21. Any concerned Authority shall be at liberty to approach this Tribunal for any further clarification as may be necessary.

22. Ordered accordingly. C.P. (CAA)/138/MB/2023 is allowed and disposed of.

